

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

In the matter of:)	Case No. 06-0048-LOD
)	
MICHAEL J. LaROCCA)	<u>DIVISION ORDER</u>
3280 West 142 nd Street)	Denial of Loan Officer License Application
Cleveland, OH 44111)	&
)	Notice of Appellate Rights

Respondent, Michael J. LaRocca (“Respondent”), submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on September 22, 2005. On March 9, 2006 the Division notified Respondent that it intended to deny his Application because: (1) on or around September 20, 2005, Respondent attested in a sworn statement that information he provided about his criminal background in the Application he submitted to the Division was complete and truthful when it was not; (2) on or around September 22, 2005, in an attempt to obtain a loan officer license, Respondent provided untruthful information about his criminal background to the Division; (3) he violated R.C. 1322.07(A) by making a substantial misrepresentation in the 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 by state law in the Application; (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 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 May 16, 2006. A Report and Recommendation (“Report”) was filed with the Division on November 2, 2006, recommending that the Division grant 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 Hearing Examiner’s Report is attached).

The Division disapproves paragraphs 4 and 5 on pages 4 and 5 of the Report.

In 2002, Respondent was convicted of Assault-Domestic Violence (Case No. 2002-479,373) and Domestic Assault (Case No. 2002-478,444) in the County Court of Lubbock County, Texas. (State's Ex. E; Tr., p. 14). He did not disclose the convictions in the Application. (State's Ex. D; Tr., p. 18). For the Assault-Domestic Violence conviction, Respondent appeared in court and entered a plea of guilty. (State's Ex. E). Respondent was found guilty and sentenced to 234 days confinement, with credit for time served, and court costs. (Id.) For the Domestic Assault conviction, Respondent appeared in court and entered a plea of no contest. (Id.). Respondent was found guilty and sentenced to 365 days confinement with credit for time served, court costs, twenty-four months community supervision, and fifty hours of community service. (Id.). In his letter of explanation, Respondent stated that he spent seven months in a county jail hospital in relation to the Domestic Assault conviction. (State's Ex. F; Tr., pp. 19, 20).

In the Application, Question 5 asked Respondent:

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. (DUIs and DWIs are criminal offenses.) (Emphasis in original).

(State's Ex. 1). Respondent answered "No" and explained that he thought the Division was only asking about felonies. (State's Ex. D; Tr., p 18). Question 5 explicitly inquired as to whether Respondent had ever been convicted of any criminal offense. Respondent was asked not only about felony offenses, but rather about any criminal offenses. Respondent acknowledged that question 5 was not limited to only felony convictions, admitted that he was not confused by the question, and stated that his response was not truthful. (Tr., pp. 18, 19, 23).

The Division disapproves paragraphs 6, 7, 8, 9 and 10 on pages 5 and 6 of the Report.

Information concerning an applicant's criminal history is a material fact for licensing purposes. With this in mind, the Division finds that Respondent's untruthful answer to Question 5 of the Application violated R.C. 1322.07(A) which prohibits an applicant from "mak[ing] any substantial misrepresentation in any *** license application." R.C. 1322.07(B) prohibits an applicant from "[m]ak[ing] false or misleading statements of a material fact, [or] omissions of statements required by state law[.]" Given its ordinary meaning, "false" is defined as "untrue <a false statement." (*Blacks Law Dictionary, Seventh Edition*, 1990, p. 618). The term "omission" is defined as "the act of leaving something out." (*Black's Law Dictionary, Seventh Edition*, 1999, p. 1116.) And, "omit" means "to leave out or leave unmentioned." (*Miriam-Webster*

Online Dictionary, www.m-w.com/dictionary/omit). Accordingly, by answering “No” to Question 5 on the license application, Respondent violated R.C. 1322.07(B). The Division also finds that Respondent’s failure to disclose his criminal conviction to the Division constituted improper dealings in violation of R.C. 1322.07(C).

The interpretation of R.C. 1322.07 in the Report is in error. (Report, ¶¶ 4, 5, and 7, pp. 6 and 7). R.C. 1322.07(A), (B), and (C) do not require a deliberative act for their violation. In contrast to 1322.07(E) and (F), which contain language of intent by use of the term “knowingly,” R.C. 1322.07(A), (B), and (C) do not employ such language. Accordingly, an applicant that fails to carefully read and answer each question in a loan officer application, swears to its veracity, and then files such application with the Division is in violation of R.C. 1322.07(A), (B), and (C) when such answer is patently untrue. Here, Respondent stated in his application that he had not been convicted of any criminal offense, affirmed before a notary that his Application was “complete and true,” and shortly thereafter filed the Application, containing a false and incomplete answer as to his criminal history, with the Division. Respondent’s testimony that he thought the question only asked about felonies is simply unbelievable given the straightforward nature of the question and the fact that the word “felony” appears nowhere in the question.

Additionally, Respondent’s inability to understand a direct question evidences a lack of the requisite fitness needed of a loan officer. On a daily basis loan originators deal with consumers’ personal financial information and counsel them on what is most often their largest financial investment. Being able to comprehend, evaluate and explain complicated mortgage documents is a vital part of the job. By not understanding a simple question on the Application, Respondent has demonstrated to the Division that he does not hold the requisite fitness required of a loan officer. For this reason and Respondent’s violation of R.C. 1322.07(A), (B), and (C), the Division finds that Respondent’s 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. R.C. 1322.041(A)(5).

Lastly, the Division disapproves the Recommendation on page 6 of the Report.

As the Division has established the basis for and proven the violations of R.C. 1322.07(A), (B), and (C), the Division has established a lack of compliance with the Ohio Mortgage Broker Act. Additionally, the record, as discussed above, does not support the conclusion that Respondent meets the conditions for licensure set forth in 1322.041(A)(5).

For the reasons stated above, the Division hereby denies the loan officer license application of Michael J. LaRocca.

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 30th day of November 2006.

ROBERT M. GRIESER

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