

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

In the matter of:	)	Case No. 03-LO-D-22-23
	)	
<b>KENNETH D. ROTH</b>	)	<b><u>DIVISION ORDER</u></b>
5565 Fairwood Road	)	<b>Denial of loan officer license application</b>
Cincinnati, Ohio 45239	)	<b>&amp;</b>
<hr style="width: 40%; margin-left: 0;"/>	)	<b>Notice of Appellate Rights</b>

Respondent, Kenneth D. Roth, submitted a loan officer license application to the Division of Financial Institutions ("Division") on March 19, 2002. On April 30, 2003, the Division notified Roth that it intended to deny his loan officer license application because: (1) he had been convicted of passing bad checks in 1988 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 offense involving passing bad checks or offense involving money; (2) in 1989 he had been convicted of criminal damaging; (3) he violated R.C. § 1322.07(A) by failing to disclose his convictions on his loan officer license application; (4) 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; 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.

Roth requested a hearing and an administrative hearing was held on June 17, 2003. A Report and Recommendation was filed with the Division on July 30, 2003, recommending that the Division approve Roth's application and grant him a loan officer license. Roth did not object to the report and/or 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 hereto as Exhibit A.)

The second paragraph on page 1 of the Report and Recommendation makes reference to "Exhibit A." This is a typographical error and should state "Exhibit 1A." The second paragraph of page 1 is modified accordingly.

The Division modifies the third paragraph on page 1 of the Report and Recommendation to reflect that a cover letter was not issued with the Division's notice.

The Division modifies paragraph 4 on page 5 of the Report and Recommendation, which reads:

The Respondent was convicted of passing bad checks and criminal damaging. The burden of proof shifted to the Respondent to show by a preponderance of the evidence that he is honest, truthful and of good reputation and there is no basis to believe he will commit such an offense again. He must also show that his character and fitness command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the purpose of the Ohio Mortgage Broker Act.

Due to Roth's conviction for passing bad checks, he does have the burden to show by a preponderance of the evidence that his employment record and activities since his passing bad checks conviction show that he is honest, truthful, and of good reputation and that there is no basis in fact for believing that he would commit such an offense again. (See R.C. §§ 1322.031(A)(2) and 1322.041(A)(3).) However, it is the Division's burden to show that Roth's character and general fitness command the confidence of the public and warrant the belief that the business will be operated honestly and fairly with the purposes of the Ohio Mortgage Broker Act. (See R.C. 1322.041(A)(5).) Paragraph 4 on page 5 is modified to reflect the changes.

The Division disapproves paragraph 18 on pages 7 and 8 of the Report and Recommendation; paragraph 19 on page 8 of the Report and Recommendation; and the recommendation of the Report and Recommendation for the reasons stated below.

The record reflects that in 1988, Roth was convicted of passing bad checks. (Exhibit 6.) As a result, it was Roth's burden to show that his employment record and activities since his conviction show that he is honest, truthful, and of good reputation. To that end, Roth presented his own self-serving testimony, the testimony of two witnesses, two affidavits, a resume, and copies of his business cards.

The first witness called by Roth was Jarvis Woodson, part owner of The Mortgage Source – which is a closely held S-corporation. (Transcript, p. 48.) Woodson has known Roth for less than two years. (Transcript, p. 49.) Woodson stated that although there were “some gray areas” in Roth's explanation for why he did not disclose his crimes to the Division on his loan officer license application, Woodson was not concerned about any of the documents that Roth may have completed while working for The Mortgage Source. (Transcript, pp. 55-56.)

The second witness was Don Lueke who is also part owner of The Mortgage Source and has known Roth for less than two years. (Transcript, pp. 58-59.) When Lueke was asked if Roth's failure to disclose convictions to the Division on his loan officer license application caused him any concern, he said that it did not because he could see how someone could forget about their criminal convictions from "10 or 15 years" ago. (Transcript, pp. 63-64.) Both witnesses stand to gain financially from the issuance of a loan officer license to Roth.

The affidavits of Tim Wills and David Anderson do not contain a statement as to their knowledge of Roth's criminal background or his non-disclosure of those criminal convictions to the Division. (Exhibits 9 and 10.) The affiants were not available for cross-examination. Roth's resume and business cards do little to show that he is honest, trustworthy, and of good reputation with respect to his employment prior to being hired by The Mortgage Source as Roth's own self-serving testimony is the only thing to corroborate the contents of those exhibits. (Exhibits 11 and 12.) Considering the evidence put forth by Roth, the Division finds that the evidence he presented does not prove by a preponderance of the evidence that his employment record and activities show that he is honest, truthful, and of good reputation and that there is no basis in fact to believe that he would commit the offense of passing bad checks again. (See R.C. §§ 1322.031(A)(2) and 1322.041(A)(3).)

Furthermore, Roth did not disclose his convictions to the Division on his loan officer license application. (Exhibit 3.) When Roth was asked what "...made [him] think that [he] didn't have to inform the Division of [his]....convictions," Roth stated that "[He] looked at it as part of [his] life that didn't exist anymore." (Transcript, p. 35.) As a consequence of Roth's failure to disclose his criminal convictions, Roth violated R.C. §§ 1322.07(A) & (B). (See also Report and Recommendation, p. 7.) In addition, failure to disclose criminal convictions to the Division calls into question Roth's character and general fitness to originate loans.

In summary, the Division finds that Roth failed to meet his burden in proving that his employment record and activities since his passing bad checks conviction show that he is honest, truthful, and of good reputation and there is no basis in fact for believing that he will commit an offense involving passing bad checks again. The Division further finds that Roth violated R.C. §§ 1322.07(A) & (B) and that Roth lacks the character and general fitness to assist buyers in what is often their largest financial investment. Accordingly, Roth's March 19, 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 10th day of June 2005.

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**ROBERT M. GRIESER**

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

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