

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

In the matter of:)	Case No. 04-0304-LOD
)	
YOHANCE A. LUCAS)	<u>DIVISION ORDER</u>
2752 130 th Street)	Denial of Loan Officer License Application
Toledo, Ohio 43611)	&
)	Notice of Appellate Rights

Respondent, Yohance A. Lucas, submitted a loan officer license application to the Division of Financial Institutions (“Division”) on April 10, 2002. On April 12, 2004, the Division notified Lucas that it intended to deny his loan officer license application because: (1) in 2000 he was convicted of possession of drugs, a felony of the fifth degree, in Hardin County, Ohio; (2) in 2000 he was convicted of carrying a concealed weapon, a felony of the fourth degree in Hardin County, Ohio; (3) in 2000 he was convicted of aggravated assault, a felony of the fourth degree in Hardin County, Ohio; (4) he violated R.C. § 1322.07(A) by failing to fully disclose his criminal conviction on his loan officer license application; (5) 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; (6) he violated R.C. § 1322.07(C) by engaging in conduct that constitutes improper, fraudulent, or dishonest dealings; and (7) 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.

Lucas requested an administrative hearing which was held on July 20, 2004. A Report and Recommendation was filed with the Division on August 18, 2005, recommending that the Division deny Lucas’ application and not grant him a loan officer license. Objections were filed with the Division on August 29, 2005.

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, respondent’s objections, 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 and Recommendation is attached hereto as Exhibit A).

The Division disapproves paragraph 7 on page 6 of the Report and Recommendation.

Contrary to the opinion expressed in the Report and Recommendation, proof of intent is not necessary to find a violation of R.C. §§ 1322.07(A), (B) or (C). The case which the hearing officer relied upon does not deal with the above mentioned statute, but rather a statute applicable to the State Medical Board. (See paragraph 7 on page 6 of the Report and Recommendation). Additionally, the legislature chose to explicitly include a requirement of intent in R.C. §§ 1322.07 (E) and (F) by prefacing these with the word "knowingly". The knowingly requirement is absent in the sections relied upon by the Division in reaching its decision to deny Respondent's application. *Expressio unius est exclusion alterius* is a long held canon of statutory construction meaning the inclusion of one thing indicates the exclusion of the other. (See William N. Eskridge, Jr. et al., Cases and Materials on Legislation 824 (3rd ed. 2001)). If the legislature wanted violations of R.C. §§ 1322.07 (A)-(D) to have a culpability standard they would have included a modifier such as knowingly, which they did in (E) and (F). Therefore, proof of intent is not necessary to find that respondent's behavior violated R.C. §§ 1322.07(A)-(C).

Respondent's false answer to question five (5) of the application evidences that Respondent does not hold the requisite fitness to be licensed by the State of Ohio. Respondent was fully aware of his convictions at the time he completed the application. (See Report and Recommendation pages 23, 57-8 and 78). In fact, when asked if these prior convictions came to mind when he read question five (5) Respondent responded "Yes. Yes it did." (See Transcript pg. 23). 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 and evaluate complicated mortgage documents is a vital part of the job. By not being able to understand a direct question on a licensing application, Respondent has demonstrated that he does not hold the necessary fitness to be a loan officer. (See Transcript pg 23).

The Division disapproves the second sentence of paragraph 9 on page 6 of the Report and Recommendation.

The record reflects that Lucas was convicted of possession of drugs, carrying a concealed weapon and aggravated assault in or around 2000, a mere two (2) years prior to completing his loan officer application. (See Exhibit 4). All of these convictions were felonies, including the crime of possession of drugs, which the hearing officer determined was immaterial. (See paragraph 9 on page 6 of the Report and Recommendation). A felony conviction of any type is a direct reflection on an applicant's character and is therefore always material to the ultimate determination of whether a loan officer license is granted.

For the reasons stated above, the Division hereby denies the loan officer license application of Yohance A. Lucas.

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 11th day of January 2006.

ROBERT M. GRIESER

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