

06 SEP -5 AM 8:30

DIVISION OF FINANCIAL INSTITUTIONS

CASE NO. 05-0189-LOD

**LANDI JACKSON-FORBES
HEARING OFFICER**

Issued September 1, 2006

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:

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 Joseph A. Huber, of North Bend, 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 December 20, 2005. The Division issued the NOH to Respondent on the basis that Respondent had an attempted theft conviction in 1999 and a 2001 failure to comply conviction, which he failed to disclose on his loan officer application. The NOH alleges that Respondent 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 theft or any criminal offense involving money or securities. The NOH also alleges that Respondent's 1999 and 2001 criminal convictions, and his failure to disclose the 2001 conviction 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 further alleges that Respondent's failure to disclose his 2001 conviction on the loan officer application constitute violations of Revised Code §1322.07(A)(B) and (C).

The hearing was held at 10:30 a.m. on March 8, 2006, at 77 South High Street, 19th Floor, Room 1924, Columbus, Ohio. The Division, represented by Deputy Attorney General Matthew Lampke, appeared at the hearing. Respondent appeared *pro se* and testified at the hearing. At the hearing, State's Exhibits A through G were admitted into the record without objection and Respondent's Exhibit 1 was admitted into the record as discussed in the transcript (hereinafter "Tr."). At the end of the hearing the record in this case was left opened until March 15, 2006 to permit Respondent to submit evidence to support his testimony. Respondent responded by email dated March 13, 2006 and attached a document, discussed at the hearing, to be proffered into the record.

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)
2. Respondent is an individual who wishes to conduct business in Ohio as a Mortgage Loan Officer. The Division received a Loan Officer Application for Respondent on or about August 15, 2005 ("August 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...?" No criminal conviction was disclosed elsewhere in the August Application or in any attachment to the August Application. The Division subsequently withdrew the August Application because it had not been properly notarized. (State Ex. C & G)
3. Respondent reapplied with the Division on September 9, 2005 by submitting a signed, sworn and attested to Ohio Loan Officer Application ("Application") and fingerprint card. (State Ex. C)
4. Respondent swore to or affirmed that the answers he gave in the Application are complete and true of his own knowledge. (State Ex. C)
5. 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, "Attempted theft 1998 (High School Prank)". (State Ex. C)
6. Pursuant to Revised Code §1322.03 (B), the Division conducted a criminal records background check based on Respondent's fingerprints as part of the application process. The criminal records background check revealed a 1999 second degree misdemeanor conviction for attempted theft in the Hamilton County Municipal Court and a 2001 failure to comply with order/signal of a police officer in the Hamilton County Court of Commons Pleas. (State Ex. D & E)

7. Respondent's attempted theft conviction arose out of events which occurred when he was 18 years old. Respondent testified that while attending a party he broke a screen door but was also accused on stealing jewelry. He initially plead not guilty to a theft charge, but later plead guilty to attempted theft. Respondent paid the fine, court costs and restitution for the stolen jewelry. (State Ex. D, Tr. at 22-23)
8. Respondent was twenty at the time of his second criminal conviction. Respondent was drinking alcohol while driving an automobile and did not stop upon the order from a police officer. Respondent attempted to flee the police officer and hit a mailbox. Respondent was sentenced to six months in jail, placed on probation for five years and ordered to pay restitution. Respondent's driver's license was also suspended for five years. Respondent served approximately 60 days in jail, paid the restitution and was released from probation after two years. Respondent's driver's license was also reinstated after six months. (State Ex. E, Tr. at 24-26)
9. Respondent testified that he did not fully disclose all of his convictions on his Application, but described each one briefly in a letter dated September 16, 2005 that he attached to the Application. Respondent maintained that the same letter was attached to the August Application and was modified in his computer on September 16, 2005. (Tr. at 14-15, 17-18, 21 & 33)
10. The copies of Respondent's loan officer license applications put into the record by the State did not have an attached letter explaining Respondent's convictions. (State Ex. C & G, Tr. at 35)
11. At the close of the hearing the record remained open for seven days to allow Respondent to review his loan officer application file maintained by the Division and submit a letter that Respondent had attached to his Application disclosing and explaining his convictions. Respondent was also given the opportunity to proffer a copy of the letter on his computer into the record. (Tr. at 38)
12. Respondent responded by email dated March 13, 2006 and attached a copy of the letter dated September 16, 2005 to be proffered into evidence.
13. Respondent acknowledges that he made some mistakes in his past due mainly to immaturity. Respondent believes that time spent in jail due to his 2001 conviction helped him to re-prioritize his life. Respondent earned Associate and Bachelor Degrees and obtained a real estate license since his last conviction. (Tr. at 28-29)
14. Respondent's current employer, whom he has worked for since August 2005, believes that Respondent is honest and ethical in his business dealings. (Respondent Ex. 1)
15. Respondent testified that he has not been in any trouble in five years. (Tr. at 29)

