

**STATE OF OHIO
DEPARTMENT OF COMMERCE**

CONFIDENTIAL
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IN THE MATTER OF:

DIVISION OF FINANCIAL
INSTITUTIONS

WILLIAM R. STOCKTON

CASE NO. M2006-9992837

**REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER D. MICHAEL QUINN**

Issued October 31, 2006

I. FINDINGS OF FACT

A. BACKGROUND

The above-captioned matter came before this 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 an adjudicative hearing in accordance with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (hereinafter "O.R.C."). Said hearing was held at 9:00 AM on September 20, 2006, at 77 South High Street, 23rd Floor, West Conference Room, Columbus, Ohio.

The hearing was held at the request of Respondent William R. Stockton, of Columbus, Ohio (hereinafter the "Respondent") to consider the Division's Notice of Intent to Deny Loan Officer License Application, Notice of Opportunity for a Hearing (hereinafter "NOH"). Said NOH was based upon an allegation that Respondent was convicted in 1976, in Fairfield County, Ohio, of attempted breaking and entering, and convicted in 1999, in Franklin County, of passing bad checks, both misdemeanors, and, also, that Respondent failed to disclose the convictions on the Application, and is thereby ineligible to obtain a license as a Mortgage Loan Officer. The Division appeared and was represented by the Ohio

Attorney General's Office, Assistant Attorney General Todd A. Nist. Respondent appeared pro se.

At the hearing, State's Exhibits 1 through 6 were admitted into the record, as discussed in the transcript (hereinafter "Tr."). Respondent did not put forth any exhibits and his only witness was himself. The Division called two witnesses, one of whom was Respondent.

B. JURISDICTION

Respondent filed a Loan Officer Application with the Division on April 28, 2006. The Division issued the NOH against Respondent on July 27, 2006. Respondent requested a hearing, which was received by the Division on August 23, 2006. On August 24, 2006, the Division scheduled the hearing for September 1, 2006, but continued the hearing to September 20, 2006 on its own motion, at which time the hearing went forward.

C. PROPOSED ISSUANCE OF ORDER TO DENY LICENSE APPLICATION

1. The Division is the state agency responsible for the licensing and regulation of Mortgage Loan Officers pursuant to O.R.C. Chapter 1322. (Exhibit 3; Testimony of Wright.)
2. Respondent is an individual who has conducted, and wishes to conduct, business in Ohio as a Mortgage Loan Officer. (Exhibit 4; Testimony of Respondent.)
3. On or about April 28, 2006, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"). (Exhibit 4.)
4. Respondent signed the Application on April 24, 2006, and attested to the accuracy and truthfulness of his answers. (Exhibit 4; Tr. pp. 25-27, 35-36.)
5. Within the Application Respondent answered "No" to Question number 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." (Exhibit 4; Tr. pp. 26-27, 32.)
6. On, or about, February 18, 1977, 29 years prior to the submission of the Application, Respondent, who was 18 years old, pleaded

guilty, in Fairfield County, to attempted breaking and entering. (Exhibit 5; Tr. pp. 37-40.)

