

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

In the matter of:	)	Case No. 04-0278-LOD
	)	
<b>JOSEPH P. GAINES</b>	)	<b><u>DIVISION ORDER</u></b>
749 U.S. Route 224	)	<b>Denial of loan officer license application</b>
Williard, Ohio 44890	)	<b>&amp;</b>
	)	<b>Notice of Appellate Rights</b>

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Respondent, Joseph P. Gaines, submitted a loan officer license application to the Division of Financial Institutions ("Division") on November 21, 2003. On March 16, 2004, the Division notified Gaines that it intended to deny his loan officer license application because: (1) in or around 1989 he was convicted of attempted trafficking in marijuana; (2) he violated R.C. § 1322.07(A) by failing to fully disclose his criminal convictions 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 and to the Division; (4) he violated R.C. § 1322.07(C) by engaging in conduct that constitutes improper, fraudulent or dishonest dealings; and (5) because his character and general 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 R.C. § 1322.01 to 1322.12—the Ohio Mortgage Broker Act.

Gaines requested a hearing, and an administrative hearing was held on May 13, 2004. A Report and Recommendation was filed with the Division on July 12, 2004, recommending that the Division deny Gaines' loan officer license application. No objections were filed.

In accordance with R.C. § 119.09, the Division has considered the Report and Recommendation, the transcript of testimony and exhibits, as well as all applicable laws. As a result, the Division modifies and /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.)

For the reasons stated hereafter, the Division disapproves and/or modifies: paragraph 5 on page 4.

The burden of proof to show by a preponderance of the evidence that “[a]pplicant’s character and general fitness 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 1322.01 to 1322.12 of the Revised Code—the Ohio Mortgage Broker Act.” lies with the Division. Since Gaines was convicted of a numerated offense involving drug trafficking, the burden shifted to him to prove “...by a preponderance of the evidence, that the applicant’s activities and employment record since the conviction show that the applicant is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant will commit such an offense again.” (See R.C. 1322.031(A)(2) and 1322.041(A)(3)) The fact that he answered no to Question 5 does not shift this burden.

Therefore, the first paragraph 5 on page 4 shall read:

Because respondent was convicted of an offense involving drug trafficking, the burden of proof shifted to him 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 there is no basis in fact for believing that [he] will commit such an offense again.” (See R.C. 1322.031(A)(2) and 1322.041(A)(3)). The Division has the burden of proof to show “[his] character and general fitness [do 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 sections 1322.01 to 1322.12 of the Revised Code.” (See R.C. 1322.041(A)(5)).

The Division disapproves paragraph 10 on page 4 for the following reasons.

Respondent only presented his own self-serving testimony at the hearing. He did not provide any other character witness or any evidence of how he has conducted himself and his business in the years following his conviction. Therefore he did not meet his burden to show by a preponderance of the evidence that he is honest and of good reputation and that he will not commit a similar offense again.

Respondent testified that he “misinterpreted the question” as the reason he did not respond honestly to question five (5). (See Transcript pg. 26). On a daily basis loan originators deal with consumers’ personal financial information and counsel them on what is most often their largest financial investment. Being able to comprehend and evaluate complicated mortgage documents is a vital part of the job. By not being able to understand a direct question on a licensing application, respondent has demonstrated that he does not hold the requisite fitness to be a loan officer.

The Division hereby denies the Loan Officer License Application of Respondent,  
Joseph P. Gaines.

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 17th day of November 2005.

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**ROBERT M. GRIESER**

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