

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

In the matter of:)	Case No. 03-LO-D-96-97
)	
EUGENE FREEMAN)	<u>DIVISION ORDER</u>
25908 Buckthorn Road)	Denial of Loan Officer License Application
Bedford Heights, Ohio 44146)	&
<hr style="width: 40%; margin-left: 0;"/>)	Notice of Appellate Rights

Respondent, Eugene Freeman (“Respondent”), submitted a loan officer license application to the Division of Financial Institutions (“Division”) on April 22, 2002. On September 26, 2003, the Division notified Freeman that it intended to deny his loan officer license application because: (1) he was convicted of assault and no handgun license in 1976; (2) he was convicted of passing bad checks in 1980; (3) he was convicted of passing bad checks in 1981; (4) he violated R.C. 1322.07(A) and (B) by failing to disclose his criminal conviction to the Division; (5) he had not proven to the Division that he is honest, truthful, and of good reputation and that there is no basis in fact for believing that he will not commit another offense involving passing bad checks; and (6) his 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.

Freeman requested a hearing and an administrative hearing was held on February 12, 2004. A Report and Recommendation was filed with the Division on March 25, 2004, recommending that the Division deny Freeman’s application and not grant him a loan officer license. (A copy of the Report and Recommendation is attached). Objections were filed, which have been considered. The affidavit attached to the objections is an attempt to introduce new evidence and will not be considered.

In accordance with R.C. 119.09, the Division has considered the record, consisting of the Report and Recommendation, the objections filed thereto, the transcript of testimony and exhibits, as well as all applicable laws. As a result, the Division makes the following findings and conclusions.

The Division modifies the Case Number listed at the top of the Report and Recommendation to accurately reflect that this is Case Number 03-LO-D-96-97.

The Division modifies paragraph 6 on page 4 of the Report and Recommendation to reflect that Freeman was convicted of passing bad checks in the Cleveland Heights Municipal Court in 1981. (Exhibit 6).

The Division disapproves and modifies paragraph 4 on page 5 of the Report and Recommendation, which reads:

Because the Respondent has been convicted of the misdemeanor offense of passing bad checks (twice), the burden of proof shifted to the Respondent to show by and preponderance of the evidence that there is no basis in fact for believing that he will commit another criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering or drug trafficking or any criminal offense, involving money or securities. The failure to disclose the criminal convictions as well as the criminal conviction for assault also caused the burden of proof to shift to the Respondent to show by a preponderance of the evidence that his character and fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purpose of the Ohio Mortgage Broker Act.

The hearing officer correctly shifts the burden of proof to Freeman as a result of his passing bad checks convictions, but the standard used is incomplete. It is not just that Freeman must show that he is not likely to commit that offense again, but that also that his activities and employment record since his passing bad checks convictions shows that he is honest, truthful, and of good reputation. (See R.C. 1322.041(A)(3)). Further, it was the Division's burden to show that Freeman's character and general fitness do not command the confidence of the public and warrant the belief that his business will be operated honestly and fairly in compliance with the Ohio Mortgage Broker Act. Failure to disclose criminal convictions does not shift the burden of proof, but rather reflects on an applicant's character and general fitness. Paragraph 4 on page 5 of the Report and Recommendation is modified to reflect the accurate legal burdens. Likewise, the first two sentences of paragraph 8 on page 8 of the Report and Recommendation are modified to reflect the accurate legal burdens.

The Division modifies the second sentence of paragraph 4 on page 7 of the Report and Recommendation to reflect that Freeman was 27 years old at the time of his 1976 convictions, 31 years old at the time of his first passing bad checks conviction, and 32 years old at the time of the second passing bad checks conviction. (Exhibits 2, 4, 5, 6).

The Division modifies paragraph 9 on page 8 of the Report and Recommendation to reflect that R.C. 1322.07(A) and (B) did not become effective until ten days after Respondent submitted his Application. Respondent submitted his application on April 22, 2002 and the relevant sections of 2001 Am. Sub. SB 76 went into effect on May 2, 2002. Nevertheless, Respondent's failure to disclose his criminal convictions on the Application constitutes a false or fraudulent representation of a material fact and the making of a false or misleading statement to the Division. (Exhibit 2). Respondent's actions, accordingly, support a finding, pursuant to R.C. 1322.041(A)(5), that his 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. The fact that R.C. 1322.041(A)(5) went into effect after the submission of the Application is immaterial in that the Division may consider an applicant's past when considering that person's character and general fitness. Respondent submitted an application to the Division that contained false and misleading representations concerning his criminal history, which reflects poorly on Respondent's character and general fitness.

In accordance with the foregoing, the Division otherwise adopts the Report and Recommendation. The loan officer license application of Eugene Freeman 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 must, pursuant to R.C. 119.12, 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 28th day of March 2006

ROBERT M. GRIESER

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