

STATE OF OHIO  
DEPARTMENT OF COMMERCE

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IN THE MATTER OF:

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DIVISION OF FINANCIAL  
INSTITUTIONS

STEVEN J. POWERS

CASE NO. 05-0126-LOD

LANDI JACKSON-FORBES  
HEARING OFFICER

REPORT AND RECOMMENDATION

Issued November 30, 2005

I. FINDINGS OF 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 held at 2:00 pm on October 20, 2005, at 77 South High Street, 19<sup>th</sup> Floor, room 1918, Columbus, Ohio.

The hearing was scheduled by the Division at the request of Respondent Steven J. Powers, of North Royalton, 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"), that was issued to Respondent on or about July 20, 2005.

The Division issued the NOH to Respondent on the bases that Respondent was convicted of theft in the Municipal Court of Parma, Cuyahoga County, Ohio, and violated Revised Code §1322.07(A)(B) and (C) by failing to disclose the conviction on his loan officer application. The Division alleges that based upon Respondent's conviction, nondisclosure, and violations of Revised Code §1322.07 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 Division further alleges that Respondent's actions and conviction shows 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, represented by Assistant Attorney General Mindy Worly appeared at the October 20, 2005 hearing and presented its case. Witness for the Division was staff attorney Mark Rhea. Respondent did not appear at the hearing, nor was he represented by counsel. At the hearing, State's Exhibits 1 through 8 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 Chapter 1322.
2. On or about June 2, 2004, the Respondent applied for an Ohio Mortgage Broker Loan Officer license ("loan officer license") by submitting a signed, sworn and attested Ohio Loan Officer Application to the Division pursuant to R.C. Chapter 1322. (State Ex. 1)
3. Within the application Respondent checked the "yes" box to question number 5, which asked: "Have you ... ever been convicted of any criminal offense?" (State Ex. 1)
4. Question number 5 on the application further requires that "if the answer is yes, furnish details". Respondent wrote, "2000 – underage drinking; underage possession of alcohol, possession of marijuana, agt (aggravated) menacing". (State Ex. 1; Tr. at 12)
5. Pursuant to §1322.03 (B) of the Revised Code, the Division is required to conduct a criminal records check based on the applicant's fingerprints as part of the application process.
6. Respondent's criminal records check revealed the 2000 underage possession conviction, 2002 possession of marijuana charge and possible convictions of theft and aggravated menacing in 2003. (State Ex. 4)
7. On or about August 3, 2004, the Division notified Respondent that his application was being investigated. The letter required Respondent to explain the convictions in detail and submit certified copies of the judgment entries for all convictions. (State Ex. 4)

8. In response to the Division's inquiry, Respondent submitted a letter dated August 25, 2004 acknowledging and explaining each of his convictions along with a journal entry from the City of North Royalton Mayor's Court confirming the underage possession conviction, and a certified journal entry from the Cleveland Municipal Court confirming the possession of marijuana charge. Respondent also submitted copies of the warrants and complaints for the 2003 theft and aggravating menacing charges. (State Ex. 5)
9. On or about March 8, 2005, the Division sent Respondent a letter requesting certified copies of the 2003 theft and aggravated menacing entries indicating his pleas and the courts findings regarding these convictions. The Division received the requested certified journal entries from Respondent on March 17, 2005. (State Ex. 3 & 5)
10. On or about January 7, 2003 Respondent removed the license plate from someone else's vehicle while in the North Royalton Police Department parking lot. Respondent was charged with theft and subsequently plead no contest to the charge. Accompanying the theft charge was a charge of aggravated menacing to the same victim. Respondent also plead no contest to the aggravated menacing charge. On January 13, 2003 Respondent was found guilty of petty theft, a misdemeanor of the first degree and aggravated menacing. Respondent was fined and placed on probation for twelve months. (State Ex. 3 & 5)
11. Respondent sent a letter to the Division explaining the 2003 convictions as follows:

Because of an argument with someone I knew I removed the license plates from the victim's car in an attempt to keep that person from leaving. We were parked in the North Royalton Police Department parking lot. I did not know the seriousness of the crime. I did not nor plan on using the removed plates. ... This (aggravated menacing charge) was an accompanied charge to the above theft charge. I did not leave when I was told to do so. I wanted to talk with the victim. I was angry and shouted at the victim. These events were very bad choices I made in my past. I had consequences and fines for these actions. I have followed the court's terms and stayed away from the victims. I continued to improve my moral character daily.

