

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

In the matter of:

JOHN E. KOBAL
6014 Velma Avenue
Parma, Ohio 44129

) Case No. 04-0105-LOD
)
) **DIVISION ORDER**
)
) **Denial of Loan Officer License Application**
) **&**
) **Notice of Appellate Rights**

DIVISION ORDER

On April 29, 2002, John E. Kobal ("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 May 24, 2004.

The hearing officer filed her written report and recommendation with the Division on August 5, 2004, recommending that the Division grant a loan officer license to Respondent. 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. 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 disapproves paragraph 5 on page 4 of the Report and Recommendation.

Answering "no" to Question 5 does not shift any burden of proof to the Respondent. The Division must prove that the Respondent's "character and general fitness command the confidence of the public to 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 Revised Code Section 1322.041(A)(5)

- The Division disapproves paragraph 6 on page 4 of the Report and Recommendation.

The Attorney for Respondent put Respondent on direct examination as well as a witness for the Respondent in an attempt to rebut the Division's attempt

to prove that Respondent's character and general fitness does not command the confidence of the public nor warrant the belief that his business would be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

- The Division modifies paragraph 9 on page 5 of the Report and Recommendation.

In regard to the letters of reference provided by the Respondent, the Division was unable to cross-examine the authors as they were not present at the hearing.

- The Division disapproves the recommendation on page 8 of the Report and Recommendation.

The Division is not required to follow the recommendation of the hearing officer. *Stelzer v. State Board of Education* (1991), 72 Ohio App.3d 529, 531, *Trout v. Ohio Department of Education*, 2003 Ohio 987, 2003 Ohio App. LEXIS 927 (Ohio Ct. App., Franklin County Mar. 6, 2003.) Further, the Division may review the evidence and make its own findings and draw its own conclusions from the evidence. *In re Certificate of Need Application of Providence Hosp.* (1990), 67 Ohio App.3d 391, 398, *Trout v. Ohio Department of Education*, 2003 Ohio 987, 2003 Ohio App. LEXIS 927 (Ohio Ct. App., Franklin County Mar. 6, 2003.)

Respondent testified that the rationale behind him not disclosing his conviction to the Division was if one believes that their conviction is expunged and you notify the Division that a criminal conviction exists, "then you're basically throwing up a flag that doesn't exist." (Transcript, p. 22.) The fact is, a conviction did exist. (State's Exhibits 4, 5, Transcript pp. 18, 20, 22, 26.) Regardless of the reason for non-disclosure of the conviction, the Division has reason to be concerned that the conviction was not disclosed. The Division expects that extreme care and diligence are exercised when completing a loan officer license application. Such extreme care and diligence dictate that a person be absolutely certain about the answers they submit to the Division. The gravity of the care expected by the Division is evidenced in the Attestation section of the Loan Officer Application where it states "***Being first duly cautioned***, I hereby swear or affirm that I have completed the foregoing Loan Officer Application ***fully and frankly***." The answers are complete and true of my own knowledge." (State's Exhibit 1.) The fact that Question 5 was completed incorrectly gives the Division adequate reason to believe that a loan officer's character and general fitness do not command the confidence of the public. A loan officer is expected to complete forms and explain the details of those forms to their clients every day. The Division expects that the loan officers it licenses use the same care in completing complex documents for their clients as they would use in completing a loan officer license application. Further, the Division expects that these

documents will be completed in compliance with the law. The Division cannot believe that the Mortgage Broker Act will be complied with when it has been violated.

The Division has proven that Respondent violated R.C. 1322.07(A) which prohibits a loan officer applicant from “mak[ing] any substantial misrepresentation in any registration or license application[.]” An applicant’s criminal history is a material fact. The application of Respondent indicates that he answered “no” to Question 5 of the Loan Officer License Application. (See Exhibit 1.) Respondent was convicted of a crime. (State’s Exhibits 4, 5, Transcript pp. 18, 20, 22, 26.) The Division finds that Respondent’s failure to disclose his conviction is a substantial misrepresentation, and consequently, a violation of R.C. 1322.07(A).

The Division has proven that Respondent violated R.C. 1322.07(B) which prohibits a loan officer applicant from “[m]ak[ing] false or misleading statement of a material fact, [or] omissions of statements required by state law[.]” An applicant’s criminal history is a material fact. The application of Respondent indicates that he answered “no” to Question 5 of the Loan Officer License Application. (See Exhibit 1.) Respondent was convicted of a crime. (State’s Exhibits 4, 5, Transcript pp. 18, 20, 22, 26.) The Division finds that Respondent’s failure to disclose his conviction an omission of statements required by state law, and consequently, a violation of R.C. 1322.07(B).

The Division has proven that Respondent violated R.C. 1322.07(C) which prohibits a loan officer applicant from “[e]ngag[ing] in conduct that constitutes improper, fraudulent, or dishonest dealings.” The application of Respondent indicates that he answered “no” to Question 5 of the Loan Officer License Application. (See Exhibit 1.) Respondent was convicted of a crime. (State’s Exhibits 4, 5, Transcript pp. 18, 20, 22, 26.) The Division finds that Respondent’s failure to disclose his conviction constitutes improper dealings, and consequently, a violation of R.C. 1322.07(C).

Upon the Division’s review of the evidence, the Division finds that it has met its burden of proof and as a result, Respondent’s character and general fitness do not command the confidence of the public and warrant the belief that business will be operated honestly and fairly in compliance with the Ohio Mortgage Broker Act.

The Division hereby denies the Loan Officer License Application of Respondent, John E. Kobal.

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 1st day of December 2005.

ROBERT M. GRIESER

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