

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

In the matter of:)	Case No. 06-0055-LOD
)	
BENJAMIN J. WARD)	<u>DIVISION ORDER</u>
1407 Beaverton Avenue)	Denial of Loan Officer License Application
Cincinnati, OH 45237)	&
)	Notice of Appellate Rights

Respondent, Benjamin J. Ward, submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on November 17, 2005. On January 22, 2004, the Division notified Ward that it intended to deny his loan officer license application because: (1) in 1988, in the Judicial District 38-1-03, Montgomery County, Pennsylvania he pleaded guilty to and was convicted of retail theft, a summary offense and has 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 theft or any criminal offense involving money or securities; (2) he violated R.C. 1322.07(A) by failing to disclose his conviction on his loan officer license application; (3) 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; (4) he violated R.C. 1322.07(C), which prohibits an applicant from engaging in improper or dishonest conduct; and (5) 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 February 9, 2006. A Report and Recommendation was filed with the Division on October 16, 2006, 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. 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).

The Division disapproves paragraphs 14, 15, 16, 17 and 18 on pages 6 and 7 of the Report and Recommendation.

Question number 5 on the Application specifically inquires about any prior criminal convictions, including theft. Violations of R.C. 1322.07 (A), (B), and (C) do not require intent.¹ Respondent answered “no” to Question 5 of the Loan Officer License Application. (See State’s Ex. 1). 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). Additionally, as found in paragraph 12 on page 6 of the Report, Respondent showed complete lack of attention to detail when he failed to determine if his retail theft conviction needed to be disclosed.

The Division also finds that Respondent’s statement that he had not been convicted of any offenses is a false or misleading statement, thus a violation of 1322.07(B). To “omit” means “fail to include; leave out...” *Webster’s New World Dictionary, Third College Edition, 1988 p. 945*. The definition of “omit” does not include any mental state or cognitive awareness. Therefore, the Division finds that Respondent omitted a statement required by law, violating R.C. 1322.07(B). Further, the Division finds that Respondent’s failure to disclose his retail theft conviction, an enumerated offense, on his loan officer license application is conduct that constitutes “improper, fraudulent, or dishonest dealings” for the purposes of R.C. 1322.07(C).

Respondent violated R.C. 1322.07(A), (B), and (C). Hence, he 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 approves the recommendation on page 7 of the Report and Recommendation and hereby denies the Loan Officer License Application of Benjamin J. Ward.

It is so ordered.

¹ R.C. 1322.07 (E) and (F) contain language of intent by using the term “knowingly,” whereas R.C. 1322.07 (A), (B), and (C) do not.

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 5th day of December 2006.

ROBERT M. GRIESER

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