(State Ex. 3)

12. Respondent did not disclose the theft conviction on his loan officer application nor did he explain in his letters to the Division why he failed to disclose the theft conviction.
13. In response to the NOH issued to the Respondent, a hearing was requested and scheduled. On or about August 24, 2005, the Division sent Respondent a letter scheduling the requested hearing for August 29, 2005. The Division continued the hearing on its own motion to October 20, 2005 at 1:30 p.m. (State's Ex. 7 & 8)
14. The August 24, 2005 letter scheduling the hearing was not returned to the Division as undeliverable. (Tr. at 29)
15. Respondent did not appear at the October 20, 2005 hearing in person nor was counsel present representing Respondent. (Tr. at 5)
16. Respondent did not request a continuance of the October 20, 2005 hearing. (Tr. at 29)

## **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 August 24, 2005 scheduling the requested hearing was sent to the Respondent by regular mail at the most recent address he had provided to the Division and at which he received certified mail service of the NOH. 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 (1947), 81 Ohio App. 158, 161, 77 N.E.2d 76, 78. Testamentary evidence from the Division that the August 24, 2005 letter was sent to the Respondent and not returned to the Division as undeliverable also demonstrate that the Division complied with Revised Code §119.07.

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. (1988) 40 Ohio App.3d 124, 125-126, 532 N.E.2d 189, 191.

**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. Ohio Revised Code Section 1322.031(A)(2) requires a loan officer license applicant to include in his or her application a statement as to whether he or she has 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.
3. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application.
4. Ohio Revised Code Section 1322.07(B) prohibits a loan officer license applicant from making false or misleading statements of a material fact or omissions of statements required by state law.
5. Respondent's failure to disclose his 2003 theft conviction was a substantial misrepresentation in his application in violation of Revised Code §1322.07(A). Respondent's theft conviction is in the recent past, which makes it unlikely that he did not remember the conviction to disclose it on his loan officer application particularly since he did disclose the aggravated menacing conviction which accompanied the theft conviction.
6. Respondent's omission of his 2003 theft conviction on his application is an omission of a statement required by law and a violation of Revised Code §1322.07(B).

7. 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."
8. Respondent's act of omitting his 2003 theft conviction from his loan officer application indicates that he intended to conceal this conviction from the Division. Respondent's act of omission indicates that he is dishonest and would attempt to obtain a loan officer license through dishonesty. Respondent's act of omitting the 2003 theft conviction constitutes dishonest dealings which violates Revised Code §1322.07(C).
9. Once the theft conviction was proven by the Division, the burden shifts to Respondent to prove, 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 {he} will commit such an offense again" in order to obtain a license. Revised Code §1322.041(A)(3)
10. Respondent, although having received proper notice of the scheduled hearing, failed to appear to meet his burden to prove that his activities and employment record since his conviction show that he is honest, truthful, and of good reputation, and there is no basis in fact for believing that he will commit the offense of theft again. Respondent stated in his explanation to the Division that he continues to improve his character daily, but offered no evidence to support this statement. On the contrary, Respondent's failure to disclose the recent theft conviction on his loan officer application and his failure to explain why he omitted the conviction is indicative that he does not have the character to obtain a loan officer license.
11. Respondent has not provided 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 in compliance with the Ohio Mortgage Broker Act.

### III. RECOMMENDATION

In careful consideration of the record made in this matter, it is recommended that Steven J. Powers be found to have not presented sufficient evidence to prove, by a preponderance of the evidence, that his activities since his conviction show that he is honest, truthful, and of good reputation, and there is no basis in fact for believing that he will be subject to a judgment again and 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  
November 16, 2005  
Docket No. 05-0070-LOD