

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

In the matter of:)	Case No. 05-0108-LOD
)	
CONCETTA GORDON)	<u>DIVISION ORDER</u>
5370 Bartlett Road)	Denial of Loan Officer License Application
Bedford Heights, OH 44146)	&
)	Notice of Appellate Rights
)	

Respondent Concetta Gordon (“Respondent”), submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on March 11, 2005. On June 2, 2005, the Division notified Respondent that it intended to deny her Application because: (1) in or around September 1979, in the Bedford, Ohio Municipal Court Respondent was convicted of bad check; (2) Respondent attested in a sworn statement that information she provided in her Application was complete and truthful when it was not; (3) Respondent provided untruthful information to the State of Ohio, Department of Commerce, Division of Financial Institutions; (4) Respondent violated R.C. 1322.07(A), (B), and (C) by attesting to the accuracy of the Application and not disclosing her complete criminal history in her Application, which was filed with the Division; and (6) because 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 R.C. sections 1322.01 to 1322.12, the Ohio Mortgage Broker Act.

Respondent requested an administrative hearing, which was held on October 4, 2005. A Report and Recommendation (“Report”) was filed with the Division on January 23, 2006, 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. (The Report is attached).

The Division disapproves of paragraph 12 on page 4 of the Report.

The statement that intent is a necessary element to establish a violation of 1322.07 is incorrect. Unlike the Medical Board statutes considered in *Webb* (cited in the Report at page 4), R.C. 1322.07(A), (B), and (C) do not require a deliberative act to establish a 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. An applicant who, regardless of intent, fails to carefully read and answer each question in a 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) if her answer is untrue.

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 her criminal conviction to the Division constituted improper dealings in violation of R.C. 1322.07(C).

Here, Respondent failed to disclose her criminal background on the Application. Yet, Respondent affirmed before a notary that her Application was “complete and true” and shortly thereafter filed the Application, containing a false answer as to her criminal history, with the Division. (State’s Ex. 1). Respondent’s actions constitute a violation of 1322.07(A), (B), and (C).

Upon consideration of the record, the Division hereby adopts the hearing officer’s recommendation. The Application of Concetta Gordon is 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 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 January 2007.

ROBERT M. GRIESER

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