

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

In the Matter of:	:	
	:	Case No. 04-0226-LOD
Mao E. Glynn	:	
6424 Montgomery Avenue	:	Terrence O'Donnell, Hearing Examiner
Cincinnati, OH 45213	:	

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HEARING EXAMINER'S  
REPORT AND RECOMMENDATION

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I. Introduction

This case came to be heard on June 2, 2004. Appearing were Respondent Mr. Mao Glynn, his attorney Mr. Arthur C. Church, his character witnesses Mr. Willard R. Church and Mr. Michael Cox, and his wife Ms. Christina Glynn. Ms. Glynn did not testify. Assistant Attorney General Daniel Jones represented the Department of Commerce's Division of Financial Institutions ("the Division").

After due consideration of the evidence, the Hearing Examiner makes the following findings.

II. Findings of Fact

A. Background

1. Pursuant to the Ohio Mortgage Broker Act, O.R.C. 1322.01 to O.R.C. 1322.12, the Department of Commerce's Division of Financial Institutions is charged with the responsibility to accept applications for loan officer licenses and determine whether applicants meet the statutory requirements.
2. On June 26, 2002, Mr. Glynn applied for a license to be a loan officer. See Loan Officer Application, State's Exhibit 1.

3. On February 14, 2003, the Division notified Mr. Glynn that it was unable to make a determination regarding his license because he had not supplied sufficient information concerning his criminal background. See Letter, State' Exhibit 3.
4. Over the next several months, through a series of correspondence, Mr. Glynn eventually sent the Division the all of the information it had requested concerning his criminal background. See State's Exhibits 4-14.
5. On January 23, 2004, the Division sent Mr. Glynn a Notice of Intent to Deny his Loan Officer Application. In the Notice, the Division stated that in or around 1993, Mr. Glynn was convicted of drug abuse, a fourth degree felony; that in or around 1996, Mr. Glynn was convicted of drug trafficking, a fourth degree felony; and that in or around 1998, Mr. Glynn was convicted of conspiracy to possess with intent to distribute marijuana. The Division also stated that Mr. Glynn attested his application was completed fully and frankly, while knowingly supplying the Division with incomplete information. See Notice, State's Exhibit 5.
6. As a result, the Division stated that Mr. Glynn had not proven he is honest, truthful, and of good reputation, and had not proven there is no basis in fact to believe he will not commit such a crime again. In addition, the Notice alleges Mr. Glynn's character and general fitness do not command the confidence of the public and do not warrant the belief that his mortgage business will be operated honestly and fairly in compliance with the purpose of the Ohio Mortgage Broker Act. The Notice also alleges Mr. Glynn violated O.R.C. 1322.07 by failing to fully disclose his criminal record on his application. See Notice, State's Exhibit 5.
7. On or before February 23, 2004, Mr. Glynn requested a hearing to appeal the Division's determination. See Hearing Request Form, State's Exhibit 16.

B. Conviction for Drug Abuse (1993)

8. At the hearing, the State offered into evidence documentation indicating Mr. Glynn was convicted of drug abuse on August 4, 1993. See Hamilton County Clerks of Courts "Document Listing," State's Exhibits 6. Mr. Glynn acknowledged the conviction at the hearing. See Transcript, p. 51.
9. Mr. Glynn testified that the conviction stemmed from an incident in which the police discovered traces of cocaine (four-hundredths of a gram) on some cash he was carrying, which an acquaintance had given him. See Transcript, p. 51.
10. For his crime, the Court sentenced Mr. Glynn to three years probation. See Transcript, p. 52.

C. Conviction for Drug Trafficking (1996)

11. At the hearing, the State offered into evidence documentation indicating Mr. Glynn was convicted of drug trafficking in 1996. See Hamilton County Court of Common Pleas Docket Sheet, State's Exhibit 7. See also Document Listing, State's Exhibit 8.
12. Mr. Glynn testified that the conviction resulted from his possession of such an amount of marijuana as to meet the level at which the law assumes one is distributing drugs. However, he also testified that at that time in his life, he indeed was trafficking in drugs "at times." See Transcript, pp. 52-53. He was also a marijuana user. See Transcript, p. 55. At the time of his arrest, he was still on probation for his previous offense. See Transcript, p. 52.

