

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

In the matter of:)	Case No. 05-0159-LOD
)	
ROBERTO GERENA)	<u>DIVISION ORDER</u>
3405 West 35 th Street)	Denial of Loan Officer License Application
Cleveland, OH 44109)	&
)	Notice of Appellate Rights
)	

Respondent, Roberto Gerena (“Respondent”), submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on December 15, 2004. On August 25, 2005, the Division notified Respondent that it intended to deny his Application because: (1) in or around September 1998, Respondent pleaded guilty to and was convicted of possession of drugs, a felony of the fifth degree; (2) Respondent attested in a sworn statement that information he provided in his Application was complete and truthful when it was not; (3) Respondent provided untruthful information to the State of Ohio, Department of Commerce, Division of Financial Institutions; (4) Respondent violated R.C. 1322.07(A), (B), and (C) by attesting to the accuracy of the Application and not disclosing his complete criminal history in his Application, which was filed with the Division; and (5) because 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 R.C. sections 1322.01 to 1322.12, the Ohio Mortgage Broker Act.

Respondent requested an administrative hearing, which was held on December 1, 2005. A Report and Recommendation (“Report”) was filed with the Division on March 31, 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 of paragraphs 10 and 11 on page 5 of the Report.

The statement that a deliberative act is necessary to establish a violation of 1322.07 is

incorrect. R.C. 1322.07(A), (B), and (C) do not require a deliberative act to establish a 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. An applicant who, regardless of intent, fails to carefully read and answer each question in a 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) if his answer is untrue.

Information concerning an applicant’s criminal history is a material fact for licensing purposes. 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). 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).

Here, Respondent failed to disclose his criminal background on the Application. Yet, Respondent affirmed before a notary that his Application was “complete and true” and shortly thereafter filed the Application, containing a false answer as to his criminal history, with the Division. (State’s Ex. A). Respondent’s actions constitute a violation of 1322.07(A), (B), and (C).

Upon consideration of the record, the Division hereby approves the hearing officer’s recommendation. The Application of Roberto Gerena is 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 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 8th day of January 2007.

ROBERT M. GRIESER

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