

**STATE OF OHIO
DEPARTMENT OF COMMERCE**

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IN THE MATTER OF:

**DIVISION OF FINANCIAL
INSTITUTIONS**

SCOTT R. MELARGNO

CASE NO. 06-0041-LOD

**LANDI JACKSON-FORBES
HEARING OFFICER**

REPORT AND RECOMMENDATION

Issued October 17, 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 9:30 am on April 11, 2006 at 77 South High Street, 19th Floor, Room 1918, Columbus, Ohio.

The hearing was scheduled by the Division at the request of Respondent Scott R. Melaragno, 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 February 13, 2006. The Division issued the NOH to Respondent on the basis that Respondent was convicted in September 1999 of possession of LSD and in October 2002 of possession of Cocaine, both in the Franklin County Court of Common Pleas, and that Respondent failed to disclose the 1999 conviction on his loan officer license application.

The Division alleges that Respondent's convictions, and nondisclosure of the 1999 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 failure to disclose his 1999 conviction on the application constitute violations of Revised Code §1322.07(A)(B) and (C).

The Division, represented by Assistant Attorney General Daniel Jones, appeared at the hearing. Respondent appeared *pro se* and testified at the hearing. At the hearing, State's Exhibits A through E and Respondent's Exhibit 1 through 8 were admitted into the record 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. On or about February 1, 2005, Respondent applied for an Ohio Mortgage Broker Loan Officer license ("loan officer license") by submitting a signed, sworn and attested Ohio Loan Officer License Application ("Application") and fingerprint card 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. A)
3. Respondent checked "yes" to Question five within the application which asked: "Have you ... ever been convicted of any criminal offense?" In his explanation to Question five, Respondent wrote "possession of controlled substance (cocaine)." (State Ex. A)
4. The criminal records background check conducted by the Division pursuant to §1322.03 (B) of the Revised Code revealed the disclosed the cocaine possession conviction, which occurred in October 2002, and also revealed a September 1999 conviction for possession of LSD that was not disclosed on the Application. (State Ex. B & C)
5. On September 21, 1999 Respondent plead guilty to and was convicted of possession of LSD, a fifth degree felony, in the Franklin County Common Pleas Court. He was placed on probation for two years and required to receive chemical dependency/abuse intervention treatment and maintain employment. (State Ex. C)
6. In 2001, Respondent was charged with possession of cocaine, a fifth degree felony, in the Franklin County Commons Pleas Court. Respondent plead guilty to and was convicted of the same charge on October 3, 2002. On February 5, 2003, Respondent was fined \$250, placed on probation for two years and ordered to perform forty hours of community service. On January 15, 2004 the Court ordered Respondent to enter and complete a Community Based Corrections Facility and any recommended aftercare as an additional condition of probation. Respondent received early release from probation on October 8, 2004. (State Ex. C)

7. On or about February 13, 2006, the Division issued to Respondent the NOH which alleges that Respondent's possession of LSD and possession of cocaine convictions, and his failure to disclose the LSD possession conviction demonstrate 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 purposes of the Ohio Mortgage Broker Act. The Division also alleges that Respondent's failure to disclose the possession of LSD conviction is a violation of Revised Code §1322.07(A)(B)and (C). (State Ex. D)
8. Respondent has worked as a telemarketer in mortgage broker industry over the past six years. At the time of the hearing, Respondent had been in his current position for approximately four months. His current employer appeared at the hearing and spoke highly of Respondent's work ethics. A co-worker, who has known Respondent on a professional basis for approximately one and a half years, and who was also previously aware of Respondent's convictions, appeared at the hearing and remarked on Respondent's willingness to assist with various projects outside the scope of his responsibilities as a telemarketer. Respondent's colleague stated that Respondent was well respected and a top performer at a mortgage broker company where they had both been previously employed. (Tr. at 22-25)
9. Respondent acknowledges that he committed the offenses. He regrets his actions and he appeared remorseful. Respondent has successfully completed a drug rehabilitation treatment program and has been drug free for over five years. Respondent still attends Cocaine Anonymous and Alcohol Anonymous meetings and has sponsored others seeking to recover from a substance abuse addiction. Respondent indicated that he will not abuse drugs or alcohol again because he doesn't want to put himself in that situation again and he has to be stable and reliable to take care of his family. Respondent believes that his convictions does not reflect his character and believes that he is reliable and trustworthy. (Tr. at 29-31 & 46)
10. Respondent believed that his 1999 LSD possession conviction was a misdemeanor drug abuse charge. He did not understand that a felony and a misdemeanor are different classifications of criminal offenses. Respondent explained that he did not include the 1999 LSD possession conviction on the Application because he interpreted the language in Question 5, "Exclude minor misdemeanors traffic and parking offenses" to exclude reporting misdemeanor offenses. Respondent also believed

