

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

In the matter of:	)	Case No. 04-0373-LOD
	)	
<b>ZACHARY L. DZIAK</b>	)	<b><u>DIVISION ORDER</u></b>
424 Berry Ridge Drive	)	
Amherst, Ohio 44001	)	<b>Denial of Loan Officer License Application</b>
	)	

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**DIVISION ORDER**

On December 17, 2003, Zachary L. Dziak ("Respondent") submitted a loan officer license application to the Division of Financial Institutions ("Division"). On May 14, 2004, the Division issued Respondent a notice of the Division's intent to deny Respondent's application, and notified Respondent of his right to a hearing on the matter. Respondent requested a hearing, and pursuant thereto, an administrative hearing was held in accordance with Ohio Revised Code Chapter 119. on July 16, 2004.

The hearing officer filed his written report and recommendation with the Division on August 24, 2004, recommending that the Division deem the Respondent's application to have been withdrawn, and in the alternative the Division to deny Respondent's application. A copy of the report and recommendation and a letter explaining Respondent's right to submit written objections to the report was served on Respondent. Respondent filed objections. Respondent's objections were considered. However the letters attached to the objection were not considered, as they were an attempt to introduce evidence after the record had closed. (See Transcript p. 51.)

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 Division disapproves paragraph 2 under Discussion, on page 5 of the Report and Recommendation.

Pursuant to R.C. 119.09, it is the hearing officer's responsibility to submit to the agency "a written report of his findings of fact and conclusions of law and a recommendation of the action to be taken by the agency." As indicated by the hearing officer, there is no direct statutory or administrative authority that addresses withdrawal of an application. The hearing officer is correct that the Division of Securities promulgated a rule to amplify R.C. 1707.151. The hearing officer is correct that the Division has no regulations with regard to the

withdrawal of applications.<sup>1</sup> These are the facts adduced by the hearing officer. The hearing officer makes no conclusion of law regarding the Respondent's request to withdraw his application. Instead, the hearing officer attempts to establish Division policy concerning requests for application withdrawals. The hearing officer has no authority to do so, and his recommendation that "the Division should consider the application to have been withdrawn and that, therefore, the Division need not act on the Application" is expressly denied.

The mere fact that the Division has no administrative rule addressing application withdrawals does not mean the Division lacks the authority to deny application withdrawals. The Division is broadly empowered to investigate and adjudicate charges of violations of the Ohio Mortgage Broker Act, impose disciplinary sanctions, refuse to renew licenses, and revoke licenses. *See R.C. 1322.10*. The regulation of registrants and licensees under the Ohio Mortgage Broker Act is for the purpose of protecting the public. The licensing of professionals is recognized as falling within a state's broad police powers for the protection of the general welfare.

The statutory authority to issue or deny a license necessarily implies the discretionary authority to deny leave to withdraw a license application. After all, a licensee may not evade disciplinary action merely by resigning or allowing a license to expire. Otherwise, the licensee could apply for admission in another jurisdiction, or subsequently reapply in the same jurisdiction, and maintain that he or she has never been disciplined for professional misconduct. This would defeat the underlying purposes of the regulatory scheme to protect the public and maintain the integrity of the profession.

The state's interest is no less urgent in the case of an applicant for a license. The Division's authority to investigate an applicant's background is every bit as broad as its authority to investigate a licensee. *See R.C. 1322.031(B)*. When that investigation discloses grounds for denial on the basis of false or fraudulent representations, or questions whether the applicant's character and general fitness command the confidence of the public and questions whether the applicant could operate her or her business honestly and fairly in compliance with the Ohio Mortgage Broker Act, the safety of the public and the integrity of the profession may, in the Division's discretion, be better served by issuing a formal ruling, so that a decision of record would be available in this or any other jurisdiction where the applicant might subsequently apply. Allowing an applicant to avoid scrutiny of her or her background, training, experience, character, honesty, truthfulness, and/or morals by simply withdrawing the application at his or her convenience would ill serve the public safety in this state and the other state licensing jurisdictions.

Respondent submitted himself to the Division's jurisdiction when he filed an application for a loan officer license. On May 14, 2004, the Division instituted

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<sup>1</sup> The lack of a rule does not indicate that an agency lacks authority to take an action. Rules expound the powers already granted by statute, and do not create powers in addition to those found in a statute.

formal proceedings to deny Respondent's application. The Division will not entertain Respondent's request to withdraw his application.

- The Division disapproves the last sentence of paragraph 9 on page 7 of the Report and Recommendation.

Paragraph 9 on pages 6 and 7 reads:

“In order to sustain its burden to prove violations of Section 1322.07(A), (B), and (C), the Division must show that there has been a false or fraudulent misrepresentation or omission or conduct that constitutes improper, fraudulent or dishonest dealings. The Hearing Officer concludes that there is no creditable evidence in the record to suggest that the Respondent knowingly or intentionally misrepresented his answer to Question 5. The Hearing Officer is convinced that the Respondent did not understand Question 5. **The Division has not met its burden with regard to violations of Section 1322.07(A), (B), and (C).**” (Emphasis added.)

The Division has met its burden with regard to violations of Sections 1322.07(A), (B), and (C). The application of Respondent indicates that he answered “no” to Question 5. (See Exhibit 1.) Respondent was convicted of a crime. (See Exhibits 3A and 3B, Transcript pp. 25-26.)

Question 5 inquires about an applicant's criminal history. An applicant's criminal history is a material fact, as R.C. 1322.041 indicates that an individual who has pled guilty to or been convicted of certain crimes shall not receive a loan officer license unless they can prove to the superintendent, by a preponderance of the evidence, that the applicant's activities and employment record since the conviction show that the applicant is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant will commit such an offense again. In addition, an applicant's criminal history is important as it may reflect upon his or her character and general fitness, as indicated in R.C. 1322.041(A)(5), and whether the Applicant commands the confidence of the public and warrants the belief that the business will be operated honestly and fairly in compliance with the purposes of sections 1322.01 to 1322.12 of the Revised Code.

Respondent's answer to Question 5 was false. Therefore, Respondent attempted to obtain a loan officer license through a false statement of a material fact, in violation of R.C. 1322.07(A). In addition, Respondent made a false statement of a material fact on his application, in violation of R.C. 1322.07(B). Further, Appellant's conduct in answering question 5 on his application was improper, in violation of R.C. 1322.07(C). R.C. 1322.07(A), (B), and (C), do not set forth a culpability standard.<sup>2</sup> These are strict liability violations. Therefore, it is immaterial why Respondent answered question 5 falsely.

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<sup>2</sup> Unlike R.C. 1322.07(E) and (F), which requires an individual to act “knowingly.”

- The Division disapproves the first sentence of the RECOMMENDATION on page 7 of the Report and Recommendation. As mentioned above, the Division does not accept Respondent's attempt to withdraw his application.

Upon consideration of the hearing officer's report and recommendation, the Division modifies the Recommendation as indicated above. Accordingly, Respondent's application for a loan officer license is hereby denied.

### **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, 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 1st day of November, 2004.

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