

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

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IN THE MATTER OF: : CASE NO. 04-0418-LOD  
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Jeff P. Voll : James J. Lawrence, Hearing Officer

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ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
November 19, 2004

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I. FINDINGS OF FACT

A. Background

This matter came before James J. Lawrence, an attorney licensed to practice law in the state of Ohio and duly appointed by the Ohio Division of Financial Institutions (Division) to serve as Hearing Officer for this hearing in accordance with Ohio Revised Code (R.C.) Chapter 119, the Administrative Procedure Act. The hearing was held at 3:00 p.m. on September 20, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Jeff P. Voll (Respondent) to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for Hearing (NOH).

The Division alleges that Respondent was convicted in 2001 of theft and in 2002 of theft and forgery and that he failed to disclose these convictions on his loan officer application filed in September of 2002. Therefore, the Division asserts that Respondent is not eligible for a loan officer license pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322 for the following reasons:

1. Respondent has not proven that he is honest, truthful and of good reputation, and that there is no basis in fact to believe that he would not commit another criminal offense involving theft or any criminal offense involving money or securities as required by R.C. 1322.041 (A) (3);

2. 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 as required by R.C. 1322.041(A)(5);
3. Respondent violated R.C. 1322.07 (A), (B) and (C) by failing to disclose a criminal conviction on his loan officer application filed in September of 2002 and, therefore, did not comply with R.C. 1322.01 to 1322.12 as required by R.C. 1322.041(A)(2).

Anthony D. Siciliano, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. The Respondent appeared with counsel, Jose A. Iborra, Hardin & Schaffner, L.P.A. of New Philadelphia. At the hearing, State's Exhibits 1 through 8 and Respondent's Exhibit A were admitted into the record.

#### **B. Jurisdiction and Procedural Matters**

The Division issued the NOH to Respondent on June 16, 2004 by certified mail return receipt requested. (Exhibit 5.) The Division received the Respondent's hearing request on July 15, 2004. (Exhibit 6.) The Division scheduled the hearing for July 26, 2004 and, on its own motion, continued it to August 24, 2004. The hearing was continued at the Respondent's request to September 20, 2004. The Division sent notices of the hearings by ordinary mail to the same address to which it mailed the NOH. (Exhibits 7&8.)

#### **C. Respondent's Loan Officer Application**

1. The Respondent filed a loan officer application on September 16, 2002. (Exhibit 1.)
2. Question 5 of that application asked the following question:
  5. 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?
3. In response to Question 5, the Respondent answered "No." (Exhibit 1.)

4. Respondent signed the application on July 8, 2002 before a notary public. Directly above the applicant signature line, the application states:

“Being first duly cautioned, I hereby swear or affirm that I have completed the foregoing Loan Officer Application fully and frankly. The answers are complete and true of my own knowledge.” (Exhibit 1.)

5. As part of the application process, the Division conducted a criminal background check. R.C. 1322.031 (B). The background check revealed that the Respondent had been charged by the Jackson Township Police Department with theft and forgery on April 12, 2001 and by the Massillon Ohio Police Department with theft on May 23, 2002. (Exhibit 2.) By letter dated November 27, 2002, the Division required the Respondent to submit a detailed explanation of the facts and circumstances which gave rise to each charge and certified copies of the journal entries evidencing the disposition and sentence for each charge.
6. The Respondent submitted a Journal Entry in Case No. 01-CRA-799-N that showed that on April 21, 2001 the Massillon Municipal Court convicted the Respondent of theft, in violation of R.C. 2913.02(A)(1), a first degree misdemeanor. The Respondent also submitted a Judgment Entry from the Stark County Court of Common Pleas that showed that on July 31, 2002 the Court in Case No. 2002CR0786 found that the Respondent was charged with theft in violation of R.C. 2913.02(A)(1), (2) or (3) and forgery in violation of R.C. 2913.31 (A)(1), (2) or (3) and ordered a stay in the criminal proceedings pending the Respondent’s successful completion of the Stark County Court of Common Pleas Chance Program. (Exhibit 4.)
7. The Respondent explained that these offenses occurred during a period when he was addicted to cocaine. (TR at 25.) The first offense occurred when he was employed by Rockwell Mortgage Corporation. He wrote checks on his employer’s account to himself. He pleaded guilty to the misdemeanor theft charge, but did nothing about his addiction. (TR at 26, 31.) He was subsequently employed by AAA Mortgage. The second offense occurred when he again wrote checks on his employer’s account to himself. (TR at 33 – 34.) This time he sought help for his addiction. On the day that he was released from jail on bond, he met with an Alcoholics Anonymous counselor. Two days later he began attending Alcoholics Anonymous meetings. (TR at 35 – 36.) The Stark County Court of Common Pleas placed him in its Chance Program and stayed the criminal proceeding. (TR at 41.)

