

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

In the matter of:)	Case No. 04-0212-LOD
)	
JEFFREY B. SAWYER)	<u>DIVISION ORDER</u>
1651 Mentor Avenue, Apt. 3007)	Denial of Loan Officer License Application
Painesville, Ohio 44077)	&
)	Notice of Appellate Rights

Respondent, Jeffrey B. Sawyer, submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on February 10, 2003. On January 22, 2004, the Division notified Sawyer that it intended to deny his loan officer license application because: (1) in 1997 he was convicted of disorderly conduct; (2) in 1999 he was convicted of driving under the influence; (3) he violated R.C. 1322.07(A) by failing to disclose his convictions on his loan officer license application; (4) he violated R.C. 1322.07(B) by making a false statement of a material fact or by omitting a statement required by state law on the licensing application; (5) he violated R.C. 1322.07(C), which prohibits an applicant from engaging in improper or dishonest conduct; and (6) because his character and general fitness did not command the confidence of the public and warrant the belief that his 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.

Sawyer requested an administrative hearing which was held on July 19, 2004. A Report and Recommendation was filed with the Division on October 14, 2004, recommending that the Division grant Respondent’s application. 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. Any finding and/or conclusion not specifically addressed below is approved, adopted, and incorporated herein. (The Hearing Examiner’s Report and Recommendation is attached hereto).

The Division disapproves paragraph 11 on page 3 of the Report and Recommendation.

In its Notice of Intent to Deny a Loan Officer License, the Division never alleged that Respondent “....make any statement that he **thought or knew was false....**” to the Division.

Sections 1322.07 (A), (B), and (C) do not require that an applicant violate them knowingly.¹ Sawyer had criminal convictions, but did not disclose them on his application when inquired about them in Question 5 of the Application.

The Division disapproves paragraph 4 on page 4 of the Report and Recommendation.

The hearing officer concluded that Sawyer did not make a substantial misrepresentation when he answered question 5. However, the application of Respondent indicates that he answered “no” to question 5. (See Exhibit 1). Respondent was convicted of two criminal offenses in separate incidents. (See Exhibit 4). Respondent’s statement that he had not been convicted of any offenses is a false or misleading statement. The Division finds that Respondent’s failure to disclose his convictions is a substantial misrepresentation, thus a violation of R.C. 1322.07(A).

The Division disapproves paragraphs 5 and 6 on pages 4 and 5 of the Report and Recommendation.

The application of Respondent indicates that he answered “no” to question 5. (See Exhibit 1). However, Respondent had been convicted of two different criminal offenses. (See Exhibit 4). The Division finds that Respondent’s statement that he had not been convicted of any offenses is a false or misleading statement, thus a violation of R.C. 1322.07(B). As noted above, an inadvertent mistake when reading the question does not diminish the ramifications of making a false statement to the Division. Furthermore, the Division has a responsibility to the public to be diligent in its oversight, and this responsibility demands that not accurately answering a question about one’s criminal background be taken seriously.

To “omit” means “fail to include; leave out...” *Webster’s New World Dictionary, Third College Edition, 1988 p. 945*. The definition of “omit” does not include any mental state or cognitive awareness. Sawyer has two criminal convictions and did not disclose these on his Application. While the convictions were not for crimes of the nature listed in R.C. 1322.031(A)(2), (A)(4) allows the Division to ask about “[a]ny further information that the superintendent requires”. Question 5 of the Application did not simply inquire about the offenses listed in R.C. 1322.031(A)(2), but asked for the disclosure of any criminal offense. (See Exhibit 1). Therefore, the Division finds that Respondent omitted a statement required by law, violating R.C. 1322.07(B).

The Division disapproves paragraph 7 on page 5 of the Report and Recommendation.

¹ In R.C. 1322.07 (E) and (F), both sections contain language of intent by using the term “knowingly.” R.C. 1322.07 (A), (B), and (C) do not.

The application of Respondent indicates that he answered “no” to Question 5 of the Loan Officer License Application. (See Exhibit 1.) In its Notice of Intent to Deny a Loan Officer License, the Division never alleged that Respondent “....omit[ted] any information that he thought or knew he should disclose from his Application” to the Division. Sections 1322.07 (A), (B), and (C) do not require that an applicant violate them knowingly. As stated above, intent is not an element of violating 1322.07 (A), (B), and (C). Respondent was convicted of two separate offenses. (See Exhibit 4). The Division finds that Respondent’s failure to disclose his convictions on his Application is conduct that constitutes “improper, fraudulent, or dishonest dealings” for the purposes of R.C. 1322.07(C).

The Division disapproves paragraphs 8 and 9 on page 5 of the Report and Recommendation.

This Division, as pointed out in the previous paragraphs of this Order, did prove that Respondent violated R.C. 1322.07(A), (B), and (C). Hence, Respondent did not comply with R.C. 1322.01 through 1322.12—the Ohio Mortgage Broker Act. As a result, the record indicates that Respondent did not meet the condition for licensure outlined in R.C. 1322.041(A)(2).

The Division disapproves paragraph 12 on page 8 of the Report and Recommendation.

The Division, as pointed out in the previous paragraphs of this Order, proved that Respondent violated R.C. 1322.07(A), (B), and (C) by not disclosing his convictions on his Application. Hence, Respondent did not comply with R.C. 1322.01 through 1322.12 of the Revised Code—the Ohio Mortgage Broker Act. Additionally, the inability to understand a direct question evidences a lack of the requisite fitness needed of a loan officer. On a daily basis loan originators deal with consumers’ personal financial information and counsel them on what is most often their largest financial investment. Being able to comprehend and evaluate complicated mortgage documents is a vital part of the job. By not being able to understand a direct question on a licensing application, respondent has demonstrated to the Division that he does not hold the requisite fitness needed to be a loan officer. As a result, the Division finds that Respondent’s character and general fitness do not command the confidence of the public and warrant the belief that business will be operated honestly and fairly in compliance with the Ohio Mortgage Broker Act.

The Division disapproves the recommendation on page 6 of the Report and Recommendation.

Upon the Division's review of the evidence, the Division finds that it has met its burden of proof and as a result, Respondent's character and general fitness do not command the confidence of the public and warrant the belief that business will be operated honestly and fairly in compliance with the Ohio Mortgage Broker Act.

For the reasons stated above, the Division hereby denies the Loan Officer License Application of Jeffrey B. Sawyer.

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 20th day of June 2006.

ROBERT M. GRIESER

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