

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

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| In the matter of: |) | Case No. 04-0061-LOD |
| |) | |
| EARL E. DOLINAR |) | <u>DIVISION ORDER</u> |
| 2118 Cottingham Drive |) | Denial of loan officer license application |
| Lyndhurst, Ohio 44124 |) | & |
| |) | Notice of Appellate Rights |

Respondent, Earl E. Dolinar, submitted a loan officer license application to the Division of Financial Institutions ("Division") on September 3, 2002. On January 22, 2004, the Division notified Dolinar that it intended to deny his loan officer license application because: (1) in 1991 he pleaded guilty to and 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.

Dolinar requested a hearing and an administrative hearing was held on April 2, 2004. A Report and Recommendation was filed with the Division on May 20, 2004, 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 as Exhibit A).

The Division disapproves the second and fourth sentences of paragraph 4 on pages 6 and 7 of the Report and Recommendation.

The hearing officer concluded that Dolinar did not make a substantial misrepresentation when he answered question 5. However, the application of Respondent indicates that he answered “no” to Question 5 of the Loan Officer License Application. (See Exhibit 1). Respondent was convicted of a crime involving theft, one of the enumerated offenses in the question. (See Exhibit 5, Transcript pp. 37-41). Respondent’s statement that he had not been convicted of any offenses is a false or misleading statement. The Division finds that Respondent’s failure to disclose his theft conviction is a substantial misrepresentation, thus a violation of R.C. § 1322.07(A).

The Division disapproves the second and fourth sentences of paragraph 5 on page 7 of the Report and Recommendation.

The application of Respondent indicates that he answered “no” to Question 5 of the Loan Officer License Application. (See Exhibit 1). Respondent was convicted of a crime involving theft. (See Exhibit 5, Transcript pp. 37-41). The Division finds that Respondent’s statement that he had not been convicted of any offenses is a false or misleading statement.

In its Notice of Intent to Deny a Loan Officer License, the Division never alleged that Respondent “...make any statement that he **thought or knew was false....**” to the Division. Sections 1322.07 (A), (B), and (C) do not require that an applicant violate them knowingly.¹ Additionally, while it is the prerogative of the hearing officer to judge a witness’ credibility the Division notes that Respondent at one point testified that his arrest was “...the most dehumanizing thing.” (Transcript pp. 52). An arrest and conviction that was so embarrassing is not something that is likely to leave anyone’s memory.

The Division disapproves the last three sentences of paragraph 6 on page 7 of the Report and Recommendation.

The application of Respondent indicates that he answered “no” to Question 5 of the Loan Officer License Application. (See Exhibit 1). Respondent was convicted of a crime involving theft. (See Exhibit 5, Transcript pp. 37-41). To “omit” means “fail to include; leave out...” *Webster’s New World Dictionary, Third College Edition, 1988 p. 945*. The definition of “omit” does not include any mental state or cognitive awareness. Dolinar has a conviction of petty theft and did not disclose this on his 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

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

theft...”. Therefore, the Division finds that Respondent omitted a statement required by law, violating R.C. § 1322.07(B).

In its Notice of Intent to Deny a Loan Officer License, the Division never alleged that Respondent “....omit[ed] any information that he thought or knew he should disclose from his Application.” to the Division. Sections 1322.07 (A), (B), and (C) do not require that an applicant violate them knowingly. As stated above, intent is not an element of violating 1322.07 (A), (B), and (C).²

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

The application of Respondent indicates that he answered “no” to Question 5 of the Loan Officer License Application. (See Exhibit 1.) Respondent was convicted of a crime involving theft. (See Exhibit 5, Transcript pp. 37-41.) The Division finds that Respondent’s failure to disclose his theft conviction on his loan officer license application is conduct that constitutes “improper, fraudulent, or dishonest dealings” for the purposes of R.C. 1322.07(C).

The Division disapproves paragraphs 8 and 9 on page 7 of the Report and Recommendation.

This Division, as pointed out in the previous paragraphs of this order, did prove 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, the record indicates that Respondent did not meet the condition for licensure outlined in R.C. 1322.041(A)(2).

The Division disapproves paragraph 12 on page 8 of the Report and Recommendation.

The Division, as pointed out in the previous paragraphs of this order, did prove that Respondent violated R.C. 1322.07(A), (B), and (C) by not disclosing his theft conviction on his loan officer license application. Hence, Respondent did not comply with R.C. §§ 1322.01 through 1322.12 of the Revised Code—the Ohio Mortgage Broker Act. The Division is troubled by the fact that even thirteen years after Respondent’s theft conviction, he had an outstanding balance of \$505.80 in fines and court costs. (See Respondent’s Exhibit O). 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 business will be operated honestly and fairly in compliance with the Ohio Mortgage Broker Act.

² In R.C. §§ 1322.07 (E) and (F), both sections contain language of intent by using the term “knowingly.” R.C. §§ 1322.07 (A), (B), and (C) do not.

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

Upon the Division's review of the evidence, the Division finds that it has met its burden of proof and as a result, Respondent's character and general fitness do not command the confidence of the public and warrant the belief that business will be operated honestly and fairly in compliance with the Ohio Mortgage Broker Act.

For the reasons stated above, the Division hereby denies the Loan Officer License Application of Earl E. Dolinar.

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 22nd day of November 2005.

ROBERT M. GRIESER

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

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