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STATE OF OHIO
DEPARTMENT OF COMMERCE

IN THE MATTER OF:

CARYN C. JENKINS

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DIVISION OF FINANCIAL
INSTITUTIONS

CASE NO. M2006-9991193

LANDI JACKSON-FORBES
HEARING OFFICER

REPORT AND RECOMMENDATION

Issued December 28, 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 Caryn C. Jenkins of Cincinnati, 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 May 24, 2006. The Division issued the NOH to Respondent on the basis that Respondent was convicted of Passing Bad Checks in 1987, which she did not disclose on her Loan Officer License Application. Respondent also swore that the information on her Application regarding her criminal background was complete and truthful and attempted to obtain a loan officer license using untruthful information regarding her criminal record.

The Division alleges that based upon Respondent's passing bad checks conviction and her nondisclosure of the conviction, Respondent has not proven that she is honest, truthful, and of good reputation, and that there is no basis in fact for believing that she will not commit another criminal offense involving

passing bad checks again, or any criminal offense involving money or securities. The Division further alleges that Respondent's conviction, her nondisclosure of the conviction and her attempt to obtain a loan officer license using incomplete and untruthful information demonstrates 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. The Division also alleges that Respondent's nondisclosure violates Revised Code §§1322.07(A), (B) and (C).

The hearing was held at 9:30 a.m. on August 22, 2006, in Room 1908 at 77 South High Street, Columbus, Ohio. The Division, represented by Assistant Attorney General Todd A. Nist, appeared at the hearing and presented its case. Witness for the Division was staff attorney Carrie Moore. Neither Respondent nor any representative, including counsel, appeared even though the start of the hearing was delayed until 9:50 a.m. At the hearing, State's Exhibits A through E 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 applied for an Ohio Mortgage Loan Officer License by submitting a signed, sworn and attested to Loan Officer License Application ("Application") and fingerprint card in February of 2006. Mortgages Unlimited is listed as the sponsoring Mortgage Broker. (State Ex. D)
3. Within the Application Respondent checked the "no" box to Question 6 which asked:

Have you 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?

(State Ex. D)

4. Respondent swore to or affirmed that the answers she gave in the Application are complete and true of her own knowledge. (State Ex. D)

5. 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 that Respondent was convicted in 1987 of passing bad checks in the Hamilton County Municipal Court. (State Ex. E)
6. In response to a letter sent to Respondent by the Division, Respondent provided information regarding the passing bad checks conviction. (State Ex. E)
7. On October 5, 1987 Respondent was plead no contest and was found guilty of passing bad checks, a first degree misdemeanor. Respondent was given a 30 day suspended jail sentence and placed on probation for six months. She was ordered to pay restitution in the amount of \$49.59 to the retailer. (State Ex. E)
8. The Division issued its NOH against Respondent on May 24, 2006. (State Ex. B)
9. Respondent received the NOH via certified mail return receipt and requested a hearing. (State Ex. A & C)
10. By letter dated June 27, 2006, the Division scheduled the hearing for July 3, 2006 and continued the hearing on its own motion to August 22, 2006. The letter was addressed to the same delivery address where Respondent received the NOH. (State Ex. B)
11. Respondent did not appear for the scheduled hearing in person or through counsel or request a continuance of the August 22, 2006 hearing from the hearing officer nor did she submit any written document setting forth her positions, arguments or contentions in lieu of her appearance as permitted by Revised Code §119.07. (Tr. at 5)

II. CONCLUSIONS OF LAW

A. Jurisdiction and Procedural Matters

1. Ohio Revised Code §119.07 requires the Division to notify Respondent of their right to request a hearing. The Division complied with §119.07 by notifying Respondent of her right to a hearing in the NOH which was properly served upon Respondent by certified mail.
2. The Division further complied with §119.07 by notifying Respondent, when she requested a hearing, of the time, date, and place of the hearing once the date was set. The Division's June 27, 2006 letter scheduling the

requested hearing was sent to the Respondent by regular mail at the address she supplied to the Division and where she had received previous written communications from the Division. Ohio Revised Code §119.07 does not require the notice of the hearing to be sent by certified mail. The use of regular mail was appropriate in this case. McCoy v. Bureau of Unemployment Compensation, 81 Ohio App. 158, 161, 77 N.E.2d 76, 78 (1947).

3. Respondent received proper notice of the hearing therefore it was appropriate for the hearing to proceed in his absence. Reed v. State Med. Bd., 40 Ohio App.3d 124, 125-126, 532 N.E.2d 189, 191 (1988).

B. Loan Officer License Application

1. Respondent was convicted of passing bad checks in 1987, which is a conviction specifically enumerated in Revised Code §1322.031(A)(2) and may provide a basis for Respondent's application for a license to be denied under Revised Code §1322.041(A)(3) as the same incorporates the terms of Revised Code §1322.031(A)(2).
2. Revised Code §1322.041(A)(3) provides that if Respondent has been convicted of any criminal offense involving certain named offenses, including passing bad checks, Respondent must prove by a preponderance of the evidence that Respondent's activities and employment record since the conviction show that Respondent is honest, truthful, and of good reputation, and there is no basis in fact for believing that Respondent will commit such an offense again.
3. The Division also charged 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. Revised Code §1322.041(A)(5).
4. Respondent did not offer any proof that Respondent's activities and employment record since the conviction show that Respondent is honest, truthful, and of good reputation, or to prove there is no basis in fact for believing that Respondent will commit such an offense again or that Respondent'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 Ohio Mortgage Broker Act.

5. The Division also charged violations of the Ohio Mortgage Broker Act, §§1322.02(A) (making any substantial misrepresentation in any registration or license application), (B) (making false or misleading statements of a 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 answering Question 6 on the Application "No".
6. The Division presented evidence that Respondent was charged with passing bad checks and was found guilty of the charge, thereby making her response to Question 6 on the Application untruthful.
7. Intent is required for a conclusion that §§1322.07 (A), (B) and (C) have been violated. Webb v. State Med. Bd., 146 Ohio App. 3d, 621, 628 (2001), (intent is required for a finding of fraud, misrepresentation, or deception).
8. Respondent provided no explanation for her untruthful response to Question 6 and failed to appear at the requested hearing to present evidence to overcome the Division's evidence that demonstrates that she violated §§1322.07(A), (B) and (C). Respondent's unexplained inaccurate response to Question 6 supports a finding that she intended to make a substantial misrepresentation, that she intended to make a false statement of a material fact required by law on the license application, and that her act of answering inaccurately constitutes fraudulent or dishonest dealings in violation of Revised Code §§1322.07(A), (B) and (C).

III. RECOMMENDATION

The Division has proven that Respondent has a passing bad checks conviction. As Respondent did not appear and, in fact, did not present any evidence at all, there must be a finding for the Division in this case. The recommendation to the Superintendent of Financial Institutions is to deny a mortgage loan officer's license to Caryn C. Jenkins. It is further recommended that Caryn C. Jenkins be found to have violated §§1322.07(A), (B) and (C) of the Ohio Mortgage Broker Act.

Respectfully submitted,

✓ Landi Jackson-Forbes
Hearing Officer
December 28, 2006
Docket No. M2006-9991193