

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

In the matter of:)	Case No. 04-0084-LOD
)	
DAVID G. CASTO)	<u>DIVISION ORDER</u>
2107 Utah Court N.W.)	Denial of Loan Officer License Application
Canton, Ohio 44709)	&
)	Notice of Appellate Rights

Respondent, David G. Casto, submitted a loan officer license application to the Division of Financial Institutions (“Division”) on May 3, 2002. On January 22, 2004, the Division notified Casto that it intended to deny his loan officer license application because: (1) in 1991 he pleaded guilty to and was convicted of two counts of sexual battery; (2) he violated R.C. § 1322.07(A) by failing to disclose his convictions 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.

Casto requested an administrative hearing which was held on May 13, 2004. A Report and Recommendation was filed with the Division on March 30, 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. 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 as Exhibit A).

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

Respondent was convicted of two counts of sexual battery, which are third degree felonies. (See State's Exhibit 6B). Not only were these serious criminal offenses, the victim was a minor who was also Respondent's step-daughter. (See Transcript pp. 29-33). A felony conviction of any type is a direct reflection on an applicant's character and is therefore always material to the ultimate determination of whether a loan officer license is granted. Furthermore, the nature of Respondent's conviction is especially egregious

The Division disapproves paragraph 9 on page 5 of the Report and Recommendation.

Respondent was convicted of two counts of sexual battery against his step-daughter. (See State's Exhibit 6B, Transcript pp. 29-33). Respondent was forty-two and his step-daughter fifteen when the sexual contact occurred. (See Transcript pp. 30, 33). The hearing officer states that the particular circumstances during the time of the commission of the offense weigh in Respondent's favor. The very circumstances of the offense instead show the very reason why Respondent's character does not command the confidence of the public. He was a grown man in a position of confidence and trust as a father, a position which he took advantage of by engaging in sexual contact multiple times with his fifteen year old step-daughter. (See Transcript pg. 31). Additionally, the fact that his victim chose to marry him does not mitigate the serious nature of his crimes, nor does it bolster his character.

The Division disapproves paragraph 14 on page 6 of the Report and Recommendation.

It is the applicant's responsibility to read the loan officer application thoroughly and make their own determinations of what is required. Reliance on information given by others

regarding the application is not an adequate reason for answering questions untruthfully or inaccurately.

The Division disapproves paragraph 18 on page 6 of the Report and Recommendation.

Sections 1322.07 (A), (B), and (C) do not require that an applicant violate them intentionally and contain no mens rea standard.¹ Respondent answered “No” to Question Five of the application when in fact he had a conviction for two counts of sexual battery. (See State’s Exhibit 2 and 6B). 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). The Division finds that Respondent’s statement that he had not been convicted of any offenses is a false or misleading statement, thus a violation of R.C. § 1322.07(B). Finally, The Division finds that Respondent’s statement that he had not been convicted of any offenses is conduct that constitutes improper, fraudulent, or dishonest dealings, thus a violation of R.C. § 1322.07(C).

The Division disapproves the first and last sentence of the DISCUSSION section on page 6-7 of the Report and Recommendation.

Respondent’s offenses were not only socially unacceptable but serious third degree felonies for which he was incarcerated. (See State’s Exhibit 6B, 6C, and Transcript pg. 34). Additionally, the relationship between Respondent and his victim in no way transcended the offense, but in fact made it all that more troubling. The father-daughter relationship and the nature of the crime committed calls into question Respondent’s character and the confidence that the public could place in him.

Based on the record the Division did demonstrate that Respondent’s character and general fitness do not command the confidence of the public and warrant the belief that the

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

business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

For the reasons stated above, the Division hereby denies the loan officer license application of David G. Casto.

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 11th day of January 2006.

ROBERT M. GRIESER

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