

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

In the matter of:

TROY D. LEHMAN
9022 Bowman Road
Amanda, Ohio 43130

) Case No. 06-0155-LOD
)
) **DIVISION ORDER**
) **Denial of Loan Officer License Application**
) **&**
) **Notice of Appellate Rights**
)

Respondent, Troy D. Lehman (“Respondent”), submitted a loan officer license application to the Division of Financial Institutions (“Division”) on July 14, 2004. On February 16, 2006, the Division notified Respondent that it intended to deny his loan officer license application (“Application”) because: (1) Respondent violated R.C. 1322.07(A) by substantially misrepresenting his prior criminal record in response to a question on the Application; (2) Respondent violated R.C. 1322.07(B) by making a false statement of a material fact and by omitting a statement required on the licensing application; (3) Respondent violated R.C. 1322.07(C), by engaging in improper or dishonest conduct; and (4) because Respondent’s character and general fitness do 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 May 23, 2006. A Report and Recommendation (“Report”) was filed with the Division on June 29, 2006, 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 Report is attached hereto.)

The Division rejects paragraphs 13 and 14 on page 3 of the Report.

The Report concludes that Question 5 of the Application was confusing. The Division disagrees with this proposition. Question 5 of the Application requires applicants to respond yes or no, and provide an explanation with supporting documentation in the event the following question is answered in the affirmative:

Have you ... 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?

(See, State's Exhibit C.) This is not a confusing question. It is a direct question: have you been convicted of any criminal offense including, but not limited to, the following? Nevertheless, despite having been convicted of Aggravated Trespass in 2003, Respondent answered "no" to Question 5 on the Application submitted to the Division. Id., see also, Transcript of Proceedings, May 23, 2006, at pp. 23-24. To the extent that Respondent testified that his omission of the prior conviction was mistaken or unintentional, this does not mitigate the substantive elements of Respondent's violation of R.C. §§ 1322.07 (A), (B), and (C), in as much as these portions of the Ohio Mortgage Broker Act do not require any showing of knowledge or intent. R.C. 1322.07 (E) and (F) both contain language of intent by using the term "knowingly." R.C. 1322.07 (A), (B), and (C) do not.

The Division rejects paragraph 18 on page 4, and paragraph 3 on page 5 of the Report.

The inability to understand 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. Being able to comprehend and evaluate complicated mortgage documents is an important part of

the job, and reading operative terms or phrases into any document, such as “felonies only,” can have serious consequences for the loan officer’s customer. (*See*, Report, para. 12, pg. 3.) Moreover, the application form is an important document for any prospective loan officer, and question number 5 is an important question for any applicant with a criminal record – certainly one who had just been convicted the year before. Taken within its proper context, Respondent’s inability to understand and truthfully respond to an important question, even if unintentional, demonstrates to the Division that Respondent does not hold the requisite fitness needed to be a loan officer.

Furthermore, the Division is permitted to consider the entirety of an applicant’s criminal history in order to determine that individual’s character and fitness to become a loan officer, under R.C. 1322.031(A)(4) and R.C. 1322.041(A)(5). Respondent’s conviction was not only recent, but was also an aggravated offense, and a first degree misdemeanor, which gives the Division cause for concern.

The Division rejects paragraph 20 on page 5 of the Report.

The Report is divided generally into separate sections containing “findings of fact” and “conclusions of law.” Paragraph 20 is the last paragraph in the “findings of fact” section, and concludes that:

...the evidence in the record only supports a finding that Respondent’s character and general fitness 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 Ohio’s Mortgage Broker Act.

This is not a factual finding but a conclusion, attempting to apply the legal standard contained in R.C. 1322.041(A)(5) to the facts, the basis of which – Respondent’s sincerely truthful but substantially misleading response – has also been disapproved, above.

The Division rejects paragraphs 3 and 4 on pages 5 and 6 of the Report.

As stated above, Respondent’s inability to understand and truthfully respond to an

important question, even if unintentional, demonstrates to the Division that Respondent does not hold the requisite fitness needed to be a loan officer. However, the Report goes beyond that, and concludes in paragraph 3 that there is no nexus between the underlying conviction and the license being sought. As noted above, an applicant's criminal history is of primary concern to the Division. The Report also erringly reduces the Respondent's substantially misleading response to a totality of the circumstances test – a violation to be considered, but not determinative of the Respondent's Application.

