

**STATE OF OHIO
DEPARTMENT OF COMMERCE**

DIVISION OF FINANCIAL
INSTITUTIONS

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IN THE MATTER OF:

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**DIVISION OF FINANCIAL
INSTITUTIONS**

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SALVATORE L. ZINGALES

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CASE NO. M2006-9992755

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**LANDI JACKSON-FORBES
HEARING OFFICER**

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REPORT AND RECOMMENDATION

Issued November 3, 2006

I. FINDINGS OF FACT

After having heard the testimony, considered the evidence, observed the demeanor of the witnesses, and weighed their credibility, the hearing officer finds the following to be fact:

A. Jurisdiction and Procedural History

This matter came before Landi Jackson-Forbes, 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 the above captioned matter in accordance with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (hereinafter "Revised Code").

The hearing was scheduled by the Division at the request of Respondent Salvatore L. Zingales, of Elyria, Ohio (hereinafter "Respondent") to consider the Division's Notice of Intent to Deny Loan Officer License Application, Notice of Opportunity for a Hearing (hereinafter "NOH"), that was issued to Respondent on or about April 27, 2006. The Division issued the NOH to Respondent on the bases that Respondent swore that the information on his Loan Officer License Application ("Application") regarding his criminal background was complete and truthful and attempted to obtain a loan officer license using untruthful information regarding his criminal record. The Division alleges that based upon Respondent's nondisclosure and attempt to obtain a loan officer license using incomplete and untruthful information; Respondent 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. The Division further alleges that Respondent's nondisclosure violates Revised Code §§1322.07(A), (B) and (C).

The hearing was held at 9:30 a.m. on June 13, 2006, at 77 South High Street, West Conference Room, 23rd Floor, Columbus, Ohio. The Division, represented by Assistant Attorney General Laura A. Meehan, appeared at the hearing and presented its case. Witness for the Division was staff attorney Jason K. Wright. Neither Respondent nor any representative, including counsel, appeared even though the start of the hearing was delayed until 9:50 a.m. At the hearing, State's Exhibits 1 through 4 were admitted into the record without objection, as discussed in the transcript (hereinafter "Tr.").

B. Loan Officer License Application

1. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to Revised Code Chapter 1322.
2. Respondent applied for an Ohio Mortgage Loan Officer License by submitting a signed, sworn and attested to Loan Officer License Application ("Application") and fingerprint card on or about September 30, 2005. Glass City Mortgage, Inc. is listed as the sponsoring Mortgage Broker. (State Ex. 3)
3. Within the application Respondent checked the "no" box to Question number 5, which asked: "Have you ... ever been convicted of any criminal offense?" (State Ex. 3)
4. Respondent swore to or affirmed that the answers he gave in the Application are complete and true of his own knowledge. (State Ex. 1)
5. Pursuant to Revised Code §1322.03(B), the Division conducted a criminal records background check based on Respondent's fingerprints as part of the application process. The criminal records background check revealed that Respondent was convicted of assault on September 3, 2002 in the Avon Lake Municipal Court. (State Ex. 4)
6. Respondent submitted a letter to the Division on or about November 15, 2005 explaining the circumstances that lead to his assault conviction, along with copies of judgment entries evidencing the conviction. Respondent did not provide an explanation for why he did not disclose the criminal conviction on his Application. (State Ex. 4)
7. The Division issued its NOH against Respondent on April 27, 2006. (State Ex. 2)
8. Respondent received the NOH via certified mail return receipt on May 5, 2006 and requested a hearing. (State Ex. 1 & 2)

9. By letter dated May 16, 2006, the Division scheduled the hearing for May 25, 2006 and continued the hearing on its own motion to June 13, 2006. The letter was addressed to the same delivery address where Respondent received the NOH. (State Ex. 1; Tr. at 11)
10. Respondent did not appear for the scheduled hearing in person or through counsel or request a continuance of the June 13, 2006 hearing from the hearing officer. Respondent also did not offer any evidence relating to his character and general fitness to command the confidence of the public and warrant the belief that he will operate honestly and fairly as a loan officer in compliance with the purposes of the Ohio Mortgage Broker Act.

