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The hearing was scheduled by the Division at the request of Respondent Benjamin J. Ward of Cincinnati, 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 served upon Respondent on January 6, 2006. The Division issued the NOH to Respondent on the basis that Respondent had been convicted of retail theft, a summary offense under Pennsylvania law, in 1988 which was not disclosed on Respondent's loan officer license application. The NOH alleges that based on Respondent's conviction, he has not proven that he is honest, truthful, and of good reputation, and that there is no basis in fact for believing that Respondent will not commit another criminal offense involving money or securities. The NOH also alleges that Respondent's conviction and his failure to disclose the criminal conviction on his loan officer license application shows 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. The Division further alleges that Respondent's failure to disclose his conviction on the loan officer application constitute violations of Revised Code §1322.07(A)(B) and (C).

The hearing was held on February 9, 2006 at 1:30 p.m., at 77 South High Street, 19th Floor, Room 1938, Columbus, Ohio. The Division, represented by Assistant Attorney General James Evans, appeared at the hearing. Respondent appeared *pro se* and testified at the hearing. State's Exhibits 1 through 12 and Respondent's Exhibits A and C were admitted into the record 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 R.C. Chapter 1322. (State Ex. 1)
2. Respondent applied for an Ohio Mortgage Loan Officer License by submitting to the Division a Loan Officer License Application ("Application") and fingerprint card on or about November 17, 2005. Home 123 is listed as the sponsoring Mortgage Broker. (State Ex. 1)
3. Respondent checked the "no" box to Questions 6 and 8 which asked:

(6) Have you been convicted of or pleaded guilty to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities?

(8) Have you ever been convicted of or pleaded guilty to any criminal offense in a state other than the state where you currently reside?

(State Ex. 1)

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 retail theft, a summary offense in the Judicial District 38-1-03, Montgomery County, Pennsylvania on March 31, 1988. (State Ex. 4)
6. Pursuant to §3929(b)(1)(i) of the Pennsylvania Consolidated Statutes, retail theft, is a theft crime which is graded based prior offenses and the value of the merchandise stolen. Retail theft is charged or graded as a summary offense in first offense cases, and the value of the merchandise taken is less than \$150.
7. Respondent explained that he answered "no" to questions 6 and 8 because he believed that he was issued a "ticket" for criminal trespass to which he pleaded guilty. Respondent knew that his offense was a summary offense, but did not

know what that meant, only that his offense was not a misdemeanor or felony conviction. (Tr. at 23, 35 & 37)

8. Respondent was nineteen years old at the time of the offense. His parents signed off on the ticket and paid the accompanying fine and costs. Respondent was told to never return to the store where the offense took place. (Respondent Ex. A, Tr. at 35)
9. Respondent told his manager at the mortgage broker company that he had a retail theft offense in 1988 but that it was not a misdemeanor or felony, and asked whether he should fill out another loan officer license application disclosing the offense. His manager told him not to worry since the offense is not a misdemeanor or felony, and happened more than ten years ago. (Tr. at 27, 34-35 & 40)
10. Respondent's manager did not appear at the hearing but wrote a letter on Respondent's behalf hailing him for his community involvement, and other accomplishments. The letter did not mention any advice given Respondent regarding reporting the retail theft offense to the Division. (Respondent's Ex. C)
11. Respondent is certified as a substitute teacher in by the State of Ohio Department of Education and as such has undergone a BCI and/or FBI criminal background check as part of the certification process. Approximately two years prior to applying for an Ohio Loan Officer License, Respondent applied to teach school in Ohio and was notified that he was listed as a multi-state offender. He hired an attorney to determine why he was labeled as a multi-state offender and it was discovered that his 1988 "ticket" is listed as retail theft, a summary offense. Respondent received a document from the court in Cheltenham, Pennsylvania that listed his retail theft offense as a summary offense. (Respondent Ex. A & B, Tr. at 35, 42 & 68-69)
12. Respondent has not been convicted of any criminal offense involving theft or securities in or outside Ohio since 1988.

II. CONCLUSIONS OF LAW

A. Jurisdiction

The Division procedurally complied with Revised Code Chapter 119 in mailing the NOH, in demonstrating delivery of the NOH, and in scheduling the hearing that had been requested by Respondent within the time parameters established in Revised Code §119.07, §119.08 and §119.09. The Division has jurisdiction in this matter.

B. Loan Officer License Application

1. In order to issue a license Revised Code §1322.041(A) requires the Division must make a finding that *inter alia*:
 - (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.
 - (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 the sections 1322.01 to 1322.12 of the Revised Code.
2. In 1988 Respondent plead guilty to retail theft, a summary offense under Pennsylvania law, which is included by reference to "theft" offenses so that the conviction may provide a basis for recommending that Respondent's Application be denied under Revised Code §1322.041 as the same incorporates the terms of Revised Code §1322.031(A)(2).
3. The retail theft conviction being proven by the Division shifts the burden to Respondent to prove by a preponderance of the evidence that Respondent's "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 Respondent will commit such an offense again." Revised Code §1322.041(A)(3)
4. Respondent's 1988 conviction is far enough removed in time and occurring when he was still somewhat immature, so that Respondent's explanation of the underlying facts of the conviction in combination with his clean record is evidence to show that he is honest, truthful and of good reputation.
5. Respondent provided a letter of recommendation and his substitute teaching license issued by the Ohio Department of Education as evidence of his activities and employment record since his theft conviction.
6. Because an administrative hearing is designed to permit a respondent an opportunity to offer an explanation without the formalities or expense of a trial, the letter of recommendation from Respondent's manager was considered as evidence to show Respondent's activities and employment since his 1988 conviction. Because the State could not cross examine the letter writer to test the

authenticity, accuracy or details of the document, the letter has been afforded limited weight.

