

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

In the matter of:)	Case No. 04-0019-LOD
)	
PAUL A. KNOFF, JR.)	<u>DIVISION ORDER</u>
1723 Griffin Gate Road)	Denial of Loan Officer License Application
Louisville, Kentucky 40205)	&
<hr style="width: 40%; margin-left: 0;"/>)	Notice of Appellate Rights

Respondent, Paul A. Knopf, Jr., submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on September 29, 2003. On January 22, 2004, the Division notified Respondent that it intended to deny his Application because: (1) he violated R.C. 1322.07(A) by failing to disclose his conviction on his Application; (2) he violated R.C. 1322.07(B) by making a false statement of a material fact or by omitting a statement required on the licensing application; (3) he violated R.C. 1322.07(C), which prohibits an applicant from engaging in improper or dishonest conduct; and (4) 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.

Respondent requested an administrative hearing which was held on July 20, 2004. A Report and Recommendation (“Report”) was filed with the Division on October 22, 2004, 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, Respondent’s objections, 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 the first sentence of paragraph 11 on page 3 of the Report and Recommendation.

The hearing officer faulted the Division for not forwarding a copy of Respondent’s application to him before the hearing so that he could “adequately prepare his response to the allegations...” The Division finds that this is a moot issue, as the Respondent failed to appear at the hearing and cannot claim that any action by the Division prejudiced his defense of the case.

The Division disapproves paragraph 13 on page 4 of the Report and Recommendation.

The hearing officer concluded that Question 5 of the Loan Officer Application “can be confusing and might well lead someone to think that minor misdemeanors such as the conviction involved do not need to be disclosed on the Application.” Respondent’s conviction was for a disorderly conduct offense committed in the Commonwealth of Kentucky, not the State of Ohio, and is a Class B misdemeanor. *See*, K.R.S. 525.060(2). To the extent that the term “minor misdemeanors” in Question 5 refers to a specific classification of offenses set forth in R.C. 2901.01(G), and not a general characterization of the relative seriousness of any particular offense, it is not applicable to a foreign conviction for an offense committed out of state.

The Division disapproves paragraph 4 on page 5 of the Report and Recommendation.

The hearing officer concluded that Respondent did not make a substantial misrepresentation for purposes of obtaining a license, within the meaning of R.C. 1322.07(A), due to the Respondent’s misreading of Question 5. The Division finds that Respondent’s answer to Question 5 was in fact a substantial misrepresentation under R.C. 1322.07(A). Question 5 asked whether Respondent had “ever been convicted of **any criminal offense**.” (Emphasis in original.) (*See*, Exhibit A.) Respondent had been convicted of disorderly conduct in 2000 in the Commonwealth of Kentucky, which fact, if disclosed, would have been directly responsive to the question. Accordingly, the Division finds that Respondent’s negative response to Question 5 was a substantial misrepresentation under R.C. 1322.07(A).

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

The hearing officer concluded that Respondent’s denial of any prior convictions did not qualify as either a false or misleading statement of material fact, within the meaning of R.C. 1322.07(B). The hearing officer bases this conclusion on the absence of evidence introduced by the Division that Respondent either “thought or knew” he was required to disclose the conviction in response to Question 5.

The Division finds that R.C. 1322.07(B) does not require that an applicant commit a violation of that section knowingly.¹ There is no requirement that the Division introduce evidence of knowledge or intent to deceive by the Respondent in order to establish a material misrepresentation on a Loan Officer Application form. Respondent’s prior conviction for

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.

disorderly conduct was a material fact, because it was directly responsive to the question of whether Respondent had “ever been convicted of **any criminal offense**.” (Emphasis in original.) (See, Exhibit A.) Respondent answered “no,” and the Division finds that Respondent’s answer to Question 5 was a false or misleading statement of material fact under R.C. 1322.07(B).

The Division disapproves paragraph 6 on page 5 of the Report and Recommendation.

The hearing officer concluded that Respondent’s prior conviction did not need to be disclosed because the underlying offense involved was not one of the specifically enumerated offenses in R.C. 1322.031(A)(2); and, as a result, the hearing officer concluded it was not a statement required by law within the meaning of R.C. 1322.07(B). This finding ignores the attestation made by the Respondent in his Loan Officer Application, that “the answers are complete and true of my own knowledge.” (See, Exhibit A.)

Notwithstanding the Respondent’s attestation, the hearing officer overlooks the additional provision contained in R.C. 1322.031(A)(4), that the Division may require an applicant to disclose “[a]ny further information that the superintendent requires,” beyond the specifically enumerated offenses set forth in R.C. 1322.031(A)(2) and (3). This provision allows the Division to collect information to verify compliance with its overriding criteria for approval of a loan officer application: that “[t]he applicant’s character and general fitness command the confidence of the public and warrant the belief that the business will be operated honestly and fairly...” R.C. 1322.041(A)(5). Whether an applicant has provided false information in response to a question regarding the applicant’s criminal record is relevant to an inquiry of this nature.

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

The hearing officer concluded that because Respondent had answered truthfully based on a misreading of question 5, the Respondent had not engaged in “improper, fraudulent or dishonest dealings,” within the meaning of R.C. 1322.07(C). Falsification of an applicant’s response to a question asking for information about his criminal record, in a manner which would otherwise result in approval of the application but for the discovery of the untruthful response, constitutes “improper, fraudulent or dishonest dealings” within the meaning of R.C. 1322.07(C).

The Division disapproves paragraph 8 on page 5, and paragraph 9 on page 6 of the Report and Recommendation.

As the above discussion demonstrates, there is ample evidence to show that Respondent violated R.C. 1322.07(A), (B) and (C).

The Division rejects paragraph 10 on page 6 of the Report and Recommendation. In accordance with the foregoing, the Division concludes that Respondent's loan officer license application should be 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, 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 June 2006.

ROBERT M. GRIESER

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