7. Respondent's explanation of the 1977 conviction was that he was 18 years old, home from school over winter break, and he and his friends were drinking large amounts of alcohol. In order to get warm, they started to sneak into a vacant office building. The police came and he awoke in jail. (Tr. pp. 37-40, 41-44.)
8. Respondent's explanation of the 1977 conviction demonstrated remorse and regret. (Tr. pp. 37-40, 41-44.)
9. On, or around, October 8, 1999, Respondent pleaded guilty, in Franklin County Municipal Court, to one count of passing bad checks, on a complaint in Mayor's Court in Upper Arlington. (Exhibit 6; Tr. pp. 27-29.)
10. Respondent's explanation of the 1999 conviction was that his wife had emptied their banking accounts – both checking and savings – in preparation for filing for divorce. Respondent, not knowing the checking account did not have the funds it usually contained, wrote checks as usual. The one check he didn't track down, once he learned of the problem, was a check he had written for his child's lunch in the amount of \$10.50, to a middle school. Respondent stated that the school officials explained, when he tried to pay the check, that they had an agreement with the Upper Arlington police that all bad checks would be turned over for prosecution. Because it would have cost a great deal to hire a lawyer and fight the charges and the cost of pleading guilty would only be a \$50 fine and restitution, Respondent chose the more expedient, and affordable, course. (Tr. pp. 27-32.)
11. Respondent acknowledges his convictions. (Tr. pp. 27, 29, 42.)
12. The Application does not limit the response sought on Question 6 to felony crimes but asks if the applicant has ever been convicted of or pleaded guilty to any of the listed criminal offenses. (Exhibit 3.)
13. Nowhere on the Application, including on Question 6, is the applicant required to disclose that he had an attempted breaking and entering charge entered against him in an Ohio state court. (Exhibit 4.)
14. Respondent's explanation of why he answered Question 6 on the Application as "No" when he knew that he had a misdemeanor passing bad checks conviction on his record was that he just wasn't

thinking. He stated he had a large stack of paperwork he was filling out to begin his new job and it was never his intention to deceive the Division. Respondent stated that he only read the first part of the question, thought to himself: "I'm not a crook" and checked "No." (Tr. pp. 28-29, 32-33, 43-45.)

15. Respondent has, or is in the process of obtaining, a loan officer license in Tennessee and Connecticut. Respondent is also able to act as a loan officer in Florida, Oregon, California and Virginia where a license is not required. (Tr. p. 35.)
16. During the hearing, Respondent presented himself as well educated and articulate.
17. Respondent did not present any evidence other than his own testimony.

II. CONCLUSIONS OF LAW

A. JURISDICTIONAL ISSUE

1. The Division procedurally complied with O.R.C. Chapter 119.

B. LICENSE APPLICATION

2. Respondent has been proven to have been convicted of passing bad checks, which is an offense specifically cited in section 1322.041(A)(3), O.R.C., and on the Application.
3. The passing bad checks offense is in the category which automatically requires the Respondent to prove, by a preponderance of the evidence, that the Respondent'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." Sections 1322.041(A)(3), O.R.C.
4. The Division charged that Respondent has not proven that Respondent 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 passing bad checks, or any criminal offense involving money or securities.

5. The Division brought into question Respondent's honesty, truthfulness, reputation, and that there is no basis in fact for believing that Respondent will not commit another criminal offense by bringing forth evidence of the two convictions and that Respondent did not disclose the existence of the offenses on the Application.
6. The Division 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.
7. The Division brought into question Respondent's 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 the purposes of the Ohio Mortgage Broker Act by bringing forth evidence of Respondent's two convictions and that Respondent did not disclose the existence of the offenses on the Application.
8. The attempted breaking and entering conviction of 1977 occurred almost 30 years ago and when the Respondent was 18 years old. Under the circumstances as described by Respondent it may be considered that Respondent was unaware of the legal consequences of his actions. At the very least, after 30 years, a non-financial conviction which occurred when the Respondent was a teenager would not generally be something held against him in the application process.
9. The 1999 conviction for passing bad checks occurred seven years ago and no other conviction occurred – other than the unrelated 1977 conviction. The circumstances surrounding the 1999 conviction, as described by Respondent, cause a careful reader to wonder why Respondent was prosecuted for a situation clearly out of his control and absent the necessary mens rea; but, it is recalled that the prosecution began in Mayor's Court. The amount involved was de minimus.
10. The 1999 conviction cited is far enough removed in time, with no subsequent convictions, the amount involved and Respondent's explanation and demeanor during the hearing would be sufficient to show there is no basis in fact for believing that he will commit such offenses again and that the surrounding and subsequent circumstances demonstrate the offenses should not prohibit Respondent from receiving a loan officer's license.

