

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

In the matter of:)	Case No. 05-0046-LOD
)	
THOMAS E. TIMPERIO)	<u>DIVISION ORDER</u>
6885 Carriage Hill Drive, #65)	Denial of Loan Officer License Application
Brecksville, Ohio 44141)	&
)	Notice of Appellate Rights

Respondent, Thomas E. Timperio (“Respondent”), submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on November 9, 2004. On May 25, 2005, the Division notified Respondent that it intended to deny his Application because: (1) in or around 1981, in the Court of Common Pleas, Cuyahoga County, Ohio, Respondent was convicted of grand theft; (2) Respondent had not proven that he is honest, truthful, and of good reputation, and that there is no basis in fact for believing that he will not commit another criminal offense involving grand theft or any criminal offense involving money or securities; (3) in 2004, Respondent attested in a sworn statement that information he provided about his criminal background in the Application was complete and truthful when it was not; (4) in 2004, in an attempt to obtain a loan officer license, Respondent provided untruthful information about his criminal background to the Division; (5) he violated R.C. 1322.07(A) by making a material misrepresentation in the Application; (6) 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; (7) he violated R.C. 1322.07(C), which prohibits an applicant from engaging in improper or dishonest conduct; and (9) 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 August 24, 2005. Respondent appeared without counsel. A Report and Recommendation (“Report”) was filed with the Division on September 26, 2005, recommending that the Division deny Respondent’s application. No objections were 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. (A copy of the Report is attached).

The Division disapproves of paragraph 18 on page 4, paragraph 4 on page 5, paragraphs 5, 6, 7, 8, and 9 on page 6 and paragraph 11 on page 7 of the Report. The Division modifies paragraph 13 and 14 on page 7 of the Report.

Respondent was convicted of grand theft in 1981 in the Cuyahoga County Court of Common Pleas and did not disclose the conviction in the Application. (State's Exs. 1 and 3). Respondent also did not disclose his conviction for a firearms charge in 1979. In the Application, Question 5 asked Respondent:

Have you or has any company for which you have been an officer, or more than 5% owner or director, **ever** been **convicted** of or **pleaded guilty** to **any** criminal offense including, but not limited to, **theft**...? (Emphasis added).

(State's Ex. 1). Respondent answered "No." (State's Ex. 1).

Information concerning an applicant's criminal history is a material fact for licensing purposes, regardless of how long ago the conviction occurred. 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." (*Merriam-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. R.C. 1322.07(A), (B), and (C) do not require a deliberative act for their violation. In contrast to 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. (See *Shehabi v. Ohio Dept. of Comm.* (Feb. 26, 2007), Trumbull C.P. No 2006 CV 1930, unreported). Accordingly, an applicant that fails to carefully read and 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.

In total, Respondent’s activities do not show that he is honest, truthful, and of good reputation and that there is no basis in fact for believing that he will not commit another criminal offense again involving theft. In Respondent’s favor were positive character references via reference letters. Respondent also personally testified. However, Respondent’s testimony and the reference letters, which were admitted over hearsay objections, are overshadowed by Respondent’s failure to disclose his conviction for theft. Because of this act of dishonesty, the Division cannot find that Respondent is honest, truthful, and of good reputation pursuant to R.C. 1322.041(A)(3).

Additionally, Respondent’s inability to understand a direct question evidences a lack of the requisite fitness needed of a loan officer. 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, evaluate and explain complicated mortgage documents is a vital part of the job. By not understanding a simple question on the Application, Respondent has demonstrated to the Division that he does not hold the requisite fitness required of a loan officer. The Report States in paragraph 7 that Respondent merely “misread a confusing question”. The Application contains eight questions on one and a half pages of paper. Of the eight questions, only four questions may require a brief pause to comprehend and then reflect upon the proper response. The question we are examining here inquires of a person’s criminal history and begins with the words “Have you or...?” (emphasis added) and then asks for details of any criminal convictions. A person of good reputation and of proper character and fitness is expected to have a very good memory of an arrest and conviction regardless of the age of the conviction, especially when the respondent was over 28 years old at the time of conviction. A career criminal could possibly forget one of countless arrests and convictions. However, having

the police come to your home to arrest you, as stated in exhibit 3, together with the real possibility of incarceration would leave an indelible mark on the psyche of an upstanding citizen. Moreover, question 5 specifically asks for information regarding “theft” convictions and

Respondent pleaded guilty to and was convicted of grand theft. The word “theft” is actually in the title of Respondents charge and conviction so it would be extremely difficult to be confused in this situation. If question 5 can be considered confusing, then the amount of information and documentation needed for a complicated loan closing must be considered impossible to comprehend. For this reason and Respondent’s violation of R.C. 1322.07(A), (B), and (C), the Division finds that Respondent’s 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 the Ohio Mortgage Broker Act. R.C. 1322.041(A)(5).

The Division modifies paragraph 13 and 14 on page 7 of the Report. The Notice of Opportunity for Hearing did provide sufficient notice to Respondent because it did state that he provided untruthful information to the Division. The fact that not every charge is stated is irrelevant. However, the Division did not obtain a certified copy of the journal entry regarding the firearms charge so therefore that charge will not be considered.

As the Division has established the basis for and proven the violations of R.C. 1322.07(A), (B), and (C), the Division has established a lack of compliance with the Ohio Mortgage Broker Act. Additionally, the record, as discussed above, does not support the conclusion that Respondent meets the conditions for licensure set forth in 1322.041(A)(2),(3), and (5).

For the reasons stated above, the Division hereby denies the Application of Thomas E. Timperio.

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 8th day of May 2007.

RICHARD F. KECK

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