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STATE OF OHIO  
DEPARTMENT OF COMMERCE

IN THE MATTER OF:

DIVISION OF FINANCIAL  
INSTITUTIONS

**JASON L. HUDSON**

CASE NO. 05-0020-LOD

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**REPORT AND RECOMMENDATION**  
**ADMINISTRATIVE HEARING OFFICER D. MICHAEL QUINN**

Issued July 29, 2005

**I. FINDINGS OF FACT**

**A. BACKGROUND**

The above-captioned matter came before this Hearing Officer, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions (hereinafter the "Division") to serve as Hearing Officer for an adjudicative hearing in accordance with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (hereinafter "O.R.C."). Said hearing was held 10:30 AM on April 21, 2005, at 77 South High Street, room 1918, Columbus, Ohio.

The hearing was held at the request of Respondent Jason L. Hudson, of Toledo, Ohio (hereinafter the "Respondent") to consider the Division's Notice of Intent to Deny Loan Officer License Application, Notice of Opportunity for a Hearing (hereinafter "NOH"). Said NOH was based upon an allegation that Respondent failed to disclose past criminal offenses on his sworn Application and is thereby ineligible to hold a license as a Mortgage Loan Officer. The Division appeared and was represented by the Ohio Attorney General's Office, Assistant Attorney General Timothy Loughry. Respondent appeared pro se.

At the hearing, State's Exhibits A through F were admitted into the record. Respondent's Exhibits 1 through 4 were admitted into the record over the

Division's hearsay objections, all subject to the weight deemed to be appropriate to be afforded the documents, as discussed in the transcript (hereinafter "Tr."). Respondent appeared as a witness and one additional witness appeared on Respondent's behalf.

## B. JURISDICTION

The Division issued the NOH against Respondent on March 2, 2005. Respondent requested a hearing, which was received by the Division on March 10, 2005. On March 14, 2005, the Division scheduled the hearing for March 21, 2005, but continued the hearing to April 21, 2005 on its own motion, at which time the hearing went forward.

## C. PROPOSED ISSUANCE OF ORDER TO DENY LICENSE APPLICATION

1. The Division is the state agency responsible for the licensing and regulation of Mortgage Loan Officers pursuant to O.R.C. Chapter 1322. (Exhibit C.)
2. Respondent is an individual who wishes to conduct business in Ohio as a Mortgage Loan Officer. (Exhibits A, B.)
3. A statutory requirement became effective on May 2, 2002, which mandated, for the first time, that Mortgage Loan Officers become licensed. (Senate Bill 76, 2001.)
4. On or about September 23, 2004, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"). (Exhibit A.)
5. Respondent signed the Application under oath on September 13, 2004. (Exhibit A.)
6. Within the Application Respondent answered "No" to Question number 5, which asked: "Have you ... ever been convicted of or pleaded guilty to any criminal offense including, but not limited to, theft, ... forgery, ... , or any criminal offense involving money or securities?" (Exhibit A; Tr. p. 19.)
7. On, or about, December 15, 1993, while college a student, Respondent was convicted of possession of drug paraphernalia, with an arrest date of November 4, 1993, in the Municipal Court of Bowling Green, Ohio. Respondent was 21 at the time of the arrest. (Exhibit B.)

8. On, or about, October 23, 1993, while a college student, Respondent was convicted of disorderly conduct, with an arrest date of August 24, 1993, in the Municipal Court of Bowling Green, Ohio. Respondent was 21 at the time of the arrest. (Exhibit B.)
9. On, or about, February 25, 2000, Respondent was convicted of speeding and, separately, of driving under the influence, after an arrest date of August 30, 1999, in the Magistrate Court of Ohio County, West Virginia. Respondent was 27 at the time of the arrest. (Exhibit B.)
10. On, or about, May 1, 2003, Respondent was convicted of reckless operation, in the Mayor's Court, Northwood, Ohio. The sentence included serving three days at Behavioral Connections of Wood County, a residential alcohol and drug addiction program of at least 21 hours, during August 21 through 24, 2003. Respondent was 31 at the time of the conviction. (Exhibit B.)
11. On, or about, August 4, 2004, Respondent was convicted of driving without a license and, separately, of reckless operation, after an arrest in February 8, 2002, in the Magistrate Court of Marshall County, West Virginia. Respondent was 29 at the time of the arrest. (Exhibit B.)
12. Respondent acknowledges his commission of the offenses. (Exhibits B, 4; Tr. 67-68.)
13. Respondent's explanation of the various offenses was that he had made many poor choices involving alcohol and the three-day treatment program had helped him change his behavior. Respondent testified that, since the treatment program in 2003, his lifestyle has changed so that alcohol is not a part of his life. (Tr. pp. 35-36.)
14. Respondent was brought into court on all occasions. (Exhibit B.)
15. Respondent testified that the only treatment for substance abuse was a requirement to attend the above-mentioned three-day counseling program. There is no continuing counseling. (Tr. pp. 35-36.)
16. Respondent filled out the Application, including the authorization for a background check, knowing that a background check would be conducted and that he had criminal convictions in his record. (Exhibit A; Tr. p. 29.)

