

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

In the matter of:)	Case No. 04-0068-LOD
)	
PETER J. FORMICA)	<u>DIVISION ORDER</u>
6293 Eastview Avenue)	
North Ridgeville, Ohio 44039)	Denial of Loan Officer License Application
)	

DIVISION ORDER

On February 19, 2003, Peter J. Formica ("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 his 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 April 28, 2004.

The hearing officer filed her written report and recommendation with the Division on July 9, 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 mailed to Respondent via certified mail. Respondent did not file objections.

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 modifies paragraph 4 on page 2 of the Report and Recommendation.

Paragraph 4 on page 2 reads:

"On or about March 14, 2003, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"). (Exhibit 1)"

The application was actually received by the Division on February 19, 2003. Paragraph 4 on page 2 shall read, "On or about February 19, 2003, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"). (Exhibit 1)"

- The Division modifies paragraph 5 on page 4 of the Report and Recommendation.

The first paragraph 5 on page 4 reads:

“Because the Respondent answered yes to Question 5 of the Application, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his character and fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purpose of the Ohio Mortgage Broker Act.”

The burden of proof to show that “[a]pplicant’s character and general fitness 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 1322.01 to 1322.12 of the Revised Code (aka the Ohio Mortgage Broker Act),” lies with the Division. Since the Respondent answer yes to Question 5 and was convicted of an offense involving drug trafficking, he had the burden to show “....by a preponderance of the evidence, that the applicant’s activities and employment record since the conviction show that the applicant is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant will commit such an offense again.” (See R.C. 1322.031(A)(2) and 1322.041(A)(3))

Hence, the first paragraph 5 on page 4 shall read:

Because the Respondent answered yes to Question 5 of the Application and was convicted of an offense involving drug trafficking, the burden of proof shifted to the Respondent to show by a preponderance of the evidence “that [his] activities and employment record since the conviction show that [he] is honest, truthful, and of good reputation, and there is no basis in fact for believing that [he] will commit such an offense again.” (See R.C. 1322.031(A)(2) and 1322.041(A)(3)) The Division has the burden of proof to show “[his] 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 sections 1322.01 to 1322.12 of the Revised Code.” (See R.C. 1322.041(A)(5))

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