

**STATE OF OHIO  
DEPARTMENT OF COMMERCE**

IN THE MATTER OF:	:	DIVISION OF FINANCIAL
	:	INSTITUTIONS
	:	
Terrance A. Harmon, Sr.	:	CASE NO. 05-0147-LOD
	:	
	:	LANDI JACKSON-FORBES
	:	HEARING OFFICER

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**REPORT AND RECOMMENDATION  
Issued March 16, 2006**

**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 10:00 a.m. on October 24, 2005, at 77 South High Street, 19<sup>th</sup> Floor, Room 1938, Columbus, Ohio.

The hearing was scheduled by the Division at the request of Respondent Terrance A. Harmon, of Columbus, 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 August 10, 2005. The Division issued the NOH to Respondent on the bases that he has four prior criminal convictions and he not did disclose all of those convictions on his loan officer application. The Division alleges that based upon Respondent's convictions and nondisclosure, Respondent has not proven that since his convictions that he is honest, truthful, and of good reputation, and that there is no basis in fact for believing that he will not commit another criminal offense involving money or securities and Respondent has violated Revised Code §1322.07(A)(B) and (C). The Division further alleges that Respondent's criminal convictions and nondisclosure 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, represented by Assistant Attorney General Timothy Loughry, appeared at the hearing. Respondent appeared *pro se* and testified at the hearing. At the hearing, State's Exhibits 1 through 9 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 Code Chapter 1322.
2. Respondent is an individual that wishes to be licensed to conduct business in Ohio as a Mortgage Loan Officer. He was a loan officer for approximately ten years prior to the enactment of Senate Bill 76, which required mortgage loan officers to be licensed, effective May 2, 2002. (Tr. at 30-31)
3. Respondent applied for a Mortgage Broker Loan Officer License ("loan officer license") on or about March 2, 2005 by submitting a signed, sworn and attested Ohio Loan Officer Application ("Application") to the Division pursuant to Revised Code Chapter 1322. Respondent swore to or affirmed that the answers he gave in the Application are complete and true of his own knowledge. (State Ex. 2)
4. Within the Application Respondent checked the "yes" box to Question 5 which asked: "Have you ... ever been convicted of any criminal offense?" In his explanation to question five, Respondent wrote, "Held in contempt of court for back child support". (State Ex. 2)
5. Respondent attached a letter to his Application which indicated that on February 24, 2003 he was indicted on one count of Nonsupport of Dependents due to being behind on his child support obligation. Respondent stated that he is on probation until all arrearages are paid and indicated that the arrearages should be paid within the next thirty days. Respondent also attached a copy of a January 2, 2003 entry from the Court of Commons Pleas Franklin County evidencing Respondent being found guilty of Nonsupport of Dependents, placed on probation for two years, and ordered to pay arrearages or restitution to the Franklin County Child Support Enforcement Agency. (State Ex. 2)

6. Question/Statement number 8 on the Application provides that the applicant must submit a fingerprint background check as part of the application. (State Ex. 2 & 3)
7. Pursuant to §1322.03 (B) of the Revised Code, the Division is required to conduct a criminal records background check based on the applicant's fingerprints as part of the application process.
8. Respondent's criminal records background check revealed a 1983 petty theft charge; 1988 passing bad check charge; 2 counts of theft by deception and two counts of passing bad checks in 1994; a 1999 solicitation for prostitution charge; and a 2002 Nonsupport of Dependents charge. All of Respondent's acts took place in Columbus, Ohio. (State Ex. 4)
9. Respondent submitted to the Division written explanations of the charges listed in paragraph 8 and copies of judgment entries evidencing a 1996 theft conviction, a 1997 receiving stolen property conviction, a 1999 solicitation for prostitution conviction and a 2002 Nonsupport of Dependents conviction. (State Ex. 4, 6-9)
10. On May 21, 1996 Respondent plead guilty to theft, a felony of the fourth degree in the Franklin County Court of Commons Pleas. He was found guilty, sentenced to eighteen months of suspended jail time, and placed on probation for three years. Respondent was also ordered to pay restitution in the amount of \$1,927.25 by July 31, 1998, and complete 200 hours of community service. (State Ex. 7)
11. On July 9, 1997 Respondent plead guilty to receiving stolen property, a felony of the fourth degree in the Franklin County Court of Common Pleas. The receiving stolen property charge arose from the same circumstances as the 1996 theft conviction. The September 16, 1997 Court Entry states that Respondent entered a guilty plea and was in court personally on September 15, 1997. Respondent was found guilty of receiving stolen property, sentenced to one year of suspended jail time, and placed on probation for five years. (State Ex. 8)
12. On May 4, 1999 Respondent plead guilty to and was found guilty of soliciting another to engage in sexual activity for hire. Respondent was fined \$200 plus court costs and his probation was extended. (State Ex. 9; Tr. at 23)

