

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

In the matter of:)	Case No. 04-0384-LOD
)	
GILBERT I. GRAHAM)	<u>DIVISION ORDER</u>
192 Empire Drive)	Denial of loan officer license application
Gahanna, Ohio 43230)	&
<hr style="width: 50%; margin-left: 0;"/>)	Notice of Appellate Rights

Respondent, Gilbert I. Graham, submitted a loan officer license application to the Division of Financial Institutions ("Division") on October 21, 2003. On May 14, 2004, the Division notified Graham that it intended to deny his loan officer license application because: (1) he had been convicted of carrying a concealed weapon in 1997; (2) he had been convicted of falsification in 1998; (3) he violated R.C. § 1322.07(A) by failing to disclose his convictions on his loan officer license applications; (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 on the licensing applications; (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 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.

Graham requested a hearing and an administrative hearing was held on August 6, 2004. A Report and Recommendation was filed with the Division on September 24, 2004, recommending that the Division approve his application and grant him a loan officer license. Graham 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.)

The Division disapproves the fourth sentence of paragraph 2 under the subheading "D Respondent's Failure to Disclose Convictions"

The Municipal Court records do not confirm the belief that Graham's carrying a concealed weapons conviction was expunged. In fact, the municipal court records indicate that the only reason the charge was dismissed in municipal court was there was the possibility of a future criminal indictment in Common Pleas Court. (Exhibit 10) Subsequently, he was convicted of carrying a concealed weapon in Franklin County Common Pleas Court. (Exhibit 12)

The Division disapproves paragraph 2 on pages 6 and 7 of the Report and Recommendation, disapproves paragraph 3 on page 7 of the Report and Recommendation, modifies paragraph 4 on page 5 of the Report and Recommendation, disapproves paragraph 5 on pages 7 and 8 of the Report and Recommendation, and disapproves the recommendation on page 8 of the Report and Recommendation.

Question 5 on the loan officer license application submitted on October 21, 2003 asked: "Have you *** ever been convicted of **any criminal offense**?" (Emphasis in original)(Exhibit 5) The question 5 on the application submitted on April 26, 2002 also asked if Graham had ever been convicted of any criminal offense. (Exhibit 1) The record clearly establishes that Graham answered "No" both times. (Exhibits 1 and 5) The hearing officer noted that Graham had explained that he had misunderstood the meaning of question 5, and then speculated that:

"[Graham's] failure to disclose the convictions shows that he did not put enough thought and effort into completing the application. It is doubtful that at the time he completed the applications; [Graham] believed that the convictions would cause the Division not to give him a loan officer license. He had to know that simply answering "No" to question 5 would not prevent the Division from discovering his criminal history."

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. Even if the Division accepts the explanation that Graham twice-misunderstood question 5 on the loan officer license applications, the wording of question 5 is clear on both applications. Loan officers are expected to read, and be able to assist buyers with documents containing far more complex language than that contained in question 5 on the licensing applications. If it is true that Graham just could not understand the question, the Division does not believe that he has the general fitness to be a loan officer, as required by R.C. § 1322.041(A)(5).