that the background check that he submitted to would reveal the 1999 as well as the 2000 conviction. (Respondent Ex. 1-7, Tr. at 47-49)

11. There was no evidence presented that Respondent has been charged with any criminal offense since 2001 or convicted of any offense after 2003. (Tr. at 31)

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)(5), to issue a license, the Division must make a finding that an 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. The Division brought into question Respondent's character and general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly, by demonstrating that Respondent was convicted of possession of LSD in 1999 and possession of cocaine in 2003. The Division also relied on Respondent's failure to disclose his 1999 conviction on his Application.
3. Respondent disclosed his 2003 conviction but excluded the 1999 conviction. Answering incorrectly on an application reflects negatively on an applicant's character and fitness as it relates to honesty. In this instance Respondent's partially correct answer is not a negative reflection on his character. Respondent's testimony that he believed his 1999 conviction was a misdemeanor drug abuse conviction and that he mistakenly read Question five to not require disclosure of misdemeanor convictions was credible. Respondent had nothing to gain from disclosing the 2003 conviction and excluding the 1999 conviction as both drug related convictions, on their face, are not favorably demonstrative of Respondent's character and general fitness. Respondent answered

Question five in good faith as he understood it and the classification of his 1999 conviction. Respondent's testimony that he did not intend to answer Question five dishonestly and mislead the Division about his criminal history is believable.

4. Respondent has not been charged with a drug related offense or any or criminal offense in over five years. While his offenses are in the recent past, the evidence shows that Respondent has successfully completed a substance and alcohol abuse treatment program since his last conviction to overcome his drug and alcohol addiction and rehabilitate himself. Evidence of Respondent's recovery, his own testimony and that of the two witnesses are sufficient evidence to overcome the Division's evidence questioning Respondent's character and general fitness to command the confidence of the public and the belief that the business will operated honestly and fairly in compliance with the law.
5. 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 1999 possession of LSD conviction 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).
6. Respondent disclosed his 2003 conviction on the Application; a conviction that is not favorable demonstrative of Respondent's character and general fitness. Failing to disclose the 1999 conviction would gain Respondent no advantage because the Division relied on both of Respondent's convictions as a basis for questioning his character and general fitness to obtain a loan officer license. Respondent's explanation why he excluded the 1999 conviction from Question 5 was plausible and consistent. Respondent's mistake in excluding the conviction from the Application is not a substantial misrepresentation in violation of Revised Code §1322.07(A).
7. Respondent's failure to include the 1999 conviction on the Application was also not a false or misleading statement of material fact or an omission required by state law. Respondent was incorrect in excluding the 1999 conviction from the Application, but he did not exclude it to mislead the Division about his criminal past which is evidenced by his disclosing the 2003 conviction. Respondent honestly believed that at the time of filling out the Application his 1999 conviction was not required to

be disclosed on the Application. Although he was mistaken, he fully complied with the Division's request for an explanation and supporting documentation about his conviction. He did not try to hide anything and his explanation that he incorrectly read Question five was credible.

8. 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." Respondent made a mistake. He did not disclose the conviction because his reading and understanding of Question five and his 1999 conviction did not require the 1999 conviction to be disclosed. His good faith belief that the 1999 conviction was not required to be disclosed on the Application does not amount to engaging in conduct that is improper, fraudulent, or dishonest in violation of Revised Code §1322.07(C).
9. Respondent did have the requisite intent to violate Revised Code §1322.07(A), (B) or (C).

III. RECOMMENDATION

In careful consideration of the record made in this matter, it is recommended that Scott R. Melaragno be found to have presented 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, and that consequently he be granted an Ohio Loan Officer License.

Respectfully submitted,

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Landi Jackson-Forbes
Hearing Officer
October 17, 2006
Docket No. 06-DFI-042