

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

In the matter of: ) Case No. 04-0107-LOD  
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**Sam Joseph Ailabouni** ) **DIVISION ORDER**  
4998 Gilwood Drive )  
Hilliard, Ohio 43026 ) **Denial of Loan Officer License Application**  
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**DIVISION ORDER**

On or about May 15, 2003, Sam Joseph Ailabouni ("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 March 23, 2004.

The Hearing Officer filed his written Report and Recommendation with the Division on August 24, 2004, stating "section 119.07, relating to the matter of proper notice to Respondent, requires that the recommendation to the Superintendent of Financial Institutions is that **no adverse action be taken against SAM JOSEPH AILABOUNI's license application based upon the NOH.**" (Emphasis in original) A copy of the Report and Recommendation and a letter explaining Respondent's right to submit written objections to the report was mailed to Respondent via certified mail on August 24, 2004. A copy of the Report and Recommendation is attached hereto and incorporated herein. Respondent received the Report and Recommendation and letter on August 25, 2004. Respondent has not filed any objections.

In an order dated November 22, 2004, the Division ordered that "the record of the proceeding shall be opened until November 29, 2004, allowing for the introduction of documentary evidence indicating if a notice was issued prior to March 5, 2004, setting the hearing for March 5, 2004, thus complying with R.C. 119.07. The documentary evidence shall be submitted to the Division. If either party submits documentary evidence, they shall provide a copy to the other party. Respondent shall have until December 9, 2004, to object to any documentary evidence that is submitted to the Division." On or about November 26, 2004, AAG Emily Smith submitted to the Division what's she marked for identification purposes as Exhibit 8 and Exhibit 9. Respondent did not submit any documentary evidence, nor did he file any pleading responsive to Exhibit 8 and Exhibit 9.

Exhibit 8 is document dated March 2, 2004, which appears to be a letter sent from the Division to the Respondent. On its face, Exhibit 8 indicates that a hearing is set for March 5, 2004, in regards to the proposed denial of Respondent's loan officer license application. Exhibit

9 is an affidavit signed by Mark Rhea, a staff attorney for the Division. Mr. Rhea states in his affidavit “Exhibit 8 is a true and accurate copy of the initial scheduling letter, dated March 2, 2004, in which the Division of Financial Institutions initially scheduled the case for hearing.”

In accordance with R.C. § 119.09, the Division has considered the Report and Recommendation, applicable laws, the transcript of testimony, the exhibits presented at the hearing, and Exhibits 8 and 9. 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 Division modifies paragraph I(B) under Jurisdiction, on page 2 of the Report and Recommendation, based on Exhibits 8 and 9.

On March 2, 2004, the Division sent a letter to Respondent that scheduled the hearing for March 5, 2004, but then continued the hearing to a future date. The Division initially scheduled a hearing thirteen (13) days after Respondent requested a hearing, in accordance with R.C. 119.07. On March 11, 2004, the Division sent a letter to Respondent that addressed the March 5, 2004, hearing that was continued, and rescheduled the hearing to March 23, 2004. *See Exhibit 7.*

- The Division disapproves paragraphs II(A)(1) through (5) under Jurisdictional Issue, on page 4 of the Report and Recommendation, based on Exhibits 8 and 9.

Exhibits 8 and 9 clearly indicate that the date of the hearing was initially set within fifteen days, but not earlier than seven days, after Respondent requested the hearing. The Division complied with R.C. 119.07, and has jurisdiction to hear this matter.

- The Division disapproves paragraph III under Recommendation, on page 8 of the Report and Recommendation, based on Exhibits 8 and 9.

The hearing officer recommended that no adverse action be taken against Respondent’s license application because he believed that the Division did not issue proper notice under R.C. 119.07. As evidenced by Exhibits 8 and 9, the Division did issue a proper notice under R.C. 119.07.

The Division proposed to deny Respondent’s loan officer license application because his character and general fitness do 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 the Ohio Mortgage Broker Act. *See Exhibit 5.* In paragraph II(C) under Discussion on page 8 of the Report and Recommendation, the Hearing Officer stated “...the Division demonstrated that Respondent’s character and general fitness do not command the confidence of the public.” *See Report and Recommendation at 8.*

The Division also proposed to deny Respondent's loan officer license application because of his violations of R.C. 1322.07(A), (B), and (C). Respondent answered "No" to question number 5, which asked "Have you...ever been convicted of or pleaded guilty to any criminal offense, including, but not limited to, theft, ...forgery,... or any criminal offense involving money..." *See Exhibit 1*. Respondent acknowledged at the hearing that he was found guilty on of possession of criminal tools on or about March 13, 1998, in the Franklin County Municipal Court. *See Hearing Transcript* at pp 34-35.

The Division has met its burden and proved violations of R.C. 1322.07(A), (B), and (C). The application of Respondent indicates that he answered "no" to question number 5, indicating that he had never pleaded guilty to or been convicted of any criminal offense, when in fact he had been convicted of a crime.

Question number 5 inquires about an applicant's criminal history. An applicant's criminal history is a material fact, as R.C. 1322.041 indicates that an individual who has pled guilty to or been convicted of certain crimes shall not receive a loan officer license unless they can prove to the superintendent, by a preponderance of the evidence, that the applicant's activities and employment record since the conviction show that the applicant is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant will commit such an offense again. In addition, an applicant's criminal history is important as it may reflect upon his or her character and general fitness, as indicated in R.C. 1322.041(A)(5), and whether the Applicant commands the confidence of the public and warrants the belief that the business will be operated honestly and fairly in compliance with the purposes of sections 1322.01 to 1322.12 of the Revised Code.

Respondent's answer to question number 5 was false. Therefore, Respondent attempted to obtain a loan officer license through a false statement of a material fact, in violation of R.C. 1322.07(A). In addition, Respondent made a false statement of a material fact on his application, in violation of R.C. 1322.07(B). Further, Respondent's conduct in answering question number 5 on his application was improper, in violation of R.C. 1322.07(C). R.C.1322.07(A), (B), and (C), do not set forth a culpability standard.<sup>1</sup> These are strict liability violations. It is immaterial why Respondent answered question number 5 falsely.

The Respondent falsely answered question number 5 on his application, violating R.C. 1322.07(A), (B), and (C). In addition, his character and general fitness do not command the confidence of the public and does not warrant the belief that the business would be operated honestly and fairly in compliance with the purposes of R.C. 1322.01 to R.C. 1322.12.

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<sup>1</sup> Unlike R.C. 1322.07(E) and (F), which requires an individual to act "knowingly."

The Division modifies and/or disapproves the Hearing Officer's Report and Recommendation as indicated above. Accordingly, Respondent Sam Joseph Ailabouni's application for a loan officer license is hereby denied.

**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 18th day of February 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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