

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

In the matter of:)	Case No. 04-0387-LOD
)	
VAKEETA L. SIMMONS)	<u>DIVISION ORDER</u>
1968 Hurston Court)	Denial of Loan Officer License Application
Cleveland, Ohio 44121)	&
<hr style="width: 40%; margin-left: 0;"/>)	Notice of Appellate Rights

Respondent, Vakeeta L. Simmons, submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on March 17, 2004. On July 22, 2004, the Division notified Respondent that it intended to deny her Application because: (1) she violated R.C. 1322.07(A), by failing to disclose her prior convictions for domestic violence and aggravated assault; (2) she violated R.C. 1322.07(B), by making a false statement of a material fact or omitting a statement required on the licensing application; (3) she violated R.C. 1322.07(C), by engaging in conduct which constitutes improper, fraudulent or dishonest dealings; and (4) because her character and general fitness did not command the confidence of the public and warrant the belief that her business would 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 16, 2004. A Report and Recommendation (“Report”) was filed with the Division on November 10, 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, 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.)

The Division disapproves paragraph 2 on pages 5 and 6 of the Report and Recommendation.

The hearing officer misstates the Division’s position concerning Respondent’s criminal record and its relationship with Respondent’s character and general fitness to become a loan officer. The Division has never asserted that Respondent is unfit to command the confidence of the public because of her prior criminal activity – neither of the offenses are of the type

identified in R.C. 1322.031(A)(2) which would, by themselves, disqualify the Respondent. Likewise, the evidence of Respondent's employment record and personal references are equally irrelevant, as neither conviction shifted the burden of proof to Respondent under R.C. 1322.041(A)(3) to establish her honesty, truthfulness or good reputation. Rather, pursuant to R.C. 1322.041(A)(5), it is Respondent's omission of these facts from her answer to the Division's question concerning her criminal record that negatively and directly implicates her character and general fitness to 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 Division disapproves paragraph 3 on pages 6 and 7 of the Report and Recommendation.

The hearing officer found that Respondent's "failure to correctly answer question 5 on the application was not done with any intent to deceive the Division." That is entirely beside the point. R.C. 1322.07(A), (B) and (C) do not require that an applicant commit any violation of those sections knowingly or with intent to deceive – the omission proves itself.

Furthermore, Respondent's argued misinterpretation of Question 5 was not a reasonable interpretation of the wording of that question. The question asked: "have you ... ever been convicted of or pleaded guilty to any criminal offense including, but not limited to, theft, receiving stolen property..." (*See*, Exhibit 1.) Respondent claimed that she read the word "including" as meaning "for example" or "as for instance." By itself, this would not have been a misinterpretation of the question. However, what Respondent failed to explain was how she disregarded the language "but not limited to," following "including," when crafting her response to the question.

The inability to understand a direct question evidences a lack of the requisite fitness needed 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 investment. Being able to comprehend and evaluate complicated mortgage documents is a vital part of the job, and reading out operative terms or phrases within a document, even elementary phrases such as "including, but not limited to," can have serious consequences for the loan officer's customer. Moreover, 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. Taken

within its proper context, Respondent's inability to understand and truthfully respond to an important question, even if unintentional, demonstrates to the Division that Respondent does not hold the requisite fitness needed to be a loan officer.

The Division disapproves paragraph 5 on page 7 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). 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 29th day of June 2006.

ROBERT M. GRIESER

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