

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

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IN THE MATTER OF: : CASE NO. 05-0084-LOD  
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Timothy E. Jolliffe : James J. Lawrence, Hearing Officer

ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
June 9, 2005

I. FINDINGS OF FACT

A. Background

This matter came before James J. Lawrence, an attorney licensed to practice law in the state of Ohio and duly appointed by the Ohio Division of Financial Institutions (Division) to serve as Hearing Officer for this hearing in accordance with Ohio Revised Code (R.C.) Chapter 119, the Administrative Procedure Act. The hearing was held at 10:30 a.m. on April 18, 2005, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Timothy E. Jolliffe (Respondent) to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for Hearing (NOH).

The Division alleges that Respondent was convicted of driving under the influence in 1996 and trafficking in marijuana in 1997. 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. The 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 commit such an offense again as required by R.C. 1322.041 (A) (3);
2. The Respondent's convictions show that his 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);

James M. Evans, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the

hearing. The Respondent appeared without counsel. At the hearing, State's Exhibits 1 through 9 and Respondent's Exhibits A through S were admitted into the record.

#### **B. Jurisdiction and Procedural Matters**

The Division issued the NOH to Respondent on April 5, 2005 by certified mail, return receipt requested. (Exhibit 7.) Respondent's hearing request was received by the Division on April 7, 2005. (Exhibit 8.) The Division scheduled the hearing for April 18, 2005. The Division sent notice of the hearing by ordinary mail to the same address to which it mailed the NOH. (Exhibit 9.)

#### **C. Respondent's Loan Officer Application**

1. The Respondent filed a loan officer application on September 28, 2004. (Exhibit 1.)
2. Question 5 of that application asked the following question:
  5. Have you or has any company for which you have been an officer, or more than 5% owner or director, ever been convicted of or pleaded guilty to any criminal offense including, but not limited to, theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities?
3. In response to Question 5, the Respondent answered "Yes" (Exhibit 1; TR at 39.) The Respondent attached a statement to his application in which he disclosed that he had been convicted of driving under the influence and drug abuse in 1996, and trafficking in marijuana in 1997. (Exhibit 1.)
4. By letter dated March 7, 2005, the Division required the Respondent to submit certified copies of the judgment entries evidencing the pleas and the courts' findings with respect to the convictions. (Exhibit 5.)
5. The Respondent submitted two Judgment Entries from the Madison County Municipal Court. The Entry for case number TRC 9607550 shows that on October 9, 1996 the Court found the Respondent guilty of operating a motor vehicle while under the influence in violation of R.C. 4511.19(B)(2). The Court fined the Respondent \$250.00, suspending \$125.00, imposed costs of \$30.00 and ordered six months of probation. The Entry for case number CRB 9600705 shows that on October 9, 1996 the Court found the Respondent guilty of drug abuse in violation of R.C. 2925.11(C)(3)(a). The Court ordered the Respondent to pay a \$100.00 fine and costs of \$53.00. (Exhibit 6.)
6. The Respondent submitted an Entry of Community Control from the Madison County Common Pleas Court for case number 97CR0707150. The Entry shows that on October 28, 1997 the Court had sentenced the Respondent to six months confinement for two counts of trafficking in marijuana, in violation of R.C. 2925.03(A)(3)(b), fourth degree felonies. However, on

June 24, 1998 the Court, finding that the Respondent would abide by the General Rules of the Court for individuals placed on Community Control, suspended the six-month sentence and instead ordered the Respondent to serve seven days in jail with work release, two years of Community Control, ordered a fine of \$2,500.00 plus costs and suspended his driver license for six months. (Exhibits 6, E.)