D. Conviction for Conspiracy to Possess With Intent to Distribute Marijuana

in Excess of 100 Kilograms (1998)

13. At the hearing, the State offered into evidence documentation indicating Mr. Glynn was convicted in 1998 of conspiracy to possess with intent to distribute marijuana. See

Judgment, United States District Court, Southern District of Indiana, State's Exhibit 13.

14. Though the details of this conviction were never fully explored, for his crime, the Court sentenced Mr. Glynn to three years in prison. See Transcript, p. 56.

E. Failure to Fully Disclose Convictions on Loan Officer Application

15. In response to Question 5 on his Loan Officer Application, asking:

“[h]ave you or has any company for which you have been an officer, or more than 5% owner or director, ever been convicted of or plead 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,”

Mr. Glynn checked the box indicating “yes,” and wrote on the line below “Drug Abuse.”

See Application, State's Exhibit 1.

16. At the hearing, Mr. Glynn explained that this was an effort to make disclosure of his actual crimes because he did not consider any of his convictions to technically be drug trafficking charges. On direct examination, he explained:

Q: “And when you said ‘drug abuse,’ was that your effort to provide the details of all the different crimes that were listed there, the one that you were guilty of?”

A: “Yes, sir. Even the '96 was actually—it was trafficking because—I was not trafficking drugs. I did have drugs though. I'm not trying to get around that, but trafficking was the charge because that's the way it had to be charged...anything every (*sic*) over 200 grams made it a trafficking charge.”

Q: “When you answered that question, did you believe that was a correct answer?”

A: “Yes; because it is drug abuse. It was for personal use.” (See Transcript, pp. 37-38.

17. He also testified on direct examination that at the time of application, while he had some hope that the Division would not look into his criminal record, he believed his background

check would reveal the nature of each of his convictions:

Q: "When you told them you had drug abuse problems in the past and gave them an authorization to look at any records that they wanted to, did you, for one minute, think that they wouldn't do that or they would?"

A: "I prayed that they wouldn't do it, but I knew at all times that my past was pretty much going to be laid open. And I had no reason to think any particular event or anything was not going to be discovered through the national background check. 'National' pretty much means statewide or countrywide, to me, at least, and I pretty much knew that everything was going to be disclosed." See Transcript, pp. 42-43.

18. On cross-examination, Mr. Glynn testified that the application did not provide adequate space for him to outline his criminal record, and that he did not believe he ever did have a drug trafficking conviction. He stated:

"Basically, when I filled it out, I knew I had been in trouble. I knew there wasn't enough space for me to fill everything in, and I figured that pretty much, after I took the background check, I could elaborate on any and all offenses when I actually got in trouble. I put drug abuse because I didn't think I was charged with trafficking in '96. It just wasn't clicking like drug trafficking. It was a drug abuse charge, and then—I grouped everything into one." See Transcript, pp. 62-63.

#### F. Personal Testimony

19. Mr. Glynn offered personal testimony to support his claim that he is unlikely to commit similar crimes going forward. He testified to what he has learned from his incarceration, and his drug rehabilitation. In particular, he emphasized the importance of his family.

"Once I saw that I can accept that help and I can offer that help in the sense—I used to help my brothers financially was my main objective... Now I help them morally from seeing the mistakes I made...my mother died in 1985. My brother was none months old. I took care of him since he was nine months old. I'm basically a father figure to him...And so him looking up to me, me being in jail, that's sending the wrong message...I'm not going to let 11 years dictate the rest of my life. If I live to be 60, I'm 30, that's 30 more years. Why can't I do 30 more years of something positive? Why do I have to do 30 years of something negative? I don't have to. I'm not going to. I'm going to leave an impression upon my family that, 'Hey, we can do this.'" See Transcript, pp. 59-60.

