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**STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS**

IN RE:	:	CASE NO. M2006-9992720
	:	
THERON L. MOSLEY	:	JANE S. ARATA, HEARING OFFICER

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**ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
Issued September 22, 2006**

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**I. FINDINGS OF FACT**

**A. Background.**

This matter came before Jane S. Arata an attorney licensed to practice law in Ohio duly appointed by the Ohio Division of Financial Institutions ("Division") to serve as Hearing Officer for this hearing in accordance with the Ohio Administrative Procedure Act, Ohio Revised Code ("R.C.") Chapter 119. The hearing was held on August 23, 2006, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Theron Mosley ("Respondent") to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License and Notice of Opportunity for a Hearing ("NOH").

The Division alleges that Respondent was convicted of passing bad checks in 1995, solicitation in 1995, and passing bad checks in 2004. The Division further alleges that he violated R.C. 1322.07(A), (B), and (C) by failing to disclose the two 1995 convictions on his 2004 loan officer license application ("2004 Application.") Therefore, the Division asserts that Respondent is not eligible for a loan officer license pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322, for the following reasons:

1. Respondent violated R.C. 1322.07(A), (B), and (C) by failing to disclose the convictions on his 2004 Application;

2. Respondent has not proven that he is honest, truthful and of good reputation, and that there is no basis in fact to believe that he would not commit such an offense involving passing bad checks, money or securities again as required by R.C. 1322.041(A)(3); and
3. Respondent's character and general fitness do not command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act as required by R.C. 1322.041(A)(5).

Ted Klecker, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Dan Kline represented the Respondent at the hearing. At the hearing, State's Exhibits A through J and Respondent's Exhibit 1 were admitted into the record.

**B. Jurisdiction and Procedural Matters.**

1. The Division issued the NOH to Respondent on April 13, 2006, and served it upon him by certified mail. (State's Exhibit A.)
2. The Division received Respondent's request for a hearing within thirty days of the date the NOH was sent to him by certified mail. (State's Exhibit A.)
3. The Division initially scheduled the hearing for a date more than seven and within fifteen days after it received the hearing request. The hearing continued once and was set for August 23, 2006. (State's Exhibit B.)
4. Respondent was notified of the date, time, and place for all scheduled hearing dates. (State's Exhibit B.)

**C. Respondent's Loan Officer Applications and Criminal Convictions.**

5. On May 2, 2002, amendments to Ohio's Mortgage Broker Act became effective that required mortgage loan officers to be licensed by the Division. R.C. 1322.02(B).
6. Respondent first applied for an Ohio mortgage loan officer license in November of 2004. (State's Exhibit C; Hearing Transcript ("TR") at 16.)

7. Respondent answered "No" to Question 5 on the 2004 Application, which asked:

Have you or has any company for which you have been an officer, or more than 5% owner or director, ever been convicted of **any criminal offense**? Exclude minor misdemeanor traffic and parking offenses. (DUIs and DWI's are criminal offenses.)

(2004 Application, State's Exhibit C, emphasis and boldface type in original.)

8. Respondent's signature in the Attestation on the 2004 Application is notarized. Directly above that signature, the Application states: "Being first duly cautioned, I hereby swear or affirm that I have completed the foregoing Loan Officer Application fully and frankly. The answers are complete and true of my own knowledge." (2004 Application, State's Exhibit C, TR at 22-23.)
9. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031(B).
10. Respondent was convicted of passing bad checks in 1995, solicitation in 1995, and passing bad checks in 2004. All of these convictions were misdemeanors. The 2004 conviction occurred after he filed his 2004 Application. (State's Exhibits C, E, F, G, H, I, and J; Respondent's Exhibit 1; TR at 16-21, 23-25, 29-30, 34-36, 40.)
11. Respondent's 2004 Application was withdrawn by the Division because he did not submit information requested by the Division to complete it. (State's Exhibits C and D.)
12. Respondent applied for a loan officer license in June of 2005. (2005 Application, State's Exhibit E; TR at 17.)
13. Respondent answered "Yes" to Question 5 on the 2005 Application, which was the same as Question 5 on the 2004 Application. (2005 Application, State's Exhibit E, emphasis and boldface type in original.)

**D. Respondent's Failure to Disclose Convictions on Application.**

14. Respondent did not disclose the 1995 passing bad checks and 1995 solicitation convictions on his 2004 Application. (State's Exhibit C)
15. Respondent initially stated that he did not disclose the criminal convictions because they were not felonies and because others at work told him that they did not need to be disclosed for that reason. He then clarified that he was told that that felony offenses were what would bar someone from becoming a licensed loan officer. Therefore, no one told him not to disclose those convictions but instead he was told that they would not prevent him from getting a license. Direction on disclosure requirements differs from comments on what might preclude one from obtaining a license. Just because something may not bar licensure does not mean that it does not need to be disclosed as part of the licensing process. Therefore, Respondent's claim that he relied upon comments about the impact of the convictions does not provided a credible excuse for nondisclosure on the 2004 Application. (TR at 31-32.)
16. Respondent's testimony about his response to Question 5 on the 2004 Application evidences that he knew about the two convictions at the time he filled out the Application, knew that they should have been disclosed on the 2004 Application, and failed to do so. His false and inaccurate response to Question 5 on the 2004 Application reflects negatively on his ability to be a loan officer.