7. The Respondent testified that the Court suspended his six-month jail sentence and placed him on Community Control because he had gone through drug rehabilitation, had been employed full time and had enrolled in college since his arrest. (TR at 20.) In its 1999 order discharging the Respondent, the Court stated that it had suspended the sentence because "the character of the Defendant and the circumstances of the case were such that he would not likely again engage in an offensive course of conduct, and that the public good did not demand or require that he should be immediately sentenced." (Exhibit F.)
8. The Respondent made no excuses for the conduct which led to the criminal convictions. In fact he says that he firmly believes that his arrest was the best thing that could have happened to him. (Exhibit H; TR at 36.) He testified that he began the process of changing his life immediately after his arrest for trafficking. (TR at 19.)
9. The Respondent completed an eight-week drug rehabilitation program at Riverside Methodist Hospital and attended Narcotics Anonymous meetings for three months. (TR at 35.) He has not used any illegal substances since his arrest. (TR at 35.)
10. The Respondent married his wife, Amanda, in 1998. They have a daughter born in 2002 and a son born in 2004. (Exhibit N.)
11. The Respondent supported his wife while she earned an Associate degree at Clark State Community College. (TR at 28.)
12. In 2004, the Respondent completed a degree of Bachelor of Science in Business Administration at The Ohio State University Max M. Fisher College of Business with a major in finance and a 3.5 grade point average. (Exhibit 4, 6 & P.) He completed his degree while working full time and rehabilitating an old house. (TR at 27.)
13. The Respondent has been employed continuously since his arrest. He worked for Chase Levy Transportation and then at DLC Promotions. (TR at 29.) In January of 2001 The Respondent began working at CBCS as a collector. In 2002 CBCS promoted him to collections supervisor. As a supervisor he managed a team of ten to twelve employees. (TR at 29.) In October of 2004 he left CBCS to work for Mortgage Source as a loan officer. (TR at 30.) When the Division did not approve his loan officer license application he went to work for Newpros Communications Inc. where he is currently employed as a manager. (TR at 31.) (Exhibit Q.) He has a standing offer to return to Mortgage Source when his loan officer license is approved. (TR at 41.)

14. The Respondent and his family are members of the Water of Life Church in Columbus, Ohio. (Exhibit R; TR at 32.) The Respondent serves the Church as a member of its Preschool Board and as an event coordinator. (Exhibits L, M & R; TR at 32 - 33.) Eric Biddle, the lead pastor of the Water of Life Church wrote a letter on the Respondent's behalf. He stated that the Respondent has increasingly become active in the church and has continually gained the trust of church leaders. They asked him to serve on the Preschool Board because of his integrity, character and ability to gracefully handle responsibilities. (Exhibit L.) Lee Jackson, also a pastor of the Water of Life Church, wrote that the Respondent has been forthright about his offenses and does not blame anyone else. He said that the Respondent feels that the arrest was the beginning of the process of turning his life around and Pastor Jackson believes that he is still following that process years later. (Exhibit M.)
15. The Respondent submitted an Application for Executive Clemency to the Ohio Parole Board. The Board granted a hearing which was held on March 31, 2005. (Exhibit 6; TR at 21.)
16. The Respondent submitted letters from three other individuals. Exhibit I is a letter that Amanda Jolliffe, the Respondent's wife, wrote to Parole Board in support of his request for pardon. She relates the Respondent's efforts to turn his life around and says that he has worked really hard to improve the lives of his family and never gave up hope or determination. Exhibit J is a letter that Sandra K. Thornber, the Respondent's mother, wrote to the Parole Board in support of his request for pardon. Ms. Thornber also related the Respondent's efforts since his arrest and wrote that he has a great deal of integrity and the potential for success. Exhibit K is a letter from Craig L. Jolliffe, the Respondent's father and the Manager of Flight Standards of Boston-Maine/Pan Am Airways, to the Deputy Superintendent of Consumer Finance. His letter reiterates the many positive things that the Respondent has done since his offenses. He states that these efforts are unequivocal evidence of a young man who, when at a crossroads in his life, chose to follow the right path.

