

STATE OF OHIO
DEPARTMENT OF COMMERCE
Division of Financial Institutions
Consumer Finance

In the matter of:)	Case No. 04-0401-LOD
)	
DEBORA L. VALENTINE)	<u>DIVISION ORDER</u>
35475 Poplar Street)	Denial of loan officer license application
North Ridgeville, Ohio 44039)	&
<hr style="width: 40%; margin-left: 0;"/>)	Notice of Appellate Rights

Respondent, Debora L. Valentine, submitted a loan officer license application to the Division of Financial Institutions (“Division”) on March 22, 2004. On April 27, 2004, the Division notified Valentine that it intended to deny her loan officer license application because: (1) she had been convicted of passing a bad check in 2001 and she had 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 offense involving passing bad checks or any offense involving money; (2) she violated R.C. 1322.07(A) by making a substantial misrepresentation on her loan officer license application; (3) she violated R.C. 1322.07(B) by making a false statement of a material fact or by omitting a statement required by state law; (4) she violated R.C. 1322.07(C) by engaging in conduct that constitutes improper, fraudulent, or dishonest dealings; and (5) because of her 2001 passing a bad check conviction, and her non-disclosure of that conviction, her character and general fitness do not command the confidence of the public and warrant the belief that her business will be operated honestly and fairly in compliance with the purposes of R.C. 1322.01 to 1322.12—the Ohio Mortgage Broker Act.

Valentine requested an administrative hearing, which was held on July 6, 2004. A Report and Recommendation was filed with the Division on September 8, 2004, recommending that the Division approve Valentine’s application and grant her a loan officer license. (A copy of the Report and Recommendation is attached.) No objections were filed.

In accordance with R.C. 119.09, the Division has considered the record, consisting of the Report and Recommendation, the transcript of testimony and exhibits, as well as all applicable laws. As a result, the Division makes the following findings and conclusions.

The Division modifies the second paragraph on page 1 of the Report and Recommendation to include the Division’s allegations that Valentine violated divisions (A), (B),

and (C) of section 1322.07 of the Revised Code by failing to disclose her criminal conviction on her application as additional reasons the Division considered her to be ineligible to hold a loan officer license. (Exhibit 7.)

The Division modifies the paragraph titled Jurisdiction on page 1 of the Report and Recommendation to reflect that the Division issued its Notice of Intent to Deny Loan Officer Application on April 23, 2004, not April 27, 2004. April 27, 2004 is the date that it was sent via certified mail to Valentine.

The Division modifies paragraph 5 on page 2 of the Report and Recommendation to reflect that Respondent filled out the application and signed it on March 19, 2004, not March 4, 2004.

The Division modifies paragraph 7 on page 2 of the Report and Recommendation to reflect that it is Exhibit 5, not Exhibit 7, shows Valentine was convicted of passing a bad check.

The Division disapproves and modifies paragraph 5 on page 3 of the Report and Recommendation.

Paragraph 5 on page 3 of the Report and Recommendation reads:

Because the Respondent answered “no” to Question 5 of the Application, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that her character and fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purpose of the Ohio Mortgage Broker Act.

Answering “no” to Question 5 on the application does not shift any burden of proof. As Valentine was convicted of passing a bad check, the burden was on her to show, by a preponderance of the evidence, that her activities and employment record since her conviction show that she is honest, truthful, and of good reputation, and there is no basis in fact for believing that she will commit an offense involving passing bad checks again. See R.C. 1322.031(A)(2) and 1322.041(A)(3.) The burden was on the Division to show that Valentine’s character and general fitness do not command the confidence of the public and warrant the belief that her business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. Accordingly, paragraph 5 on page 3 is disapproved and modified to reflect the accurate legal burdens.

The Division modifies paragraph 10 on page 4 of the Report and Recommendation to reflect that it was Attorney Jeffrey Edelman who made all statements referenced in paragraph 10, not Assistant Attorney General Dan Jones.

The Division disapproves paragraph 11 and the Recommendation on page 5 of the Report and Recommendation.

