

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

In the matter of:)	Case No. 04-0165-LOD
)	
TODD L. CLARK)	<u>DIVISION ORDER</u>
3541 Concord Drive)	
Erlanger, Kentucky 41018)	Denial of Loan Officer License Application
)	

DIVISION ORDER

On February 25, 2003, Todd L. Clark ("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 April 2, 2004.

The hearing officer filed his written report and recommendation with the Division on June 14, 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 modifies paragraph 4 on page 4 of the Report and Recommendation.

Paragraph 4 on page 4 reads:

"Because the Respondent has been convicted of drug offense, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his activities and employment record since his conviction show that he is honest, truthful and of good reputation and that there is no basis for believing he will commit such an offense again. The Division has the burden to show that the Respondent's character and fitness do not command the confidence of the public and warrant the belief that the business will be operated fairly in compliance with the purposes of the Ohio Mortgage Broker Act as well as the burden of showing the violations of Section 1322.07(A), (B), and (C)"

The first sentence of paragraph 4 shall be deleted. A drug offense, in and of itself, does not necessarily shift the burden of proof to the Respondent. In order for a drug offense to shift the burden of proof to the Respondent, said drug offense must be one that involves drug trafficking. (See R.C. 1322.031(A)(2) and 1322.041(A)(3)) Neither the possession of marijuana nor the possession of drug paraphernalia convictions of the Respondent in the instant case involved drug trafficking. Further, Division never

alleged in its Notice of Intent to Deny that the Respondent ever committed an offense involving drug trafficking.

- The Division modifies paragraph 3 on page 5 of the Report and Recommendation.

Paragraph 3 on page 5 reads:

“Based on the record before him, the Hearing Officer finds that the Division has met its burden in this matter in that the Respondent has failed to meet his burden. The Respondent has not met his burden to show that his activities and employment records since the conviction show that he is honest, truthful and of good reputation and that there is no basis in fact for believing that he will commit such and offense again. The Division has established through the criminal conviction that there is doubt as to the Respondent’s character and general fitness and whether they 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. The Respondent has not challenged that evidence.”

The second sentence of paragraph 3 on page 5 shall be deleted. The Respondent did not have the burden of proof as he was not convicted of a crime involving drug trafficking. (See R.C. 1322.031(A)(2) and 1322.041(A)(3))

Paragraph 3 on page 5 of the Report and Recommendation is further modified to reflect that the Division met its burden with respect to proving that Respondent violated R.C. §§1322.07(A), (B), and (C.) Violations of R.C. §§1322.07(A),(B), and (C) are strict liability. R.C. §1322.07(A) forbids any license applicant from “[o]btain[ing] a***license through any false or fraudulent representation of a material fact or any omission of a material fact required by state law[.]” Respondent’s failure to disclose his conviction on his loan officer license application is a violation of R.C. §1322.07(A.) R.C. 1322.07(B) prohibits a license applicant from “[m]aking false or misleading statements of a material fact, [or] omission of statements required by state law[.]” Respondent’s failure to disclose his criminal conviction to the Division is a violation of R.C. §1322.07(B.) R.C. §1322.07(C) prohibits a license applicant from “[e]ngag[ing] in conduct that constitutes improper, fraudulent, or dishonest dealings.” Non-disclosure of convictions on a loan officer license application constitutes improper dealings. The loan officer license application submitted by Clark specifically asked him in question 5 whether he has “ever been convicted of any criminal offense[?]” (Exhibit 1.) Respondent answered “no.” (Id.) Respondent signed his loan officer license application under oath before a notary public, swearing that he had completed it “fully and frankly[, and that] the answers were complete and true” when they were not. (Id.) His failure to disclose his conviction and his resulting violations of R.C. §§1322.07(A), (B), and (C) show that his character and general fitness do not command the confidence of the public and warrant the belief that his business will be operation honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

Upon consideration of the hearing officer’s report and recommendation, the Division confirms and approves the recommendation. Accordingly, Respondent’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 2nd of August 2005

ROBERT M. GRIESER

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

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