

**STATE OF OHIO  
DEPARTMENT OF COMMERCE**

RECEIVED  
DIVISION OF FINANCIAL  
INSTITUTIONS

SEP 27 AM 10:03

IN THE MATTER OF:

DIVISION OF FINANCIAL  
INSTITUTIONS

**JASSEN S. HOLDERBY**

CASE NO. 05-0170-LOD

---

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

**Issued September 26, 2006**

**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 at 2:00 PM on January 18, 2006, at 77 South High Street, 19<sup>th</sup> Floor, room 1908, Columbus, Ohio.

The hearing was held at the request of Respondent Jassen S. Holderby, of Blacklick, 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 was convicted of Attempted Receiving Stolen Property, a misdemeanor, and, also, that in 2004 the Division found that Respondent failed to disclose the past criminal offenses on his 2002 sworn Application, and is thereby ineligible to hold a license as a Mortgage Loan Officer. Apparently, the Division also alleges that, because they made a finding in 2004 that Respondent was not eligible to obtain a license he is therefore not eligible to obtain a license

in 2006. The Division appeared and was represented by the Ohio Attorney General's Office, Assistant Attorney General James M. Evans. Respondent appeared Pro Se.

At the hearing, State's Exhibits 1 through 5 were admitted into the record, as discussed in the transcript (hereinafter "Tr."). Respondent's Exhibits A, B and C were admitted into the record over the Division's hearsay objection to A and C. Two witnesses appeared for Respondent, including Respondent.

## B. JURISDICTION

The Division issued and mailed the NOH against Respondent on November 21, 2005. Respondent requested a hearing, which was received by the Division on December 7, 2005. On December 8, 2005, the Division scheduled the hearing for December 19, but continued the hearing to January 18, 2006, 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.
2. Respondent is an individual who wishes to conduct business in Ohio as a Mortgage Loan Officer. (Exhibit 1.)
3. On September 13, 2005, the Division received from Respondent a Loan Officer Application (hereinafter the "2005 Application"). (Exhibit 1.)
4. Respondent signed the 2005 Application, attesting to his responses, on August 28, 2005. (Exhibit 1.)
5. Within the 2005 Application, Question number 5 asked: "Have you ... ever been convicted of any criminal offense? Exclude minor misdemeanor traffic and parking offenses. (DUIs and DWIs are criminal offenses.)" (emphasis in original). (Exhibit 1.)
6. Respondent answered "yes" to Question 5 in the 2005 Application. (Exhibit 1.)
7. On, or about, July 22, 1996, Respondent pleaded guilty to, and was convicted of, one count DUI, in Massillon Municipal Court. (Exhibit 1.)

8. Respondent's explanation of the DUI charge was as follows: After drinking with co-workers a few days after his 21<sup>st</sup> birthday, Respondent was stopped on the way home. (Exhibit 1.)
9. On, or about, December 7, 1993, Respondent pleaded guilty to, and was convicted of, Attempted Receiving Stolen Property, in Franklin County Court of Common Pleas. (Exhibit 1.)
10. Respondent's explanation of the Attempted Receiving Stolen Property conviction was: When Respondent was 18 years old, an acquaintance offered to sell Respondent two car amplifiers. Respondent indicates he did not consider if the objects were stolen. Respondent was arrested and charged, but he indicates that the reason he was charged, and pleaded guilty, was the person from whom he purchased the amplifiers was not prosecutable due to some type of psychological condition. (Exhibit 1; Tr. p. 49.)
11. The two charges were when Respondent was 18 and 21 years old. (Exhibit 1.)
12. No evidence was brought forth indicating that Respondent engaged in a pattern of alcohol abuse.
13. Respondent acknowledges his commission of the offenses. (Exhibit 1; Tr. p. 49.)
14. On May 1, 2002, the Division received from Respondent a Loan Officer Application (hereinafter the "2002 Application"). (Exhibit 5.)
15. 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.)
16. Respondent signed the 2002 Application, attesting to his responses, on April 12, 2002. (Exhibit 5; Tr. p. 42.)
17. Respondent worked as a mortgage loan officer prior to the 2002 Application. (Tr. p. 46-47.)
18. Within the 2002 Application, Question 5 asked: "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?" (Exhibit 5.)

19. Respondent answered "No" to question 5 on the 2002 Application. (Exhibit 5; Tr. pp. 42-43.)
20. On January 22, 2004, the Division issued a NOH against Respondent intending to deny his 2002 Application. Because Respondent had taken employment with a National Bank, where a mortgage license was not required, Respondent did not request a hearing to challenge the Division's allegations. The Division issued a denial on March 26, 2004. (Exhibit 5; Tr. pp. 46-47.)
21. Respondent's explanation why he responded "No" to Question 5 on the 2002 Application was that he was confused by the question. He understood the question to be asking about convictions when he was an officer, director or owner of a company. He states that he now understands that the question asked both about him and any company for which he worked. It is unclear whether he came to that conclusion by himself or he was accepting the interpretation of the Division. (Tr. Pp. 43, 54-55.)
22. Respondent's testimony that he believed that the list of offenses in Question 5 pertained to applicants who were officers or directors or owners of a business was credible.
23. Respondent's witness, Resseger, presented himself as an enthusiastic business owner who spoke highly of Respondent as hardworking and honest. Resseger has known Respondent for a number of years, has worked with him and respected his work. Resseger's body language was that of a credible witness. (Tr. pp. 85-106.)
24. Respondent's Exhibits A and C are letters of recommendation from persons who were not in attendance at the hearing (Olson and Gustafson and Havlin). Exhibit B contains copies of adoption certificates. Because an administrative hearing is designed to permit a respondent an opportunity to offer an explanation without the formalities or expense of a trial, Exhibits A, B and C 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, the letters have been afforded reduced weight. However, the specificity of the letters, and that one was notarized, causes more weight to be granted these letters than would normally be the case. The adoption certificates are not germane to the instant proceeding.