13. On February 24, 2003 Respondent plead guilty to Nonsupport of Dependents, a misdemeanor of the first degree and was found guilty of the charge by the Franklin County Court of Common Pleas. Respondent received two months of suspended jail time at the Franklin County Correction Center and was ordered to pay \$4,405 in restitution. (State Ex. 6)
14. The Application does not limit the response sought on Question 5 to felonies, to a particular period of time, to those offenses for which there exists a record, or to those offenses for which an applicant has served time in jail, but asks if the applicant has ever been convicted of or pleaded guilty to any criminal offense, including, but not limited to, certain named offenses. (State Ex. 2)
15. On or about August 10, 2005, the Division notified Respondent of its intent to deny him a loan officer license. The bases of the intended denial are Respondent's 1996 theft conviction in the Franklin County Court of Common Pleas; a 1997 receiving stolen property conviction in the Franklin County Court of Common Pleas; a 1999 soliciting another to engage in sexual activity for hire in the Franklin County Municipal Court; a 2003 nonsupport of dependents conviction in the Franklin County Court of Common Pleas. The Division also based its intent to deny on Respondent's Application in which he swore that all the information regarding his criminal background was complete and truthful and Respondent submitting the incomplete application and untruthful information to the Division to obtain a loan officer license. (State Ex. 1)
16. The NOH alleges that Respondent has not proven since his theft, receiving stolen property and nonsupport of dependents convictions that he is honest, truthful, and of good reputation and that there is no basis in fact for believing that he will not commit another criminal offense involving money or securities. The NOH further alleges that because of Respondent's convictions 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 purposes of the Ohio Mortgage Broker Act. Finally, the Division alleges that Respondent has violated Revised Code §1322.09(A), (B) and (C). (State Ex. 1)

17. Respondent acknowledges that he plead guilty to the 1996, 1999 and 2003 offenses listed in paragraph 15, but believes that he was not guilty of the charges. (State Ex. 4, Tr. at 17-18, 20, 22)
18. Respondent's explanation of his 1996 theft conviction is that his cousin paid for a hotel room at which Respondent was registered with a credit card over the phone. Respondent testified that he did not know that the credit card did not belong to his cousin until after he was charged with theft. (Tr. at 17-18)
19. Respondent testified that he was not aware of the 1997 receiving stolen property conviction until he requested his records from the Franklin County Court of Common Pleas in response to the Division's request. Respondent testified that he was not in court on the dates indicated in the September 16, 1997 Entry and he did not plead guilty to a receiving stolen property charge. Respondent did not question anyone at the Court regarding the 1997 conviction nor notify the Court that the Entry's statement that Respondent was in court and plead guilty were incorrect. (State Ex. 8 and Tr. at 19-20 and 33)
20. Respondent's recount of the circumstances that lead to the solicitation charge was that he was "hanging out" with a friend and went into a store to purchase beer. When he came out of the store his friend was talking to a woman that Respondent had noticed had been standing on the corner. The woman got into the car with them and as soon as they pulled out an unmarked police care came around the corner. Respondent's testimony contradicts his earlier written statement of the circumstances surrounding his solicitation conviction submitted to the Division in May 2005. In that written explanation Respondent stated:

I merely saw an old friend on the street that wanted a ride. He then asked if I would pick up his friend. Just a moment later, a police cruiser and unmarked car pulled me over. I had no idea of what was going on. But, I was taken in, though wrongly accused, and bail was paid. Because I had nothing to do with this, charges were dropped against me. The bail money was paid back the very next day. There is nothing on the record.