### G. Character References

20. Mr. Willard R. Church, an officer with Premier Mortgage, testified on behalf of Mr. Glynn. Her has known Mr. Glynn since March of 2003, and represented that Mr. Glynn is a diligent employee, who enjoys much success in the loan industry. See Transcript, p. 69. He stated that his business associate Mr. Cox knew Mr. Glynn much better than he did, but that Mr. Glynn has since earned his complete trust. See Transcript, pp. 68,71.
21. On cross-examination, he testified that at the time of hire, he was aware Mr. Glynn had prior drug offenses. See Transcript, p. 73.
22. Mr. Michael Cox, the Executive Vice President of Premier Mortgage, also testified on behalf of Mr. Glynn. He testified that he has known Mr. Glynn since 1986, when they attended college together at the University of Dayton. See Transcript, p. 76. They worked together at another mortgage company before both transferring to Premier Mortgage. See Transcript, p. 78. He also testified that Mr. Glynn's drug habits began during a difficult period in his life, when he had to care for his four siblings and his grandparents. See Transcript, pp. 78-79. He recommends Mr. Glynn for a license.
23. In addition to the testimony provided by Mr. Glynn's character witnesses, he provided a letter from Ms. Juanita Bohannon. Ms. Bohannon, a family friend, explains that Mr. Glynn undertook many family responsibilities at the age of fifteen upon the passing of his mother. She indicates that he has paid his debt to society and recommends him for a license. See Letter, Respondent's Exhibit A.

### III. Conclusions of Law

24. The Ohio Revised Code sets out the criteria by which the Superintendent of Financial Institutions shall license loan officers. It states in part:

“...the superintendent of financial institutions shall issue a loan officer’s license to the applicant if the applicant has not been convicted of or plead guilty to any criminal offense described in Division (A)(2) of Section 1322.031 of the Revised Code.” O.R.C. 1322.041.

25. The criminal offenses incorporated by reference are:

“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.” O.R.C 1322.031 (A)(2). Emphasis added.

26. Based on the documentation offered by the State (State’s Exhibit 8), and Mr. Glynn’s admission at the hearing, the Hearing Examiner finds that Mr. Glynn was convicted of drug trafficking in 1996.

27. Once the fact of conviction is established, the statute allows for a burden-shift in which Mr. Glynn assumes the burden of proving by a preponderance of the evidence that despite his conviction, he otherwise should receive a loan officer’s license.

28. The statute sets out a number of criteria the applicant must meet, two parts of which are relevant to this analysis. The first part states:

“The superintendent shall issue a loan officer license to the applicant if the superintendent finds the following conditions are met:

(3) ...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.” O.R.C. 1322.041 (A)(3).

29. Mr. Glynn’s conviction for drug trafficking in 1996 was not an isolated event. Since then, he has had a closely related conviction for “conspiracy to possess with intent to distribute marijuana in excess of 100 kilograms” in 1998. Further, he committed his 1996 drug trafficking crime *while on probation for drug abuse*. His 1998 “repeat offense”

demonstrated that after his initial drug trafficking conviction, Mr. Glynn did not abstain from engaging in similar conduct. In fact, he continued it to such a degree that a federal court in Indiana saw fit to sentence him to five years in prison, three of which he actually served.

30. Thus, while he testified with sincerity that he has no intention of continuing to traffic in illegal drugs, and that he wishes to set a positive example for his family, his repeat offense does provide some basis for believing he would commit a similar offense in the future. In addition, while his conviction occurred in 1998, approximately seven years ago, three of those years were spent in prison. His record of good behavior only exists for the last four.
31. Mr. Glynn's colleagues, Mr. Church and Mr. Cox, testify that he has a strong employment record. But again, this record is not particularly lengthy, and Mr. Church acknowledged that he has only known Mr. Glynn since March of 2003. This causes the weight of his testimony to be reduced.
32. Finally, as to whether Mr. Glynn's "activities" since the conviction demonstrate honesty, Mr. Glynn's representations to the Division concerning his criminal record are relevant. By characterizing his three separate convictions (drug abuse, drug trafficking, and conspiracy to possess with intent to distribute marijuana) as simply "drug abuse," he made a misleading and incomplete representation to the Division.
33. That he may have considered his trafficking charge somewhat mitigated, in the nature of a possession charge—and only meeting the legal definition of "trafficking" because of the weight of the drugs—does not justify his incomplete response on his application. For he had an obligation to disclose all criminal convictions. Nor does the fact that he did not see adequate "space" on the application to detail his criminal history. He had three relevant