17. The Application does not limit the response sought on Question 5 to felonies, or to a particular type of conviction, or for those offenses for which there exists a record, but asks, albeit in a somewhat complicated style, if the applicant has ever been convicted of or pleaded guilty to any criminal offense, including, but not limited to, certain named offenses. (Exhibit A.)
18. Respondent's explanation of why he answered Question 5 on the Application as "No" when he knew that he had convictions on his record was that he didn't understand that his traffic and other convictions were included in the list of offenses about which the Division was requesting information. Respondent stated that he misunderstood the question, perhaps by not reading the question as carefully as necessary. Respondent knew the background check would uncover his past convictions. (Exhibit 4; Tr. pp. 25-26; 28-30.)
19. Respondent's Exhibits 1 through 3 are letters from Respondent's current employer, past customers and other acquaintances who were not in attendance at the hearing. Because an administrative hearing is designed to permit a respondent an opportunity to offer an explanation without the formalities or expense of a trial, Respondent's Exhibits were admitted into the record and considered. Because the State could not cross examine the letter writers to test the authenticity, accuracy or details of the documents, Respondent's Exhibits have been afforded reduced weight.

## **II. CONCLUSIONS OF LAW**

### **A. JURISDICTIONAL ISSUE**

1. The Division procedurally complied with O.R.C. Chapter 119.

### **B. LICENSE APPLICATION**

2. Respondent has been proven to have been convicted of seven criminal offenses directly or indirectly involving drugs or alcohol. The offenses are not offenses specifically cited in sections 1322.041(A)(3) or (4), O.R.C., or on the Application.
3. The Division charged that 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.

4. The Division brought into question Respondent's character and general fitness to 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 by bringing forth evidence of Respondent's inaccurate response to Question 5.
5. Respondent's Exhibits were more persuasive because they offered specific explanations for the broad statements made.
6. The pattern of offenses extends over a significant portion of Respondent's life. Since there is no ongoing treatment for substance abuse it is too soon to know if Respondent has changed his behavior after the three-day treatment program.
7. Respondent provided sufficient proof to overcome the inference by the Division that the response to Question 5 was a deliberate act.
8. Even accepting Respondent's explanation of his response to Question 5 at face value, it demonstrates a lack of attention to detail. The Application specifically asks for any criminal convictions. Respondent knew, or should have known, he was criminally convicted. The Application and does not limit the response to financial crimes.
9. Filing an inaccurate Application is negatively demonstrative of an applicant's character and general fitness to 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, including the lack of attention to detail.
10. The Division proved 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 – specifically relating to his response to Question 5.
11. Respondent failed to provide sufficient evidence to overcome the Division's evidence questioning his general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly.

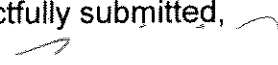
12. The Division also charged violations of the Ohio Mortgage Broker Act sections 1322.07(A) (making any substantial misrepresentation in any registration or license application), (B) (making false or misleading statements of a material fact or omissions of statement required by state law) and (C) (engaging in conduct that constitutes improper, fraudulent, or dishonest dealings) all resulting from Respondent answering Question 5, on the Application "No."
13. The Division, while proving the answer to Question 5 was incorrect, presented no evidence that Respondent committed a deliberate act. Respondent submitted more persuasive evidence that the act was a mistake and, therefore, not deliberate. The Division as the burden of proof. Since definitions found in statute, case law and Black's Dictionary indicate that "false," "misleading" and "misrepresentation" require a deliberate act, the Division has not met its burden.
14. The Division did not prove violations of 1322.07.


#### C. DISCUSSION

The Division sought to deny Respondent's license application because Respondent did not answer Question 5 on the Application accurately. Because the Application contained a critical mistake, Respondent cannot show that he has been honest and truthful, that his character and general fitness do 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.

#### III. RECOMMENDATION

The recommendation to the Superintendent of Financial Institutions is to **DENY A MORTGAGE LOAN OFFICER'S LICENSE TO JASON L. HUDSON.**

Respectfully submitted, 

 D Michael Quinn  
Hearing Officer  
July 29, 2005  
Docket No. 05-DFI-024