

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

In the matter of:)	Case No. 04-0067-LOD
)	
DEBRA A. FIORILLI)	<u>DIVISION ORDER</u>
5207A Cline Road)	Denial of loan officer license application
Kent, Ohio 44240)	&
)	Notice of Appellate Rights

Respondent, Debra A. Fiorilli, submitted a loan officer license application to the Division of Financial Institutions ("Division") on April 4, 2002. On August 24, 2004, the Division notified Fiorilli that it intended to deny her loan officer license application because: (1) she had been convicted of petty theft in 1976, and she had not proven that she is honest, truthful, and of good reputation and that there is no basis in fact for believing that she will not commit another theft-type offense; (2) she violated R.C. § 1322.07(A) by failing to disclose her theft conviction on her loan officer license application; (3) she 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) she violated R.C. § 1322.07(C), which prohibits an applicant from engaging in improper or dishonest conduct; and (5) because her character and general fitness did not command the confidence of the public and warrant the belief that her 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.

Fiorilli requested a hearing and an administrative hearing was held on March 3, 2004. A Report and Recommendation was filed with the Division on May 11, 2004, recommending that the Division approve Fiorilli's application and grant her a loan officer license. Fiorilli did not object to the report and/or recommendation.

In accordance with R.C. §119.09, the Division has considered the Report and Recommendation, all 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 disapproves paragraph 13 on page 9 of the Report and Recommendation.

Fiorilli did not disclose her theft conviction to the Division. In answering question 5 of her loan officer license application, Fiorilli stated that she had never been convicted of any criminal offense involving theft, when in fact, she had. (Exhibits 1, 3, and 5.) She signed the loan officer license application under oath, swearing that she had completed it “fully and frankly[, and that] the answers were complete and true” when they were not. As a result, the Division makes the following findings:

R.C. § 1322.07(A) prohibits 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, or [from] mak[ing] any substantial misrepresentation in any *** license application[.]” By failing to disclose her criminal conviction on her licensing application, Fiorilli violated R.C. § 1322.07(A).

R.C. § 1322.07(B) prohibits a license applicant from “[m]ak[ing] false or misleading statements of a material fact, [or] omission of statements required by state law[.]” By failing to disclose her criminal conviction on her licensing application, Fiorilli violated 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.” By failing to disclose her criminal conviction on her licensing application, Fiorilli engaged in improper dealings in violation of R.C. § 1322.07(C).

The Division has a responsibility to the public to be diligent in its oversight, and this responsibility demands that not answering a question about one’s criminal background accurately be taken seriously.

The Division disapproves sentences 9, 10, 11 and 12 of paragraph 14 on page 9 of the Report and Recommendation.

The law governing the loan officer licensing process explains that the General Assembly considers the crime of theft severe enough to shift the burden on an applicant who has been convicted of such a crime to prove that he/she is worthy of a license. (See R.C. §§ 1322.031(A)(2) and 1322.041(A)(3).) Accordingly, Fiorilli should have known that her criminal conviction for theft was of importance and could cause the Division to deny her application.

Further, as far as any violation being “unintentional”, violations of R.C. §§ 1322.07 (A), (B), and (C) do not require intent.¹

The Division concludes that because Fiorilli failed to disclose her theft conviction on her license application, she does not hold the requisite character and general fitness which commands the confidence of the public and warrants the belief that her business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

The Division disapproves the Recommendation on page 10 of the Report and Recommendation

The record shows that Fiorilli violated R.C. §§ 1322.07(A),(B) and (C) by failing to disclose her theft conviction on her license application, and that her character and fitness do not command the confidence of the public and warrant the belief that her business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

Accordingly, Fiorilli’s April 4, 2002 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 28th 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.