

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

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| In the matter of:                         | ) | Case No. 04-0311-LOD                              |
|   | ) |   |
| <b>JEROME E. TUFF</b>                     | ) | <b><u>DIVISION ORDER</u></b>                      |
| 2763 Glenshire Drive                      | ) | <b>Denial of loan officer license application</b> |
| Columbus, Ohio 43219                      | ) | <b>&amp;</b>                                      |
| <hr style="width: 40%; margin-left: 0;"/> | ) | <b>Notice of Appellate Rights</b>                 |

Respondent, Jerome E. Tuff, submitted a loan officer license application to the Division of Financial Institutions ("Division") on April 8, 2002. On February 9, 2004, the Division notified Tuff that it intended to deny his loan officer license application because: (1) he had been convicted of soliciting prostitution in 1995; (2) in 1999 he had been convicted of a felony in federal court for issuing United States Postal money orders without paying or receiving payment, 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 or offense involving money; (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; (5) he violated R.C. § 1322.07(C), which prohibits an applicant from engaging in improper or dishonest conduct; and (6) 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.

Tuff requested a hearing and an administrative hearing was held on May 25, 2004. A Report and Recommendation was filed with the Division on July 21, 2004, recommending that the Division approve Tuff's application and grant him a loan officer license. Tuff 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 record reflects that the Division offered Exhibits 1-16 into evidence and moved to have them admitted, but the hearing officer never ruled on their admittance. The record also reflects that Tuff referred to a letter he authored and marked as Exhibit A, but he did not offer it into the evidence, nor did he read its contents into the record. Because the hearing officer relied upon Exhibits 1-16 and A in writing her report, the Division deems all Exhibits admitted.

Paragraph 8 on page 2 of the Report and Recommendation states that Tuff was charged in 1999 with a felony for issuing postal money orders without paying or receiving payment. The report does not set forth the disposition of the charge. The Division modifies Paragraph 8 on page 2 of the Report and Recommendation to reflect that Tuff was charged in 1998 and convicted in 1999 of issuing postal money orders without paying or receiving payment. (Ex. 9). Tuff explained that while he had been a United States Postal Service employee, he printed money orders made payable to himself without submitting payment for them, and then cashed the checks. (Tr. 19.)

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

Because the Respondent answered “no” to Question 5 of the Application, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his character and fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the Mortgage Broker Act.

Tuff’s burden was to show, by a preponderance of evidence, that his employment record and activities since his conviction for issuing postal orders without paying or receiving payment show that his is honest, truthful, and of good reputation, and there is no basis in fact for believing that he will commit an offense involving theft or money again. (See R.C. §§ 1322.031(A)(2) and 1322.041(A)(3).) It was the Division’s burden to show that Tuff’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. Paragraph 5 on page 4 of the Report and Recommendation is modified to reflect the accurate legal burdens.

In addressing the allegations that Tuff violated R.C. §§ 1322.07(A),(B) and (C) by failing to disclose his criminal convictions on his license application, the hearing officer noted in paragraph 4 on page 4 that Tuff “stated in his letter that was submitted as Exhibit A that ‘The information requested was brought to you in person by me in a timely fashion, so I did not

intentionally try to hide this information from you.’ (Ex.A).” The hearing officer then concluded that Tuff’s “character and general fitness do command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act[,]” and recommended the Division grant Tuff a license. (See paragraph 21 and the recommendation on page 6 of the Report and Recommendation.) The record reflects that Tuff was convicted in 1995 of soliciting for prostitution, and convicted in 1999 of theft of postal funds totaling \$9,094.06 for issuing money orders for which payment was not received. Tuff completed his loan officer license application, stating that he had never been convicted of any criminal offense and, on March 20, 2002, signed that application under oath. Tuff submitted that application to the Division on April 8, 2002. The Division conducted a criminal background check of Tuff, and pursuant to the results, wrote Tuff on June 27, 2002, explaining the findings and requesting him to submit documentation regarding his charges. Tuff responded to the Division’s inquiry on July 25, 2002. The Division wrote Tuff again on November 14, 2002, requesting him to submit further documentation and/or explanations about his criminal background. (Ex. 3) Tuff replied on December 9, 2002. On February 9, 2004, the Division issued Tuff a notice of intent to deny his license application. (Ex 13.) The letter authored by Tuff and marked as Exhibit A was written over two years after Tuff submitted his license application. (Ex. A) The letter was not written under oath and the contents of the letter were not read into the record. Nonetheless, in that letter, Tuff states that when the Division wrote him in June of 2002 and again in November of that same year, he submitted responses “in a timely fashion, so [he] did not intentionally try to hide this information[.]”

