

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

In the matter of:)	Case No. M2006-9993068
)	
DANIEL E. HARDIN)	<u>DIVISION ORDER</u>
221 Cold Spring Road)	Denial of Loan Officer License Application
Oregonia, Ohio 45054)	&
)	Notice of Appellate Rights

Respondent, Daniel E. Hardin (“Respondent”), submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on August 24, 2006. On January 11, 2007, the Division notified Respondent that it intended to deny his Application because: (1) in or around 1993, in the Fairfield, Ohio, Municipal Court, Respondent was convicted of three counts of passing bad checks; (2) in 2004, Respondent attested in a sworn statement that information he provided about his criminal background in a loan officer license application was complete and truthful when it was not; (3) in 2004, in an attempt to obtain a loan officer license, Respondent provided untruthful information about his criminal background to the Division; (4) in 2005, Respondent attested in a sworn statement that information he provided about his criminal background in a loan officer license application was complete and truthful when it was not; (5) in 2005, in an attempt to obtain a loan officer license, Respondent provided untruthful information about his criminal background to the Division; (6) he violated R.C. 1322.07(A) by making a material misrepresentation in the Application; (7) 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; (8) he violated R.C. 1322.07(C), which prohibits an applicant from engaging in improper or dishonest conduct; (9) Respondent had not proven that he is honest, truthful, and of good reputation, and that there is no basis in fact for believing that he will not commit another criminal offense involving passing bad checks or any criminal offense involving money or securities; and (10) 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 10, 2007. Respondent appeared with counsel. A Report and Recommendation (“Report”) was filed with the Division on May 24, 2007, recommending that the Division deny 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. (A copy of the Report is attached).

The Division disapproves of paragraphs 12, 14, and 15 on page 4; paragraph 4 on pages 5 and 6; paragraphs 5, 6, 7, and 8 on page 6; and paragraph 9 on pages 6 and 7 of the Report.

Respondent was convicted of three counts of passing bad checks in 1993 in the Fairfield, Ohio, Municipal Court and seven other criminal offenses from 1995 through 2002. However, Respondent only disclosed one driving under the influence conviction in his 2004 and 2005 Application. (State’s Exs. 4 and 5). In the 2004 and 2005 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** ? (Emphasis in original).

Information concerning an applicant’s criminal history is a material fact for licensing purposes, regardless of how long ago the conviction occurred. 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.” (*Merriam-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. 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. (See *Shehabi v. Ohio Dept. of Comm.* (Feb. 26, 2007), Trumbull C.P. No 2006 CV 1930, unreported). 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.

In total, Respondent's activities do not show that he is honest, truthful, and of good reputation and that there is no basis in fact for believing that he will not commit another criminal offense again involving passing bad checks, money or securities. A seven year period of criminal activity and dishonesty that ended only 4 years prior to Respondent's Application, in and of itself, clearly illustrates a lack of character and fitness. Additionally, Respondent's conviction for three counts of passing bad checks, an offense specifically enumerated in the Ohio Mortgage Broker Act goes to the heart of the integrity needed to adequately and fairly represent the interest of mortgage clients. In Respondent's favor was a letter from his bank and a copy of his credit report. Respondent also personally testified. However, Respondent's testimony and his documents are overshadowed by Respondent's failure to disclose his criminal history and the duration of said history. Because of this act of dishonesty and Respondent's lengthy criminal history, the Division cannot find that Respondent is honest, truthful, and of good reputation pursuant to R.C. 1322.041(A)(3).

Additionally, Respondent's inability to understand a direct question evidences a lack of the requisite fitness needed of a loan officer. The Report repeatedly states that Respondent merely made a mistake on the Application and did not understand a confusing question. Additionally Respondent testified that he thought only felonies need to be disclosed. 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. The Application contains eight questions on one and a half pages of paper. Of the eight questions, only four questions may require a brief pause to comprehend and then reflect upon the proper response. The question we are examining here inquires of a person's criminal history and begins with the words "Have you or..." (emphasis added) and then asks if you have "ever been convicted of any criminal offense?" (emphasis in original). A person of good reputation and of proper character and fitness is expected to have a very good memory of seven arrests and convictions regardless of the age of the conviction. The question does not state anywhere that only felonies need to be disclosed. If question 5 can be considered confusing, then the amount of information and documentation needed for a complicated loan closing must be considered absolutely impossible to comprehend. 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 the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. R.C. 1322.041(A)(5).

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)(2),(3), and (5).

For the reasons stated above, the Division hereby denies the Application of Daniel E. Hardin.

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 13th day of December 2007.

LEIGH A. WILLIS

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