II. CONCLUSIONS OF LAW

A. Jurisdiction and Procedural Matters

1. Ohio Revised Code §119.07 requires the Division to notify Respondent of his right to request a hearing. The Division complied with §119.07 by notifying Respondent of his right to a hearing in the NOH which was properly served upon Respondent by certified mail.
2. The Division further complied with §119.07 by notifying Respondent, when he requested a hearing, of the time, date, and place of the hearing once the date was set. The Division's May 16, 2006 letter scheduling the requested hearing was sent to the Respondent by regular mail at the address he supplied to the Division and where he had received previous written communications from the Division. Ohio Revised Code §119.07 does not require the notice of the hearing to be sent by certified mail. The use of regular mail was appropriate in this case. McCoy v. Bureau of Unemployment Compensation, 81 Ohio App. 158, 161, 77 N.E.2d 76, 78 (1947).
3. Respondent received proper notice of the hearing therefore it was appropriate for the hearing to proceed in his absence. Reed v. State Med. Bd., 40 Ohio App.3d 124, 125-126, 532 N.E.2d 189, 191 (1988).

B. Loan Officer License Application

1. Pursuant to Revised Code §1322.041(A)(5), to issue a license, the Division must make a finding that, *inter alia*, Respondent'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 Revised Code §1322.01 to §1322.12.
2. In eliciting evidence that Respondent does not have the 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 law, the Division demonstrated that on or about September 30, 2005, Respondent signed a loan officer license application, containing an inaccurate response to Question 5, under oath and subsequently filed that Application with the Division to obtain a loan officer license.
3. Filing an inaccurate Application reflects negatively on Respondent's character and general fitness as it relates to whether Respondent will operate as a loan officer honestly and fairly in compliance with law.
4. Respondent provided to the Division explanations of the facts that lead to his conviction, but did not indicate why he answered Question 5 inaccurately.
5. Respondent, although having received proper notice of the scheduled hearing, failed to appear to provide sufficient evidence to overcome the Division's evidence questioning his character and general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly. Respondent failed to prove by a preponderance of the evidence his honesty in his activities, specifically relating to his response to Question 5 to support a finding that his 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 Ohio Mortgage Broker Act.
6. The Division also charged violations of the Ohio Mortgage Broker Act, §§1322.02(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 law) and (C)(engaging in conduct that constitutes improper, fraudulent, or dishonest dealings) all resulting from Respondent answering Question 5 on the Application "No".

7. The Division presented evidence that Respondent plead no contest to an assault offense and was found guilty of such charge, thereby making his response to Question 5 on the Application inaccurate.
8. Intent is required for a conclusion that §§1322.07 (A), (B) and (C) have been violated. Webb v. State Med. Bd., 146 Ohio App. 3d, 621, 628 (2001), (intent is required for a finding of fraud, misrepresentation, or deception).
9. Respondent provided no explanation for his inaccurate response to Question 5 and failed to appear at the requested hearing to present evidence to overcome the Division's evidence that demonstrates that he violated §§1322.07(A), (B) and (C). Respondent's unexplained inaccurate response to Question 5 supports a finding that he intended to made a substantial misrepresentation, that he intended to make a false statement of a material fact required by law on the license application, and that his act of answering inaccurately constitutes fraudulent or dishonest dealings in violation of Revised Code §§1322.07(A), (B) and (C).

III. RECOMMENDATION

In careful consideration of the record made in this matter, it is recommended that Salvatore L. Zingales be found to have not presented sufficient evidence to prove, by a preponderance of the evidence, that he has the 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 Ohio Mortgage Broker Act, and that Salvatore L. Zingales violated §§1322.07(A), (B) and (C) of the Ohio Mortgage Broker Act. Accordingly, it is recommended that Salvatore L. Zingales be denied an Ohio Loan Officer License.

Respectfully submitted,

✓ Landi Jackson-Forbes
Hearing Officer
November 3, 2006
Docket No. M2006-9992755