## **II. CONCLUSIONS OF LAW**

### **A. JURISDICTIONAL ISSUE**

1. The Division procedurally complied with O.R.C. Chapter 119.
2. Paragraphs B and C of the NOH do not charge Respondent with sufficient specificity to put him on notice of the acts he allegedly committed sufficient to allege he violated certain provisions of the Revised Code thereby. The Division may not use those paragraphs to deny Respondent a license without violating due process under the U.S. and Ohio Constitutions.

### **B. LICENSE APPLICATION**

3. Respondent has been proven to have been convicted of two criminal offenses. The attempted receiving stolen property offense is a theft offense specifically cited in sections 1322.041(A)(3) and (4), O.R.C. The DUI is not an offense listed in those sections and, due to the lack of notice in the charging paragraph of the NOH, the DUI offense is irrelevant to this proceeding. It was not set forth as a separate paragraph in the NOH and it was not set forth in paragraphs B or C of the NOH.
4. The attempted receiving stolen property offense is in the category which automatically requires the Respondent to prove, by a preponderance of the evidence, that the Respondent'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." Section 1322.041(A)(3), O.R.C.
5. Respondent demonstrated by a 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 the applicant will commit such an offense again. All testimony indicated that Respondent held positions of trust after the theft conviction and behaved honestly in those positions. Respondent's two convictions were when he was considerably younger.
6. 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.

7. Although the charging paragraph in the NOH is not clear, apparently the Division is alleging that the culmination of Respondent's convictions demonstrate 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.
8. The fact that the attempted receiving stolen property charge occurred when Respondent was 18 does not demonstrate lack of character, but, rather, immaturity. The DUI was a result of coworkers celebrating a social milestone with Respondent: his 21<sup>st</sup> birthday. Neither event is recent. Both events occurred when he was still immature. Respondent is now 31 years old and is married with children. His responsibilities and lifestyle has changed significantly.
9. The Division apparently also seeks to bring 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 that the Division made a finding that Respondent submitted an inaccurate response to Question 5 on the 2002 Application.
10. The fact that the language of Question 5 has changed in the three years since Respondent first submitted an application does not, in itself, demonstrate that the language was so universally confusing that it required changing. While it may be true that the language is less confusing in the current version, no testimony proves that is the reason it was reworked.
11. Respondent demonstrated that he was confused by the 2002 Application's Question 5.
12. Respondent answered Question 5 on the 2005 Application in the affirmative and correctly. If the Division seeks to hold against him that he responded incorrectly on the 2002 Application, then his positive response on the 2005 Application should be recognized. While it is true that Respondent would have learned the first time through the process that the incorrect response will not result in a license, Respondent's unrefuted testimony was that the newly re-written language of Question 5 was more understandable to him.

13. The Division's denial of Respondent's 2002 Application does not, of itself, provide direction how the 2004 Application should be treated, any more than a prior decision by a prior hearing officer would have provided direction in this case.
14. There is nothing noted in Chapter 1322, O.R.C., which suggests Respondent should be held accountable indefinitely for any mistake made on an earlier Application. Since section 1322.041 indicates an applicant can receive a license, despite past criminal convictions, if he can demonstrate that he has paid his debt to society and redeemed himself, the logical conclusion is that the incorrect response to Question 5 on the 2002 Application should not be a permanent bar to obtaining a license. Since the event is now four years old, sufficient time has elapsed to allow Respondent to have learned from that mistake.
15. Documents which are not authenticated cannot be admitted into the record as evidence.
16. Respondent provided 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.


#### C. DISCUSSION

Respondent's criminal convictions could be characterized as imprudence or injudiciousness of youth and are ten and 13 years old. The only part of the Division's allegations which cause concern is the answer to Question 5 on the 2002 Application. However, in addition to credibly testifying that he misunderstood the question as worded in the 2002 Application, it has been over three years between the two Applications. Also, Respondent has worked continuously in the industry since before the license requirement – much of the time at a bank – and the Division has not indicated there have been any complaints against Respondent, but, rather, his present employer spoke very highly of Respondent. Nothing in the statutes governing mortgage loan officers indicates that once denied a license an applicant may never be licensed.

### III. RECOMMENDATION

The Division has proven the prior theft, and other, convictions. Respondent did present sufficient evidence to prove that a license should be issued. Consequently, the recommendation to the Superintendent of Financial Institutions is to **GRANT A MORTGAGE LOAN OFFICER'S LICENSE TO JASSEN S. HOLDERBY.**

Respectfully submitted,

  
D. Michael Quinn  
Administrative Hearing Officer  
September 26, 2006  
Docket No. 05-DFI-0187