

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

In the matter of:)	Case No. 06-0013-LOD
)	
JEREMIAH J. HAYES)	<u>DIVISION ORDER</u>
1688 Ottawa Avenue)	Denial of Loan Officer License Application
Akron, OH 44305)	&
)	Notice of Appellate Rights

Respondent, Jeremiah J. Hayes (“Respondent”), submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on August 17, 2005. On January 17, 2006 the Division notified Respondent that it intended to deny his Application because: (1) on or around August 15, 2005, Respondent attested in a sworn statement that information he provided about his criminal background in the Application he submitted to the Division was complete and truthful when it was not; (2) on or around August 17, 2005, in an attempt to obtain a loan officer license, Respondent provided untruthful information about his criminal background to the Division; (3) he violated R.C. 1322.07(A) by failing to disclose his conviction in the Application; (4) 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; (5) he violated R.C. 1322.07(C), which prohibits an applicant from engaging in improper or dishonest conduct; and (6) 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 2, 2006. Respondent was present with counsel. A Report and Recommendation (“Report”) was filed with the Division on October 3, 2006, recommending that the Division deny Respondent’s application. Objections were timely 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. (The Hearing Examiner's Report is attached).

The Division disapproves paragraphs 8, 9, 10 on page 5 of the Report.

Respondent has several criminal convictions which he failed to disclose in response to Question 5 in the Application, which inquires as to an applicant's criminal history. (State's Exs. 1 and 2, Joint Exs. A and B). Respondent's convictions were for alcohol-related misdemeanors for which Respondent was, among other things, fined and received a suspended jail sentence. (State's Ex. 2, Joint Exs. A and B). As discussed in paragraph 5 of the Report, Respondent offered conflicting explanations as to why he answered Question 5 of the Application in the negative.

Information concerning an applicant's criminal history is a material fact for licensing purposes. 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." (*Miriam-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. The Report compares R.C. 1322.07(A), (B), and (C) to the Ohio Medical Board statute at issue in *Webb v. State Med. Bd.*, (2001) 146 Ohio App.3d 621, 628. The two statutes contain different language which makes them unsuitable for comparison. Specifically, R.C. 1322.07(A), (B), and (C) do not require intent or a deliberative act for their violation. This becomes clear when one considers R.C. 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. Accordingly, an applicant that fails to carefully read and honestly 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.

The Division modifies the Recommendation on page 6 of the Report to reflect that Respondent violated R.C. 1322.07(A), (B), and (C).

For these reasons, the Division hereby denies the loan officer license application of Jeremiah J. Hayes.

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, 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 6th day of November 2006.

ROBERT M. GRIESER

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