The hearing officer correctly points out to Valentine that part of being in the mortgage industry means having to “read and pay attention to a lot of technical documents.” (Transcript, p. 25). Valentine agreed with that statement. (Id.) Question 5 on the loan officer license application asked Valentine whether she had ever been convicted of passing bad checks. (Exhibit 1.) When the hearing officer questioned Valentine about her reading and answering “no” to question 5, and about did it ever “dawn” on Valentine to ask to see if it was a criminal or civil matter before answering question 5, Valentine answered “No” and “When I read that question, it didn’t seem to pertain to me.” (Transcript, pp. 25-26.) Valentine, despite signing a plea agreement in which she pleaded no contest to a charge of passing a bad check, which can carry a penalty of up a \$1000 fine and 6 months in jail, stated that she had never read the plea agreement before. (Exhibit 5 and Transcript, p. 15.) The lack of attention that Valentine gives to important details and documents, shows that she does not have the general fitness to be a loan officer.

Near the time of the conviction for passing a bad check, Valentine went to the police station where she was fingerprinted and given a misdemeanor ticket (citation) charging her with “passing bad check.” (Transcript, p. 13.) The charge read she “[d]id, with the purpose to **defraud**, issue [a] check****knowing it would be dishonored.” (Exhibit 5 and Transcript, p. 13.) To this charge, she pleaded no contest and was subsequently convicted (Exhibit 5.) Despite all of this, Valentine failed to disclose her passing bad checks conviction when she answered “No” to question 5 when she was asked if she had ever been convicted of passing bad checks. (Exhibit 1.)

R.C. 1322.07(A) prohibits any license applicant from “[o]btain[ing] a *** license through any false or fraudulent representation of a material fact or any omission of a material fact required by state law, or [from] mak[ing] any substantial misrepresentation in any *** license application [.]” By failing to disclose her criminal conviction on her licensing application, Valentine violated R.C. 1322.07(A).

R.C. 1322.07(B) prohibits a license applicant from “[m]ak[ing] false or misleading statements of a material fact, [or] omission of statements required by state law [.]” By failing to disclose her criminal conviction on her licensing application, Valentine violated R.C. 1322.07(B).

R.C. 1322.07(C) prohibits a license applicant from “[e]ngag[ing] in conduct that constitutes improper, fraudulent, or dishonest dealings.” By failing to disclose her criminal conviction on her licensing application, Valentine engaged in improper dealings in violation of R.C. 1322.07(C).

Hence, the record establishes that Valentine violated R.C. 1322.07(A), (B) and (C); she failed to disclose her conviction to the Division; and that she does not pay attention to important details and documents. As a result, the Division finds that her character and general fitness does not command the confidence of the public and warrant the belief that her business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

Valentine had the burden of showing, by a preponderance of the evidence, since her passing a bad check conviction, her activities and employment record show that she is honest, trustworthy, and of good reputation and there is no basis in fact to believe that she will commit another offense involving passing bad checks. (See R.C. 1322.031(A)(2) and 1322.041(A)(3).) To that end, Valentine only presented her own testimony and five copies of notarized reference letters. None of the five letters indicate that any of the authors knew of Valentine’s passing a bad check conviction nor were any of the authors made available for cross-examination. In addition, four of the letters do not specifically indicate that Valentine has done work for any of the authors *since* her 2001 conviction. (Exhibits D, E, F, and G.) The letter from the vice-president of her current employer, who has only known her five months, says nothing concerning her honesty, trustworthiness, or good reputation. (Exhibit C.) The Division finds that Valentine’s own self-serving testimony and submitted letters do not established that she has met her burden by a preponderance of the evidence in the forty months since her conviction. (See, also, *Ryan O’Reilly English v. State of Ohio, Dept. of Commerce* (August 31, 2004, Case No. **04CIV0163**) **Medina County Common Pleas Court** (affirming the decision of this Division to deny applicant a loan officer license on the basis that since only three years had passed since the applicant’s misdemeanor conviction, there was insufficient time to meaningfully demonstrate the burden set forth in R.C. 1322.041(A)(3)).

In accordance with the foregoing, the Division concludes that Valentine’s loan officer license application should be denied.

It is so ordered.

NOTICE OF APPELLATE RIGHTS

Respondent is hereby notified that pursuant to R.C. 119.12, this Order may be appealed by filing a notice of appeal with the Ohio Division of Financial Institutions setting forth the order appealed from and the grounds for the appeal. A copy of such notice of appeal, pursuant to R.C. 119.12, must also be filed with the court of common pleas of the county in which the place of business of the Respondent is located, or the county in which the Respondent is a resident. A notice of appeal must be filed within fifteen (15) days after the date of mailing of this Order.

Signed and sealed this 25th day of January 2006.

ROBERT M. GRIESER

Deputy Superintendent for Consumer Finance
Division of Financial Institutions
Ohio Department of Commerce