

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

In the matter of:	)	Case No. 04-0082-LOD
	)	
<b>JACK RAY CALDWELL</b>	)	<b><u>DIVISION ORDER</u></b>
3954 Chickadee Court	)	
Westerville, Ohio 43081	)	<b>Denial of Loan Officer License Application</b>
	)	

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**DIVISION ORDER**

On October 2, 2002, Jack Ray Caldwell ("Respondent") submitted a loan officer license application to the Division of Financial Institutions ("Division"). On January 22, 2004, the Division issued Respondent a notice of the Division's intent to deny Respondent's application, and notified Respondent of his right to a hearing on the matter. Respondent requested a hearing, and pursuant thereto, an administrative hearing was held in accordance with Ohio Revised Code Chapter 119 on February 26, 2004.

The hearing officer filed his written report and recommendation with the Division on July 12, 2004, recommending that the Division deny Respondent's application. A copy of the report and recommendation and a letter explaining Respondent's right to submit written objections to the report was served on Respondent. Respondent did not file objections.

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 as Exhibit A.)

- The Division disapproves the second sentence of paragraph 20 on pages 6 and 7 of the Report and Recommendation.

Paragraph 20 on pages 6 and 7 reads:

"The Division demonstrated that Respondent's response to Question 5 was a substantial misrepresentation or a false statement of a material fact required by law on the license application, even though there was no evidence of intent. **The mens rea standard must be one of negligence – knew or should have known – in Respondent's answering the questions on the license application.** Respondent not only could have learned the true nature of the facts to which he was attesting but he should have learned those facts, if he was not already in possession of that knowledge. Respondent knew the 1989 disorderly conviction occurred in his past and it was incumbent on him to determine if the event was in the category of activities of which he was required to report. While Respondent's testimony indicates that the omission of his 1975 conviction was not intentional or negligent, the omission of the 1989 conviction information had to have been intentional or negligent."

Violations of R.C. §§ 1322.07 (A), (B), and (C) do not require an applicant to have any mens rea or intent.<sup>1</sup> As such, violations of R.C. §§ 1322.07(A), (B), and (C) are strict liability. The application of Respondent indicates that he answered “no” to Question 5. (See Exhibit 1.) Respondent was convicted of crimes. (See Exhibit 3, Transcript pp. 37-38) This proves that the applicant violated R.C. §§ 1322.07(A), (B), and (C). The Division does not need to show any intent.

The Division hereby denies the Loan Officer License Application of Respondent, Jack Ray Caldwell.

**NOTICE OF RIGHT TO APPEAL**

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 29th day of July 2005.

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**ROBERT M. GRIESER**

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

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