

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

In the matter of:)	Case No. 04-0222-LOD
)	
JAMES E. WERLING II)	<u>DIVISION ORDER</u>
5738 Reswin Drive)	Denial of Loan Officer License Application
Fairfield, Ohio 45014)	&
)	Notice of Appellate Rights

Respondent, James E. Werling, II, submitted a loan officer license application to the Division of Financial Institutions ("Division") on March 14, 2002. On January 22, 2004, the Division notified Werling that it intended to deny his loan officer license application because: (1) in 1974 he was convicted of theft 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 criminal offense involving theft or any criminal offense involving money or securities; (2) he violated R.C. 1322.07(A) by failing to disclose his 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 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.

Werling requested an administrative hearing which was held on March 16, 2004. A Report and Recommendation was filed with the Division on April 23, 2004, 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 modifies part C on page 2 of the Report and Recommendation.

Part C reads, "**Respondent's Loan Officer Application and Conviction for Felonious Assault.**" This is modified to read, "**Respondent's Loan Officer Application and Conviction for Theft.**"

The Division disapproves paragraph 12 on page 4 of the Report and Recommendation.

Sections 1322.07 (A), (B), and (C) do not require that an applicant violate them knowingly.¹ At the time that Respondent submitted his loan officer license application he had a theft conviction, and was required to disclose it in response to Question 5. (See State's Exhibits 1, 5.)

The Division disapproves paragraph 13 on page 4 of the Report and Recommendation.

The Respondent is in the position of appealing the Division's intent to deny his loan officer license application because he was convicted of theft and did not disclose his conviction on his loan officer license application.

The Division disapproves paragraph 4 on page 6 of the Report and Recommendation.

The hearing officer concluded that Werling did not make a substantial misrepresentation when he answered "no" to Question 5 of the Loan Officer License Application. (See State's Exhibit 1.) Respondent was convicted of theft, one of the enumerated offenses contained in R.C. 1322.031(A)(2). (See State's Exhibit 5, Transcript pp. 16-21.) Respondent's statement that he

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.

had not been convicted of any offenses is a false or misleading statement. Sections 1322.07 (A), (B), and (C) do not require that an applicant violate them knowingly.² The Division finds that Respondent's failure to disclose his theft conviction is a substantial misrepresentation, thus a violation of R.C. 1322.07(A).

The Division disapproves paragraph 5 on page 6 of the Report and Recommendation.

The application of Respondent indicates that he answered "no" to Question 5 of the Loan Officer License Application. (See State's Exhibit 1.) Respondent was convicted of theft, one of the enumerated offenses contained in R.C. 1322.031(A)(2). (See State's Exhibit 5, Transcript pp. 16-21.) 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 6 on page 6 of the Report and Recommendation.

Respondent answered "no" to Question 5 of the Loan Officer License Application. (See State's Exhibit 1.) Respondent was convicted of a crime involving theft. (See State's Exhibit 5, Transcript pp. 16-21.) 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. Werling has a conviction of theft and did not disclose this on his application. R.C. 1322.031(A)(2) imposes an affirmative duty on all applicants for a loan officer license to disclose any criminal convictions "...involving theft...". Therefore, the Division finds that Respondent omitted a statement required by law, violating R.C. 1322.07(B).

The fact that the Division received information about Respondent's conviction after he submitted his loan officer license does not retroactively impact his non-disclosure. At the time Respondent answered "no" to Question 5 of the loan officer license application, he had a conviction for theft. (See State's Exhibits 1, 5.) The results of his background check indicated

² 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.

that he had a theft conviction. (See State’s Exhibit 2.) Therefore, the Division requested additional information concerning the conviction to proceed with its investigation. (See State’s Exhibit 3). The fact that Respondent provided documents pertaining to his conviction as part of the Division’s investigation does not mitigate his original non-disclosure, nor do those documents become part of the application.

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

The application of Respondent indicates that he answered “no” to Question 5 of the Loan Officer License Application. (See State’s Exhibit 1.) Respondent was convicted of a crime involving theft, an enumerated offense in R.C. 1322.031(A)(2). (See State’s Exhibit 5, Transcript pp. 16-21.) The Division finds that Respondent’s failure to disclose his theft conviction on his loan officer license application is conduct that constitutes “improper, fraudulent, or dishonest dealings” for the purposes of R.C. 1322.07(C).

The Division disapproves paragraphs 8 and 9 on page 7 of the Report and Recommendation.

This Division, as pointed out in the previous paragraphs of this Order, finds that Respondent violated R.C. 1322.07(A), (B), and (C). Hence, Respondent did not comply with R.C. 1322.01 through 1322.12—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 disapproves paragraph 11 on page 7 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 theft conviction on his loan officer license application. Hence, Respondent did not comply with R.C. 1322.01 through 1322.12 of the Revised Code—the Ohio Mortgage Broker Act.

Sections 1322.07 (A), (B), and (C) do not require that an applicant violate them knowingly. As stated above, intent is not an element of violating 1322.07 (A), (B), and (C). As a result, 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 8 of the Report and Recommendation.

Upon the Division's review of the evidence, 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 per R.C. 1322.041(A)(5). Thus, Respondent has not met the condition for licensure set forth in R.C. 1322.041(A)(2).

For the reasons stated above, the Division hereby denies the Loan Officer License Application of James E. Werling, II.

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 this Order.

Signed and sealed this 19th day of January 2006.

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