

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

In the matter of:)	Case No. M2006-9992740
)	
ALEX B. MUHAMMAD)	<u>DIVISION ORDER</u>
3697 East 146 th Street)	Denial of Loan Officer License Application
Cleveland, Ohio 44120)	&
)	Notice of Appellate Rights
)	

Respondent, Alex B. Muhammad, submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on August 8, 2005. On April 20, 2006, the Division notified Respondent that it intended to deny his Application because: (1) in or around 1986, Respondent was convicted of Petty Theft, a misdemeanor of the first degree; (3) Respondent violated R.C. 1322.07(A) by substantially misrepresenting his prior criminal record in response to a question on the Application; (4) Respondent violated R.C. 1322.07(B) by making a false statement of a material fact and by omitting a statement required on the Application; (5) Respondent violated R.C. 1322.07(C), by engaging in improper or dishonest conduct; (6) pursuant to R.C. 1322.031(A)(2) and 1322.041(A)(3), Respondent has not proven that he is honest, truthful, and of good reputation, and there is no basis in fact for believing that he will not commit another criminal offense involving theft or any criminal offense involving money or securities; and (7) because Respondent’s 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 R.C. 1322.01 to 1322.12 – the Ohio Mortgage Broker Act.

Respondent requested an administrative hearing which was held on June 28, 2006. A Report and Recommendation (“Report”) was filed with the Division on December 22, 2006, recommending that the Division approve 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 Report is attached hereto.)

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

The Report mistakenly refers to a conviction for Passing Bad Checks in 2000. This is an obvious typographical error, and should read "...Respondent's activities since his 1986 Petty Theft conviction."

The Division rejects paragraphs 9 and 10 on page 5 of the Report.

Question 6 of the Application form required the Respondent to disclose whether he had been "convicted of or pleaded guilty to any criminal offense involving **theft**, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities." (Emphasis added.) (*See*, State's Exhibit D.) Respondent would have been required to answer this question in the affirmative, and explain the facts and circumstances of the offense, because he had been convicted of Petty Theft in 1986, in the Bedford, Ohio, Municipal Court. (*See*, State's Exhibit E.) However, when Respondent marked his answer on the Application form, he responded "no." (*See*, State's Exhibit D.)

The Report concludes that the Division failed to establish a violation of either R.C. 1322.07(A), (B) or (C), as a result of Respondent's failure to disclose the Petty Theft conviction, citing a case from the Court of Appeals interpreting the Ohio Medical Board's enabling statute. Webb v. State Med. Bd. (10th Dist., 2001) 146 Ohio App. 3d 621, 628; *see, also*, R.C. 4731.22. In the present case involving the Ohio Mortgage Broker Act, Respondent's intent when falsely filling out his loan officer license application is irrelevant to the Division's determination. The drafters of Section 1322.07 chose not to include any language requiring knowledge or intent for purposes of either paragraphs (A), (B) or (C) of that section. Paragraphs (E) and (F) of Section 1322.07 both contain language of intent by using the term "knowingly," whereas paragraphs (A), (B), and (C) do not.

Furthermore, the primary basis for the Report's conclusion seems to be Respondent's argument that he assumed, or felt justified, in treating the conviction as if it had never happened because he has never disclosed the conviction during the last twenty years, and it was never discovered or made an issue until now. This hardly seems indicative of a pattern of honest and truthful behavior.

Accordingly, the Division finds that Respondent violated R.C. 1322.07(A) by failing to disclose a prior criminal conviction in response to a question on the Application; violated R.C.

1322.07(B) by making a false statement of a material fact and by omitting a statement required on the licensing application; and violated R.C. 1322.07(C), by engaging in improper or dishonest conduct during the course of submitting his Application for a loan officer license.¹ Further, the Division finds that Respondent's 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 the Ohio Mortgage Broker Act. *See*, R.C. 1322.041(A)(5).

Upon consideration of the hearing officer's Report, the Division rejects the Recommendation of the hearing officer. Accordingly, Respondent's Application is hereby 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, 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 21st day of February 2007.

RICHARD F. KECK

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

¹ Although not applicable to the present case, the Respondent should be aware of the recent amendment to the Ohio Mortgage Broker Act, which prohibits anyone with a prior theft conviction from being issued a license. *See*, R.C. 1322.041(A)(3), eff. Jan. 1, 2007.