

**STATE OF OHIO
DEPARTMENT OF COMMERCE**

06 OCT 31 AM 9:09

IN THE MATTER OF:

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**DIVISION OF FINANCIAL
INSTITUTIONS**

:

:

MICHAEL S. TRAVER

:

CASE NO. 06-0156-LOD

:

:

**LANDI JACKSON-FORBES
HEARING OFFICER**

:

**REPORT AND RECOMMENDATION
Issued October 30, 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 Michael S. Traver, 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 February 16, 2006. The Division issued the NOH to Respondent on the basis that Respondent was convicted of one drug trafficking felony (fifth degree) in 2002. The Division alleges that based upon Respondent's conviction he has not proven 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 drug trafficking or any criminal offense involving money or securities and 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 hearing was held at 10:00 a.m. on May 11, 2006, at 77 South High Street, 19th Floor, Room 1924, Columbus, Ohio. The Division, represented by Assistant Attorney General James Evans, appeared at the hearing. Respondent appeared *pro se* and testified at the hearing. At the hearing, State's Exhibits 1 through 13 and Respondent's Exhibits A and B were admitted into the record without objection, as discussed in the transcript (hereinafter "Tr."). The record was kept open until May 19, 2006, 5:00 p.m., to allow Respondent to submit additional letters and other written statements by individuals in support of Respondent's character and honesty, over objections by the Division. One letter was received thereafter into the record, marked as Respondents Ex. C, letter from William L. Hanna.

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. (State Ex. 1 & 7)
2. Respondent is an individual who wishes to conduct business in Ohio as a Mortgage Loan Officer, and as such applied with the Division on July 28, 2005 by submitting a signed, sworn and attested to Ohio Loan Officer Application ("Application") and Certificate of Employment. Greystone Mortgage is listed as the employing Mortgage Broker. (State Ex. 1)
3. Respondent swore to or affirmed that the answers he gave in the Application are complete and true of his own knowledge. (State Ex. 1)
4. Within the Application Respondent answered "yes" to Question 5, which asked; "Have you... ever been convicted of any criminal offense?" (State Ex. 1)
5. Respondent disclosed in the Application a 2004 operating a motor vehicle while intoxicated conviction and a 2001 trafficking in marijuana conviction. (State Ex. 1)
6. The criminal background check the Division conducted pursuant to Revised Code §1322.03(B) revealed the 2002 and 2004 convictions Respondent disclosed in the Application, and also revealed a 1999 charge for sexual battery. (State Ex. 2-4)
7. On September 21, 2005, the Division sent Respondent a letter requesting a detailed explanation of the facts of his convictions and certified copies of the journal entries evidencing the outcome of the charges. (State's Ex. 2)

8. Respondent provided an explanation of the three convictions and certified journal entries evidencing the outcomes. (State Ex. 3 & 6)
9. The Division issued the NOH on February 16, 2006 on only the basis of the 2002 trafficking in marijuana conviction. (State Ex 7)
10. Respondent requested a hearing, which request was received by the Division on March 2, 2006. The Division scheduled the hearing for March 13, 2006, and continued the hearing on its own motion to May 11, 2006, at 10:00 p.m. (State Ex. 8 & 9)
11. Respondent's explanation of his 2002 drug trafficking conviction was that on March 29, 2001 he attempted to sell 458 grams of Marijuana. He was placed on probation for two years, which was extended until October 2006 due to the OMVI conviction in 2004. He has paid the fines and court costs associated with the trafficking conviction in full. (State Ex. 3 & 6; Tr. 32)
12. Respondent appeared remorseful and understands the seriousness of his trafficking and OMVI offenses. Respondent has been in substance abuse counseling with Narcotics Anonymous and Alcoholics Anonymous for three years and still attends multiple weekly meetings. (State Ex. 3, Tr. 32-34)
13. For the past two years Respondent's has been employed with his NA and AA sponsor. (Tr. at 34 & 58-59)
14. Respondent has gotten married and had three children since his 2002 conviction. (Tr. at 13)
15. Respondent's probation was terminated seven months early due to his compliance with the terms of his probation. Respondent's Probation Officer for Franklin County submitted a letter indicating that Respondent complied with the reporting requirements imposed by his sentence and attesting to his good character. The fact that the letter was received after the hearing and was from a witness not available to testify reduces the value which can be placed on the evidence. However, the letter spoke with some detail and specificity and coming from an individual with knowledge of Respondent's conviction gives greater weight to the evidence. (Respondent Ex. C; Tr. at 39 & 57-58)
16. Respondent worked for Greystone Mortgage for approximately four months as a telemarketer. During this time he completed continuing

education hours for Indiana and Ohio in preparation to become a licensed loan officer. (Respondent Ex. A & B)

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. In order to issue a license Revised Code §1322.041(A) requires 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 the sections 1322.01 to 1322.12 of the Revised Code.

2. In 2002 Respondent plead guilty to and was convicted of trafficking in marijuana, a felony in the fifth degree, which is a criminal offense specifically stated in Revised Code §1322.031(A)(2) and is a conviction that may provide a basis for recommending that Respondent's application for a license be denied under Revised Code §1322.041(A)(3).
3. The trafficking in marijuana conviction being proven by the Division shifts the burden to Respondent to prove by a preponderance of the evidence that Respondent's "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 Respondent will commit such an offense again.” Revised Code §1322.041(A)(3)

4. In eliciting evidence whether Respondent’s activities prove that he is honest and truthful, the Division demonstrated that Respondent signed an application under oath and filed that application with a state agency – the Division – to obtain a license to engage in an occupation and that application contained truthful information, to wit: the response to Question 5.
5. Filing an accurate application is positively demonstrative of an applicant’s honesty and truthfulness. An accurate application is also positively demonstrative of applicant’s character and general fitness and of whether the business will be operated honestly and fairly in compliance with law, especially when that information is negative to the applicant.
6. While Respondent’s drug trafficking conviction is in the recent past and Respondent has been convicted of an offense involving alcohol since the 2002 conviction, the record showed that Respondent has undergone counseling and rehabilitation for alcohol and substance abuse in the last three years to overcome his addiction, and has not been convicted of another drug trafficking offense or any offense involving money or securities. Respondent’s testimony, supported by the letter from his previous probation officer, indicates that Respondent has matured and is taking the initiative to improve his life for himself and his family. Respondent’s full disclosure of his criminal past, his criminal record evidencing no other drug trafficking offenses, or other offenses involving money and securities in conjunction with the letter from his previous probation officer are sufficient to demonstrate that Respondent’s is honest, truthful, and of good reputation, and there is not basis in fact for believing that Respondent will commit such an offense again.
7. The Division’s single basis 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 was the fact that Respondent was convicted of trafficking in marijuana in 2002.
8. Respondent presented the letter from his probation officer, which indicated that he complied with the terms of his sentence so that the Court released him early from probation. Respondent’s completion and early release from probation demonstrates he has been engaged in activities and conducted himself in a manner to gain the confidence of the Court that he is rehabilitated, and as such can command the confidence of the public.

Respondent also presented un rebutted testimony that he has undergone, and continues in, a substance abuse program and that he has avoided further use of drugs and alcohol.

9. Respondent did provide 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.

III. RECOMMENDATION

In careful consideration of the record made in this matter, it is recommended that Michael S. Traver be found to have presented sufficient evidence to prove, by a preponderance of the evidence, 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, 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 granted an Ohio Loan Officer License.

Respectfully submitted,



Landi Jackson-Forbes
Hearing Officer
October 30, 2006
Docket No. 06-DFI-050