

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

In the matter of:)	Case No. 04-0403-LOD
)	
SHANE R. BARR)	<u>DIVISION ORDER</u>
9505 Birchwood Road)	Denial of loan officer license application
Garfield Heights, Ohio 44125)	&
<hr style="width: 40%; margin-left: 0;"/>)	Notice of Appellate Rights

Respondent, Shane Barr, submitted a loan officer license application to the Division of Financial Institutions (“Division”) on January 9, 2004. On April 27, 2004, the Division notified Barr that it intended to deny his loan officer license application because: (1) he had been convicted of disorderly conduct in 2002; (2) he violated R.C. § 1322.07(A) by failing to disclose his disorderly conduct 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 by state law 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.

Barr requested a hearing and an administrative hearing was held on July 6, 2004. A Report and Recommendation was filed with the Division on September 2, 2004, recommending that the Division approve his application and grant him a loan officer license. Barr did not object to the report and/or recommendation.

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 the paragraph under the heading “B. Jurisdiction and Procedural Matters” on page 2 of the Report and Recommendation to reflect that the NOH was issued on April 23, 2004, not April 27, 2004. The NOH was mailed on April 27, 2004. The Report and Recommendation is modified to reflect the changes.

The Division disapproves paragraphs 2 and 3 on page 5 of the Report and Recommendation, modifies paragraph 4 on page 5 of the Report and Recommendation, and disapproves paragraph 5 and the recommendation on page 6 of the Report and Recommendation.

Question 5 on the loan officer license application asked: “Have you *** ever been convicted of **any criminal offense**?” (Emphasis in original.) The record clearly establishes that Barr answered “No.” (Exhibit 1.) The hearing officer noted that Barr testified that he had misunderstood the meaning of question 5, and then speculated that Barr:

“....does not read and comprehend well or that he did not pay enough attention to detail. It is doubtful that at the time that he completed the application, [Barr] believed that the \$50.00 fine for kicking an ubiquitous orange barrel would cause the Division not to give him a loan officer license.”

While a hearing officer has the power to judge the credibility of a witness and the believability of a witness’ testimony, a hearing officer has no authority to speculate as to what may have been the intentions or beliefs of a witness during a prior act. Even if the Division accepts the explanation that Barr misunderstood question 5 on the loan officer license application, the wording of question 5 is clear. Loan officers are expected to read and be able to assist buyers with documents containing far more complex language than what is contained in question 5 on the licensing application. If it is true that Barr just could not understand the question, the Division does not believe that he has the general fitness to be a loan officer, as required by R.C. § 1322.041(A)(5).

Furthermore, Barr’s testimony about his recent disorderly conduct conviction shows that he has failed to take responsibility for his actions related to his conviction. He testified that had he not kicked over the orange barrel, but rather ran it down with a car, “no one would have said anything” and that the only reason for the conviction was “[The City of Kent] just saw an opportunity to make some money.” (Transcript, p. 17.) Such a failure to take responsibility for ones actions shows that Barr does not have the character to originate loans. Other than his testimony and letter, Barr submitted only three unsworn letters from people who were not made available for cross-examination. (Exhibits A through D.)

As a result of Barr’s failure to disclose his criminal conviction, the Division modifies paragraph 4 on page 6 of the Report and Recommendation to include findings that Barr violated R.C. §§ 1322.07 (B) and (C) by failing to disclose his conviction on his loan officer license application. Section (B) of R.C. 1322.07 prohibits an applicant from making a false statement of

a material fact or by omitting a statement required by state law on the licensing application. R.C. § 1322.07(C) prohibits an applicant from engaging in improper or dishonest conduct. Barr stated on his license application that he had never been convicted of any criminal offense. He signed the license application under oath, swearing that he had completed it “fully and frankly[, and that] the answers were complete and true” when they were not. Further, as far as any violation being “unintentional”, violations of R.C. §§ 1322.07 (A), (B), and (C) do not require intent.¹

The record shows that Barr was convicted of disorderly conduct in 2003 and that he did not disclose that conviction to the Division. As a result of his non-disclosure of his conviction, he violated R.C. §§ 1322.07(A),(B) and (C). These facts and findings, coupled with Barr’s inability to understand questions that are clear show that his character and fitness do 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 the Ohio Mortgage Broker Act.

Accordingly, Barr’s January 9, 2004 loan officer license application is hereby denied.

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 3rd day of November 2005

ROBERT M. GRIESER

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

¹ In R.C. §§ 1322.07 (E) and (F), both sections contain language of intent by using the term “knowingly.” R.C. §§ 1322.07 (A), (B), and (C) do not.