

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

In the matter of:)	Case No. 04-0272-LOD
)	
DAVID M. VASUTA)	<u>DIVISION ORDER</u>
3274 West 105 th Street)	Denial of Loan Officer License Application
Cleveland, Ohio 44111)	&
)	Notice of Appellate Rights
)	

Respondent, David M. Vasuta ("Vasuta"), submitted a loan officer license application to the Division of Financial Institutions ("Division") on November 5, 2003. On March 5, 2004, the Division notified Vasuta that it intended to deny his loan officer license application because: (1) he had been convicted of petty theft; (2) he violated R.C. § 1322.07(A) by making a substantial misrepresentation 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) by engaging in conduct that constitutes improper, fraudulent, or dishonest dealings; and (5) because his theft conviction and his statutory violations each independently establish that his character and general fitness do not command the confidence of the public and warrant the belief that his business would be operated honestly and fairly in compliance with the purposes of R.C. §§ 1322.01 to 1322.12 – Ohio Mortgage Broker Act.

Vasuta requested a hearing and an administrative hearing was held on May 6, 2004. A Report and Recommendation was filed with the Division on June 10, 2004, recommending that the Division grant Vasuta a loan officer license. No objections were filed.

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.

The Division disapproves paragraph 13 on page 4; paragraph 14 on page 4; paragraph 4 on pages 6 and 7; paragraphs 5 through 11 on pages 7 and 8; and the recommendation on page 8 of the Report and Recommendation for the reasons stated below.

The record establishes that Vasuta was convicted of petty theft. (See Exhibits 1B, 3A, 3C, 3D, and paragraph 10 on page 3 of the Report and Recommendation.) Therefore, Vasuta had the burden to prove “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 to believe that [he] will commit the offense again.” (R.C. §§ 1322.031(A)(2) and 1322.041(A)(3).)

The only evidence Vasuta presented was his own testimony and two affidavits from people not made available for the hearing and thus not subject to cross-examination. The two authors indicated that they have an on-going business relationship with Vasuta. It was therefore in their interest to give a favorable opinion of Vasuta. Further, the extent of their knowledge of Vasuta’s character is limited. (See Transcript at page 45, wherein Vasuta testified that the only affiant who knew about the theft conviction before authoring the affidavit was Mr. House. Vasuta testified that Mr. House knew “about a week” before he authored the affidavit.) The Division finds that Vasuta’s self-serving testimony coupled only with two affidavits does not prove, “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 to believe that [he] will commit the offense again.” (R.C. §§ 1322.031(A)(2) and 1322.041(A)(3).)

Vasuta did not disclose his theft conviction on his loan officer license application despite the fact that he swore under oath that he had completed it “fully and frankly” and affirmed that the answers were “complete and true[.]” (See Exhibit 1.) Vasuta violated

R.C. §§ 1322.07(A), (B), and (C) by failing to disclose his petty theft conviction on his licensing application.

R.C. § 1322.07(A) forbids any license applicant from “[o]btain[ing] a *** license through any false or fraudulent representation of a material fact or any omission of a material fact required by state law, or [from] mak[ing] any substantial misrepresentation in any *** license application[.]” Non-disclosure of any conviction on the Division’s loan officer license application is a substantial misrepresentation.

R.C. § 1322.07(B) prohibits a license applicant from “[m]aking false or misleading statements of a material fact, [or] omission of statements required by state law[.]” Non-disclosure of any conviction on the Division’s loan officer license application is a false statement of a material fact, or an omission of a statement required by law.

R.C. § 1322.07(C) prohibits a license applicant from “[e]ngag[ing] in conduct that constitutes improper, fraudulent, or dishonest dealings.” Non-disclosure of any conviction on the Division’s loan officer license application constitutes improper dealings.

Based on all of the above findings, the Division concludes that Vasuta’s character and general fitness do not command the confidence of the public and warrant the belief that his business would be operated honestly and fairly in compliance with the Ohio Mortgage Broker Act.

Accordingly, the Division finds that Vasuta’s loan officer license application should be 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 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 2005.

ROBERT M. GRIESER

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

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