## II. CONCLUSIONS OF LAW

### A. Jurisdictional and Procedural Matters.

1. The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.
2. The Attorney General objected to the admission of the Respondent's Exhibits generally on grounds of hearsay and relevance. The Hearing Officer admitted the Exhibits into the record with the caveat that the weight given to hearsay evidence would be determined after considering the lack of ability to observe the witnesses as they gave testimony, to judge the credibility of

their testimony and to benefit from their responses to cross examination by the Attorney General.

**B. Loan Officer Application.**

1. The Division is the state agency responsible for the licensing and regulation of loan officers pursuant to R.C. Chapter 1322.
2. R.C. 1322.041 (A) provides that the Superintendent of Financial Institutions (Superintendent) shall issue a loan officer license if the Superintendent finds that the applicant meets certain conditions including:

\* \* \*

(3) The applicant has not been convicted of or pleaded guilty to any criminal offense described in R.C. 1322.031(A)(2), 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.

\* \* \*

(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 R.C. 1322.01 to 1322.12.

The NOH states the Division intends to deny the Respondent's loan officer application because the Respondent has not met these conditions.

3. The NOH states that the Respondent has not shown that he is honest, truthful, and of good reputation, and that there is no basis in fact for believing that he will commit such an offense again, as required by R.C. 1322.041(A)(3). R.C. 1322.041(A)(3) requires that if the applicant has been convicted of or pleaded guilty to an offense described in R.C. 1322.031(A)(2), the applicant must prove 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. Drug trafficking is one of the offenses described in R.C. 1322.031(A)(2). Since the Respondent was convicted of trafficking in marijuana in 1997, the burden is on the Respondent to prove by the 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.

4. The Respondent has met this burden. Since his conviction in 1997, the Respondent married and had children. The Respondent worked while his wife attended and graduated from community college. Continuing to work full time and while his wife stayed home with their children, the Respondent completed his bachelor's degree earning a 3.5 grade point average. He has remained continuously employed. While working for CBCS he earned a promotion and, as a result of the promotion, the employer entrusted him with substantial responsibility. Likewise, as a member of the Water of Life Church his performance of volunteer tasks earned him a reputation for reliability that caused the church leaders to entrust him with a position on its preschool board. The Respondent's activities and employment history since his conviction prove by the preponderance of the evidence that he is honest, truthful and of good reputation. The Respondent has also proven by a preponderance of the evidence that there is no basis in fact for believing that he will commit such an offense again. Even the judge who convicted the Respondent said that his character and the circumstances of the offense were such that he would not likely again engage in an offensive course of conduct. The Respondent has done nothing in the intervening eight years to discredit the judge's opinion. Considering the Respondent's youth at the time of the offenses, the length of time and his many positive accomplishments since the offenses, there is no basis in fact for believing that the Respondent will commit such an offense again.
5. The NOH states that the 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). The Division bases this finding on the fact that the Respondent was convicted of criminal offenses.
6. The Respondent's criminal convictions do not support a finding that the 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). Although the offenses committed by the Respondent were serious, the Respondent committed the offenses when he was young, eighteen years of age. An offense committed many years ago, when the Respondent was young and immature, is not strong evidence of his character and general fitness today. On the other hand, the record contains strong evidence that in the intervening eight years, the Respondent has led an exemplary life both personally and professionally. In fact, the Respondent has done just about everything that society could expect an offender to do rehabilitate himself. The record is devoid of evidence that questions the Respondent's character or general fitness today. The preponderance of the evidence shows that the Respondent's character and general fitness do command the confidence of the public and warrant the belief that he will conduct the business of a loan officer honestly and fairly and in compliance with the purposes of the Ohio Mortgage Broker Act.

### III. RECOMMENDATION

The Respondent has fully met the requirements for a loan officer license under R.C. 1322.041(A). Therefore, I respectfully recommend that the Superintendent of Financial Institutions issue a loan officer license to the Respondent pursuant to R.C. 1322.041(A).

Respectfully Submitted,

James J. Lawrence  
Hearing Officer  
June 9, 2005