

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

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| In the matter of: |) | Case No. M2006-992996 |
| |) | |
| DOUGLAS M. SWEENEY |) | <u>DIVISION ORDER</u> |
| 8282 Deepwood Boulevard, #4 |) | Denial of Loan Officer License Application |
| Mentor, OH 44060 |) | & |
| |) | Notice of Appellate Rights |

Douglas M. Sweeney (“Respondent”) submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on June 20, 2006. On September 13, 2006, the Division notified Respondent that it intended to deny his Application because: (1) on or around June 7, 2006, Respondent attested in a sworn statement that information he provided about his criminal background in the Application he submitted to the Division was complete and truthful when it was not; (2) on or around June 20, 2006, in an attempt to obtain a loan officer license, Respondent provided untruthful information about his criminal background to the Division; (3) he violated R.C. 1322.07(A) by making a substantial misrepresentation in the Application; (4) he violated R.C. 1322.07(B) by making a false statement of a material fact or by omitting a statement required by state law in the Application; (5) he violated R.C. 1322.07(C), which prohibits an applicant from engaging in improper or dishonest conduct; and (6) because his character and general fitness did 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 October 19, 2006. A Report and Recommendation (“Report”) was filed with the Division on December 6, 2006, recommending that the Division grant 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 is attached).

The Division notes that the case number is M2006-9992996 and not M2006-9992296 as indicated on the Report and the Transcript.

The Division disapproves paragraph 6 on pages 2-3, paragraph 6 on page 4, and paragraphs 9 and 10 on page 5 of the Report.

Respondent failed to disclose his criminal history in the Application. (State's Ex. D). Respondent claims his failure to disclose was due to not reading the question on the Application. (Transcript pp. 12, 13, 22, 29, 38). This obvious lack of attention to detail is concerning and casts a considerable shadow on Respondent's character and general fitness to perform the duties 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 take the time to carefully review documents and other information is a large part of the job. Respondent by his obvious relaxed attitude to important paperwork has demonstrated to the Division that he does not hold the requisite fitness needed to be a loan officer.

Information concerning an applicant's criminal history is a material fact for licensing purposes, regardless of how long ago the conviction(s) occurred. See OAC 1307:8-7-09(G). Further, as far as any violation being "unintentional", violations of R.C. 1322.07 (A), (B), and (C) do not require intent.¹ With this in mind, the Division finds that Respondent's untruthful answer to Question 5 of the Application violated R.C. 1322.07(A) which prohibits an applicant from "mak[ing] any substantial misrepresentation in any *** license application." Also, R.C. 1322.07(B) prohibits an applicant from "[m]ak[ing] false or misleading statements of a material fact, [or] omissions of statements required by state law[.]" Given its ordinary meaning, "false" is defined as "untrue , a false statement." (*Blacks Law Dictionary, Seventh Edition*, 1990, p. 618). The term "omission" is defined as "the act of leaving something out." (*Black's Law Dictionary, Seventh Edition*, 1999, p. 1116). And, "omit" means "to leave out or leave unmentioned." (*Merriam-Webster Online Dictionary*, www.m-w.com/dictionary/omit). Accordingly, by answering "No" to Question 5 on the license application, Respondent violated R.C. 1322.07(B). The Division also finds that Respondent's failure to disclose his criminal conviction to the Division constituted improper dealings in violation of R.C. 1322.07(C).

As the Division has established the basis for and proven the violations of R.C. 1322.07(A), (B), and (C), the Division has established a lack of compliance with the Ohio Mortgage Broker Act. Thus, the Division finds that Respondent's character and general fitness

¹ R.C. 1322.07 (E) and (F) contain language of intent by using the term "knowingly," whereas R.C. 1322.07 (A), (B), and (C) do not.

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. R.C. 1322.041(A)(5).

The Division disapproves the Recommendation on page 6 of the Report.

For the reasons stated above, the Division hereby denies the loan officer license application of Douglas M. Sweeney.

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 16th day of February 2007.

RICHARD F. KECK

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