(State Ex. 4; Tr. at 20-22)

21. Respondent pleaded guilty to the solicitation charge but indicated to the Division that the solicitation charge had been dropped. Respondent acknowledged that he had entered a guilty plea for the solicitation charge and paid court costs. He interpreted not going before a court or to jail as meaning the solicitation charge was dropped. Respondent specifically stated:

I didn't stand before a judge for that [solicitation charge], so I assumed they were dropped.

Well, to me that's -- that's the words I put it in. I didn't do any jail time. That was just my take on it. I mean, to me, I mean, I didn't know how else to put it, how else to say it.

(State Ex. 4; Tr. at 22-24)

22. Respondent explained that the nonsupport of dependents charge and conviction were a result of not being able to consistently pay his monthly child support obligation of approximately \$700 a month. Respondent testified that he did not miss payments, but was not always able to consistently pay the entire monthly obligation because a previous employer did not consistently pay him on time. (State Ex. 4)
23. In March of 2005 Respondent owed approximately \$3000 for child support. Respondent indicated to the Division that all child support should be paid in April 2005. In a later written statement to the Division Respondent stated that, "...final payments for all support will be over officially June 20, 2005." At the October 24, 2005 hearing, Respondent testified that he had one more payment of \$189 and his child support obligation, including arrearages, would be completely paid. (State Ex. 2 and 4; Tr. at 27 and 36)
24. Respondent acknowledges that he did not pay the child support in full as he had indicated to the Division, but believes that he was being truthful when he indicated that his child support obligation would be paid in April 2005. Respondent explained that he had intended to have the support paid by that time but did not close deals as anticipated causing him not to have the money by that date. (Tr. at 28)

25. Respondent's explanation of why he did not disclose his criminal convictions on his Application when he knew that he had criminal convictions on his record was that he believed that his record had been expunged and sealed. Respondent believed that his record was expunged and sealed because he paid an attorney \$600 in cash to expunge and seal his criminal record. Respondent did not sign a contract or any other document evidencing his hiring the attorney to have his criminal record expunged and sealed. Respondent also does not remember when he hired the attorney to have his record expunged and sealed. (Tr. at 30 and 36-37)
26. Respondent testified that he does not take his job as a loan officer lightly. He further testified that he has never had a complaint regarding his activities in the mortgage industry. Respondent indicated that he could have had people testify regarding his activities and character but did not feel that he needed to. (Tr. at 32)

## **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) to issue a license, 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 Revised Code §1322.01 to §1322.12.
2. In 1996 Respondent pleaded guilty to and was convicted of theft, a fourth degree felony. Respondent also plead guilty in 1997 to a receiving stolen property charge, a fourth degree felony. Both the 1996 and 1997 convictions are criminal offenses involving theft specifically cited in Revised Code §1322.031(A)(2) and §1322.041(A)(3).
  3. The theft and receiving stolen property convictions being proven by the Division shifts the burden to Respondent. Notwithstanding the prior convictions, the Superintendent may approve the license if Respondent is able to show by a preponderance of the evidence that his "activities and employment record since his convictions show that he is honest, truthful, and of good reputation, and there is no basis in fact for believing that he will commit theft offenses again." Revised Code §1322.041(A)(3)
  4. Although it is his burden to show that he is honest, truthful, and of good reputation, Respondent provided little to no evidence regarding his activities and employment record since his theft convictions. His testimony that he has not received a complaint in his approximate ten years in the mortgage business, while possibly true, has very little probative value and is unreliable without other evidence to substantiate his own sworn testimony. As such, Respondent has failed to meet his burden to show by a preponderance of the evidence that since his convictions, his activities and employment record show that he is honest, truthful, and of good reputation and he will not commit a theft offense again.
  5. Instead, the record shows that Respondent was not honest on his Application. Respondent answered "yes" to Question 5, but did not disclose all his criminal convictions or indicate that he had other criminal convictions. Respondent's explanation that he did not disclose his criminal convictions because he believed that they were sealed and expunged was not credible. Respondent remembered the name of the attorney that he allegedly hired to expunge and seal his criminal record, but could not remember when he hired the attorney. Respondent also did not have any records documenting that he had hired the attorney or any document that he relied on to



form the basis of his belief that his criminal record had been expunged and sealed.

