

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

In the matter of:	)	Case No. 04-0273-LOD
	)	
<b>ERIC C. GAUER</b>	)	<b><u>DIVISION ORDER</u></b>
3753 West Alexis Road	)	<b>Denial of Loan Officer License Application</b>
Toledo, OH 43623	)	<b>&amp;</b>
	)	<b>Notice of Appellate Rights</b>

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Respondent, Eric C. Gauer (“Respondent”), submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on December 30, 2003. On March 5, 2004 the Division notified Respondent that it intended to deny his Application because: (1) in or around 1988, in the Montgomery, Ohio, County Court, First District, Respondent was convicted of petit 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 theft or any criminal offense involving money or securities; (3) on or around December 29, 2003, 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; (4) on or around December 30, 2003, 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 substantial 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 (8) 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 June 10, 2004. A Report and Recommendation (“Report”) was filed with the Division on January 3, 2006, recommending that the Division re-open the record so that Respondent may submit further evidence. No objections or further evidence 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. (The Hearing Examiner's Report is attached).

The Division disapproves paragraph 5 on page 4 and page 9 on page 5 of the Report.

In accordance with R.C. 119.07, the Division notified Respondent in the Notice of Hearing that he "may present [his] position, arguments, or contentions in writing, and, at the hearing, may present evidence and examine witnesses appearing for and against respondent." (State's Ex. 1). Respondent received the Notice of Hearing on March 11, 2004, and Respondent's request for a hearing was filed with the Division on March 15, 2004. (Id.) Despite requesting the hearing, Respondent neither appeared at the hearing nor did he submit his position, arguments, or contentions in writing.

The letter referenced in paragraphs 5 and 9 was received by the Division in response to an investigation and was not submitted as part of the Division's case. *Ray v. Ohio Unemployment Compensation Board of Review* (1993), 85 Ohio App.3d 103, which is cited in the report, is inapplicable to the case at hand. The evidence submitted by Mr. Ray was provided to the Board as part of his appeal. *Ray*, 85 Ohio App.3d at 106-107. In contrast, the letter referenced in paragraphs 5 and 9 of the Report was received by the Division in response to a Division investigation. The letter was not submitted by Respondent in furtherance of his appeal or as part of the R.C. Chapter 119 process. Following its receipt of the hearing request, the Division received no additional correspondence from Respondent. (Transcript, p. 25). Thus, Respondent did not submit his position, arguments or contentions in writing pursuant to R.C. 119.07.

The Division disapproves paragraph 10 on page 5 of the Report.

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. 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. Respondent affirmed before a notary that his Application was "complete and true" and shortly thereafter filed the Application, containing a false and incomplete answer as to his criminal history, with the Division. (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 false 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." Additionally, 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](http://www.m-w.com/dictionary/omit)). By answering "No" to Question 5 on the license application despite having a theft conviction, 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).

Because of 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 his business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. R.C. 1322.041(A)(5).

Lastly, the Division disapproves the Recommendation on page 8 of the Report.

Respondent was required to prove to the Division, by a preponderance of the evidence, 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 theft or any criminal offense involving money or securities. (State's Ex. 1; R.C. 1322.031(A)(3)). The Respondent did not appear at the hearing nor did any witnesses on his behalf, nor did he submit such evidence in writing. Accordingly, the Division finds that Respondent did not meet his burden of proof under R.C. 1322.031(A)(3). Also, as the Division has found violations of R.C. 1322.07(A), (B), and (C), the Division has established a lack of compliance with the Ohio Mortgage Broker Act and concludes that Respondent does not the conditions for licensure set forth in 1322.041(A)(2) and (5).

For the reasons stated above, the Division hereby denies the loan officer license application of Eric C. Gauer.

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 7<sup>th</sup> day of February 2007.

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**RICHARD F. KECK**

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