

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

In the matter of:)	Case No. 04-0231-LOD
)	
LINDA D. SPEAR)	<u>DIVISION ORDER</u>
3612 Eaton Lane)	Denial of Loan Officer License Application
Cincinnati, Ohio 45229)	&
)	Notice of Appellate Rights

Respondent, Linda D. Spear, submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on March 26, 2002. On January 23, 2004, the Division notified Spear that it intended to deny her Application because: (1) in 1985 and 1989 she was convicted of passing bad checks and she had not proven that she is honest, truthful and of good reputation and that there is no basis in fact for believing that she will not commit another criminal offense involving passing bad checks or any criminal offense involving money or securities; (2) she violated R.C. 1322.07(A) by failing to disclose her conviction on her Application; (3) she 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 her Application; (4) she violated R.C. 1322.07(C), which prohibits an applicant from engaging in improper or dishonest conduct; and (5) because her 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.

Spear requested an administrative hearing which was held on June 10, 2004. A Report and Recommendation was filed with the Division on January 18, 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).

The Division disapproves paragraph 28 on page 7 of the Report and Recommendation.

R.C. 1322.07 (A), (B), and (C) do not require that an applicant violate them knowingly.¹ At the time that Respondent submitted her Application she had two convictions for passing bad checks and was required to disclose them in response to Question 5. (See State's Exhibits 3, 5A and 5B).

The Division disapproves paragraph 29 on page 7 of the Report and Recommendation.

Passing bad checks is an enumerated offense for which applicants have an affirmative duty to report convictions. (See R.C. 1322.031(A)(2)). Respondent's convictions occurred when she was 25 and 29 years old. (See State's Exhibits 5A and 5B). She testified that she had to turn herself in to the police, was fingerprinted, photographed and appeared in court. (See Transcript pp. 22-24). Respondent testified that she was "...under the assumption I was guilty of some criminal offense..." in reference to her two passing bad checks convictions. (See Transcript pg. 20). Respondent offers no substantive proof to support the claim that she did not realize she had convictions for passing bad checks.

The Division disapproves paragraph 31 on page 8 of the Report and Recommendation.

Respondent answered "no" to Question 5 on the Application she submitted to the Division, when in fact she had a criminal conviction. (See State's Exhibit 3). The inability to understand a direct question evidences a lack of the requisite fitness needed of a loan officer. On a daily basis loan originators deal with consumers' personal financial information and counsel them on what is most often their largest financial investment. Being able to comprehend and

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.

evaluate complicated mortgage documents is a vital part of the job. By not being able to understand a direct question on a licensing application, Respondent has demonstrated to the Division that she does not hold the requisite fitness needed to be a loan officer. Further, as far as any violation being due to a mistake, violations of R.C. 1322.07 (A), (B), and (C) do not require intent. Additionally, Respondent offered no proof besides her own self-serving testimony that her manager had told her only felonies were relevant in answering Question 5.

The Division disapproves paragraph 40 on page 10 of the Report and Recommendation.

As stated above, intent is not an element of violating R.C. 1322.07 (A), (B), and (C). The Division has a responsibility to the public to be diligent in its oversight, and this responsibility demands that not answering a direct question about one's criminal background accurately be taken seriously.

The Division disapproves paragraph 41 on page 10 of the Report and Recommendation.

As the hearing officer states, "properly filling out paperwork is a regular duty" of a loan officer. Loan officers have to be able to understand the legal structure in which they operate and comply with such laws. The demonstrated inability of Respondent to understand a direct question on the Application is directly related to the Division's determination of her general fitness.

The Division disapproves paragraph 42 and 44 on pages 10-11 of the Report and Recommendation.

Respondent answered "no" to Question 5 of the Application. (See State's Exhibit 3). Respondent was twice convicted passing bad checks, one of the enumerated offenses contained in R.C. 1322.031(A)(2). (See State's Exhibit 5A, 5B Transcript pp. 19-21). Respondent's statement that she had not been convicted of any offense is a false or misleading statement. Sections 1322.07 (A), (B), and (C) do not require that an applicant violate them knowingly. The

Division finds that Respondent's failure to disclose her passing bad checks convictions are a substantial misrepresentation, thus a violation of R.C. 1322.07(A).

Respondent answered "no" to Question 5 of the Application. (See State's Exhibit 3). Respondent was twice convicted passing bad checks, one of the enumerated offenses contained in R.C. 1322.031(A)(2). (See State's Exhibits 5A, 5B and Transcript pp. 19-21). The Division finds that Respondent's statement that she had not been convicted of any offenses is a false or misleading statement of a material fact, thus a violation of 1322.07(B). Additionally, Spear has two convictions for passing bad checks and did not disclose this on her 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 passing bad checks...". Therefore, the Division finds that Respondent omitted a statement required by law, violating R.C. 1322.07(B).

Respondent answered "no" to Question 5 of the Application. (See State's Exhibit 3). Respondent was convicted of a crime involving passing bad checks, an enumerated offense in R.C. 1322.031(A)(2). (See State's Exhibits 5A, 5B and Transcript pp. 19-21). The Division finds that Respondent's failure to disclose her passing bad checks convictions on her loan officer license application is conduct that constitutes "improper, fraudulent, or dishonest dealings" for the purposes of R.C. 1322.07(C).

The Division, as discussed 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, Respondent did not meet the condition for licensure outlined in R.C. 1322.041(A)(2).

The Division disapproves paragraph 45 on page 11 of the Report and Recommendation.

As previously stated, Respondent violated R.C. 1322.07(A), (B), and (C) by not disclosing her passing bad checks convictions on her Application. Hence, Respondent did not

comply with R.C. 1322.01 through 1322.12 of the Revised Code—the Ohio Mortgage Broker Act. 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 paragraph 46 on page 11 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 Linda D. Spear.

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 of this Order.

Signed and sealed this 25th day of January 2006.

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