

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

In the matter of:	)	Case No. 04-0418-LOD
	)	
<b>JEFF P. VOLL</b>	)	<b><u>DIVISION ORDER</u></b>
3845 Oakridge Drive	)	<b>Denial of Loan Officer License Application</b>
Louisville, Ohio 44641	)	&
<hr/>	)	<b>Notice of Appellate Rights</b>

Respondent, Jeff P. Voll, submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on September 16, 2002. On June 16, 2004, the Division notified Respondent that it intended to deny his Application because: (1) his prior misdemeanor and felony convictions for theft and forgery precluded him from being licensed as a loan officer pursuant to R.C. 1322.041(A)(2) and (A)(3); he violated R.C. 1322.07(A) by failing to disclose his convictions on his Application; (2) he violated R.C. 1322.07(B) by making a false statement of a material fact or by omitting a statement required on the licensing application; (3) he violated R.C. 1322.07(C), which prohibits an applicant from engaging in improper or dishonest conduct; and (4) 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 September 20, 2004. A Report and Recommendation (“Report”) was filed with the Division on November 23, 2004, recommending that the Division approve 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. (The Hearing Examiner’s Report and Recommendation is attached).

The Division modifies paragraph 1 on page 6 of the Report and Recommendation.

The evidence shows that in 2002, Respondent was entered into a court diversion program in the Stark County Court of Common Pleas, for pending charges involving felony theft and forgery. This program would have allowed for the charges to be dismissed and the records

sealed if Respondent successfully completed the program, in exchange for a guilty plea. *See*, Transcript of Proceedings, Sept. 20, 2004, at pp. 41-42. State's Exhibit 4 contains a letter from the Stark County Court of Common Pleas dated March 13, 2003, stating that Respondent's "projected completion of the program is September 2003," and Respondent testified at the hearing in 2004 that he did, in fact, succeed in successfully completing the program. Tr. at p. 41.

However, at the time Respondent submitted his Loan Officer Application to the Division on September 16, 2002, these charges were still pending. Moreover, Respondent had already plead guilty to the offenses, and a disclosure of that fact would have been required in response to the question contained on his application at the time it was submitted to the Division. *Id.* at p.

44. The Loan Officer Application requires applicants to disclose whether:

Have you or has any company of 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?

(Emphasis added.) *See*, State's Exhibit 1. Therefore, paragraph 1 on page 6 of the Report and Recommendation is modified to provide that Respondent pleaded guilty to theft and forgery in the Stark County Court of Common Pleas in August, 2002.

The Division rejects the sixth sentence of paragraph 3 on page 7 of the Report and Recommendation.

Paragraph 3 includes the hearing officer's finding that "the conviction itself," presumably the misdemeanor theft conviction in 2001, "is not strong evidence that the Respondent is untrustworthy, dishonest and likely to commit another similar offense again today, as long as the Respondent remains drug and alcohol free." The Division also considers the Respondent's conviction in light of his untruthful response to the Loan Officer Application. When asked whether he had been convicted of or pleaded guilty to theft or forgery, Respondent answered "no." At the time of his response, Respondent already had one conviction for theft, and another charge pending. By the time Respondent had actually submitted his application to the Division, he had already pleaded guilty to the second set of charges involving theft and forgery. *See*, State's Exhibits 1 and 4.

There was much testimony offered by the Respondent regarding his reputation for honesty, and his willingness to be open and forthcoming about his criminal record. *See, e.g.*, Tr.

at pp. 55, 63-65, 77, 80. Respondent related the account of his first meeting with his then-current employer, Rick Mirenzi.

He primarily knew what I did and I think primarily part of his reason was, he said the reason – he told me later, yeah, I hired you. He goes, I already did an investigation on you. He goes, I knew what you did. I just wanted to see if you were going to be open and honest with me and that's what you did. He goes, that's why I brought you in.

Tr. at p. 55. Respondent testified that this meeting with Mr. Mirenzi took place in April, 2002. Respondent was not as open and honest with the Division three months later when Respondent answered “no,” to the question on his Loan Officer Application.

The inability to understand and truthfully respond to a direct question evidences a lack of the requisite fitness needed of a loan officer. On a daily basis loan originators deal with consumers' personal financial information and counsel them on what is most often their largest financial investment. Even assuming, arguendo, that Respondent failed to read the question in the disjunctive after consultation with both his employer and his attorney, such failures can have serious consequences for the loan officer's customer.

The Division rejects the last sentence of paragraph 4 on page 7 of the Report and Recommendation.

The facts of this case do not establish that “the Respondent has proven by the preponderance of the evidence that his activities and employment record since the conviction show that he is honest, truthful, and of good reputation.” Furthermore, the facts of this case do not establish by a preponderance of the evidence that “there is no basis in fact for believing that he will commit such an offense again.” The evidence shows that since the date of Respondent's conviction in 2001, he pleaded guilty to theft and forgery in 2002.

The Division rejects paragraphs 5 and 6 on page 8 of the Report and Recommendation.

These two paragraphs will be discussed jointly as they involve an identical and cumulative error. In paragraph 5, the hearing officer concluded that “the fact of the [Respondent's] conviction and the 2002 charges alone,” does not “establish that the Respondent's character and general fitness do not command the confidence of the public.” In paragraph 6, the hearing officer found that “Respondent's incorrect answer to question 5 does not, by itself, establish that the Respondent's character and general fitness do not command the confidence of the public.”

The hearing officer separated the Divisions two arguments under R.C. 1322.041(A)(5), namely, Respondent's convictions and his omission of them on the application submitted to the Division, and concluded that each issue did not by itself justify a finding that Respondent's character and general fitness did not command the confidence of the public, or warrant the belief that the business would be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. The Division rejects this analysis, based on the fact that the two must be viewed together. It is incumbent upon the hearing officer to look at the totality of the circumstances when making findings and recommendations. By dividing the facts of the case before viewing them against the appropriate legal standard, the hearing officer has diminished the sufficiency of the evidence, and created an ambiguity within the facts where none existed before.

The Division finds that, when viewed together, Respondent's conviction for theft in 2001 and his subsequent omission of such from his Loan Officer Application in 2002, justify a finding that Respondent's character and general fitness do not command the confidence of the public, or warrant the belief that the business would be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act, pursuant to R.C. 1322.041(A)(5).

The Division rejects the discussion contained in Footnote 1 to paragraph 7 on page 9 of the Report and Recommendation.

The hearing officer concluded that any discussion of R.C. 1322.07(B) or (C) would be moot because it "would make no difference to the outcome of this application for a loan officer license." The hearing officer made this decision because he had already found that Respondent violated R.C. 1322.07(A) by omitting "a material fact required by state law from a license application." However, the matter of whether Respondent had violated R.C. 1322.07(B) and (C) should have been included, as the hearing officer ultimately recommended that the Division approve Respondent's application and issue a loan officer license to the Respondent.

Accordingly, the Division finds that Respondent's non-disclosure violated R.C. §1322.07(B) as it was an omission of statement required by state law. Moreover, the Division finds that Respondent's non-disclosure and failure to divulge his criminal record on a license application constitutes improper, fraudulent, or dishonest dealings pursuant to R.C. §1322.07(C).

Upon consideration of the hearing officer's Report, the Division rejects the Hearing Officer's recommendation. Respondent's Loan Officer Application is denied.

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 19<sup>th</sup> day of July 2006.

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**ROBERT M. GRIESER**

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