

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

In the matter of:

STEVEN L. JONES

11413 Villagebrook Drive #624
Cincinnati, Ohio 45243

) Case No. 04-0025-LOD

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) **DIVISION ORDER**

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) **Denial of Loan Officer License Application**

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DIVISION ORDER

On or about October 3, 2003, Steven L. Jones ("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 16, 2004.

The Hearing Officer filed his written Report and Recommendation with the Division on July 28, 2004, stating, "The record herein does not indicate whether that [the hearing was set within seven to fifteen days after the Division received the request for a hearing, in accordance with R.C. 119.07] was done. Jurisdiction cannot be determined and, pursuant to Section 119.07, O.R.C., no final order may be issued adverse to Respondent." 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 previously mentioned Report and Recommendation and letter on August 4, 2004. A copy of the Report and Recommendation is attached as Exhibit A. Respondent has not filed any objections.

On November 23, 2004, the Division issued an Order allowing the parties to provide documentary proof of when the Division received Respondent's request for a hearing, and to determine compliance with R.C. 119.07. On November 29, 2004, AAG Martine Jean provided the Division with documentation indicating the Division received Respondent's request for a hearing on February 17, 2004. A copy is attached and shall be considered Hearing Exhibit 8. As the Respondent's hearing was initially set for March 2, 2004, the Division has complied with R.C. 119.07. Therefore, the Division makes the following changes:

- The first paragraph under B. JURISDICTION shall be modified to indicate that the Division received Respondent's request for a hearing on February 17, 2004.

- Paragraph 15 on page 3 shall be modified to indicate that the back of Exhibit 2, as evidenced in Exhibit 8, has a file stamp showing the Division received the request for hearing on February 17, 2004.
- Paragraph 1 on page 4 under A. JURISDICTIONAL ISSUE shall be disapproved. Exhibit 8 indicates the Division received Respondent's request for a hearing on February 17, 2004. As the hearing was initially set for March 2, 2004, the Division complied with R.C. 119.07.
- The first paragraph under **III. RECOMMENDATION** found on page seven is disapproved. As mentioned above, the Division complied with R.C. 119.07 when it set the Respondent's initial hearing.

Upon consideration of the Hearing Officer's Report and Recommendation and all evidence admitted at the hearing, the Division hereby modifies and/or rejects additional paragraphs in the Hearing Officer's Report and Recommendation as follows. Paragraphs of the Report and Recommendation not specifically addressed are approved.

- The Division disapproves the first sentence of paragraph 6 on page 4 under "B. LICENSE APPLICATION," as the sentence is confusing.
- The Division modifies paragraph 7 on page 5 under "B. LICENSE APPLICATION," by striking the second sentence.

The first sentence in paragraph 7 is a factual statement, based upon evidence presented at the hearing. In the second sentence, the hearing officer created a "two-prong test" that has no basis in the Ohio Mortgage Broker Act, nor has the hearing officer cited any authority for this test.

- The Division disapproves paragraph 10 on page 5 under "B. LICENSE APPLICATION."

The hearing officer is correct that an applicant for a loan officer license "should not be required to hold a law degree, or have a sufficient command of legal language..." However, the term "minor misdemeanor" is not a "term of art." It is merely the hearing officer's opinion that "minor misdemeanor" is a "term of art" or "legal language." The Division disagrees, and believes that "minor misdemeanor" is a commonly used term.

Question 5 speaks for itself. The question clearly states, "Exclude minor misdemeanor traffic and parking offenses." Respondent stated that he misread the question, and thought he was to exclude "minor misdemeanor offenses" and "traffic and parking offenses." However, Respondent admitted that he did not answer question 5 accurately because he "just wasn't paying attention." Transcript at page 17, line 1. (hereinafter "Tr. at p. __ l. __") Respondent also stated under oath that "I didn't read carefully, that's all I can say." Tr. at p. 39, l. 17. He thought the question excluded information about "minor misdemeanor,

traffic and parking offenses.” *See* Tr. at p. 36, l. 16 to p. 40, l. 2. He added “I left out information I should have put down [on the application] in this case.” Tr. at p. 40, l. 1. Respondent’s inability to carefully read a question on his licensure application troubles the Division. This calls into question his ability to carefully read loan documents presented to him by prospective clients, and shows the Respondent would not command the confidence of the public.

- The Division disapproves paragraph 11 on page 5 under “B. LICENSE APPLICATION.”