7. While the letter listed some accomplishments and community activities, the letter does not indicate how the writer knows Respondent or the length of time they have been acquainted. The writer also does not indicate whether he knows about Respondent's accomplishments and activities personally or just through a retelling from Respondent. Respondent's accomplishments and activities, while possibly true, have very little probative value and are unreliable without other evidence or specifics to support the content of the letter.
8. Respondent's substitute teaching license demonstrates that the Ohio Department of Education has conducted a BCI and/or a FBI background check and found him to be qualified to preside over school age children in Ohio. Respondent's clean criminal record since 1988 coupled with meeting the underlying criteria to hold a substitute teaching license is sufficient to demonstrate that Respondent's activities and employment record show that he is honest, truthful and of good reputation and that there is no basis in fact for believing that he will commit a theft offense again, or any offense involving money or securities.
9. The Division brought into question Respondent's character and general fitness to command the confidence of the public and that the business will be operated honestly and fairly, by demonstrating that Respondent failed to disclose his 1988 conviction on his Application.
10. Filing an inaccurate response to questions on the Application is negatively demonstrative of Respondent's character and general fitness and of whether the business will be operated honestly and fairly in compliance with law.
11. Respondent's explanation that he believed he was issued a "ticket", if accepted at face value demonstrates that he overlooked important facts and acted without verification on what he surmised were the facts and law. Respondent was put on notice two years prior to applying for a loan officer license that he was listed as a multi-state offender and in fact discovered that his 1988 "ticket" was listed as retail theft, a summary offense. Based upon this information Respondent should have known then that there was something more to his conviction that should have alerted him to investigate further or at the least make inquiries about the nature of the offense as listed in the Court's record. Instead, the record indicates that Respondent continued to believe that he was just issued a ticket. Respondent's failure to learn more about the nature of his conviction demonstrates a lack of care which raises concern about his fitness to act as a loan officer, particularly since he incorrectly answered Questions 6 and 8 because he failed to determine what is a summary offense.
12. Questions 6 and 8 do not limit disclosure to only misdemeanor and felony convictions or only require disclosure of convictions that took place within a certain time period. Questions 6 and 8 asks for any guilty plea or conviction,

which Respondent knew or should have known that he had as a result of his inquiry and receipt of documents from the Court. Respondent's response to Questions 6 and 8 demonstrates an inability to carefully read an important document prior to the attestation of its truthfulness. Those that participate in the mortgage industry are obligated to take the time and care to ensure that applications and loan-related documents are truthful and accurate in every respect and that information conveyed to consumers is correct. There is no room for making assumptions about the law and overlooking important facts when dealing with loan documents when a person is placed in a position of public trust as would be a mortgage loan officer. Respondent did not overcome the Division's evidence questioning his character and general fitness to command the confidence of the public and the belief that he will operate honestly and fairly as a mortgage loan officer.

13. The Division has also charged Respondent with violations of the Ohio Mortgage Broker Act §1322.07(A) (making any substantial misrepresentation in any registration or license application), (B) (making false or misleading statements of 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 not disclosing all his criminal convictions on his Application.
14. Respondent's failure to disclose his convictions on the Application does not automatically demonstrate that he intended to make a substantial misrepresentation, false statement of material fact or engage in fraudulent or dishonest conduct. Intent is required for a conclusion that Revised Code §1322.07(A), (B), and (C) have been violated. *Webb v. State Med. Bd.*, 146 Ohio App. 3d 621, 628 (Ohio Ct. App. 10th Dist., 2001).
15. Respondent's fingerprints were submitted along with his Application which put him on notice that his conviction would be revealed. Respondent provided un rebutted testimony that he knew the conviction would be revealed, based on his experience with a previous criminal background check. His understanding and belief that his 1988 "ticket" was a summary offense, not a misdemeanor or felony, that was not required to be disclosed on the Application demonstrates that he did not carefully read the questions on the Application and made assumptions about facts and law, not that he intentionally made a substantial misrepresentation in violation of Revised Code §1322.07(A).
16. Respondent excluding his conviction from the Application was also not a false or misleading statement of material fact or an omission required by state law. Respondent made a mistake in his assumptions of the facts and the law that drew him to conclude that his conviction was not required to be disclosed, but no evidence was offered to show that he intentionally excluded the summary offense to mislead the Division about his criminal past which is evidenced by his testimony that he knew that the criminal records check would disclose his conviction.

17. Pursuant to Revised Code §1322.07(C) a loan officer license applicant is prohibited from engaging in "conduct that constitutes improper, fraudulent, or dishonest dealings." Respondent inaccurately answering Questions 6 and 8 demonstrates a lack of care in reading the Application particularly since his own testimony indicated that he questioned whether the conviction should be disclosed. Respondent's inexcusable lack of care does not amount to engaging in conduct that is improper, fraudulent, or dishonest in violation of Revised Code §1322.07(C).
18. Respondent did not have the requisite intent to violate Revised Code §1322.07(A), (B) or (C).

III. RECOMMENDATION

In careful consideration of the record made in this matter, it is recommended that Benjamin J. Ward be found to not have met his burden to prove by a preponderance of the evidence 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, and that consequently he be denied an Ohio Loan Officer License.

Respectfully submitted,

Landi Jackson-Forbes
Hearing Officer
October 13, 2006
Docket No. 06-DFI-012