

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

In the matter of:)	Case No. 04-0010-LOD
)	
Duane L. Hill)	<u>DIVISION ORDER</u>
8116 Loden Court)	
Blacklick, Ohio 43004)	Denial of Loan Officer License Application
)	

DIVISION ORDER

On or about May 19, 2003, Duane L. Hill ("Respondent") submitted a loan officer license application to the Division of Financial Institutions ("Division"). On January 22, 2004, the Division issued Respondent a notice of the Division's intent to deny Respondent's application, and notified Respondent of his right to a hearing on the matter. Respondent requested a hearing, and pursuant thereto, an administrative hearing was held in accordance with Ohio Revised Code Chapter 119. on June 2, 2004.

The Hearing Officer filed her written Report and Recommendation with the Division on October 27, 2004, recommending "[t]he record only supports a conclusion that Respondent has met the conditions set forth in Ohio Revised Code Section 1322.041(A)(2), (3), and (5). Therefore, I respectfully recommend that the Superintendent of the Division of Financial Institutions issue Respondent a loan officer license pursuant to R.C. 1322.041." A copy of the Report and Recommendation and a letter explaining Respondent's right to submit written objections to the report was mailed to Respondent via certified mail on October 27, 2004. A copy of the Report and Recommendation is attached hereto and incorporated herein. Respondent received the previously mentioned Report and Recommendation and letter, and he has not filed any objections.

Upon consideration of the Hearing Officer's Report and Recommendation and all evidence admitted at the hearing, the Division hereby modifies and/or rejects certain paragraphs in the Hearing Officer's Report and Recommendation as follows. Paragraphs of the Report and Recommendation not specifically addressed below are approved.

- The Division disapproves of the last paragraph of Section I(A), on page 2.

According to the transcript of the hearing, the record was to be left open for two (2) weeks after the hearing "...to see if we could have a copy of that [back side of the hearing request form] provided or copy of that back page provided." *Hearing Transcript* at p. 15. Therefore, the record in the matter was closed July 28, 2004. After the record closes, the hearing officer is to "submit to the agency a written report setting forth his findings of fact and

conclusions of law and a recommendation of the action to be taken by the agency.” *See* R.C. 119.09. The Hearing Officer states she reopened the case “for the parties to submit additional information regarding the alleged conviction.” However, the Hearing Officer has no authority to do so. According to R.C. 119.09, it is the agency who may “permit the introduction of further documentary evidence.” Therefore, in addition to disapproving this paragraph, the e-mail that the Hearing Officer considered as “a legal pleading” will not be considered.

- The Division modifies paragraph I(C)(10) on page 4.

The Division adds the following to this paragraph:

The letter in question is page 5 of State’s Exhibit 4. This document is on letterhead from the Franklin County Municipal Court Clerk’s office. It is verified, signed by Deputy Clerk Thomas on June 13, 2003.

AAG Evans informed the Hearing Officer that the parties had stipulated to the State’s Exhibits. *Hearing Transcript* at p. 8. State’s Exhibit 4 was described as

Mr. Hill’s letter which was not dated, but received by the Division on July 1 of 2003, which included a cover letter, being his letter of explanation and various court documents regarding the domestic violence matter and the passing bad check matter and also a copy of his discharge from bankruptcy.

Hearing Transcript at 11. Respondent agreed to the stipulation after the Hearing Officer told him a stipulation meant

[f]irst of all, these documents are admissible in this hearing, that they are documents pertaining to your application and also that they are authentic.

* * *

And they can be used – any information in them can be used as a stipulation by the hearing officer in making a decision...

Hearing Transcript at 14. Respondent had no questions of the Hearing Officer as to what a “stipulation” is. *Hearing Transcript* at 15.

- The Division modifies paragraph I(C)(11) on page 4

The Respondent states that he was charged with passing bad checks in 1988. However, he did not provide any other proof of the conviction date.

- The Division modifies paragraph (I)(C)(13) on page 5.

The Division strikes the last sentence in this paragraph.

There is ample evidence in the record of proof of Respondent's criminal conviction. First and foremost, there is page 5 of State's Exhibit 4, which was stipulated to by the Respondent. This document clearly indicates that Respondent was found guilty of passing bad checks, regardless of Respondent's recollection of what happened when he appeared at Court. The Respondent acknowledges that he was in court regarding a charge that he passed a bad check. *See* State's Exhibit 4, page 1, and Respondent's testimony. The document from the Clerk's office, provided to the Division by the Respondent and also stipulated to by the Respondent, indicates Respondent was found guilty of passing bad checks.

- The Division modifies paragraph (I)(C)(14) on page 5.

The Division adds the following to this paragraph:

State's Exhibit 2 does indicate that Respondent was convicted for a violation of 2913.11, "Passing Bad Checks," in November 1988. It is not proof of a conviction; it is merely an investigative tool of the Division to learn more information from an applicant. The Division shall give no weight to State's Exhibit 2, as it is clear that it is not proof of a conviction.