It is unreasonable for an applicant to think the Division does not want to “bother itself” with misdemeanors. The applicant should read the question and answer what is asked. Respondent admitted he did not carefully read the question. If the Division did not wish to know about misdemeanor offenses, it would have crafted the question to reflect that. Instead, it asked Respondent if he had ever been convicted of any criminal offense, excluding minor misdemeanor traffic and parking offenses. Respondent answered “no,” when in fact the answer was “yes.”

The Division disagrees with the hearing officer’s opinion that “minor” could be read to mean something unrelated to the business of being a loan officer.

- The Division disapproves paragraph 12 on page 5 under “B. LICENSE APPLICATION.”

In the Notice of Intent issued on January 22, 2004 (Exhibit 1), the Division did not propose to deny Respondent’s loan officer application by bringing “into question Respondent’s honesty and truthfulness in his activities since the offense by bringing forth evidence of respondent’s inaccurate response to Question 5 on the Application.”

- The Division disapproves paragraph 15 on page 6 under “B. LICENSE APPLICATION.”

Respondent stated at the hearing that he did not answer question 5 correctly because he “just wasn’t paying attention” and “didn’t read the question carefully.”

- The Division disapproves paragraph 16 on page 6 under “B. LICENSE APPLICATION.”

As mentioned above, Respondent was not confused by question 5.

- The Division disapproves paragraph 17 on page 6 under “B. LICENSE APPLICATION.”

The record does not establish that there was any confusion regarding question 5. In fact, the record shows that the Respondent was careless when answering question 5, which calls into question his ability to carefully read loan documents presented to him by prospective clients, and shows the Respondent does not command the confidence of the public.

- The Division disapproves paragraph 18 on page 6 under “B. LICENSE APPLICATION.”

The Division agrees with the statement that “An applicant for a license should not be forced to guess what a question is asking.” However, that is not the case before the Division. Respondent acknowledged that if he had read the question carefully, he would have answered it correctly.

- The Division modifies paragraph 19 on page 6 under “B. LICENSE APPLICATION,” by striking the second sentence.

The record does not prove that the wording of question 5 was flawed so that a person of ordinary intelligence would find the language confusing. In fact, Respondent stated that he would have answered question 5 if he read it carefully. A person of ordinary intelligence can properly answer question 5.

- The Division disapproves paragraphs 20 and 22 on pages 6 and 7 under “B. LICENSE APPLICATION,” by striking the second sentence.

Respondent’s inability to carefully read question 5 and answer it correctly clearly shows his lack of general fitness to 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.

Respondent’s answer to question 5 was false. An applicant’s criminal history is a material fact the Division must consider prior to issuing a license. Therefore, Respondent attempted to obtain a loan officer license through a false or fraudulent representation of a material fact or an omission of a material fact, in violation of R.C. 1322.07(A). In addition, Respondent made a false or misleading statement of a material fact, an omission of a statement required by state law, or a false promise regarding a material fact, in violation of R.C. 1322.07(B). Further, Appellant’s conduct in answering question 5 on his application was improper, fraudulent, or dishonest, in violation of R.C. 1322.07(C). R.C.1322.07(A), (B), and (C), does not set forth a culpability standard.¹ These are strict liability violations. Therefore, it is immaterial why Respondent answered question 5 falsely.

- The Division disapproves paragraph 24 on page 7 under “B. LICENSE APPLICATION.”

¹ Unlike R.C. 1322.07(E) and (F), which requires an individual to act “knowingly.”

The Division presented sufficient proof that Respondent cannot meet the licensure conditions set forth in R.C. 1322.041(A)(5). Respondent's inability to carefully read question 5 and answer it correctly clearly shows his lack of general fitness to command the confidence of the public. Respondent's violations of R.C. 1322.07(A), (B), and (C) clearly show that he does not warrant the belief that his business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

■ The Division modifies the second and third paragraphs on page 7 under **III. RECOMMENDATION.**

The Division strikes the second and fourth sentences from the second paragraph. Respondent was not confused by question number 5; he did not read question number 5 carefully. Further, question number 5 can be understood by a person of ordinary intelligence, and be read to exclude minor misdemeanor traffic and parking offenses.

The Division strikes the first and third sentences from the third paragraph. Based upon the violations of R.C. 1322.07(A), (B), and (C), and resulting inability to meet the conditions set forth in R.C. 1322.041(A)(5), the Division has proved that Respondent's failure to report the conviction should cause a denial of Respondent's application for a loan officer license. Therefore, the Respondent's application for a loan officer license should be denied

Upon consideration of the hearing officer's report and recommendation, the Division modifies the Recommendation as indicated above. 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 20th of July, 2005.

ROBERT M. GRIESER

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