

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

In the matter of:)	Case No. 04-0410-LOD
)	
ARTHUR W. SUMMERS, III)	<u>DIVISION ORDER</u>
15611 Harvard Avenue)	Denial of Loan Officer License Application
Cleveland, Ohio 44120)	&
)	Notice of Appellate Rights
)	

Respondent, Arthur W. Summers, III (“Respondent”), submitted a loan officer license application to the Division of Financial Institutions (“Division”) on September 2, 2003. On March 1, 2004, the Division notified Respondent that it intended to deny his loan officer license application (“Application”) because: (1) Respondent violated R.C. 1322.07(A) by failing to disclose his prior conviction in response to a question on the Application regarding his criminal record; (2) Respondent violated R.C. 1322.07(B) by making a false statement of material fact and by omitting a statement required on the licensing application; (3) Respondent violated R.C. 1322.07(C), by engaging in improper or dishonest conduct; and (4) because 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 purposes of R.C. 1322.01 to 1322.12 – the Ohio Mortgage Broker Act.

Respondent requested an administrative hearing, which was held on July 13, 2004. A Report and Recommendation (“Report”) was filed with the Division on January 27, 2005, recommending that the Division deny 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. (The Hearing Examiner’s Report and Recommendation is attached).

The Division modifies paragraph 13 on pages 6 and 7 of the Report and Recommendation.

The hearing officer concluded that, although the Division had put forth sufficient evidence to find that Respondent had violated R.C. 1322.07(A) by making a “substantial misrepresentation in any registration or license application,” it was not, however, possible to also find a violation of either paragraphs (B) or (C), as there were not “separate or distinct elements differentiating the different sections.” This is not so.

R.C. 1322.07(B) prohibits applicants from making any “false statement of a material fact, [or] omissions of statement required by state law.” Conversely, R.C. 1322.07(C) prohibits applicants from engaging in conduct that constitutes “improper, fraudulent, or dishonest dealings.” The sections are mutually exclusive, and although it is possible to prove a violation of both through evidence of untruthfulness on an application, it is both possible and foreseeable that one’s conduct may constitute a violation of one, but not the other. For example, an applicant may have engaged in an ongoing pattern of dishonest dealings in a previous business venture which did not result in any criminal charges. In such a case, the applicant’s conduct would constitute a violation of R.C. 1322.07(C), but not (B), as it would not have been responsive to the question concerning prior criminal convictions, and the negative response on the application would be neither false nor an omission of statement required by state law.

In the present case, 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 2.) Respondent was convicted of attempted drug abuse in 1990. (Tr. at p. 30.) When Respondent marked his answer to question 5 on the Application, he answered “no.” (See, Exhibit 2.)

Respondent's false response to the question constitutes both a false statement of material fact, under R.C. 1322.07(B), and dishonest conduct under R.C. 1322.07(C). Accordingly, the Division finds that Respondent violated R.C. 1322.07(B) and (C).

The Division hereby adopts the hearing officer's recommendation and denies the loan officer license application of Arthur W. Summers, III.

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, 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 August 2006.

ROBERT M. GRIESER
Deputy Superintendent for Consumer Finance
Division of Financial Institutions
Ohio Department of Commerce