

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

In the matter of:)	Case No. 04-0191-LOD
)	
DANIEL V. TOBIN)	<u>DIVISION ORDER</u>
4400 Marion Edison Road)	Denial of Loan Officer License Application
Marion, Ohio 43302)	&
)	Notice of Appellate Rights

Respondent, Daniel V. Tobin, submitted a loan officer license application to the Division of Financial Institutions (“Division”) on April 26, 2002. On January 22, 2004, the Division notified Tobin that it intended to deny his loan officer license application because: (1) in 1978 he pleaded guilty to and was convicted of trafficking in marijuana, and he had not proven 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 criminal offense involving drug trafficking or any criminal offense involving money or securities; (2) in 1979 he pleaded guilty to and was convicted of fleeing and eluding; (3) he violated R.C. § 1322.07(A) by failing to disclose his convictions on his loan officer license application; (4) 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; (5) he violated R.C. § 1322.07(C), which prohibits an applicant from engaging in improper or dishonest conduct; and (6) 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.

Tobin requested a hearing and an administrative hearing was held on May 5, 2004. A Report and Recommendation was filed with the Division on January 4, 2005, 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 hereto as Exhibit A).

The first sentence of the Introduction section states “This case came to be heard on May 5, 2005.” This is changed to “This case came to be heard on May 5, 2004.”

The Division disapproves the second sentences of paragraph 9 on page 3 of the Report and Recommendation.

The transcript contains no mention of an undercover police officer involved in the drug trafficking charge. (See Transcript pp. 72).

The Division disapproves the second sentence of paragraph 36 on page 8 of the Report and Recommendation.

Question 5 on the loan officer license application asks: “[h]ave you***ever been convicted of or pleaded guilty to any criminal offense including, but not limited to, theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities?”. There is no statute of limitations such that older convictions do not have to be disclosed. Therefore, Respondent was required to disclose all of his convictions, the year committed being irrelevant.

Respondent’s belief that the convictions were not relevant to the loan officer license application is not reasonable. One of his convictions was for the enumerated offense of drug trafficking. (See State’s Exhibit 4). This is an offense that the General Assembly considers severe enough to shift the burden on an applicant who has been convicted of such a crime to prove that he/she merits a license. (See R.C. §§ 1322.031(A)(2) and 1322.041(A)(3)). Therefore a belief that this conviction was not relevant is not reasonable.

The Division disapproves paragraph 41 on page 9 of the Report and Recommendation.

Respondent’s intent when falsely filling out his loan officer license application is irrelevant to the Division’s determination.¹ The Division concludes that because Tobin failed to disclose his convictions for drug trafficking and fleeing and eluding on his loan officer license application, he does not hold the requisite character and general fitness which commands the confidence of the public and warrants the belief that his business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

The Division disapproves paragraph 42 on page 9 of the Report and Recommendation.

Respondent’s inability to answer a direct question honestly evidences a lack of the requisite fitness required 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

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.

investment. Being able to comprehend and evaluate complicated mortgage documents is a vital part of the job. By not understanding a straightforward 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. The favorable testimony of superiors, who have a financial stake in Respondent receiving his loan officer license, does not mitigate Respondent's failure to disclose his convictions. The Division has a responsibility to the public to be diligent in its oversight, and this responsibility demands that falsely answering a question about one's criminal background be taken seriously.

The Division disapproves paragraph 43 on page 9 of the Report and Recommendation.

The Division has the burden to prove that Tobin'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 has met this burden by proving that Respondent lied on his loan officer license application.

The Division disapproves paragraph 45 on pages 9-10 of the Report and Recommendation.

The application of Respondent indicates that he answered "no" to Question 5 of the loan officer license application. (See State's Exhibit 1). Respondent was convicted of a crime involving drug trafficking, one of the enumerated offenses in the question. Additionally, he was convicted of the crime of fleeing and eluding. (See State's Exhibit 4 & 5, Transcript pp. 74-76, 101). Respondent's statement that he had not been convicted of any offenses is a false or misleading statement. The Division finds that Respondent's failure to disclose his convictions is a substantial misrepresentation, thus a violation of R.C. § 1322.07(A).

The application of Respondent indicates that he answered "no" to Question 5 of the Loan Officer License Application. (See State's Exhibit 1). Respondent was convicted of a crime involving drug trafficking, an enumerated offense, in addition to the offense of fleeing and eluding. (See State's Exhibit 4 & 5, Transcript pp. 74-76, 101). The Division finds that Respondent's statement that he had not been convicted of any offenses is a false or misleading statement, thus a violation of R.C. § 1322.07(B).

The application of Respondent indicates that he answered "no" to Question 5 of the Loan Officer License Application. (See State's Exhibit 1). Respondent was convicted of a crime involving drug trafficking, an enumerated offense, in addition to the offense of fleeing and eluding. (See State's Exhibit 4 and 5, Transcript pp. 74-76, 101). The Division finds that

Respondent's statement that he had not been convicted of any offenses is conduct that constitutes improper, fraudulent, or dishonest dealings, thus a violation of R.C. § 1322.07(C).

Sections 1322.07 (A), (B), and (C) do not require that an applicant violate them intentionally.² Additionally, while it is the prerogative of the hearing officer to judge a witness' credibility the Division notes that Respondent at one point testified that his arrest was "...very impressionable" and that he still remembers many details from the day of the arrest. (Transcript pp. 76). Furthermore, Respondent testified that he understood Question 5 when he read the loan officer license application. (Transcript pp. 78). Therefore, Respondent understood that his convictions were required to be disclosed and they were not.

The Division disapproves paragraph 46 of the Report and Recommendation on page 10.

The Division, as pointed out in the previous paragraphs of this Order, did prove 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 54 on page 11 of the Report and Recommendation.

Respondent's activities as evidenced by his failure to honestly answer Question 5 of the application, do not prove that he is honest and truthful and of good reputation. Additionally, the Division, as pointed out in the previous paragraphs of this order, did prove that Respondent violated R.C. 1322.07(A), (B), and (C) by not disclosing his convictions on his loan officer license application. Hence, Respondent did not comply with R.C. §§ 1322.01 through 1322.12 of the Revised Code—the Ohio Mortgage Broker Act. As a result, the Division finds that Respondent's character and general fitness do not command the confidence of the public and warrant the belief that business will be operated honestly and fairly in compliance with the Ohio Mortgage Broker Act.

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

Upon the Division's review of the evidence, the Division finds that it has met its burden of proof and as a result, Respondent's character and general fitness do not command the confidence of the public and warrant the belief that business will be operated honestly and fairly in compliance with the Ohio Mortgage Broker Act.

² 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.

For the reasons stated above, the Division hereby denies the loan officer license application of Daniel V. Tobin.

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 6th day of January 2006.

ROBERT M. GRIESER

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