

Ted Strickland
Governor

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

Kimberly A. Zurz
Director

In the matter of:)	Case No. M2007-716
)	
SCOTT R. DRAY)	<u>DIVISION ORDER</u>
13465 Mottlestone Drive)	Permanent Revocation of Loan Officer License
Pickerington, OH 43147)	&
)	Notice of Appellate Rights

On or around December 24, 2007, the Division of Financial Institutions issued notice to Scott R. Dray ("Respondent") that the Division intended to permanently revoke his loan officer license because: 1.) on or about January 4, 2007, in the Cuyahoga County, Ohio, Court of Common Pleas, an indictment was filed by the Grand Jurors of the State of Ohio against Respondent for two counts of Theft, two counts of Securing Writings by Deception, and one count of Receiving Stolen Property for offenses arising from a mortgage loan transaction involving an elderly married couple; 2.) on or about May 30, 2007, Respondent attested in a sworn statement that information provided about his criminal background on the loan officer license renewal application submitted to the Division was complete and truthful, when it was not; 3.) on or about May 31, 2007, Respondent provided incomplete or untruthful information about his criminal background to the Division in an attempt to renew his loan officer license; 4.) on or about July 23, 2007, in the Cuyahoga County, Ohio, Court of Common Pleas, Respondent pleaded guilty to and was convicted of Falsification, a first degree misdemeanor in violation of R.C. 2921.13(A)(8); 5.) Respondent's failure to truthfully disclose his criminal history violated R.C. 1322.07(A), (B), and (C); 6.) as Respondent has violated R.C. 1322.07(A), (B), and (C), Respondent's loan officer license should be revoked pursuant to R.C. 1322.10(A)(1)(a); and 7.) as a result of Respondent's conviction for Falsification, a criminal offense involving fraud, Respondent's loan officer license should be revoked pursuant to R.C. 1322.10(A)(1)(b) and said revocation shall be permanent pursuant to R.C. 1322.10(E).

Respondent requested an administrative hearing, which was originally scheduled for January 31, 2008 and was continued by the Division, on its own motion, to March 10, 2008. Respondent requested a continuance, which was granted, and the hearing was held on March 27,

2008. Respondent appeared with counsel. A Report and Recommendation (“Report”) was filed with the Division on May 27, 2008, recommending that the Division suspend and fine Respondent. (A copy of the Report is attached hereto). No objections were filed.

In accordance with R.C. 119.09, the Division has considered the record, consisting of the Report, 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 Division modifies the first paragraph on page one of the Report to reflect that the Division issued a Notice of Intent to Permanently Revoke Loan Officer License and Notice of Opportunity for a Hearing. (Ex. A).

The Division disapproves paragraphs 34 and 36 on page 8 of the Report.

R.C. 1322.10(A)(1)(b) permits the Division to revoke a license if the superintendent finds that a licensee has been convicted of or pleaded guilty to “any criminal offense involving... fraud.” (Emphasis added.) As noted in the Report, Respondent pleaded guilty to Falsification, a violation of R.C. 2921.13 (A)(8), which states, in pertinent part:

(A) No person shall knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, when any of the following applies:

(8) The statement is in writing and is made with purpose to induce another to extend credit to or employ the offender... when the person to whom the statement is directed relies upon it to that person’s detriment.

It is correct that no language in R.C. Chapters 1322 or 2921 equates the term “falsification” with “fraud.” However, the key term in R.C. 1322.10(A)(1)(b) is “involving fraud.” “Defraud,” as defined by R.C. 2913.01(B) “means to knowingly obtain, by deception, some benefit for oneself or another, or to knowingly cause, by deception, some detriment to another.” By pleading guilty to falsification, Respondent admitted that he had knowingly made a false statement, or knowingly affirmed the truth of a false statement previously made, with the purpose to induce another to extend credit or employ the offender to the detriment of another. Considering that the elements of Respondent’s falsification conviction involve the same elements of the term “defraud,” the Division concludes that Respondent has pleaded guilty to a criminal offense involving fraud.

The Division modifies paragraph 37 on pages 8 and 9 of the Report.

The November 13, 2006 letter from the Division to Mr. Stavole makes no finding of a “significant” benefit to Mr. and Mrs. Stavole. (Ex. B). Rather the letter states that “[i]t appears that there was a benefit to you in this transaction.”

The Division disapproves the second sentence of paragraph 52 on page 11 of the Report. As discussed above, falsification is a criminal offense involving fraud.

The Division disapproves the Recommendation on page 13 of the Report.

Because Respondent has pleaded guilty to falsification, a criminal offense involving fraud, and violated R.C. 1322.07(A), (B), and (C), Respondent’s loan officer license should be revoked pursuant to R.C. 1322.10(A)(1)(a) and (b). Further, because Respondent’s conviction is for a criminal offense involving fraud, the revocation shall be permanent per R.C. 1322.10(E).

It is so ordered.

NOTICE OF RIGHT TO APPEAL

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, 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 4th day of August, 2008.

LEIGH A. WILLIS
Superintendent of Financial Institutions
Division of Financial Institutions
Ohio Department of Commerce