This legal proposition directly conflicts with the Ohio Mortgage Broker Act. R.C. 1322.041(A)(2) only permits the Division to issue a license to an applicant who complies with the other sections of the Act, including R.C. 1322.07(A), (B) and (C):

[n]o mortgage broker, registrant, licensee, **or applicant for a certificate of registration or license** under sections 1322.01 to 1322.12 of the Revised Code shall do any of the following:

(A) Obtain a certificate of registration or license through any false or fraudulent representation of a material fact or any omission of a material fact required by state law, or make any substantial misrepresentation in any registration or license application;

(B) Make false or misleading statements of a material fact, omissions of statements required by state law, or false promises regarding a material fact, through advertising or other means, or engage in a continued course of misrepresentations;

(C) Engage in conduct that constitutes improper, fraudulent, or dishonest dealings;

(Emphasis added.) Id. Due to this requirement contained in R.C. 1322.041(A)(2), the Division cannot foresee any set of circumstances where an applicant's violation of R.C. 1322.07 can be reduced to a mere factor to be considered.

The Division rejects paragraphs 6 through 14, on pages 6 and 7 of the Report.

These paragraphs all involve the same legal issue and will be addressed together: namely, the relevance or importance of an applicant's knowledge or intent to deceive in determining

whether an applicant for a loan officer license has violated R.C. 1322.07(A), (B) or (C), and by extension, what effect that should have upon the question of an applicant's character and general fitness under R.C. 1322.041(A)(5).

The Application form asked the Respondent to disclose whether he had "ever been convicted of or pleaded guilty to any criminal offense including, but not limited to..." (*See*, State's Exhibit C.) Respondent's disclosure of his prior criminal conviction would have been responsive to this question. Instead, Respondent answered "no." The Report concludes that Respondent's substantial misrepresentation did not actually violate either R.C. 1322.07(A), (B) or (C), because his response was made "truthfully based on his understanding of the question." (*See*, Report at para. 12, pg. 3.) However, R.C. 1322.07(A), (B) and (C) do not require that an applicant commit a violation of that section knowingly. R.C. 1322.07(E) and (F) contain language of intent by using the term "knowingly." R.C. 1322.07(A), (B) and (C) do not. Therefore, despite the fact that Respondent mistakenly believed that he could deny having been convicted, his response was still untruthful, regardless of his knowledge or belief at that time.

The Report goes on to conclude that due to the fact that Respondent's conviction was not for an offense listed in R.C. 1322.031(A)(2), the fact of his conviction was not "material for purposes of this licensing process," for purposes of R.C. 1322.07(A); and was not a statement required by state law on the application, under R.C. 1322.07(B). Again, these findings ignore the express requirement in R.C. 1322.041(A)(2) that in order to become licensed each applicant must comply with the other sections of the Ohio Mortgage Broker Act, including R.C. 1322.07(A), (B) and (C). Moreover, R.C. 1322.031(A)(4) allows the Division to require disclosure of "[a]ny further information that the superintendent requires," on an Application, in addition to the offenses specifically enumerated in R.C. 1322.031(A)(2). How then can the Division find that this is not a material fact, or that state law does not require it to be disclosed?

The answer, of course, is that it is.

Accordingly, the Division finds that Respondent violated R.C. 1322.07(A) by failing to disclose a prior criminal conviction in response to a question on the Application; violated R.C. 1322.07(B) by making a false statement of a material fact and by omitting a statement required on the licensing application; and violated R.C. 1322.07(C), by engaging in improper or dishonest conduct during the course of submitting his Application for a loan officer license. Further, the Division finds that Respondent's character and general fitness do 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 the Ohio Mortgage Broker Act. *See*, R.C. 1322.041(A)(5).

Upon consideration of the Report, the Division rejects the Recommendation.

Accordingly, Respondent's Application is hereby 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, 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 9th day of February 2007.

RICHARD F. KECK

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