6. Respondent also was not honest and/or forthcoming in his explanations of the facts and circumstances that lead to some of his solicitation and nonsupport of dependents convictions. Respondent's sworn testimony of the facts that lead to his solicitation conviction conflict with his earlier written explanation. Respondent offered no explanation for the conflicting accounts. Respondent also stated that the solicitation charges were dropped when he knew that he had plead guilty to the charges, was fined and had his probation extended.
7. Respondent affirmatively stated in his written explanation that his child support obligation would be "over officially June 20, 2005" when he knew that there was the possibility that the child support would not paid by that date. Respondent is not new to the mortgage business. He is paid by commission only and is aware that business is not consistent so that his income will often vary. As such, Respondent knew that his inconsistent income may not permit him to complete his obligation. Respondent may have intended to have the child support obligation paid by a date certain, but when he did not, he would not accept responsibility that the statement he made was not true.
8. Respondent's inconsistent testimony, inaccurate Application, and his misrepresentation of facts regarding his criminal convictions demonstrate that since his theft convictions in 1996 and 1997, he has not been honest, truthful, and of good reputation and further demonstrate that there is a basis in fact for believing that he will commit a theft offense or any criminal offense involving money again.
9. The Division charged that Respondent's character and general fitness to not command the confidence of the public and warrant the belief that the business with be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. The Division brought forth evidence of Respondent's inaccurate response to Question 5.
10. Filing an inaccurate response to Question 5 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 intentionally did not disclose all of his criminal convictions. His explanation that he believed that his criminal record has been expunged and sealed was not credible. Respondent did not bring anything from the attorney that he allegedly hired to substantiate his sworn testimony that the attorney was engaged to expunge and seal his record. Respondent could not remember when he allegedly hired the attorney, thus it is unclear which of Respondent's convictions he believed were expunged and sealed.
12. Even accepting Respondent's explanation that he believed his record to be expunged and sealed, when asked to explain the circumstances that lead up to his criminal convictions, Respondent gave conflicting explanations regarding his solicitation charge and misrepresented the facts of both the solicitation and Nonsupport of Dependent convictions.
13. Respondent's inconsistent testimony, inaccurate Application and misrepresentation of facts regarding his criminal convictions demonstrate that the public cannot rely on him to be honest and fair. 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 he will operate as a loan officer honestly and fairly in compliance with law.
14. 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 all his criminal convictions on his Application and Respondent claiming that the solicitation charge was dropped, when it was not. 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).

15. Respondent's explanation for not disclosing all his criminal convictions was that he believed that his convictions had been expunged and sealed, which allowed him to not disclose his convictions on the Application. Respondent's failure to remember when he allegedly hired the attorney or produce any documentation from the attorney to support his belief rendered his explanation untenable. Respondent's inconsistent explanation and misrepresentation of the facts involving his solicitation conviction and his inability to be honest and forthcoming when asked to explain his criminal convictions, even when he was confronted with contradictory evidence, demonstrate that he intentionally made substantial misrepresentations, gave false statements of material fact required by law on the license application, and engaged in fraudulent or dishonest conduct to obtain a Loan Officer License from the Division in violation of Revised Code §1322.07 (A), (B), and (C).
16. Respondent has not established the licensing prerequisites set forth in Revised Code §1322.041(A)(5).

### III. RECOMMENDATION

In careful consideration of the record made in this matter, it is recommended that Terrance A. Harmon be found not to have 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 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  
March 16, 2006  
Docket No. 05-0147-LOD