felony convictions—not all for “drug abuse”— and he easily could have listed each. Finally, that he also submitted to a background check at the time of application does not justify his failure to fully disclose his criminal record as required. Making a partial disclosure and “pray[ing]” that the Division would not further investigate was not an appropriate course of action. This failure to make the necessary criminal disclosures to the Division makes it more difficult to conclude Mr. Glynn’s activities since his conviction demonstrate that he is honest and truthful.

34. The second relevant portion of the Ohio Revised Code relates to the applicant’s “character and general fitness.” It states in part:

“The superintendent shall issue a loan officer license to the applicant if the superintendent finds the following conditions are met:

(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.” O.R.C. 1322.041 (A)(5).

35. The Hearing Examiner is not unmindful of Mr. Glynn’s efforts both inside and outside of the mortgage lending industry to better his behavior and ensure he will not relapse into the sort of lifestyle that led him to incarceration.
36. But Mr. Glynn’s pattern of drug-related convictions does raise questions about whether or not his character and fitness command the confidence of the public. Drug trafficking in particular is a serious crime which the General Assembly specifically included on the list of crimes that could disqualify an applicant.
37. Further, the relative recency of Mr. Glynn’s crimes, and his relatively recent release from prison and probation, has not provided Mr. Glynn with a great amount of time to demonstrate that his character and general fitness would command the confidence of the

public.

38. Mr. Glynn's incomplete response on his loan officer application is also relevant to this statutory analysis. An assessment of his honesty is critical in determining whether or not he possesses the character that commands the confidence of the public, and in determining whether his "business will be operated honestly and fairly," as the statute demands.

39. Mr. Glynn provided incomplete information to the Division on his application. At the hearing, he did not offer a credible, coherent explanation for this omission. See Paragraph 33. This precludes the Hearing Examiner from finding that he will operate his business "honestly and fairly."

40. The law also makes explicit that no applicant should receive a license who knowingly withholds information from the Division in the application process. It states:

"No mortgage broker, registrant, licensee, or applicant for a certificate of registration or license under sections 1322.01 to 1322.12 of the Revised Code shall do any of the following:

(A) Obtain a certificate of registration or license through any false or fraudulent representation of a material fact or any omission of a material fact required by state law, or make any substantial misrepresentation in any registration or license application;

(B) Make false or misleading statements of a material fact, omissions of statements required by state law, or false promises regarding a material fact, through advertising or other means, or engage in a continued course of misrepresentations;

(C) Engage in conduct that constitutes improper, fraudulent, or dishonest dealings..."

41. While Mr. Glynn provided a number of explanations for his incomplete answer to Question 5 on the application, none were sufficient to satisfy the Hearing Examiner that his omissions should for some reason be excused. See Paragraph 33.

42. Mr. Glynn's failure to disclose his conviction on his application for a loan officer's license

is a false representation of a material fact and an omission of a statement required by law.

43. Based on the foregoing, the Hearing Examiner finds that Mr. Glynn has not proven by a preponderance of the evidence, that the his activities and employment record since the conviction show that the 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. Nor does the Hearing Examiner find that his 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 intent of O.R.C. 1322.01 to 1322.12. The Hearing Examiner also finds Mr. Glynn violated O.R.C. 1322.07 by failing to fully disclose his criminal convictions to the Division.

#### IV. Recommendation

44. Therefore, in accordance with the above Findings of Fact and Conclusions of Law, the Hearing Examiner recommends that the Superintendent of the Division of Financial Institutions deny Mr. Glynn's Loan Officer Application pursuant to Ohio Revised Code 1322.041.

1/14/05  
Date

Terrence O'Donnell  
Hearing Examiner