

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

In the matter of:)	Case No. 04-0225-LOD
)	
JOSEPH J. WAITS)	<u>DIVISION ORDER</u>
3700 Oaklawn Drive)	Denial of Loan Officer License Application
Middletown, Ohio 45044)	&
)	Notice of Appellate Rights

Respondent, Joseph J. Waits, submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on March 18, 2002. On January 23, 2004, the Division notified Waits that it intended to deny his Application because: (1) in 1999 he was convicted of aggravated assault; (2) he violated R.C. 1322.07(A) by failing to disclose his conviction on his 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 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.

Waits requested an administrative hearing which was held on May 18, 2004. A Report and Recommendation was filed with the Division on September 7, 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).

The Division disapproves paragraph 11 on page 3 of the Report and Recommendation.

Question 5 on the Application does not limit the answer to the enumerated offenses, but includes the language “any crime including, but not limited to,...” (See State’s Exhibit 2). This means that Respondent was required to disclose his conviction for aggravated assault.

Additionally, Respondent testified that his manager told him “Joe, be honest. Tell them what happened.” when he inquired about how to answer Question 5. (See Transcript pg. 215).

However, instead of being honest, Respondent answered “no” to Question 5. (See State’s Exhibit 2).

The Division disapproves paragraph 12 on page 4 of the Report and Recommendation.

Respondent answered “no” to Question 5 on his Application which he submitted to the Division, when in fact he had a criminal conviction. (See State’s Exhibit 2). 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 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 he 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.¹

The Division disapproves paragraph 4 on page 7 of the Report and Recommendation.

The hearing officer concluded that Waits did not make a substantial misrepresentation when he answered Question 5. However, Respondent answered “no” to Question 5 of the Application. (See State’s Exhibit 2). Respondent was convicted of aggravated assault, a fourth

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.

degree felony. (See State’s Exhibit 5C, Transcript pp. 25, 213). Respondent’s statement that he had not been convicted of any offenses is a false or misleading statement. Sections 1322.07 (A), (B), and (C) do not require that an applicant violate them knowingly.² The Division finds that Respondent’s failure to disclose his conviction is a substantial misrepresentation, thus a violation of R.C. 1322.07(A).

The Division disapproves paragraph 5 on page 8 of the Report and Recommendation.

Respondent answered “no” to Question 5 of the Application. (See State’s Exhibit 2). Respondent was convicted of aggravated assault, a fourth degree felony. (See State’s Exhibit 5C, Transcript pp. 25, 213). As noted above, sections 1322.07 (A), (B), and (C) do not require that an applicant violate them knowingly.³ The Division finds that Respondent’s statement that he had not been convicted of any offenses is a false or misleading statement of a material fact.

The Division disapproves paragraph 6 on page 8 of the Report and Recommendation.

Respondent answered “no” to Question 5 of the Application. (See State’s Exhibit 2). Respondent was convicted of aggravated assault, a fourth degree felony. (See State’s Exhibit 5C, Transcript pp. 25, 213). 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. R.C. 1322.031(A)(4) permits the Superintendent, in the loan officer license application, to request of the applicant “any further information that the superintendent requires.” Pursuant to R.C. 1322.031(A)(4), the application requests information regarding “any criminal offenses” in addition to those enumerated in R.C. 1322.031(A)(2). (See State’s Exhibit 2). Respondent was convicted for aggravated assault, but answered “no” to Question 5. (See State’s Exhibits 2, 5C). Therefore, the Division finds that Respondent omitted a statement required by law, violating R.C. 1322.07(B).

² 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.

³ Ibid.

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

Respondent answered “no” to Question 5 of the Application. (See State’s Exhibit 2). Respondent was convicted of aggravated assault, a felony of the fourth degree. (See State’s Exhibit 5C, Transcript pp. 25, 213). The Division finds that Respondent’s failure to disclose his conviction on his 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 8 of the Report and Recommendation.

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

The Division disapproves paragraph 10 on page 8 of the Report and Recommendation.

The Division, as pointed out in the previous paragraphs of this Order, finds that Respondent violated R.C. 1322.07(A), (B), and (C) by not disclosing his conviction on his Application. Hence, Respondent did not comply with R.C. 1322.01 through 1322.12 of the Revised Code—the Ohio Mortgage Broker Act. 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). 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. Therefore, 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 the recommendation on page 9 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 Joseph J. Waits.

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 20th day of January 2006.

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