**D. Respondent's Failure to Disclose Conviction**

1. The Respondent did not disclose the 2001 conviction or the 2002 charge on his loan officer application. (Exhibit 1; TR at 56.)
2. The Respondent stated that he did not disclose the conviction or the charges because at the time that he completed the application, he read the question so that he was to indicate "yes" only if he had been an officer, director or more than five percent owner of a corporation that had been convicted of a crime. (TR at 57 – 58, 62.) Since he had never been an officer, director or more than five percent owner, he believed that the correct answer was "no." The Respondent insisted that he did not intend to mislead the Division; he had previously fully disclosed his criminal history to his employer and never tries to hide his past from anyone. (TR at 63.)

**E. Respondent's Reputation and Character.**

1. The Respondent testified about his activities and employment since his arrest in 2002. After the arrest in 2002, he joined Alcoholics Anonymous. He attended meetings for ninety consecutive days and completed its twelve step program. The Respondent continues to attend Alcoholics Anonymous meetings (TR at 70 – 71.)
2. The Respondent entered the Stark County Court of Common Pleas Chance Program on July 11, 2002. The Chance Program is a twelve month intensive treatment program with three phases. It uses a comprehensive approach to assist individuals in becoming responsible, contributing members of society. The program includes regular court appearances, submission to random drug screen, attendance at group counseling sessions, regular meetings with probation officer, Alcoholic Anonymous/Narcotics Anonymous meeting attendance and other services such as anger management counseling, life skills groups, parenting classes, community service work and vocation and education assistance. Upon successful completion of the Chance Program, charges brought by the Court of Common Pleas which initiated the referral to the Chance Program are dismissed. The Respondent completed the Chance Program in September of 2003. (Exhibit 5, TR at 70.)
3. The Respondent has been continuously employed as a loan officer with Lending Hand Financial, Inc. since July of 2002. He no longer uses cocaine, alcohol or any other drug. He does not associate with those who do. Outside of work he socializes primarily with others who are in Alcoholics Anonymous. (TR 37 – 38.)

4. The Respondent submitted a letter from the President of Lending Hand Financial, Inc. attesting that he believes that the Respondent problems are well behind him and that the Respondent has been an asset to his team and his management group. (Exhibit A.)

## **II. CONCLUSIONS OF LAW**

### **A. Jurisdictional and Procedural Matters.**

The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.

### **B. Loan Officer License Application.**

1. R.C. 1322.031 (A) (2) requires that in an application for a license as a loan officer, an applicant must submit a statement as to whether the applicant 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.
2. R.C. 1322.041 (A) provides that a loan officer license shall be issued if the Superintendent of Financial Institutions finds that certain conditions are met, including:

\* \* \*

(2) The applicant complies with sections 1322.01 to 1322.12 or the Revised Code.

(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 sections 1322.01 to 1322.12 of the Revised Code.

3. R.C. 1322.07 provides, in part, that no applicant for a license under sections 1322.01 to 1322.07 of the Revised Code shall do any of the following:

(A) Obtain a certificate of registration or license through any false or fraudulent representation of a material fact or any omission of a material fact required by state law, or make any substantial misrepresentation in any registration or license application.

(B) Make any false or misleading statements of a material fact, omissions of statements required by state law, or false promises regarding a material fact, through advertising or other means, or engage in a continued course of misrepresentations.

(C) Engage in conduct that constitutes improper, fraudulent, or dishonest dealings.

\* \* \*

4. R.C. 1322.10 provides that after notice and opportunity for a hearing conducted in accordance with R.C. Chapter 119, the Superintendent may, among other things, refuse to issue a loan officer license if he finds a violation of or failure to comply with any provision of R.C. 1322.01 to 1322.12.

## **DISCUSSION**

1. The Respondent was convicted in the Massillon Municipal Court of the offense of theft. The Stark County Court of Common Pleas dismissed charges of forgery and theft arising from the misuse of checks in May of 2002.
2. R.C. 1322.041 provides, among other things, that since Respondent was convicted of theft, the Respondent must prove by the 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.

