

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

In the matter of:	)	Case No. 05-0163-LOD
	)	
<b>TODD D. LOUGHRY</b>	)	<b><u>DIVISION ORDER</u></b>
809 Bently Place Boulevard	)	<b>Denial of Loan Officer License Application</b>
Tallmadge, Ohio 44278	)	<b>&amp;</b>
	)	<b>Notice of Appellate Rights</b>

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Respondent, Todd D. Loughry (“Respondent”), submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on May 4, 2005. On August 25, 2005 the Division notified Respondent that it intended to deny his Application because: (1) in or around 2001, in the Portage County Municipal Court, in Kent, Ohio, Respondent was convicted of unauthorized use of property; (2) Respondent had not proven that he is honest, truthful, and of good reputation, and that there is no basis in fact for believing that he will not commit another criminal offense involving theft or any criminal offense involving money or securities; (3) on or around May 2, 2005, Respondent attested in a sworn statement that information he provided about his criminal background in the Application he submitted to the Division was complete and truthful when it was not; (4) on or around May 4, 2005, in an attempt to obtain a loan officer license, Respondent provided untruthful information about his criminal background to the Division; (5) Respondent violated R.C. 1322.07(A) by failing to disclose his conviction in the Application; (6) Respondent violated R.C. 1322.07(B) by making a false statement of a material fact or by omitting a statement required by state law in the Application; (7) Respondent violated R.C. 1322.07(C), which prohibits an applicant from engaging in improper or dishonest conduct; and (8) because his character and general fitness did 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 R.C. 1322.01 to 1322.12—the Ohio Mortgage Broker Act.

Respondent requested an administrative hearing, which was held on January 26, 2006. A Report and Recommendation (“Report”) was filed with the Division on October 10, 2006, recommending that the Division deny Respondent’s application. No objections were filed.

In accordance with R.C. 119.09, the Division has considered the record, consisting of the Report, 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 Report is attached).

The Division disapproves paragraph 5 on page 5 and paragraph 15 on page 7 of the Report.

Respondent was convicted of unauthorized use of property in 2001 and did not disclose the conviction in the Application. (State's Ex. 1). In addition, Respondent was convicted of a noise violation and disorderly conduct in 2002 which he also did not disclose on his Application. However, Respondent did include a note in his application inquiring as to whether a speeding ticket needs to be disclosed (Report para. 5, p. 2). In the Application, Question 5 asked Respondent:

Have you or has any company for which you have been an officer, or more than 5% owner or director, ever been convicted of **any criminal offense**? Exclude minor misdemeanor traffic and parking offenses. (DUIs and DWIs are criminal offenses.) (Emphasis in original).

(State's Ex. 1). Respondent answered "No." (Id.).

Question 5 explicitly inquired as to whether Respondent had ever been convicted of any criminal offense. Respondent was asked about any criminal offenses except traffic and parking offenses. Yet, Respondent still failed to disclose his entire criminal record except the one violation that clearly does not need to be disclosed.

If Respondent had doubt as to how to answer Question 5, he should have erred in favor of full disclosure. In fact, page 1 of the Application cautioned:

**You must answer each question on this application fully and truthfully. Any omission, untruthful answer, or incomplete answer may result in your being denied the privilege of \* \* \* acting as a loan officer[.]** (Emphasis in original).

Page 1 of the Application also warned Respondent:

If you have any doubts about whether any matter should be reported on this application, report it.

Respondent was duly alerted that he should err on the side of full disclosure of his criminal history, and he elected otherwise.

Information concerning an applicant's criminal history is a material fact for licensing purposes, regardless of how long ago the conviction occurred. With this in mind, the Division finds that Respondent's untruthful answer to Question 5 of the Application violated R.C. 1322.07(A) which prohibits an applicant from "mak[ing] any substantial misrepresentation in any \*\*\* license application." R.C. 1322.07(B) prohibits an applicant from "[m]ak[ing] false or misleading statements of a material fact, [or] omissions of statements required by state law[.]" Given its ordinary meaning, "false" is defined as "untrue <a false statement." (*Blacks Law Dictionary, Seventh Edition*, 1990, p. 618). The term "omission" is defined as "the act of leaving something out." (*Black's Law Dictionary, Seventh Edition*, 1999, p. 1116.) And, "omit" means "to leave out or leave unmentioned." (*Merriam-Webster Online Dictionary*, [www.m-w.com/dictionary/omit](http://www.m-w.com/dictionary/omit)). Accordingly, by answering "No" to Question 5 on the license application, Respondent violated R.C. 1322.07(B). The Division also finds that Respondent's failure to disclose his criminal conviction to the Division constituted improper dealings in violation of R.C. 1322.07(C).

The interpretation of R.C. 1322.07 in the Report is in error. (Report, para.15, p 7). R.C. 1322.07(A), (B), and (C) do not require a deliberative act for their violation. In contrast to 1322.07(E) and (F), which contain language of intent by use of the term "knowingly," R.C. 1322.07(A), (B), and (C) do not employ such language. Accordingly, an applicant that fails to carefully read and answer each question in a loan officer application, swears to its veracity, and then files such application with the Division is in violation of R.C. 1322.07(A), (B), and (C) when such answer is patently untrue. Here, Respondent's failure to disclose his criminal background on the Application was due to his failure to verify what information was sought by a straightforward question. In addition, Respondent affirmed before a notary that his Application was "complete and true" and shortly thereafter filed the Application, containing a false and incomplete answer as to his criminal history, with the Division. (State's Ex. 1).

In total, Respondent's activities do not show that he is honest, truthful, and of good reputation and that there is no basis in fact for believing that he will commit another criminal offense again involving theft. In Respondent's favor were positive character references via reference letters from persons who did not attend the hearing (Report, para. 4, p.5). The state was unable to cross examine said persons and test the accuracy of the documents. Therefore, the reference letters are overshadowed by Respondent's failure to disclose his conviction for unauthorized use of property along with the rest of his criminal history. Because of this recent

act of dishonesty, the Division cannot find that Respondent is honest, truthful, and of good reputation pursuant to R.C. 1322.041(A)(3). Because of the above, the Division disagrees that Respondent can meet his burden that he will not commit another offense as stated in paragraph 5 on page 5 of the Report.

Additionally, Respondent's 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, evaluate and explain complicated mortgage documents is a vital part of the job. By not understanding a simple question on the Application, Respondent has demonstrated to the Division that he does not hold the requisite fitness required of a loan officer. For this reason and Respondent's violation of R.C. 1322.07(A), (B), and (C), the Division finds that Respondent's character and general fitness do 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 the Ohio Mortgage Broker Act. R.C. 1322.041(A)(5).

For the reasons stated above, the Division hereby denies the loan officer license application of Todd D. Loughry.

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 must, 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 12<sup>th</sup> day of December 2006.

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**ROBERT M. GRIESER**

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