

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

In the matter of:)	Case No. 06-0034-LOD
)	
T. ANDREW MURRAY)	<u>DIVISION ORDER</u>
330 South Park)	Denial of Loan Officer License Application
Aurora, Ohio 44202)	&
)	Notice of Appellate Rights

Respondent, T. Andrew Murray, submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on September 16, 2005. On February 6, 2006, the Division notified Murray that it intended to deny his Application because: (1) in 1990 he was convicted of disorderly conduct; (2) he violated R.C. 1322.07(A) by failing to disclose his conviction on his Application; (3) 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; (4) he violated R.C. 1322.07(C), which prohibits an applicant from engaging in improper or dishonest conduct; and (5) 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.

Murray requested an administrative hearing which was held on April 27 and May 10, 2006. A Report and Recommendation was filed with the Division on June 12, 2006, 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).

The Division disapproves paragraphs 12 and 13 on pages 3 and 4, respectively, of the Report and Recommendation.

There is no age qualifier contained in Question 5 on Respondent's Application. (See State's Exhibit 2). The only application relevant to the current determination is that identified as State's Exhibit 2. While Murray may claim he simply sent in the wrong application, the fact is only one application was ever filed with the Division. Furthermore, the application which the Hearing Officer refers to, Respondent's Exhibit D, is not signed, dated nor notarized. It is completely irrelevant to the determination of honesty and fitness. The application which Murray chose to send to the Division, with his attestation to the truthfulness of the answers, is State's Exhibit 2. Clearly, his attention to detail is inadequate and troublesome in an industry where minute details can have a great impact on consumers. Additionally, Murray testified that he knew he was omitting his criminal conviction. (See Transcript I pp. 23, 40). This belies the Hearing Officer's contention that Respondent was not trying to hide anything from the Division.

The Division disapproves paragraph 14 on page 4 of the Report and Recommendation.

Question 5 of the Application is not confusing. Respondent has a high school education, and has taken college courses. (See Transcript I pg. 34). It is a reasonable expectation of the Division that applicants can read and correctly answer a question pertaining to their criminal background. Loan officers work with complicated and detailed documents as a part of their responsibilities. The fact that Respondent testified that he was aware he was omitting information when he answered Question 5 shows not that he was confused, but that he is dishonest. (See Transcript I pp. 23, 40).

The Division disapproves paragraph 16 on page 4, paragraphs 21 and 22 on page 5 and paragraphs 4, 6 and 7 on page 7 of the Report and Recommendation.

Any reference made to a different application than the one entered into the record as State's Exhibit 2 is improper and does not have a bearing on the case sub judice. R.C.

1322.031(A)(4) permits the Superintendent, in the loan officer license application, to request of the applicant "any further information that the superintendent requires." Pursuant to R.C.

1322.031(A)(4), the application requests information regarding "any criminal offenses" in addition to those enumerated in R.C. 1322.031(A)(2). (See State's Exhibit 2). This meant that Respondent was required to disclose his conviction for disorderly conduct. However, instead of being honest, Respondent answered "no" to Question 5. (See State's Exhibit 2). Murray did so with full knowledge of his criminal conviction. (See Transcript I pp. 21-23, 28, 40).

The Division disapproves paragraph 18 on page 5 of the Report and Recommendation.

Mr. Consenza not only has a direct interest in Respondent receiving his loan officer license, he only met him shortly before Respondent applied for his loan officer license. As Respondent clearly could not work as a loan officer without a license in the entire period that they have been acquainted, his evaluation of his ability to be a loan officer is deficient. Additionally, Mr. Consenza testified that he has no idea of Respondent's reputation in the community. (See Transcript II pg. 12). This self-serving testimony is not enough to bolster Respondent's character and fitness.

The Division disapproves paragraph 23 on page 5 of the Report and Recommendation.

Respondent is not trustworthy, as evidenced by his dishonesty in answering a direct question on a state licensing application. (See State's Exhibit 2).

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

The hearing officer concluded that Murray did not make a substantial misrepresentation when he answered Question 5. However, Respondent answered “no” to Question 5 of the Application. (See State’s Exhibit 2). This was a false answer as he had been convicted of disorderly conduct. (See State’s Exhibit 3, Transcript I pp. 21-22). Furthermore, Respondent testified that...“I clearly have to admit that the loan application was not submitted with the correct information”. (See Transcript I pg. 40). Respondent’s statement that he had not been convicted of any criminal offenses is a false or misleading statement. Sections 1322.07 (A), (B), and (C) do not require that an applicant violate them knowingly.¹ The Division finds that Respondent’s failure to disclose his conviction is a substantial misrepresentation, thus a violation of R.C. 1322.07(A). Additionally, any reference to a different application than was entered into the record as State’s Exhibit 2 has no relevance in the final determination.

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

Respondent answered “no” to Question 5 of the Application. (See State’s Exhibit 2). Respondent was convicted of disorderly conduct. (See State’s Exhibit 3, Transcript I pp. 21-22). As noted above, sections 1322.07 (A), (B), and (C) do not require that an applicant violate them knowingly.² The Division finds that Respondent’s statement that he had not been convicted of any offenses is a false or misleading statement of a material fact.

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

Respondent answered “no” to Question 5 of the Application. (See State’s Exhibit 2). Respondent was convicted of disorderly conduct. (See State’s Exhibit 3, Transcript I pp. 21-22). 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. In fact, Respondent himself testified that he knew he was omitting his 1990

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

² Ibid.

disorderly conduct when he filled out the Application. (See Transcript I pg. 23). R.C.

1322.031(A)(4) permits the Superintendent, in the loan officer license application, to request of the applicant “any further information that the superintendent requires.” Pursuant to R.C.

1322.031(A)(4), the application requests information regarding “any criminal offenses” in addition to those enumerated in R.C. 1322.031(A)(2). (See State’s Exhibit 2). Respondent was convicted for disorderly conduct, but answered “no” to Question 5. (See State’s Exhibits 2, 3).

Therefore, the Division finds that Respondent omitted a statement required by law, violating R.C. 1322.07(B).

The Division disapproves paragraph 11 on page 8 of the Report and Recommendation.

Respondent answered “no” to Question 5 of the Application. (See State’s Exhibit 2). Respondent was convicted of disorderly conduct. (See State’s Exhibit 3, Transcript I pp. 21-22). The Division finds that Respondent’s failure to disclose his conviction on his Application is conduct that constitutes “improper, fraudulent, or dishonest dealings” for the purposes of R.C. 1322.07(C).

The Division disapproves paragraph 24 on page 5 and paragraphs 12, 13 and 14 on page 8 of the Report and Recommendation.

The Division, as pointed out in the previous paragraphs of this Order, finds that Respondent violated R.C. 1322.07(A), (B), and (C) by not disclosing his conviction on his Application. Sections 1322.07 (A), (B), and (C) do not require that an applicant violate them knowingly. Hence, Respondent did not comply with R.C. 1322.01 through 1322.12 of the Revised Code—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 has a responsibility to the public to be diligent in its oversight, and this responsibility demands that not

answering a direct question about one's criminal background accurately be taken seriously. Therefore, the Division finds that 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 Ohio Mortgage Broker Act.

The Division disapproves the recommendation on page 9 of the Report and Recommendation.

Upon review of the evidence, the Division finds that Respondent has not met the condition for licensure set forth in R.C. 1322.041(A)(2), as his 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 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 T. Andrew Murray.

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 19th day of July 2006.

ROBERT M. GRIESER
Deputy Superintendent for Consumer Finance
Division of Financial Institutions
Ohio Department of Commerce