

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

In the matter of:)	Case No. 05-0031-LOD
)	
PRECIOUS G. SMITH)	<u>DIVISION ORDER</u>
1621 E. Fulton Street)	Denial of Loan Officer License Application
Columbus, OH 43205)	&
)	Notice of Appellate Rights
)	

Respondent, Precious G. Smith (“Respondent”), submitted a loan officer license application to the Division of Financial Institutions (“Division”) on September 16, 2004. On April 05, 2005, the Division notified Respondent that it intended to deny her loan officer license application (“Application”) because: (1) Respondent attested in a sworn statement that information she provided in her Application was truthful when it was not; (2) Respondent provided untruthful information to the State of Ohio, Department of Commerce, Division of Financial Institutions; (3) Respondent violated R.C. 1322.07(A), (B), and (C) by attesting to the accuracy of the Application and not disclosing her criminal history in her Application, which was filed with the Division; and (4) 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 May 11, 2005. A Report and Recommendation (“Report”) was filed with the Division on August 17, 2005, recommending that the Division deny Respondent's Application. Objections were filed with the Division on September 1, 2005.

In accordance with R.C. 119.09, the Division has considered the record, consisting of the Report, the transcript of testimony and exhibits, Respondent’s objections 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 is attached).

The Division disapproves paragraph 11 on page 5 of the Report. Additionally, given the hearing officer's reasoning in the Report it must be assumed that paragraph 11 contains a typographical error and that in the last sentence the word "not" should be removed.

The interpretation of R.C. 1322.07 in paragraph 11 of the Report is in error. 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 her criminal background on the Application was due to her own carelessness. Respondent testified that she did not read the question carefully and that she "misread" the question. (Tr., pp. 15-17). Yet, Respondent affirmed before a notary that her Application was "complete and true" and shortly thereafter filed the Application, containing a false answer as to her criminal history, with the Division. (State's Ex. A). Respondent's actions constitute a violation of 1322.07(A), (B), and (C).

With the exceptions stated above the Division hereby adopts the hearing officer's recommendation and denies the loan officer license application of Precious G. Smith.

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 18th day of October 2006.

ROBERT M. GRIESER

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