

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

In the matter of:	)	Case No. 04-0417-LOD
	)	
<b>MICHAEL A. VLCEK</b>	)	<b><u>DIVISION ORDER</u></b>
9772 Wainwright Terrace	)	<b>Denial of loan officer license application</b>
Olmsted Falls, Ohio 44138	)	<b>&amp;</b>
<hr style="width: 40%; margin-left: 0;"/>	)	<b>Notice of Appellate Rights</b>

Respondent, Michael A. Vlcek, submitted a loan officer license application to the Division of Financial Institutions ("Division") on September 5, 2002. On June 16, 2004, the Division notified Vlcek that it intended to deny his loan officer license application because: (1) he had been convicted of theft in 2001, and he 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 theft-type offense; (2) he violated R.C. § 1322.07(A) by failing to disclose his theft conviction on his loan officer license application; (3) he 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; (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 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.

Vlcek requested a hearing and an administrative hearing was held on September 20, 2004. A Report and Recommendation was filed with the Division on November 17, 2004, recommending that the Division approve Vlcek's application and grant him a loan officer license. Vlcek did not object to the report and/or recommendation.

In accordance with R.C. §119.09, the Division has considered the Report and Recommendation, all 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 hereto as Exhibit A.)

The Division modifies paragraph B on page 2 of the Report and Recommendation to reflect that the Division received Respondent's hearing request on July 16, 2004, not July 13, 2004. (Exhibit 8.)

The Division disapproves paragraph 2 on page 6.

Vlcek was convicted of a felony theft conviction approximately one year before filling out his loan officer license application. (See Exhibits 1 and 4). A theft conviction alone satisfies the Division's burden of proof, no matter the alleged circumstances in which it arose. (See R.C. § 1322.041(A)(3)).

The Division disapproves paragraph 3 on page 6.

Vlcek stated on his license application that he had never been convicted of any criminal offense. He signed the license under oath, swearing that he had completed it "fully and frankly[, and that] the answers were complete and true" when they were not. When attempting to explain his non-disclosure Vlcek stated "...I don't know whether to tell the truth or lie or what." (Transcript, p. 13). The Division cannot find that any loan officer applicant has the character and fitness to originate loans when they do not know whether or not to correctly answer questions asked by the Division. The fact that he lied on an application so his employer wouldn't find out is simply further evidence of deceit. (Transcript pg. 26-27). The claim that Respondent was merely attempting to protect his privacy when answering question five falsely further calls his character into question. Vlcek did not disclose his criminal history for his own personal gain and nothing else. Further, the mere fact that Vlcek signed a required background check as part of his application does not alleviate his responsibility to answer all questions correctly, which he swore he had. Respondent's intent when falsely filling out his loan officer license application is irrelevant to the Division's determination.<sup>1</sup>

The Division disapproves paragraph 5 on page 7.

Vlcek was convicted of a felony theft offense, which is one of the enumerated offenses found in R.C. §1322.031(A)(2). This conviction standing alone places the burden on the respondent. (See R.C. §1322.041(A)(3)). This conviction occurred only thirty-five months<sup>2</sup> prior to the hearing. Vlcek did not meet his burden and prove that he is trustworthy and honest and not likely to commit a similar offense again.

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<sup>1</sup> 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.

<sup>2</sup> Time from the conviction in October, 2001 until the hearing in September 2004.

The Division modifies paragraph 6 on page 7 on the Report and Recommendation to include findings that Vlcek violated R.C. §§ 1322.07(B) and (C) by failing to disclose his convictions on his application. Section (B) of R.C. 1322.07 prohibits an applicant from making a false statement of a material fact or by omitting a statement required on the licensing application. R.C. § 1322.07(C) prohibits an applicant from engaging in improper or dishonest conduct.

The Division disapproves paragraph 7 on page 7.

Vlcek failed to comply with R.C. §§ 1322.07 (A), (B) and (C) by not disclosing his theft conviction on his license application. Additionally, he did not satisfy his burden that his activities and employment record since his conviction show that he is honest, truthful, and of good reputation, and that there is no basis in fact for believing that he will commit such an offense again. (See R.C. §§ 1322.031(A)(2) and 1322.041(A)(3)). The Division has a responsibility to the public to be diligent in its oversight, and this responsibility demands that not answering a question about one's criminal background accurately be taken seriously, especially when the conviction is theft. On a daily basis, loan officer's deal with consumers' personal financial information and advise consumers on what is most often their largest financial investment. Vlcek does not hold the requisite character and general fitness to originate loans.

In accordance with the foregoing, the Division disapproves the recommendation to issue Vlcek a loan officer license.

In accordance with the foregoing, the Division concludes that Vlcek's loan officer application should be 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 1st day of December 2005.

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**ROBERT M. GRIESER**

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