

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

In the matter of:	)	Case No. 04-0284-LOD
	)	
<b>PATRICK K. O'MALLEY</b>	)	<b><u>DIVISION ORDER</u></b>
10302 Russell Avenue	)	<b>Denial of loan officer license application</b>
Garfield Heights, Ohio 44125	)	<b>&amp;</b>
<hr style="width: 40%; margin-left: 0;"/>	)	<b>Notice of Appellate Rights</b>

Respondent, Patrick K. O'Malley, submitted a loan officer license application to the Division of Financial Institutions ("Division") on January 6, 2004. On March 30, 2004, the Division notified O'Malley that it intended to deny his loan officer license application because: (1) he had been convicted of theft in 1997, and he 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 theft-type offense; (2) he violated R.C. § 1322.07(A) by failing to disclose his theft conviction on his loan officer license application; (3) 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; (4) he violated R.C. § 1322.07(C), which prohibits an applicant from engaging in improper or dishonest conduct; and (5) because his character and general fitness did 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.

O'Malley requested a hearing and an administrative hearing was held on May 21, 2004. A Report and Recommendation was filed with the Division on July 21, 2004, recommending that the Division deny O'Malley's license application. O'Malley submitted objections to the report on August 13, 2004. Attached to the objections is a copy of a letter that purports to be authored by a person who knows O'Malley, although the letter fails to indicate how or in what capacity. The Division has considered O'Malley's objections but has not taken into account the additional evidence submitted therewith, as the record was closed at the conclusion of the May 21, 2004 hearing.

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.)

Paragraph 5 on page 4 of the Report and Recommendation erroneously states:

Because the Respondent answered “no” to Question 5 of the Application, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his character and fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purpose of the Mortgage Broker act.

In accord with R.C. §§1322.031(A)(2) and 1322.041(A)(3), the Division modifies Paragraph 5 on page 4 to read:

Because O'Malley had been convicted of theft, the burden of proof shifted to O'Malley to show, by a preponderance of the evidence, that his activities and employment record 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 a theft-type offense again.

Additionally, the first sentence of paragraph 8 on page 5 of the Report and Recommendation repeats this error of law by stating that the burden was O'Malley's to prove his character. While it was O'Malley's burden to show, by a preponderance of the evidence, that his activities and employment record 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 a theft-type offense again, it was the Division's burden to show that O'Malley did not possess the requisite character and general fitness.

The record establishes that O'Malley did not show, by a preponderance of the evidence, that his activities and employment record 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 a theft-type offense again. The record also shows that O'Malley failed to disclose his theft conviction on his application<sup>1</sup>. Accordingly, the Division proved that O'Malley violated R.C. §§ 1322.07(A), (B), and (C), and that his character and general fitness do not command the

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<sup>1</sup> Although an analysis of whether one violated Revised Code Sections 1322.07(A),(B) and (C) does not include the reason for one's non-disclosure on the loan officer license application, it is interesting to note that O'Malley claimed at the hearing that he is just “not the smartest guy in the world[,]” that he “read the question over and over again, and [was just] unclear how to answer” whether he had ever been convicted of any criminal offense including theft. In paragraph 6 on page 2 of O'Malley's objections he restated that he didn't understand the question and that he “do[es] not pretend to be a smart man.” Then, in the next paragraph of his objections, O'Malley offered an alternative reason for his non-disclosure: “Plain and simple it was forgotten having paid my \$35 in court costs and fines to Macedonia Mayor's Court 15 years ago.”

confidence of the public and warrant the belief that his business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

Accordingly, O'Malley's January 6, 2004 loan officer license application is hereby denied.

**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 18<sup>th</sup> day of March, 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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