

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

In the matter of:)	Case No. 04-0038-LOD
)	
MCKINLEY TATE)	<u>DIVISION ORDER</u>
3454 East 55 th Street)	Denial of loan officer license application
Cleveland, Ohio 44127)	&
)	Notice of Appellate Rights

Respondent, McKinley Tate, submitted a loan officer license application to the Division of Financial Institutions ("Division") on May 13, 2002. On January 22, 2004, the Division notified Tate that it intended to deny his loan officer license application because: (1) in 1995 he was convicted of petty theft; (2) he violated R.C. § 1322.07(A) by failing to disclose his petty 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 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 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.

Tate requested a hearing and an administrative hearing was held on October 7, 2004. A Report and Recommendation was filed with the Division on January 25, 2005, 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 hereto.)

The Division disapproves paragraphs 13, 14, and 15 under the subheading of Respondent's Failure to Disclose Conviction on Application on page 4 of the Report and Recommendation.

With respect to Tate’s petty theft charge, Tate, by his own admission, remembers getting a summons in the matter. (Transcript, p. 17.) Tate remembers that he went to court and had to pay “\$400” with respect to the petty theft charge. (Id.) The records of the Maple Heights Mayor’s Court reflect that Tate pleaded no contest to the petty theft charge and was found guilty by the Court. (Exhibit 3.) In addition to a fine and costs, the record also reflects that he received a three day suspended jail sentence. (Id.) Tate also admits that he “learned a big lesson” from the experience. (Transcript, p. 39.) Based on the facts before it, the Division cannot make the finding that Tate did not know he had a criminal conviction.

The Division disapproves paragraphs 4, 5, 6, 7, 8, and 9 on pages 7 and 8 of the Report and Recommendation.

The Division is commanded by statute to investigate the criminal backgrounds of all loan officer license applicants. (See R.C. § 1322.031(B).) Further, the application for a loan officer requires an applicant to provide a statement as to whether or not they have ever been convicted of any offense involving theft. (See R.C. § 1322.031(A)(2).) As such, any misrepresentation by an applicant on a loan officer license application concerning the existence of a theft conviction is substantial. Further, as the legislature has seen fit to inquire about crimes involving theft, theft convictions are material to the licensing process. Therefore, any theft conviction is a material fact for licensing purposes.

With that in mind, the Division finds that Tate violated R.C. §1322.07(A) which prohibits him from “mak[ing] any substantial misrepresentation in any *** license application.” In question 5 of the application, Tate was asked on his loan officer license application whether he “ever been convicted of *** any criminal offense including, but not limited to, **theft**[.]” (Exhibit 1.) Tate answered “No” thereby making a substantial misrepresentation on his loan officer license application. The hearing officer found that Tate did not violate this statute as Tate did not make a statement that he knew or thought was false. Violations of R.C. § 1322.07(A), or for that matter R.C. §§ 1322.07(B) and (C), do not require a mental state, or intent, for their violation.¹

By answering “No” to question 5 on the license application, Tate violated R.C. 1322.07(B), which prohibits an applicant from “[m]ak[ing] false or misleading statements of a material fact, [or] omissions of statements required by state law[.]” Answering “No” to question 5 is making a false statement of a material fact. Further, as the applicant is required by law to

¹ In R.C. 1322.07(E) and (F), both sections contain language of intent by using the “knowingly”, whereas R.C. 1322.07(A), (B), and (C) do not.

provide the Division with information regarding his criminal background, he made an omission of a statement required by law. (See R.C. §§ 1322.031(A)(2) and (4).) Contrary to the hearing officer's assertion, to have an "omission" does not mean that someone would necessarily have to do it with intent.² The Division also finds that the failure of Tate to disclose his theft conviction to the Division constitutes improper dealings in violation of R.C. 1322.07(C).

As the Division has established the basis and proven the violations of R.C. §§ 1322.07(A), (B), and (C), the Division has established a lack of compliance with the Ohio Mortgage Broker Act. Therefore, the record does not support the conclusion that Tate meets the condition for licensure required by R.C. § 1322.041(A)(2).

The Division disapproves paragraph 11 on page 8 of the Report and Recommendation.

The Division finds that Tate's self-serving testimony coupled with un-sworn letters from persons not made available for cross-examination is not enough for the Division to find that Tate, by a preponderance of the evidence, has shown that his activities and employment record since his conviction show that he is honest, truthful, and of good reputation, and there is no basis in fact for believing that he will commit a theft offense again. (See R.C. § 1322.041(A)(3).) Not only were the letters un-sworn, but also none of the letters indicate that any of those persons who wrote them were aware of Tate's theft conviction or the fact that he did not disclose that conviction on his loan officer license application. (Exhibits 5, E, and F.) Further, many of those letters were written by persons who have a professional relationship with Tate, and at least indirectly, have a monetary interest in seeing him obtain a loan officer license. As far as 10 years passing since theft conviction, the burden placed on Tate by statute makes no reference to the passage of time being a factor in meeting his burden. (See R.C. § 1322.041(A)(3).)

The Division disapproves paragraphs 25 and 26 on page 6 of the Report and Recommendation, paragraph 12 on page 8 of the Report and Recommendation, and the Recommendation of the Report and Recommendation.

As previously stated, the Division cannot find that Tate did not know that he had a criminal conviction. The record shows that not only did he receive a fine for his theft conviction, but also a three-day suspended jail sentence. Tate acknowledged that he had received a summons for the theft charge and further acknowledged that he did in fact go to court for the matter. Despite all of this, he did not disclose his theft conviction to the Division. As a result, the Division finds that Tate's non-disclosure of his theft conviction and the resulting violations

² "Omission" means "The neglect to perform what the law requires." *Black's Law Dictionary, Sixth Edition, 1990, p. 1086.* No language of intent is contained in the definition of "omission."

of R.C. §§ 1322.07(A), (B), and (C) show that his character and general fitness do not command the confidence of the public and warrant the belief that his business will be operation honestly and fairly in compliance with the Ohio Mortgage Broker Act. Tate also did not meet his burden as outlined in R.C. § 1322.041(A)(3).

For the reasons stated above, the Division hereby denies the Loan Officer License Application of McKinley Tate.

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 24th day of February 2006.

ROBERT M. GRIESER

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