

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

In the matter of:)	Case No. 04-0271-LOD
)	
GLENN A. CONRAD)	<u>DIVISION ORDER</u>
12841 Walnut Hill Drive, #101)	Denial of Loan Officer License Application
North Royalton, Ohio 44133)	&
)	Notice of Appellate Rights

Respondent, Glenn A. Conrad, submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on November 10, 2003. On March 5, 2004, the Division notified Respondent that it intended to deny his Application because: (1) he attested in a sworn statement that the information provided about his criminal background on his loan officer license application was complete and truthful, when it was not; (2) he submitted untruthful information about his criminal background to the Division; (3) he violated R.C. 1322.07(A), by failing to disclose his conviction on his Application; (4) 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; (5) he violated R.C. 1322.07(C), by engaging in conduct which constitutes improper, fraudulent or dishonest dealings; and (6) because his character and general fitness did 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.

Respondent requested an administrative hearing which was held on June 15, 2004. A Report and Recommendation (“Report”) was filed with the Division on July 29, 2005, recommending that the Division approve 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 Hearing Examiner’s Report and Recommendation is attached hereto.)

The Division rejects paragraph 6 on page 6 of the Report. The hearing officer concluded that the Respondent's "incorrect" answer to question 5 of the loan officer application was an "innocent mistake," and that the Division had not presented any evidence to the contrary. The hearing officer went on to conclude that Respondent did not violate either R.C. 1322.07(A), (B) or (C). The Division disagrees with the hearing officer, because under those provisions it is not required to submit any such evidence of an intent to deceive.

In contrast to R.C. 1322.07(E) and (F), which contain language of intent by use of the term "knowingly," 1322.07(A), (B), and (C) do not employ any such language. Accordingly, an applicant who fails to carefully read and answer each question in a loan officer application; swears to its veracity despite the fact that it contains information which is not true; and then files such application with the Division, the applicant is in violation of R.C. 1322.07(A), (B), and (C).

In the present case, question 5 of the Loan Officer Application form asked the Respondent whether he had "ever been convicted of **any criminal offense**. Exclude minor misdemeanor traffic and parking offenses." (Emphasis in original.) (*See*, Exhibit A.) Respondent was convicted in 1989 of domestic violence, resisting arrest, and disorderly conduct, arising from separate instances which took place earlier that year. (*See*, Exhibit C.) When Respondent marked his answer to question 5 on the Application, he answered "no." (*See*, Exhibit A.)

Respondent's failure to disclose his criminal background on the Application was not due to an innocent mistake as described in the Report, but rather the Respondent's own carelessness. Respondent testified that "I don't believe I spent the time reading it that I should have." (Tr. at p. 52.) Respondent affirmed before a notary that his Application was "complete and true" and filed the Application containing a false statement concerning his criminal history. (*See*, Exhibit A.) Thus, Respondent's actions constitute a violation of R.C. 1322.07(A), (B), and (C).

Notwithstanding R.C. 1322.07, the inability to understand a direct question evidences a lack of the requisite fitness needed of a loan officer under R.C. 1322.041(A)(5). 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. Moreover, the application form is an important document for any prospective loan officer, and question number 5 is an important question for any applicant with a criminal record. Taken within its proper context, Respondent's

inability to understand and truthfully respond to an important question demonstrates to the Division that Respondent does not hold the requisite fitness needed to be a loan officer.

The Division rejects paragraph 7 on page 6 of the Report.

The hearing officer stated that “the Superintendent has every (sic) to believe that Respondent is honest, truthful and of good reputation, and that his character and fitness command the confidence of the public.” This statement confuses the statutory provisions for review of loan officer applications.

R.C. 1322.041(A)(3) requires a respondent to prove by a preponderance of the evidence that the applicant’s activities and employment since the conviction show that he is honest, truthful, and of good reputation. However, this standard is only to be applied to applicants who have either pleaded guilty to or been convicted of one of the offenses specifically enumerated in R.C. 1322.031(A)(2), such as theft, forgery or embezzlement, which the Respondent was not. In short, this standard of proof is not applicable to the Respondent’s case.

R.C. 1322.041(A)(5) provides that a license shall be issued if the superintendent of the Division finds that the Respondent’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 sections 1322.01 to 1322.12 of the Revised Code.” The Division is unable to make such a finding here, as the Respondent’s conduct in applying for a license was in violation of R.C. 1322.07.

For all the foregoing reasons, the Division also rejects paragraphs 7 and 8 on page 6 of the Report and Recommendation.¹ These are conclusory statements by the hearing officer, cumulative to paragraphs 6 and 7, and fail for the same reason as paragraphs 6 and 7, above.

In accordance with the foregoing, the Division concludes that Respondent’s loan officer license application should be denied.

It is so ordered.

¹ Aside from the legal errors described above, these paragraphs are misidentified in the Report and should be numbered 8 and 9, respectively.

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 31st day of October 2006.

ROBERT M. GRIESER

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