

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

In the matter of:)	Case No. 04-0399-LOD
)	
MYLES M. MOORE)	<u>DIVISION ORDER</u>
2418 Stockbridge)	Denial of loan officer license application
Akron, OH 44313)	&
<hr/>)	Notice of Appellate Rights

Respondent, Myles M. Moore, submitted a loan officer license application to the Division of Financial Institutions ("Division") on June 16, 2004. On August 24, 2004, the Division notified Moore that it intended to deny his loan officer license application because: (1) he had been convicted of passing a bad check in 1983, and he had not proven that he is honest, truthful, and of good reputation and that there is no basis in fact for believing that he will not commit another theft-type offense; (2) he violated R.C. § 1322.07(A) by failing to disclose his theft conviction 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 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.

Moore requested a hearing and an administrative hearing was held on October 26, 2004. A Report and Recommendation was filed with the Division on November 22, 2004, recommending that the Division approve Moore's application and grant him a loan officer license. Moore did not object to the report and/or recommendation.

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/or 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 paragraph 5 on page 7 of the Report and Recommendation. Question 5 on the loan officer license application asked: "Have you *** ever been convicted of

any criminal offense?” (Emphasis in original.) The record clearly establishes that Moore answered “No.” The hearing officer noted that Moore testified that he had forgotten about the crime, and then speculated that Moore:

did not pay enough attention to the application and did not give his response adequate thought. It is doubtful that at the time that he completed the application, [Moore] believed that the \$50.00 fine for having a \$15.52 check returned for insufficient funds twenty-four years earlier would cause the Division not to give him a loan officer license.

While a hearing officer has the power to judge the credibility of a witness and the believability of a witness’ testimony, a hearing officer has no authority to speculate as to what may have been the intentions or beliefs of a witness during a prior act. Furthermore, the law governing the loan officer licensing process explains that the General Assembly considers the crime of passing bad checks severe enough to shift the burden on an applicant who has been convicted of such a crime to prove that he/she is worthy of a license. (See R.C. §§ 1322.031(A)(2) and 1322.041(A)(3).) Accordingly, Moore should have known that his criminal conviction for passing bad checks could cause the Division to deny his application. The Division concludes that because Moore failed to disclose his conviction for passing bad checks on his license application, he does not hold the requisite character and general fitness which commands the confidence of the public and warrants the belief that his business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

The Division modifies paragraph 6 on page 7 on the Report and Recommendation to include findings that Moore violated R.C. §§ 1322.07(B) and (C) by failing to disclose his conviction on his application. Section (B) of R.C. 1322.07 prohibits an applicant from making a false statement of a material fact or by omitting a statement required on the licensing application. R.C. § 1322.07(C) prohibits an applicant from engaging in improper or dishonest conduct. Moore stated on his license application that he had never been convicted of any criminal offense. He signed the license under oath, swearing that he had completed it “fully and frankly[, and that] the answers were complete and true” when they were not.

The Division disapproves paragraph 7 on pages 7-8 of the Report and Recommendation, wherein the hearing officer states that Moore’s failure to disclose his conviction was unintentional, and concludes that such an omission is not reason enough for the Division to deny his application. The record shows that Moore violated R.C. §§ 1322.07(A),(B) and (C) by

failing to disclose his passing bad checks charge on his license application, and that his character and fitness do 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 the Ohio Mortgage Broker Act.

Accordingly, Moore's June 16, 2004 loan officer license application is hereby denied.

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 18th day of March 2005.

ROBERT M. GRIESER

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

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