- The Division disapproves paragraph (I)(C)(15) on page 6.

The "court letter" the Hearing Officer mentions, State's Exhibit 4 at page 5, appears to be an official document on the municipal court clerk's letterhead. It is verified, signed by Deputy Clerk Thomas on June 13, 2003. Since the document clearly indicates that no records exists about 1987 convictions due to Ohio's Record Retention Schedule, this document is an official court record. No other official document is retained by the clerk's office to indicate Respondent was convicted of passing bad checks. The Code Section cited to in the court record is clearly not from the Ohio Revised Code, but most likely a reference to a City of Columbus Municipal Ordinance. The reference to 2305.08 in the official court record is not in conflict with State's Exhibit 2. As mentioned by the Hearing Officer, State's Exhibit 2 is not proof of a conviction.

The Division explicitly strikes the Hearing Officer's sentence that reads "Therefore, the Division has not established by the preponderance of the evidence that Respondent has a criminal conviction for passing bad checks." The Division has the burden of going forward at the administrative hearing. The Division must establish by the preponderance of the evidence that Respondent has a criminal conviction for passing bad checks. In other words,

the Division must establish that it is more likely than not that Respondent was convicted of passing bad checks in or around 1987, as alleged in the Notice issued on January 22, 2004. *See* State's Exhibit 6.

There is ample evidence in the record to show that it is more likely than not that Respondent was convicted of passing bad checks in or around 1987. The official court document, found in State's Exhibit 4 at page 5, indicates that Respondent was convicted of passing bad checks in 1987. Respondent acknowledges that he was charged with passing bad checks, and that he appeared in court because of it. Respondent disagrees that the conviction occurred in 1987 and that he was found guilty. However, he failed to provide any evidence to support his position. The Division finds that it was established by a preponderance of the evidence at the hearing that Respondent was convicted of passing bad checks in or around 1987.

- The Division disapproves paragraph (I)(C)(16) on page 6.

The Hearing Officer acted contrary to R.C. 119.09 when she completed a "computer search" as described in this paragraph. The Hearing Officer is not an advocate, nor is she an investigator. The Hearing Officer is a trier of fact and must limit her decision to be based upon the evidence presented at the hearing and the law. The Hearing Officer's role is to conduct a hearing, and submit to the Division a written report setting forth her findings of fact and conclusions of law and a recommendation of the action to be taken by the Division. The Hearing Officer exceeded her authority and this paragraph is disapproved.

- The Division disapproves paragraph (I)(D)(18) on page 6.

Respondent stated that he was not aware that he had a criminal conviction on his record, and that is why he answered "no" to question number five on his loan officer application.

- The Division disapproves paragraph (I)(D)(19) on page 6.

Respondent testified that he was in court in 1988 regarding the charge of passing bad checks. However, there is no other information to support his position. The court records indicate that Respondent was found guilty of passing bad checks in 1987. *See* State's Exhibit 4 at page 5.

- The Division disapproves paragraph (I)(D)(20) on page 6.

In or around 1987, Respondent was found guilty of passing bad checks. On or about May 12, 2003, Respondent submitted a loan officer application to the Division. When asked at question number 5, "[h]ave you or has any company for which you have been an officer, or more than 5% owner or

director, 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,” Respondent answered “No.”

Question number 5 inquires about an applicant’s criminal history. An applicant’s criminal history is a material fact, as R.C. 1322.041 indicates that an individual who have pled guilty to or been convicted of certain crimes shall not receive a loan officer license unless they can prove to the superintendent, by a preponderance of the evidence, that the applicant's activities and employment record since the conviction show that the applicant is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant will commit such an offense again. In addition, an applicant’s criminal history is important as it may reflect upon his or her character and general fitness, as indicated in R.C. 1322.041(A)(5), and whether the Applicant commands the confidence of the public and warrants the belief that the business will be operated honestly and fairly in compliance with the purposes of sections 1322.01 to 1322.12 of the Revised Code.

Respondent’s answer to question number 5 was false. Therefore, Respondent attempted to obtain a loan officer license through a false statement of a material fact, in violation of R.C. 1322.07(A). In addition, Respondent made a false statement of a material fact on his application, in violation of R.C. 1322.07(B). Further, Appellant’s conduct in answering question 5 on his application was improper, in violation of R.C. 1322.07(C). R.C.1322.07(A), (B), and (C), does not set forth a culpability standard.¹ These are strict liability violations. Therefore, it is immaterial why Respondent answered question 5 falsely.

- The Division disapproves paragraph II(B)(4) on page 8.

The Respondent states that he was charged with passing bad checks in 1988. The record establishes that Respondent was found guilty of passing bad checks in or around 1987.

