

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

In the matter of:

DENISE A. FENRICK

25901 Columbus Road

Bedford Heights, OH 44146

) Case No. 04-0065-LOD

)

) **DIVISION ORDER**

) **Denial of Loan Officer License Application**

)

) &

) **Notice of Appellate Rights**

Respondent, Denise A. Fenrick (“Respondent”), submitted a loan officer license application to the Division of Financial Institutions (“Division”) on April 22, 2002. On January 22, 2004, the Division notified Respondent that it intended to deny her loan officer license application because: (1) she was convicted of disorderly conduct in 1995; (2) she was convicted of passing bad checks in 1998; (3) per R.C. 1322.031(A)(2) and R.C. 1322.041(A)(3), she has 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 criminal offense involving passing bad checks or any criminal offense involving money or securities; (4) she violated R.C. 1322.07(A) by failing to disclose her convictions on her loan officer license application; (5) she violated R.C. 1322.07(B) by making a false statement of a material fact or by omitting a statement required on the licensing application; and (6) she violated R.C. 1322.07(C), which prohibits an applicant from engaging in improper or dishonest conduct; and (7) her 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.

Respondent requested an administrative hearing, which was held on May 10, 2004. A Report and Recommendation was filed with the Division on August 4, 2005, recommending that the Division approve Respondent’s application and grant her a loan officer license. No objections were filed to the Report and Recommendation.

In accordance with R.C. 119.09, the Division has considered the Report and Recommendation, applicable laws, the transcript of testimony and the exhibits. As a result, the Division modifies and/or disapproves the findings and/or conclusions listed below. Any finding and/or conclusion not specifically addressed below is approved, adopted, and incorporated herein. (The Hearing Examiner’s Report and Recommendation is attached).

The Division modifies paragraph 7 on pages 2 and 3 of the Report and Recommendation to reflect that the correct exhibit cited to is State's Exhibit 1.

The Division modifies paragraph 8 on page 3 of the Report and Recommendation.

Question 5 of the Loan Officer Application asks:

Have you or has any company for which you have been an officer, or more than 5% owner or director, ever been convicted of or pleaded guilty to any criminal offense including, but not limited to, theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities?

Despite her convictions for disorderly conduct and passing bad checks, Respondent answered "no" to Question 5. She explained, "I had thought that meant that someone that had been to jail. I just didn't consider downtown for six hours as jail. But like I said, I probably should have paid more attention, stolen property, embezzlement, fraud, bad check, money laundering." (Tr., p. 36).

Under the heading "A. Jurisdictional and Procedural Matters," the Division modifies paragraph 2 on page 4 of the Report and Recommendation to reflect that the hearing proceeded with Respondent, her attorney, and Respondent's witness in attendance.

Under the heading "B. Loan Officer License Application," the Division disapproves the last sentence in paragraph 2 on page 4 and paragraph 3 on page 4 of the Report and Recommendation. The Division bears the burden of proof under R.C. 1322.041(A)(5) and R.C. 1322.041(A), (B), and (C). As to R.C. 1322.041(A)(3), the Division bears the burden of proving Respondent was convicted of one of the enumerated offenses, which in this case was passing bad checks. See, also, R.C. 1322.031(A)(2). Upon such proof, the burden shifts to Respondent, who must prove by a preponderance of the evidence that her activities and employment record since the conviction show that she is honest, truthful, and of good reputation and there is no basis in fact for believing that she will commit such an offense again.

The Division disapproves the first sentence of paragraph 6 on page 6 of the Report and Recommendation. The Division proved that Respondent was convicted of disorderly conduct in 1995 and passing bad checks in 1998. (State's Ex. 4).

The Division disapproves paragraphs 7 and 8 on page 6 and paragraph 10 on page 7 of the Report and Recommendation.

Question 5 on the loan officer license application asked the Respondent whether she had been convicted of “any criminal offense” including, but not limited to, “passing bad checks.” Respondent answered “no” to the question, despite having been convicted of disorderly conduct and passing bad checks. (State’s Ex. 4). Respondent testified that she thought the disorderly conduct conviction was a “criminal procedure.” (Tr., p. 34). With respect to the 1998 passing bad checks conviction, Respondent was arrested and had to “set a bond.” (Tr., p. 35). On each conviction, Respondent appeared in court and entered a plea of no contest. (State’s Ex. 4).

Respondent did not testify that the question was “inartfully worded” or that it “lend[s] itself to confusion.” Rather, Respondent testified that she thought Question 5 asked about “someone that had been to jail.” (Tr., p. 36). Respondent went on to explain: “I just didn’t consider downtown for six hours as jail. But like I said, I probably should have paid more attention, stolen property, embezzlement, fraud, bad check, money laundering.” (Id.) The plain language of Question 5 asked whether the Respondent had any convictions, including passing bad checks, not whether she had been to jail. Respondent did not disclose her convictions in response to a straightforward question about her criminal history. Whether this inaccurate answer was intentional or not, it was less than complete and truthful. Respondent’s witness testified favorably in terms of Respondent’s honesty, character, reputation, and Respondent’s likelihood to again commit the crime of passing bad checks. However, Respondent’s failure to disclose her convictions, particularly the passing bad checks conviction, on her license application reflects poorly on her honesty, truthfulness and reputation. 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. The Division finds that Respondent did not prove by a preponderance of the evidence that her activities and employment record since the conviction shows that she is honest, truthful, and of good reputation and there is no basis in fact for believing she will commit the offense of passing bad checks again.

Finally, the inability to accurately answer a direct question regarding an applicant’s criminal history 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 inaccurately answering question 5

on the Application, Respondent has demonstrated to the Division that she does not hold the requisite fitness needed to be a loan officer. Accordingly, the Division finds that Respondent does not hold the necessary character and general fitness which commands the confidence of the public and warrants the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. (R.C. 1322.0041(5)).

The Division disapproves the Recommendation on page 7 of the Report and Recommendation and finds that Respondent has not met the prerequisites for licensure set forth in R.C. 1322.041.

Accordingly, Respondent's April 22, 2002 loan officer license application is hereby 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, 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 13th day of April 2006.

ROBERT M. GRIESER

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