

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

In the matter of:)	Case No. 04-0309-LOD
)	
RICHARD A. DUDAS)	<u>DIVISION ORDER</u>
29518 Vinewood Drive)	Denial of loan officer license application
Wickliffe, OH 44092)	&
<hr style="width: 40%; margin-left: 0;"/>)	Notice of Appellate Rights

Respondent, Richard A. Dudas, submitted a loan officer license application to the Division of Financial Institutions ("Division") on July 25, 2003. On January 27, 2004, the Division notified Dudas that it intended to deny his loan officer license application because: (1) in 2002 he was convicted of drug abuse and possession of drug paraphernalia; (2) in or around 2003 he was convicted of possession of drug paraphernalia; (3) he violated R.C. § 1322.07(A) by failing to fully disclose his criminal convictions on his loan officer license application; (4) 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 and to the Division; and (5) because his character and general 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 R.C. §§ 1322.01 to 1322.12—the Ohio Mortgage Broker Act.

Dudas requested a hearing and an administrative hearing was held on June 17, 2004. A Report and Recommendation was filed with the Division on September 9, 2004, recommending that the Division approve Dudas' application and grant him a loan officer license. No objections were filed.

In accordance with R.C. §119.09, the Division has considered the record, consisting of the Report and Recommendation, the transcript of testimony and exhibits, as well as all applicable laws. As a result, the Division makes the following findings and conclusions.

The Report and Recommendation is modified or disapproved as follows: On page one of the Report and Recommendation, under "Background," the hearing officer omitted the fact that the Division based its decision to deny Dudas' license application on his failure to fully disclose his drug related convictions. On page two of the Report and Recommendation, under "Jurisdiction," the report erroneously states that the notice was issued on January 28, 2004. The

notice was issued on January 27, 2004. The Report and Recommendation is hereby amended to reflect these changes.

Paragraph 5 on page 4 of the Report and Recommendation, under “Conclusions of Law,” reads:

Because the Respondent answered “yes” to Question 5 of the Application the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his character and fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purpose of the Ohio Mortgage Broker act.

The burden was on the state to show that Dudas’ character and general 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, and that Dudas violated R.C §§ 1322.07(A),(B) and (C). Accordingly, paragraph 5 is disapproved and modified to reflect the accurate legal burdens.

Paragraphs 9 and 16 under the “Discussion” section of the Report and Recommendation, and the recommendation are disapproved for the reasons explained herein.

The evidence establishes that on July 23, 2003, Dudas completed a loan officer license application and signed and affirmed, under oath, that he had completed the application “fully and frankly” and that the answers were “complete and true[.]” (See State’s Exhibit A.) Question 5 on the application asked:

Have you or has any company for which you have been an officer, or more than 5% owner or director, ever been convicted of **any criminal** offense? Exclude minor misdemeanor traffic and parking offenses. Yes ☐ No ☐

If yes, submit a detailed explanation of the facts and circumstances, which gave rise to each charge and a certified copy of the journal entry evidencing the disposition of each charge.

(Emphasis in original.) Dudas answered “yes” and explained: “Pulled over for a cracked windshield. Arrested for possession of the equivalent of one marijuana cigarette.” (Emphasis in original.) Dudas signed the application under oath and attested that he had “completed the ***[a]pplication fully and frankly[.]” and that his “answers [were] complete and true[.]” Dudas submitted that application to the Division on July 25, 2003.

After receiving Dudas’ application, the Division conducted an investigation of Dudas and found that his criminal background was more extensive than he had disclosed on his license

application. The investigation revealed that Dudas was convicted in 2002, in the Willoughby Municipal Court of Lake County, Ohio, of one count of possession of drug paraphernalia and one count of drug abuse. (See State's Exhibit B, Case No. 02CRB04865A and 02CRB04865B). In 2003 Dudas pleaded guilty to and was convicted of another count of possession of drug paraphernalia, in the Mentor Municipal Court of Lake County, Ohio. (See State's Exhibit B, Case No. 03CRB0140B.) On January 27, 2004, the Division issued Dudas notice that it intended to deny his license application because he had not fully disclosed his criminal history and thereby violated R.C. 1322.07(A),(B),and (C); because he had 3 recent drug-related convictions; and because each conviction and each statutory violation independently established 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 the Ohio Mortgage Broker Act. (See State's Exhibit D.)

In support of his position that he should be issued a loan officer license, Dudas presented: his own self-serving testimony; affidavits of five individuals who were not made available for the hearing and were not subject to cross-examination, and who had benefited financially when Dudas was legally authorized to originate loans; copies of three articles about mortgages written by Dudas; the testimony of his ex-wife for whom Dudas provides financial support; and testimony from the executive director of a non-profit organization for which Dudas acts as treasurer, who had only known Dudas for two years. Dudas testified that he failed to disclose his 2003 drug paraphernalia conviction because he thought it was vacated, and that he had committed all of the criminal offenses because it was a difficult time in his life. (Transcript pp. 47-48.)

A journal entry from the Mentor Municipal Court shows that in 2003, Dudas had not only been charged with possession of drug paraphernalia, but Dudas had also been charged with petty theft. (See Respondent's Exhibit 7.) The entry shows that Dudas pleaded guilty to the theft charge, was admitted into the court's Petty Theft Diversion Program, successfully completed the program, and that his guilty plea was vacated and the charge was dismissed on May 21, 2003. The entry also indicates that Dudas was ordered to "pay in full by 6/13/03" and that the entry was again time stamped on October 31, 2003, indicating satisfaction of payment.¹ The entry did not vacate Dudas' guilty plea or finding for the second charge in that case, possession of drug

¹ The entry does not specify whether payment was for costs of the Petty Theft Diversion Program.

paraphernalia, for which Dudas was sentenced to a fine of one hundred dollars due in full by 6/27/03. (See the second page of State's Exhibit B.)

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[.]" 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[.]" Dudas violated R.C. § 1322.07(A) and (B) by failing to disclose his 2003 paraphernalia conviction on his licensing application.

Because Dudas violated R.C. §§ 1322.07(A) and (B), and because Dudas has shown that when faced with difficulties in life he turns to drugs, the Division finds that Dudas' 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. On a daily basis loan originators deal with consumers' personal financial information and advise consumers on what is most often their largest financial investment. Dudas has not shown, by a preponderance of the evidence, that he holds the requisite character and general fitness to originate loans.

In accordance with the foregoing, the Division concludes that Dudas' 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 3rd day of February 2005.

ROBERT M. GRIESER

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

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