**E. Respondent's Reputation and Character.**

17. Respondent has worked for two mortgage companies. He has a long-term girlfriend who is the mother of his six-month-old baby. (State's Exhibits C and E; TR at 29-30.)
18. The record contains very little information about Respondent's activities and employment record since the 1995 passing bad checks conviction. Therefore, the evidence is not sufficient to establish that he is honest, truthful, and of good reputation. His 2004 conviction for passing bad checks prevents him from proving that there is no basis in fact for believing that he will commit such an offense again.
19. For the reasons described above, the evidence in the record is not sufficient to establish that Respondent's character and general fitness command the confidence of the public and warrant the belief that his business will be operated honestly and fairly in compliance with the purposes of Ohio's Mortgage Broker Act as required by R.C. 1322.041(A)(5).

## **II. CONCLUSIONS OF LAW**

### **A. Jurisdiction and Procedural Matters.**

The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.

### **B. Loan Officer License Application.**

1. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.
2. Ohio Revised Code Section 1322.041(A) provides that a loan officer license shall be issued if the Superintendent of Financial Institutions finds that certain conditions are met, including:

(2) The applicant complies with sections 1322.01 to 1322.12 of the Revised Code.

(3) The applicant has not been convicted of or pleaded guilty to any criminal offense described in division (A)(2) of section 1322.031 of the Revised Code, or, if the applicant has been convicted of or pleaded guilty to such an offense, the applicant has proven to the superintendent, by a preponderance of the evidence, that the applicant's activities and employment record since the conviction show that the applicant is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant will commit such an offense again.

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(5) The applicant's character and general fitness command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of sections 1322.01 to 1322.12 of the Revised Code.

R.C. 1322.041(A)(2), (3), and (5).

3. Ohio Revised Code Section 1322.031(A)(2) requires a loan officer license applicant to include in his or her application a statement as to whether he or she has been convicted of passing bad checks.

4. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application.
5. Ohio Revised Code Section 1322.07(B) prohibits a loan officer license applicant from making false or misleading statements of a material fact or omissions of statements required by state law.
6. Respondent's response to Question 5 on the 2004 Application indicating that he did not have any criminal convictions when in fact he had been convicted of passing bad checks and solicitation in 1995, was a substantial misrepresentation in that application that violated R.C. 1322.07(A). This response was also a false statement of a material fact, that he did not have any criminal convictions when in fact he had been convicted of passing bad checks and solicitation in 1995, in violation of R.C. 1322.07(B).
7. Respondent violated R.C. 1322.07(B) by omitting the statement regarding his 1995 passing bad checks conviction required to be in an application by R.C. 1322.031(A)(2) from his 2004 Application.
8. Ohio Revised Code Section 1322.07(C) prohibits a loan officer license applicant from engaging in "improper, fraudulent, or dishonest dealings."
9. Respondent engaged in improper, fraudulent, and dishonest dealings in violation of R.C. 1322.07(C) by falsely indicating on the 2004 Application that he did not have any criminal convictions when in fact he had been convicted of passing bad checks and solicitation in 1995.
10. Respondent's violations of R.C. 1322.07(A), (B), and (C) preclude him from being in compliance with R.C. 1322.01 through 1322.12 of the Revised Code, a condition required for licensure by 1322.041(A)(2).
11. Once the 1995 passing bad checks conviction was proven by the Division, the burden of proof shifted to Respondent to prove, by a preponderance of the evidence, that his "activities and employment record since the conviction show that {he} is honest, truthful, and of good reputation, and there is no basis in fact for believing that {he} will commit such an offense again" in order to obtain a license. R.C. 1322.041(A)(3).
12. The record contains very little information about Respondent's activities and employment record since the 1995 passing bad checks conviction. The evidence established that he has subsequent criminal convictions and failed to disclose his 1995 passing bad checks and solicitation convictions on his 2004 Application. Respondent's recent conviction for passing bad checks precludes him from establishing that there is no basis in fact for

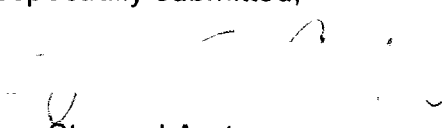
believing that he will commit such an offense again. The Respondent likewise did not prove that he is honest, truthful, and of good reputation.

13. For the reasons described above, the evidence in the record does not establish that Respondent's character and general fitness command the confidence of the public and warrant the belief that his business will be operated honestly and fairly in compliance with the purposes of Ohio's Mortgage Broker Act as required by R.C. 1322.041(A)(5).
14. Ohio's Mortgage Broker Act authorizes the Division to protect the public from harm by denying a loan officer license to individuals if the evidence does not establish that they meet the licensing standards. R.C. 1322.041(A) and 1322.10(A). This decision must necessarily take into account the fact that a home is the most valuable asset owned by most individuals. Loan officers have access to confidential personal and financial information and play a critical role in the financing process. It is extremely important to protect the integrity of the process and proceed with caution when questions regarding an applicant exist.

### **III. RECOMMENDATION**

The Respondent has not established the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(2), (3), and (5). Therefore, I respectfully recommend that Respondent's application for a loan officer license be denied pursuant to R.C. 1322.041 and 1322.10.

Respectfully submitted,

  
Jane Stempel Arata  
Administrative Hearing Officer  
September 22, 2006