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 1999 Respondent plead guilty to and was convicted of attempted theft, a misdemeanor of the second degree, which is a criminal offense included by reference to "theft" offenses so that the conviction may provide a basis for recommending that Respondent's application for a license be denied under Revised Code §1322.041(A)(3) as the same incorporates the terms of Revised Code §1322.031(A)(2).
3. The attempted theft offence and 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. Respondent's attempted theft conviction is in the recent past, and there was no evidence of a pattern of theft offenses in the six years that have passed between the 1999 conviction and the date of this Report. However, Respondent provided little evidence of his activities and employment record since his 1999 attempted

theft conviction. He testified that he has earned Associate and Bachelors degrees and that he worked as a server while attending college, but he provided no evidence to corroborate his testimony. Respondent testified that he has a real estate license and is utilizing the license in his current employment; however his employer, who wrote a letter on his behalf, can only speak to Respondent's character for a very short period of time. This evidence is insufficient to demonstrate that Respondent's activities and employment record since his 1999 conviction demonstrate that he is honest, truthful and of good reputation.

5. Instead the evidence shows that Respondent has had another criminal conviction since 1999. While that conviction is unrelated to the offenses cited in Revised Code §1322.031(A)(2.), Respondent's failure to disclose the 2001 conviction demonstrates a lack of honesty. Furthermore, Respondent characterized his attempted theft conviction on his Application and in the September 16, 2005 letter that alleged attached to the Application as a "high school prank". The facts of his conviction as he described them in his testimony do not allude to any prank being played by him. (*See* Tr. at 23) Respondent admitted that he broke a screen door, but he was charged with theft, not property damage. Nowhere does the record, which consists of Respondent's testimony and documents, indicate that the acts of a prank lead to a theft charge. Respondent's failure to disclose his 2001 conviction and his mischaracterization of his 1999 conviction are not indicative that he is a person that is honest, truthful and of good reputation.
6. Respondent's testimony that the letter dated September 16, 2005 was attached to his Application was not credible and further demonstrates that Respondent is not honest and truthful. The time-stamp on Respondent's Application is dated September 9, 2006. Respondent's claim that he modified a letter explaining both his 1999 and 2001 convictions on September 16, 2005 and submitted the letter dated the same conflict with the time-stamp date of September 9, 2005 on his Application filed with the Division. A letter modified on September 16, 2005 could not have been attached to an application filed and time-stamped on September 9, 2005 unless it was sent afterwards.
7. Respondent may have received a wake-up call when he went to jail and may have made strides in his life since his convictions, but his conflicting testimony, mischaracterization of his 1999 conviction on the Application and his failure to disclose all of his criminal convictions does not support a conclusion that he has met his burden to demonstrate by a preponderance of the evidence 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 theft or any criminal offense involving money or securities.
8. For the same reasons, Respondent has failed to prove by a preponderance of the evidence that he has 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 Revised Code §1322.01 to 1322.12. Respondent did not

provide convincing and credible testimony in his explanation for answering Question 5 incorrectly.

9. 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.
10. 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. 10th Dist., 2001).
11. Respondent's defense that he submitted a letter dated September 16, 2005 with his Application that is time-stamped September 9, 2005 is not probable. He thereby rendered his explanation untenable and was unable to refute the evidence presented by the Division that Respondent's response to Question 5 was a substantial misrepresentation, a false statement of material fact required by the law on the application, or fraudulent or dishonest conduct.

III. RECOMMENDATION

In careful consideration of the record made in this matter, it is recommended that Joseph A. Huber 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. It is also recommended that Mr. Huber be found to have violated Revised Code §1322.07(A)(B) and (C)

Respectfully submitted,

Landi Jackson-Forbes
Hearing Officer
September 1, 2006
Docket No. 05-0189-LOD