3. The offense, while serious, occurred during a period when the Respondent was addicted to cocaine. While the Respondent did not admit his drug addiction after his 2001 conviction, he did admit his addiction problem when he was charged with theft and forgery in 2002. The Common Pleas Court acceptance of him into its Chance Program shows that the offenses were related to his drug use. In other words, but for the cocaine use, the applicant would not have committed the offenses. Since the conviction, the Respondent joined Alcoholics Anonymous, completed its twelve step program and completed the Stark County Court of Common Pleas intensive Chance Program. He has remained free of alcohol and drugs. Therefore, the conviction itself is not strong evidence that the Respondent is untrustworthy, dishonest and likely to commit another similar offense again today, as long as the Respondent remains drug and alcohol free. On the other hand, the Respondent's completion of the Alcoholics Anonymous and Common Pleas Court programs are strong evidence that he is trustworthy, honest of good reputation and unlikely to commit another such offense again.
4. The Division commends the Respondent's sobriety, but asserts that not enough time has passed since the Respondent completed the programs to support a finding that Respondent has shown by the 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. The length of time between the conviction and a loan officer application is an important factor to the determination whether the life of an applicant has sufficiently changed so that the Division can be confident that an applicant warrants a loan officer license. A long period of time between the offense and an application may support a finding that an applicant has changed. However, lapse of time is not the only factor. The Division should also consider what the applicant has done during the intervening time, however short, that shows that the Division can be confident that an applicant warrants a loan officer license. Significant life changing events even in a short time period can support a finding that an applicant has changed for the positive. Successful completion of Alcoholic Anonymous' twelve step program and the Chance Program are such significant life changing events. The facts of this case establish that the Respondent has proven by the preponderance of the evidence that his activities and employment record since the conviction show that he is honest, truthful, and of good reputation and that there is no basis in fact for believing that he will commit such an offense again.

5. The Division alleges that the conviction and, presumably, the 2002 charge of theft and forgery, shows that the 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. The changed circumstances in the Respondent's life resulting from his successful completion of the Alcoholic Anonymous' twelve step program and the Chance Program and his continued sobriety diminish the weight of the 2001 and 2002 incidents as evidence against the Respondent's character and against the belief that the Respondent will conduct himself as a loan officer honestly and fairly. Based upon the fact of the conviction and the 2002 charges alone, the Division has not established that the Respondent's character and general fitness do not command the confidence of the public. Nor do they, by themselves, warrant the belief that he will not conduct himself as a loan officer honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.
6. The Division alleges that the Respondent's failure to disclose the conviction on his loan officer application 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. However, the Respondent explained that he incorrectly read question 5 of the application and misunderstood its meaning. The Respondent sought the counsel of an attorney and the owner of the company before answering the question. Moreover, the Respondent signed the National Background Check, Inc. Registration Form that authorized the release of his criminal history information in the files of the Ohio Bureau of Criminal Identification and Investigation to the Division. He had to know that simply answering "No" to question 5 would not prevent the Division from discovering his criminal history. The Respondent's failure to disclose the convictions in his response to question 5 shows that he did not put enough thought and effort into completing the application. The facts in this case do not show that the Respondent's failure to correctly answer question 5 on the application was done with any intent to deceive the Division. Thus, the Respondent's incorrect answer to question 5 does not, by itself, establish that the Respondent's character and general fitness do not command the confidence of the public. Nor does it, by itself, warrant the belief that he will not conduct himself as a loan officer honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.
7. When Respondent failed to disclose his 2001 conviction on his loan officer application, he did violate R. C. 1322.07(A), in that he omitted a material




fact required by state law from a license application. In doing so, he failed to comply with R.C. 1322.01 to 1322.12.<sup>1</sup>

8. Pursuant to R.C. 1322.10(A)(1) when an applicant for a loan officer license fails to comply with any provision of R.C. 1322.01 to 1322.12, the Superintendent may refuse to issue the loan officer license or impose a fine. The statute's use of the permissive word "may" means that the Superintendent is not required to take either action and may decide to take no formal disciplinary action. In deciding which action to take, the Superintendent should consider the facts and circumstances of the particular case and take the action that best serves the purposes of the Ohio Mortgage Broker Act. In this case, the facts show that the Respondent's violation of R.C. 1322.07 was an unintentional omission caused by a misreading of the question and miscommunication with his employer. He did not omit the information to deceive or mislead the Division. The purposes of the Ohio Mortgage Broker Act will be best served by issuing a loan officer license to the Respondent.

### **III. RECOMMENDATION**

Based upon the particular facts and circumstances of this case, I respectfully recommend that the Superintendent of Financial Institutions issue a loan officer license to the Respondent pursuant to R.C. 1322.041(A) and R.C. 1322.10(A)(1)(a).

Respectfully Submitted,

  
James J. Lawrence  
Hearing Officer  
November 19, 2004

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<sup>1</sup> The Division alleges that the failure to disclose the conviction also violated R.C. 1322.07(B) and R.C. 1322.07(C). However, having found that the failure to disclose violated R.C. 1322.07(A), any further finding that the failure to disclose violated additional provisions of R.C. 1322.07 would make no difference to the outcome of this application for a loan officer license.