

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

In the matter of:)	Case No. 05-0127-LOD
)	
DENNIS E. SMITH)	<u>DIVISION ORDER</u>
3221 Brice Road)	Denial of Loan Officer License Application
Canal Winchester, Ohio 43110)	&
)	Notice of Appellate Rights
)	

Respondent, Dennis E. Smith ("Respondent"), submitted a loan officer license application to the Division of Financial Institutions ("Division") on November 17, 2004. On July 20, 2005, the Division notified Respondent that it intended to deny his loan officer license application ("Application") because: (1) Respondent violated R.C. 1322.07(A) by substantially misrepresenting his prior criminal record in response to a question on the Application; (2) Respondent violated R.C. 1322.07(B) by making a false statement of a material fact and by omitting a statement required on the licensing application; (3) Respondent violated R.C. 1322.07(C), by engaging in improper or dishonest conduct; and (4) because 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 purposes of R.C. 1322.01 to 1322.12 – the Ohio Mortgage Broker Act.

Respondent requested an administrative hearing, which was held on September 29, 2005. A Report and Recommendation ("Report") was filed with the Division on March 15, 2006, recommending that the Division approve Respondent's Application. 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 Report is attached hereto.)

The Division rejects paragraphs 6 through 11, on pages 5 and 6 of the Report.

These paragraphs all involve the same legal issue and will be addressed together: namely, the relevance or importance of an applicant's knowledge or intent to deceive in determining whether an applicant for a loan officer license has violated R.C. 1322.07(A), (B) or (C).

The Application form asked the Respondent to disclose whether he had "ever been convicted of **any criminal offense**? Exclude minor misdemeanor traffic and parking offenses." (Emphasis in original.) (*See*, State's Exhibit 1.) Respondent's disclosure of his prior criminal convictions would have been responsive to this question. Instead, Respondent answered "no." The Report concludes that Respondent's misrepresentation was not a violation of either R.C. 1322.07(A), (B) or (C), because it was not done with any intent to deceive. (*See, also*, Report at para. 6, pg. 2.) However, R.C. 1322.07(A), (B) and (C) do not require that an applicant commit a violation of that section knowingly. R.C. 1322.07(E) and (F) contain language of intent by using the term "knowingly." R.C. 1322.07(A), (B) and (C) do not. Therefore, despite the fact that Respondent believed that he could deny having been convicted, his response was still untruthful.

Accordingly, the Division finds that Respondent violated R.C. 1322.07(A) by failing to disclose a prior criminal conviction in response to a question on his application; and violated R.C. 1322.07(B) by making a false statement of a material fact and by omitting a statement required on the licensing application; and violated R.C. 1322.07(C), by engaging in improper or dishonest conduct during the course of submitting his Application for a loan officer license. Further, 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 purposes of the Ohio Mortgage Broker Act. *See*, R.C.

1322.041(A)(5).

Upon consideration of the Report, the Division rejects the Recommendation.

Accordingly, Respondent's Application is hereby denied.

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 22nd day of December 2006.

ROBERT M. GRIESER

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