Furthermore, the record of the proceeding reflects that Graham is less than forthcoming when asked to provide information to the Division. Not only did Graham not disclose his convictions on either application that he submitted to the Division, but he was not forthcoming about his criminal convictions upon further inquiry of the Division. After the submission of Graham's second loan officer license application, the Division wrote to him concerning his carrying a concealed weapon charge and asked him for a detailed explanation of the facts surrounding the charge and for a certified copy of the journal entry of the disposition of the charge. (Exhibit 9) Graham submitted an explanation in response to the Division's November 20, 2003 letter in which he indicated that the concealed weapons charge had been dismissed. (Exhibit 10) Nowhere in the explanation that the Division specifically requested from Graham does he ever state that he had been convicted of carrying a concealed weapon. (Id.) The court entry submitted to the Division with respect to the carrying a concealed weapon charge indicates that the charge was dismissed for "possible future indictment." (Id.) Subsequently, on February 25, 2004, the Division wrote Graham for more information regarding his carrying concealed weapon charge and information concerning a falsification charge from 1998. (Exhibit 11) Graham then sent the Division an explanation and journal entry from the Franklin County Common Pleas Court which showed that he had in fact been convicted of carrying a concealed weapon in 1997. (Exhibit 12) Graham testified that the 1997 carrying a concealed weapon conviction stemmed from the same incident from which the carry a concealed weapons charge in municipal court was brought. (Transcript pp. 44-45) Only when Graham was confronted with the fact that the Division knew that something had occurred in the Franklin County Common Pleas Court with respect to his carrying a concealed weapons charge did he provide the Division with the complete story regarding his carrying a concealed weapons charge. With respect to Graham's falsification charge in 1998, Graham only provided the Division with the information regarding that charge once asked about it by its letter of February 25, 2004. (Exhibits 1, 5, 9, 10, 11, and 12)

The Division is also disturbed about Graham's statements contained in the Record. Graham answered "No" to question 5 on the application submitted to the Division on October 21, 2003. (Exhibit 5) That question 5 asked Graham if "you [h]ave *** ever been convicted of **any criminal offense**?" (Emphasis in original) Following the submission of the October 21, 2003 application, the Division, on November 20, 2003 wrote to Graham asking him for an

explanation of his 1996 carrying a concealed weapon charge. (Exhibit 9) He indicated that charge had been dismissed. (Exhibit 10) Later, on May 14, 2004, the Division again wrote to Graham asking about the same carrying a concealed weapon charge. (Exhibit 11) In response to that letter, Graham stated the Division requested a “municipal court journal.” (Exhibit 12) The Division never asked him for a “municipal court journal”, but rather just asked him about the facts and circumstances surrounding the charge and the final outcome. (Exhibits 3, 9, and 11) In an attempt to explain to the Division why he did not bring the carrying a concealed weapons **conviction** to the Division’s attention, Graham claims that he cannot differentiate between a dismissal that happened in Municipal Court and a conviction that occurred in Common Pleas Court. (Exhibit 12) The Division finds this explanation preposterous and unworthy of trust or believability. Further, even if the Division were to accept this explanation, the Division could not find that Graham has the general fitness to be a loan officer if he is not capable of making the simple distinction between a dismissal and a conviction. Contrary to Graham’s statement, one does not need to have “legal expertise” to figure that out. (Exhibit 12)

As a result of Graham’s failure to disclose his criminal convictions, the Division modifies paragraph 4 on page 7 of the Report and Recommendation to include findings that Graham violated R.C. §§ 1322.07 (B) and (C) by failing to disclose his convictions on his loan officer license applications. 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 by state law on the licensing application. R.C. § 1322.07(C) prohibits an applicant from engaging in improper or dishonest conduct. Graham stated on both of his loan officer license applications that he had never been convicted of any criminal offense. He signed both license applications under oath, swearing that he had completed it “fully and frankly [, and that] the answers were complete and true” when they were not. (Exhibits 1 and 5) Further, as far as any violation being “unintentional”, violations of R.C. §§ 1322.07 (A), (B), and (C) do not require intent.¹

The record shows that Graham was convicted of carrying a concealed weapon in 1997, falsification in 1998, and that he did not disclose those convictions to the Division. As a result of his non-disclosure of his convictions, he violated R.C. §§ 1322.07(A),(B) and (C). These findings coupled with his failure to be forthcoming, his inability to understand simple questions,

¹ In R.C. §§ 1322.07 (E) and (F), both sections contain language of intent by using the term “knowingly,” whereas R.C. §§ 1322.07 (A), (B), and (C) do not.

and/or inability to make simple distinctions of fact clearly show that Graham's 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, Graham's October 21, 2003 loan officer license 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 13th day of February 2006.

ROBERT M. GRIESER

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