

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

In the matter of:	)	Case No. 05-0118-LOD
	)	
<b>GERALD SANABRIA</b>	)	<b><u>DIVISION ORDER</u></b>
35 Sunnyside Lane	)	<b>Denial of Loan Officer License Application</b>
Columbus, OH 43214	)	<b>&amp;</b>
	)	<b>Notice of Appellate Rights</b>

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Respondent, Gerald Sanabria (“Respondent”), submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on October 28, 2004. On June 30, 2005, the Division notified Respondent that it intended to deny his Application because: (1) in or around 1981, in the Mayor’s Court of Sheffield Lake, Ohio, Respondent was convicted of theft; (2) in or around 1982, in the District Court of Harris County, Texas, Respondent was convicted of forgery; (3) Respondent 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 theft, forgery, or any criminal offense involving money or securities; (4) in 2004, Respondent attested in a sworn statement that information he provided about his criminal background in the Application was complete and truthful when it was not; (5) in 2004, in an attempt to obtain a loan officer license, Respondent provided untruthful information about his criminal background to the Division; (6) he violated R.C. 1322.07(A) by making a material misrepresentation in the Application; (7) 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 in the Application; (8) he violated R.C. 1322.07(C), which prohibits an applicant from engaging in improper or dishonest conduct; and (9) because his character and general fitness did 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 October 19, 2005. Respondent appeared with counsel. A Report and Recommendation (“Report”) was filed with the Division on May 8, 2006, 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, 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. (A copy of the Report is attached).

The Division disapproves paragraph 8 on page 5 of the Report.

The interpretation of R.C. 1322.07 in the Report is in error. R.C. 1322.07(A), (B), and (C) do not require a deliberative act for their violation. In contrast to 1322.07(E) and (F), which contain language of intent by use of the term “knowingly,” R.C. 1322.07(A), (B), and (C) do not employ such language. (See *Shehabi v. Ohio Dept. of Comm.* (Feb. 26, 2007), Trumbull C.P. No 2006 CV 1930, unreported). Accordingly, an applicant that fails to carefully read and answer each question in a loan officer application, swears to its veracity, and then files such application with the Division is in violation of R.C. 1322.07(A), (B), and (C) when such answer is patently untrue.

The Division disapproves paragraphs 10 – 13 on page 6 of the Report.

The Notice of Hearing cited Respondent’s convictions for theft in 1981 and forgery in 1982, as grounds for denying his Application pursuant to R.C. 1322.041(A)(3). Respondent candidly testified to the facts surrounding the convictions and, were these Respondent’s only run-ins with the law, the convictions may not be of great concern given that they occurred many years ago. (Tr., pp. 40, 43; State’s Exhs., 4, 5, and 7). However, evidence admitted at the hearing also included Respondent’s 1993 conviction for soliciting and 1998 conviction for attempted drug abuse—although the Division recognizes that the events leading to this conviction occurred in 1990. (Tr., pp. 47, 50, 74; State’s Exhs. 5, 6). Respondent also testified concerning his 1997 DUI conviction that was disclosed in his Application. (Tr. p. 71; State’s Exh. 1). In total, Respondent’s criminal record extends from 1981 to 1998.

On his own behalf, Respondent testified that he is honest, has held positions of trust, and that he has been gainfully employed for the last 20 years. Respondent’s self-serving testimony about his character, without more, is not enough to meet the burden of proof set forth in R.C. 1322.041(A)(3). So, Respondent also provided affidavits as to his character from Thomas Brennan, Licensing and Compliance Manager for Gordon Lending, and from Charles Sindledacker, Operations Manager for Gordon Lending. (Tr. pp. 68 – 70; Respondent’s Exhs. A and B). Both Mr. Brennan and Mr. Sindledacker stated, in their affidavits, that they have known

Respondent for “2 ½ plus years” and that Respondent has performed his job with honesty and integrity. (Id.) However, neither affidavit mentions any awareness of Respondent’s criminal history, nor was Mr. Brennan or Mr. Sindledecker available for cross-examination on their statements.

Thus, the evidence bears out that Respondent has been convicted of two enumerated offenses (theft and forgery) followed by convictions for soliciting, DUI, and attempted drug abuse. Respondent’s self-serving testimony and the character references from his employer, who have only known him recently, do not carry enough weight to tilt the scales in Respondent’s favor. Given Respondent’s lengthy criminal history, the Division finds that Respondent’s activities and employment record do not show that he is honest, truthful, and of good reputation and that there is no basis in fact for believing that he will commit another criminal offense again involving theft, forgery, or any criminal offense involving money or securities. See R.C. 1322.041(A)(3).

Lastly, the Division disapproves the Recommendation on page 6 of the Report.

The record, as discussed above, does not support the conclusion that Respondent meets the conditions for licensure set forth in 1322.041(A)(3).

Accordingly, the Division hereby denies the loan officer license application of Gerald Sanabria.

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 1<sup>st</sup> day of June 2007.

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**RICHARD F. KECK**

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