

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

In the matter of:)	Case No. 04-0378-LOD
)	
JASON R. SOBOTA)	<u>DIVISION ORDER</u>
4276 Kenmont Place)	Denial of Loan Officer License Application
Columbus, Ohio 43220)	&
<hr style="width: 50%; margin-left: 0;"/>)	Notice of Appellate Rights

Respondent, Jason R. Sobota, submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on March 10, 2004. On May 14, 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 for reckless operation 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 21, 2004. A Report and Recommendation (“Report”) was filed with the Division on September 13, 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, 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).

Paragraph A on page 1 of the Report and Recommendation states that the Division found that Respondent was convicted of a first degree misdemeanor. This is a typographical error, as the Division’s Notice of Intent to Deny correctly identified the offense as a fourth degree misdemeanor. (See, Exhibit 6.) Paragraph A on page 1 is modified to reflect the change.

Paragraph B on page 2 of the Report and Recommendation states that the hearing date was postponed until July 1, 2004. This is a typographical error as the Division requested a

continuance until July 21, 2004, and the hearing was held on that date. (*See*, Exhibit 10.)

Paragraph B on page 2 is modified to reflect the change.

The Division modifies paragraph 5 on page 3 of the Report and Recommendation.

Pursuant to R.C. 1322.41(A)(5), the Division has the burden to prove 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. This burden did not shift to Respondent when he answered "no" to question 5 of the loan officer license application. On the other hand, R.C. 1322.41(A)(3) places the burden upon Respondent to prove by a preponderance of the evidence that he is honest, truthful, and of good reputation, and that there is no basis in fact for believing he will not commit another criminal offense involving theft or any criminal offense involving money or securities.

The Division rejects paragraph 6 on page 4 of the Report and Recommendation.

The Division has a responsibility to the public to be diligent in its oversight, and this responsibility demands that any false response to a question about one's criminal background be taken seriously. Question 5 of the Loan Officer Application form asked the Respondent whether he had "ever been convicted of any criminal offense. Exclude minor misdemeanor traffic and parking offenses." (Emphasis in original.) (*See*, Exhibit A.) Respondent was convicted of reckless operation in 1998. (Tr. at p. 13.) When Respondent marked his answer to question 5 on the Loan Officer Application, he answered "no." (*See*, Exhibit A.)

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 being a loan officer. The application form is an important document for any prospective loan officer, and question number 5 is an important question for any applicant with a criminal record. Moreover, Respondent's intent when falsely filling out his loan officer license application is irrelevant to the Division's determination.¹ Taken within its proper context, Respondent's failure to provide a truthful response to the question demonstrates to the Division that Respondent does not hold the requisite fitness needed to be a loan officer.

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.

Upon consideration of the hearing officer's Report, the Division rejects the Hearing Officer's recommendation. Accordingly, Respondent's Application is 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 15th day of June 2006.

ROBERT M. GRIESER

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