

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

In the matter of:	)	Case No. 04-0405-LOD
	)	
<b>CLAUDETTE I. MURRAY</b>	)	<b><u>DIVISION ORDER</u></b>
3017 West Knolls Lane	)	<b>Denial of loan officer license application</b>
Cincinnati, OH 45211	)	<b>&amp;</b>
_____	)	<b>Notice of Appellate Rights</b>

Respondent, Claudette Murray, submitted a loan officer license application to the Division of Financial Institutions ("Division") on March 11, 2004. On April 23, 2004, the Division notified Murray that it intended to deny her loan officer license application because: (1) she had been convicted of passing bad checks in 1998, and she had not proven that she is honest, truthful, and of good reputation and that there is no basis in fact for believing that she will not commit another offense involving passing bad checks; (2) she violated R.C. § 1322.07(A) by failing to disclose her passing bad checks conviction on her loan officer license application; (3) she 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; (4) she violated R.C. § 1322.07(C), which prohibits an applicant from engaging in improper or dishonest conduct; and (5) because her character and general fitness did not command the confidence of the public and warrant the belief that her 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.

Murray requested a hearing and an administrative hearing was held on July 13, 2004. A Report and Recommendation was filed with the Division on August 30, 2004, recommending that the Division approve Murray's application and grant her a loan officer license. Murray did not object to the report and/or recommendation.

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

The Division modifies paragraph B on page 2 of the Report and Recommendation. Paragraph B states that the Division issued it Notice on April 27, 2004. The Division issued the

its Notice on April 23, 2004 and mailed it on April 27, 2004. (Exhibits 5 and 6.) Paragraph B is modified to reflect the correct date of issuance and mailing of its Notice.

The Division disapproves paragraph 2 on page 4 of the Report and Recommendation. Horvath did not state what opinion he had of Murray's trustworthiness, even after directly asked by the hearing officer. Horvath did testify that Murray has turned down loans that were not in the borrowers' best interest. (Tr. 30-31.)

The Division disapproves paragraph 2 on pages 5 and 6; paragraph 3 on page 6; paragraph 5 on pages 6 and 7; paragraph 7 on page 7 and the Recommendation of the Report and Recommendation for the reasons stated herein.

The record reflects that on March 11, 2004, Murray submitted a loan officer application to the Division. (Exhibit 1.) The loan officer license application submitted by Murray specifically asked Murray in question 5 whether she "[has]\*\*\* ever been convicted of any criminal offense?" (Emphasis added?) Murray answered "no" to question 5 and did not disclose any criminal convictions to the Division. (Exhibit 1.) Pursuant to R.C. § 1322.031(B), a criminal background check of Murray was completed and it revealed that Murray had a 1998 passing bad checks charge in Cheviot, Ohio. (Exhibit 2.) On April 6, 2004, the Division wrote to Murray to inquire as to the 1998 passing bad checks charge and to have her send the Division specific information concerning that charge. (Exhibit 3.) In response to the Division's inquiry, Murray sent a certified copy of the court docket of the Cheviot Mayor's Court, which showed that Murray had been convicted passing a bad check in 1998. (Exhibit 4.)

Since Murray was convicted of passing bad checks, Murray had the burden to prove, by a preponderance of the evidence, that since her passing bad checks conviction, her employment record and activities show that she is honest, truthful, and of good character, and there is no basis in fact to believe that she will commit an offense involving passing bad checks again. (See R.C. §§ 1322.031(A)(2) and 1322.041(A)(3).) To that end, Murray presented only her own self-serving testimony, the testimony of her branch manager, Kevin Horvath, and a resume. (See Exhibit A.)

Horvath testified that Murray has a strong work ethic, but he never stated that Murray is honest or trustworthy even when directly asked about it. (Transcript pp. 30-31.) Moreover, Horvath had only been Murray's manager at Fidelity Mortgage for the four months preceding the

hearing. (Transcript p. 21.) The record is void of any evidence to corroborate the information contained in the resume Murray admitted.

The Division finds that Murray did not show by a preponderance of the evidence that her employment record and activities since her passing bad checks conviction that she is honest, truthful, and of good reputation.

The Division further finds that Murray not only violated R.C. § 1322.07(A), as found by the hearing officer, but also violated R.C. §§ 1322.07(B) and (C) by failing to disclose her conviction on her application. Section (B) of R.C. 1322.07 prohibits an applicant from making a false statement of a material fact or by omitting a statement required on the licensing application. R.C. § 1322.07(C) prohibits an applicant from engaging in improper or dishonest conduct. In answering question 5 on her loan officer license application, Murray stated that she had never been convicted of any criminal offense. (Exhibit 1.) She signed the license application under oath, swearing that she had completed it “fully and frankly[, and that] the answers were complete and true” when they were not.

The hearing officer noted in paragraph 3 on page 6 of the Report and Recommendation that Murray testified that she had misunderstood the meaning of question 5, and then speculated that Murray:

.... does not read and comprehend well or that she did not pay enough attention to detail. It is doubtful that at the time that she completed the application, [Murray] believed that the \$50.00 fine for having a \$14.74 check returned for insufficient funds would cause the Division not to give her a loan officer license.

While a hearing officer has the power to judge the credibility of a witness and the believability of a witness’ testimony, a hearing officer has no authority to speculate as to what may have been the intentions or beliefs of a witness during a prior act. Furthermore, the law governing the loan officer licensing process explains that the General Assembly considers the crime of passing bad checks severe enough to shift the burden on an applicant who has been convicted of such a crime to prove that he/she is worthy of a license. (See R.C. §§ 1322.031(A)(2) and 1322.041(A)(3).) Accordingly, Murray should have known that her criminal conviction for passing bad checks could cause the Division to deny her application. Further, Murray states with respect to question 5 that “[she] read it to be and reread it again that [the Division] wanted to exclude any misdemeanor and I thought that included all misdemeanors[.]” (Transcript, p. 16.) Question 5 of the application asks all persons if they had been convicted of “any criminal offense.” It only

asks applicants to exclude “minor misdemeanor traffic and parking offenses.” (Exhibit 1.) The wording of question 5 is clear. Loan officers are expected to read and be able to assist buyers with documents containing far more complex language than question 5 on the licensing application. If it is true that Murray just could not understand the question, the Division does not believe that she has the general fitness to be a loan officer, as required by R.C. § 1322041(A)(5).

After a thorough review of the evidence, the Division finds that Murray failed to meet her burden in proving that her employment record and activities since her passing bad checks conviction show that she is honest, truthful, and of good reputation and there is no basis in fact for believing that she will commit an offense involving passing bad checks again. The Division further finds that Murray violated R.C. §§ 1322.07(A), (B), and (C), and that Murray lacks the general fitness to assist buyers in what is often their largest financial investment. Accordingly, Murray’s March 11, 2004 loan officer license application is hereby 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, 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 3<sup>rd</sup> day of June 2005.

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**ROBERT M. GRIESER**

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

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