11. Factors which are considered in Respondent's favor and that overcome the Division's contention that, based upon his prior convictions, 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, are the particular circumstances during the time of the commission of the offenses, as described by Respondent; especially that the passing bad checks offense was inadvertent; that Respondent was 18 in 1977; and that Respondent has no other offense on his record 7 years after the conviction for bad checks.
12. Respondent did not present any evidence to substantiate his own sworn testimony, although his testimony was credible.
13. In eliciting evidence whether Respondent's activities since the offenses prove that the Respondent is honest and truthful, the Division demonstrated that, on or about April 24, 2006, 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 inaccurate information, to wit: the "No" response to Question 6.
14. Filing an inaccurate Application is negatively demonstrative of an applicant's character and general fitness and of whether the business will be operated honestly and fairly in compliance with law, including the lack of attention to detail.
15. Regardless of the level of pressure associated with the large number of forms Respondent was required to complete that same day as the Application, answering the question incorrectly demonstrates a lack of attention to detail. The occupation for which he was applying entails a significant number of forms and, also, internal and external stresses exceeding those related to filling out a license application. The Application specifically asks about convictions relating to passing bad checks. It may very well be that, under the circumstances, Respondent did not deserve to be convicted but he was and is therefore under an obligation to disclose the conviction on the Application.
16. The Division has failed to demonstrate 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 based upon the two convictions.

17. Considering the two convictions only, Respondent has proven, by a preponderance of the evidence, through his un rebutted testimony, that Respondent'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.
18. Respondent failed to provide sufficient evidence to overcome the Division's evidence – specifically relating to his response to Question 6 – questioning his general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly and that Respondent's activities – specifically his response to Question 6 – do not show him to be honest and truthful.
19. The Division also charged violations of the Ohio Mortgage Broker Act sections 1322.07(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 state law) and (C) (engaging in conduct that constitutes improper, fraudulent, or dishonest dealings) all resulting from Respondent answering Question 6, on the Application "No", but only as it relates to the 1977 conviction. The Division did not incorporate the 1999 conviction in these charges.
20. The 1977 conviction was of a non-financial crime, in state court, in Ohio. The omission of that conviction is irrelevant because nowhere on the Application was Respondent required to disclose the attempted breaking and entering conviction.
21. The failure to disclose the 1999 conviction was not charged by the Division as a violation under section 1322.07, O.R.C.
22. The Division failed to demonstrate that Respondent's response to Question 6 was a substantial misrepresentation or a false or misleading omission or a fraudulent statement of a material fact required on the license application. The Division, while proving the answer to Question 6 was incorrect, did not charge him properly. The Division has the burden of proof. .

C. DISCUSSION

Respondent's convictions should not, in themselves, cause his license to be denied. However, Respondent's answer to Question 6 is troubling.

The fundamental issue in this case comes down to whether Respondent's answer to Question 6 is sufficient to prohibit him from becoming licensed as a loan officer. The legal question is whether 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. Respondent presents as his case his own assessment of his character and his own explanation of the events inflicted upon him. However reasonable those statements may be, Respondent does not present anything other than his own testimony. The Division has sufficiently raised the issue of his character and general fitness and, although Respondent has overcome the criminal conviction's statutory burden-shifting of section 1322.041(A)(3), O.R.C., the burden moves to Respondent to overcome the Division's evidence of his lacking honesty by virtue of his response to Question 6. Respondent must have more than his own testimony supporting his position.

Based on the record available, it must be concluded that the Division did demonstrate that Respondent's general fitness does not command the confidence of the public and there is not the belief that the business will be operated honestly and fairly because Respondent did not answer Question 6 on the Application accurately.

III. RECOMMENDATION

Consequently, the recommendation to the Superintendent of Financial Institutions is to **DENY A MORTGAGE LOAN OFFICER'S LICENSE TO WILLIAM R. STOCKTON.**

Respectfully submitted,

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D. Michael Quinn
Hearing Officer
October 31, 2006
Docket No. 06-DFI-177