- The Division modifies paragraph II(B)(5) on page 8.

The Division strikes the last sentence in this paragraph and replaces it with “Respondent’s answer to question number 5 was false. Therefore, Respondent attempted to obtain a loan officer license through a false statement of a material fact, in violation of R.C. 1322.07(A).”

¹ Unlike R.C. 1322.07(E) and (F), which requires an individual to act “knowingly.”

- The Division modifies paragraph II(B)(6) on page 8.

The Division strikes the last sentence in this paragraph and replaces it with “Respondent’s answer to question number 5 was false. Therefore, Respondent made a false statement of a material fact on his application, in violation of R.C. 1322.07(B).”

- The Division modifies paragraph II(B)(7) on page 9.

The Division strikes the last sentence in this paragraph and replaces it with “Respondent’s answer to question number 5 was false. Therefore, Appellant’s conduct in answering question 5 on his application was improper, in violation of R.C. 1322.07(C).”

- The Division disapproves paragraph II(B)(8) on page 9.

As mentioned above, the Division has established that Respondent violated R.C. 1322.07(A), (B), and (C) when he answered “no” to question number 5 on his application.

- The Division disapproves paragraph II(B)(9) on page 9.

R.C. 1322.10(A)(1)(a) states that the Superintendent may refuse to issue a loan officer license if an applicant has committed a violation of or failed to comply with any provision of R.C. 1322.01 to R.C. 1322.12. R.C. 1322.041(A)(5) provides that the Superintendent shall not issue a license to an applicant who’s character and general fitness do not command the confidence of the public and does not warrant the belief that the business would be operated honestly and fairly in compliance with the purposes of R.C. 1322.01 to R.C. 1322.12.

As evidenced above, Respondent “committed a violation of or failed to comply with any provision of R.C. 1322.01 to R.C. 1322.12,” when he violated R.C. 1322.07(A), (B), and (C). In addition, Respondent’s violations of R.C. 1322.07(A), (B), and (C) support the allegation that Respondent’s character and general fitness does not command the confidence of the public and does not warrant the belief that the business would be operated honestly and fairly in compliance with the purposes of R.C. 1322.01 to R.C. 1322.12.

- The Division modifies paragraph II(B)(10) on page 9.

The Division strikes the last two sentences from this paragraph. The Division met its burden when it proved it is more likely than not that Respondent was convicted of passing bad checks in or around 1987. *See* State’s Exhibit 4 at page 5. Therefore, in accordance with R.C. 1322.041(A)(3), the Respondent must prove, “by a preponderance of the

evidence, that the applicant's activities and employment record since the judgment show that the applicant is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant will be subject to such a judgment again.”

- The Division disapproves paragraph II(B)(12) on page 9.

The Division proved that Respondent’s character and general fitness does not command the confidence of the public and does not warrant the belief that the business would be operated honestly and fairly in compliance with the purposes of R.C. 1322.01 to R.C. 1322.12. Respondent’s answer to question number 5 was false. Therefore, Respondent attempted to obtain a loan officer license through a false statement of a material fact, in violation of R.C. 1322.07(A). In addition, Respondent made a false statement of a material fact on his application, in violation of R.C. 1322.07(B). Further, Appellant’s conduct in answering question 5 on his application was improper, in violation of R.C. 1322.07(C). These are examples that show Respondent’s character and general fitness does not command the confidence of the public and does not warrant the belief that the business would be operated honestly and fairly in compliance with the purposes of R.C. 1322.01 to R.C. 1322.12.

- The Division disapproves the **RECOMMENDATION** on page 10.

Respondent was convicted of passing bad checks in or around 1987. In accordance with R.C. 1322.041(A)(3), the Respondent must prove, “by a preponderance of the evidence, [his] activities and employment record since the judgment show that [he] is honest, truthful, and of good reputation, and there is no basis in fact for believing that [he] will be subject to such a judgment again.” Relying solely on Respondent’s testimony and unverified letter, Respondent’s Exhibit A, the Hearing Officer found that Respondent is “honest, truthful, of good reputation and that there is no basis in fact for believing that he will commit **any** offense in the future.” (Emphasis added). See Report and Recommendation at paragraph II(B)(11) on page 9. Therefore, Respondent has met his burden.

The Division has met its burden to show that Respondent violated R.C. 1322.07(A), (B), and (C). The Division has met its burden to show that Respondent’s character and general fitness does not command the confidence of the public and does not warrant the belief that the business would be operated honestly and fairly in compliance with the purposes of R.C. 1322.01 to R.C. 1322.12.

Upon consideration of the hearing officer's report and recommendation, the Division modifies the Recommendation as indicated above. Accordingly, Respondent's application for a loan officer license is hereby denied.

NOTICE OF RIGHT TO APPEAL

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 19th day of November 2004.

ROBERT M. GRIESER

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

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