

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

In the matter of:)	Case No. 04-0158-LOD
)	
CAROLINE ANN HUTCHINSON-SMITH)	<u>DIVISION ORDER</u>
4935 Blueberry Avenue)	
Dayton, Ohio 45406)	Denial of Loan Officer License Application
)	

DIVISION ORDER

On April 17, 2002, Caroline Ann Hutchinson-Smith ("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 her 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 March 11, 2004.

The hearing officer filed his written report and recommendation with the Division on May 11, 2004, recommending that the Division deny Respondent's application. A copy of the report and recommendation and a letter explaining Respondent's right to submit written objections to the report was served on Respondent's Attorney. No objections were filed.

In accordance with R.C. § 119.09, the Division has considered the Report and Recommendation, applicable laws, the transcript of testimony and the exhibits. As a result, the Division modifies and /disapproves the findings and/or conclusions listed below. 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 the last three sentences of paragraph 16 on page 8 of the Report and Recommendation and modifies paragraph 17 on page 8 of the Report and Recommendation.

The Division, by law is charged with investigating the criminal backgrounds of all loan officer applicants. (See R.C. § 1322.031.) The Division specifically inquired about Respondent's criminal background on her application in question 5 where it asks whether she "[has]***ever been convicted of***any criminal offense[?]" (Exhibit 2.) Therefore, an applicant's criminal background is a material fact under the Ohio Mortgage Broker Act. Respondent was convicted of petty theft, but did disclose it on her loan officer license application when asked about it in question 5. (Exhibits 2 and 7B) As found by the hearing officer, when Respondent failed to disclose her petty theft conviction to the Division, she violated R.C. 1322.07(A), (B), and (C.) Although violations of 1322.07(A), (B), and (C) may show dishonesty, no intent is required in order to violate 1322.07(A), (B), and (C) which makes those violations strict liability.¹

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.

Despite the non-disclosure of her criminal offense to the Division, Respondent signed the loan officer license application under oath before a notary public, swearing that she had completed it “fully and frankly[, and that] the answers were complete and true” when they were not. (Exhibit 2.)

Respondent’s failure to disclose her criminal conviction to the Division and her resulting violations of R.C. 1322.07(A), (B), and (C) show that her character and general fitness do not command the confidence of the public and warrant the belief that her business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

- The Division deletes the last sentence of paragraph 18 on page 8 of the Report and Recommendation.

The last sentence of paragraph 18 on page 8 reads:

“In a subsequent application, assuming full disclosure of the criminal conviction for petty theft, this Hearing Officer finds that the Respondent will have satisfied the requirements of Section 1322.031(A)(2), Section 1322.041(A)(3), and Section 1322.041(A)(5).”

The Division is in possession of an application in which the applicant failed to disclose a petty theft conviction. Said application would still be considered as evidence of dishonesty when any attempt would be made to reapply for a loan officer license in the future. The Division cannot say with certainty that the requirements of §§ 1322.031(A)(2), 1322.041(A)(3), and 1322.041(A)(5) would be satisfied.

Upon consideration of the hearing officer’s report and recommendation, the Division confirms and approves the recommendation. 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 29th day of July 2005.

ROBERT M. GRIESER

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