

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

In the matter of:)	Case No. 05-0051-LOD
)	
DUSTIN A. SWIGART)	<u>DIVISION ORDER</u>
1450 NW Washington Boulevard)	Denial of Loan Officer License Application
Hamilton, OH 45013)	&
)	Notice of Appellate Rights

Respondent, Dustin A. Swigart (“Respondent”), submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on September 17, 2004. On January 31, 2005 the Division notified Respondent that it intended to deny his Application because: (1) in or around 1999, in the District Court of Kenton County, Kentucky, Respondent was convicted of driving under the influence; (2) on or around September 14, 2004, 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; (3) on or around September 17, 2004, in an attempt to obtain a loan officer license, Respondent provided untruthful information about his criminal background to the Division; (4) he violated R.C. 1322.07(A) by failing to disclose his conviction in the Application; (5) 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; (6) he violated R.C. 1322.07(C), which prohibits an applicant from engaging in improper or dishonest conduct; and (7) 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 March 7, 2005. A Report and Recommendation (“Report”) was filed with the Division on August 16, 2005, recommending that the Division deny Respondent’s application. Objections were timely filed.

In accordance with R.C. 119.09, the Division has considered the record, consisting of the Report, the transcript of testimony and exhibits, Respondent’s objections, 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 paragraphs 11 and 12 on pages 5 and 6 of the Report.

Respondent was convicted of driving under the influence of alcohol in 1999 in the District Court of Kenton County, Kentucky, and did not disclose the conviction when required to do so in the Application. (State's Exs. A and C). 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 **any criminal offense**? Exclude minor misdemeanor traffic and parking offenses. (DUIs and DWIs are criminal offenses.) (Emphasis in original).

(State's Ex. A). Respondent answered "No" despite the fact that Question 5 explicitly inquired as to whether Respondent had ever been convicted of any criminal offense and specifically noted that "DUIs and DWIs are criminal offenses." (Id.)

Information concerning an applicant's criminal history is a material fact for licensing purposes. With this in mind, the Division finds that Respondent's false and inaccurate 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 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. 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.

Lastly, the Division modifies the Recommendation on page 6 of the Report.

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. Therefore, Respondent, as discussed above, does not meet the conditions for licensure set forth in 1322.041(A)(2) and (5).

For the reasons stated above, the Division hereby denies the Application of Dustin A. Swigart.

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 20th day of March 2007.

RICHARD F. KECK

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