Explaining the fact that he failed to disclose his crimes on his licensing application, Tuff testified I didn’t know the [soliciting for prostitution conviction] was a criminal offense \*\*\* and that’s why it wasn’t listed in the loan officer application. (Alterations added.) (Tr. 15.). However, when specifically asked whether he understood that his 1995 solicitation charge was a criminal offense, Tuff answered that he “thought that was basically a misdemeanor.” (Tr. 22.). With respect to his 1999 federal felony conviction, Tuff testified: “As to the [1999 conviction] basically, I paid my dues for 1999 and did my best to try to put that situation behind me.” (Tr. 15.). Later, Tuff testified that when he filled out his application he thought he only had the 1999 conviction. (Tr. 17.) Tuff also testified that he didn’t disclose the 1999 conviction because he

“didn’t want to acknowledge that case. That was a part that I put behind me because I had already paid my dues on that case. In my own mind, I moved past that.” (Tr. 18.)

R.C. § 1322.07(A) forbids any license applicant from “[o]btain[ing] a \*\*\*\* license through any false or fraudulent representation of a material fact or any omission of a material fact required by state law, or [from] mak[ing] any substantial misrepresentation in any \*\*\* license application[.]” Tuff’s failure to disclose his convictions on his loan officer license application is a violation of R.C. § 1322.07(A.)

R.C. § 1322.07(B) prohibits a license applicant from “[m]aking false or misleading statements of a material fact, [or] omission of statements required by state law[.]” Tuff’s failure to disclose his convictions on his loan officer license application is a violation of R.C. § 1322.07(B.)

R.C. § 1322.07(C) prohibits a license applicant from “[e]ngag[ing] in conduct that constitutes improper, fraudulent, or dishonest dealings.” Non-disclosure of convictions on a loan officer license application constitutes improper dealings.

The evidence shows that Tuff failed to disclose his 1995 soliciting for prostitution conviction and his 1999 felony conviction for issuing United States Postal money orders without receiving payment for such orders on his loan officer license application. The Division concludes that such non-disclosure violates R.C. §§ 1322.07(A),(B) and (C), and reflects poorly on his character.

Because Tuff had been convicted of a crime involving theft and/or money, he had the burden of showing, by a preponderance of the evidence, that his activities and employment history since his convictions show 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 or offense involving money. (See R.C. §§ 1322.031(A)(2) and 1322.041(A)(3).) To this end Tuff presented a letter authored by himself, his own self-serving testimony, and the testimony of three individuals—none of whom knew about Tuff’s criminal record, and all who potentially stand to benefit financially if Tuff is granted a license. Dennis Bourne testified that he works for a mortgage lender and “has a limited number of clients that [he] can call on[.]” and Tuff is one of them. (Tr. 31.) Tuff, Bourne testified, has been Bourne’s client since Tuff got started in the mortgage business some four or five years ago, and Tuff currently generates about “a quarter of a million” dollars per month for Bourne’s company. (Tr. 31, 40.) Bourne said that although he had

heard Tuff had some past problems involving the U.S. Postal Service and money orders, he didn't know what it was about and didn't question Tuff or inquire into the severity of the problems. (Tr. 36-37.) Viki Cumberlander testified that Tuff used to work for her company, that she personally trained Tuff in the mortgage industry, and hopes that he will come back to work for her. She also testified, however, that she had no knowledge of Tuff's criminal history. (Tr. 52-53.) Elaine Farrington testified that Tuff has been "one of [her] very steady clients" for about four or five years, however, she was also unaware of Tuff's criminal activities. (Tr. 45, 46.)

After a thorough review of the evidence, the Division concludes that Tuff has not proven, by a preponderance of the evidence, that his activities and employment history since his convictions show 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 or offense involving money. The record further establishes, by a preponderance of the evidence, that Tuff does not have the character and general fitness to 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 the Ohio Mortgage Broker Act. Accordingly, the Division disapproves paragraph 21 and the recommendation found on page 6 of the Report and Recommendation.

In accordance with the findings and conclusions of this order, the Division hereby denies Tuff's loan officer license application.

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 1<sup>st</sup> 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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