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**STATE OF OHIO  
DEPARTMENT OF COMMERCE**

**IN THE MATTER OF:**

**DIVISION OF FINANCIAL  
INSTITUTIONS**

**JASON D. WERNER**

**CASE NO. 06-0097-LOD**

**LANDI JACKSON-FORBES  
HEARING OFFICER**

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**REPORT AND RECOMMENDATION**

**Issued October 26, 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 Jason D. Werner of North Olmstead, 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 January 27, 2006. The Division issued the NOH on the bases that Respondent failed to disclose a 1999 criminal conviction on the loan officer license application filed on May 13, 2005. The Division alleges that based upon Respondent's nondisclosure of his conviction 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 Application constitutes violations of Revised Code §1322.07(A)(B) and (C).

The hearing was held at 1:30 p.m. on March 14, 2006, at 77 South High Street, 19<sup>th</sup> Floor, Room 1924, Columbus, Ohio. The Division, represented by Deputy Attorney General Matthew D. Lampke, appeared at the hearing. Witness for the Division was staff attorney Carrie Moore. Respondent appeared *pro se* and testified at the hearing. At the hearing, State's Exhibits A through D were admitted into the record without objection.

and Respondent's Exhibits 1 through 8 was 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. A & B)
2. Respondent applied with the Division to conduct business in Ohio as a Mortgage Loan Officer on May 13, 2006 by submitting a signed, sworn and attested to Ohio Loan Officer Application ("Application") and fingerprint card. VP Equity is listed as the employing Mortgage Broker Company. (State Ex. A)
3. Respondent swore to or affirmed that the answers he gave in the Application are complete and true of his own knowledge. (State Ex. A)
4. Within the Application Respondent checked the "no" box to Question 5, which 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?

(State Ex. A)

5. Respondent was convicted of a misdemeanor on January 19, 1999, which was not disclosed in the Application the Division received for consideration. (State Ex. A, Tr. at 18-19)
6. Respondent asserts that he has never had a problem disclosing his conviction. He testified that he checked "yes" to Question 5 on the Application and wrote "disorderly conduct". He contends that he signed two loan officer license applications at the request of VP Equity's operations manager; one on March 15, 2005 and another on April 21, 2005. He maintains that he did not place the checkmark in the "no" box to Question 5, and that it is not his signature on page 4 of the Application before the Division, which he believes is evidenced by the style of the checkmark and letters in the signature. (Tr. at 11, 17, 20, 30-31, 45 & 56)
7. Sometime between May 13, 2005 and October 18, 2005, Respondent requested from the Division a copy of the Application in the Division's records submitted by VP Equity on his behalf. Respondent acknowledged in a letter dated October 18, 2005 that, "the handwriting in my application is terrible, so I certify that it is mine." Nowhere in the October 18<sup>th</sup> letter did Respondent dispute that he did not complete the Application, or contest that all the signatures were not his. (State Ex. D)

8. Respondent did not produce the operations manager or any other witness to testify that he signed two loan officer license applications, or submit any documentation to substantiate his testimony that he signed two applications. Respondent also did not produce a witness or any documentation to verify that it is not his signature on page 4 of the Application.
9. Carrie Moore, staff attorney and records custodian for loan officer license applications with the Division, reviewed the Division's file for Respondent's Application and verified that the Application dated May 13, 2005 is the only loan officer license application submitted on Respondent's behalf. (Tr. at 34 & 41)
10. Respondent was 19 years of age when the 1999 conviction, which is the only criminal conviction on his record, took place. All fines and court costs associated with the conviction have been paid in full, and all jail time and other imposed conditions of his sentence have been served, suspended, or terminated. (Tr. at 18-19)
11. Respondent has worked in the mortgage industry for at least the past two years as either a loan officer with an entity not under the Division's regulation or as a loan processor. (Respondent Ex. 2-5, Tr. at 44)

## **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. 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 presented the Application containing an inaccurate response to Question 5.

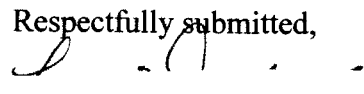
3. Statements made on a filed application may be considered in determining an applicant's character and fitness since the application, having been given under oath, is held to be based on truthful statements. *Szep v. Ohio State Board of Pharmacy*, 106 Ohio App.3d 621 (1995).
4. Evidence of filing an 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.
5. Respondent has raised the question of the validity of the Application to be used by the Division to demonstrate that his inaccurate response to Question 5 indicates that he does not have the character and general fitness to command the confidence of the public. Respondent's assertions that the checkmark to Question 5 and the signature on page 4 of the Application are not his are not credible and convincing. Respondent admitted in the October 18, 2005 letter to the Division that it is his handwriting on the Application, which contradicts his testimony regarding the checkmark and signature. Furthermore, Respondent did not produce any testimony, affidavit or other documentation that would support his explanation or claim that he signed two loan officer license applications. Instead, Respondent's basis for believing that the checkmark and signature are not his seemed farfetched and Respondent appeared to be presenting any argument that might prove successful, which demonstrates a lack of honesty.
6. Respondent's testamentary and documentary evidence regarding his work experience and civic activities offered to show that his character is honest was either unsubstantiated or not current, and as such is not probative and reliable. Respondent failed to overcome the Division's evidence questioning his 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 Revised Code §1322.01 to 1322.12.
7. The Division has also charged violations of the Ohio Mortgage Broker Action §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 his criminal conviction on his Application.
8. Respondent's failure to disclose his conviction on the Application does not automatically demonstrate that he intended to make a substantial misrepresentation on his Application. 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. 10<sup>th</sup> Dist., 2001).

9. Respondent's explanations regarding the inaccurate response to Question 5 in his Application were not credible or convincing. The explanations were insufficient to refute the Division's evidence that the inaccurate response to Question 5 was a substantial misrepresentation, a false statement of material fact required by law on the Application and that his incorrectly answering Question 5 amounts to fraudulent or dishonest conduct.

### **III. RECOMMENDATION**

In careful consideration of the record made in this matter, it is recommended that Jason D. Werner be found to have not presented sufficient evidence 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. It is further recommended that Jason D. Werner be found to have violated Ohio Revised Code §1322.07(A), (B), and (C).

Respectfully submitted,

  
Landi Jackson-Forbes  
Hearing Officer  
October 26, 2006  
Docket No. 06-DFI-029