

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

In the matter of:)	Case No. 05-0154-LOD
)	
KEITH E. KUFRIN)	<u>DIVISION ORDER</u>
1590 Westwood Drive)	Denial of Loan Officer License Application
Lewis Center, OH 43035)	&
)	Notice of Appellate Rights

Respondent, Keith E. Kufrin (“Respondent”), submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on June 15, 2005. On August 25, 2005 the Division notified Respondent that it intended to deny his Application because: (1) on or around June 9, 2005, 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; (2) on or around June 15, 2005, in an attempt to obtain a loan officer license, Respondent provided untruthful information about his criminal background to the Division; (3) he violated R.C. 1322.07(A) by failing to disclose his conviction in the Application; (4) 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; (5) he violated R.C. 1322.07(C), which prohibits an applicant from engaging in improper or dishonest conduct; and (6) 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 November 3, 2005. A Report and Recommendation (“Report”) was filed with the Division on February 13, 2006, recommending that the Division grant 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 is attached).

The Division disapproves paragraph 3 on page 2 of the Report.

The Division received the Application of Respondent on June 15, 2005, not January 8, 2004 as stated in the Report. (State's Ex. 1).

The Division disapproves paragraphs 9, 10, and 11 on page 5 and paragraph 13 on page 6 of the Report.

Question 5 of the Application explicitly inquired as to whether Respondent had ever been convicted of any criminal offense. Respondent himself admitted that he submitted an application that had a false statement on it. (Transcript pg. 12). During the course of his testimony, Respondent provides conflicting reasons for not disclosing his criminal history. At first he claims he did not disclose because he thought it was expunged already. (Transcript pp. 28, 33-34). However, later on, Respondent claims that he did not disclose because "...it was one day in my entire life. Just like I would not be able to remember a speeding ticket...I did not recall that. It was eight and a half years ago." (Transcript pp. 43-44). While he claims he did not recall the incident when filling out his Application, he was able to describe the day in vivid detail at the hearing, and in the letter of explanation he sent to the Division. (Transcript pp. 31-33, State's Ex. 4). Respondent was negligent when he did not verify that his record had actually been expunged. His conflicting explanations also raise questions concerning his honesty.

While Respondent's record is now expunged, this event post-dated the filing of his Application with the Division. (State's Ex. 1 and 5). Therefore, when he answered Question 5 he did have a criminal record. 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." (*Miriam-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 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. (Report, ¶¶ 10 and 13, pp. 5 and 6). 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.

Because of this recent act of dishonesty, combined with Respondent’s failure to verify that his criminal background had actually been expunged before he attested to the truthfulness of his answers on his Application, the Division cannot find that his character and general fitness would command the confidence of the public.

For this reason and 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 section C. DISCUSSION and 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. Additionally, Respondent’s general character and 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 the Ohio Mortgage Broker Act. See R.C. 1322.041(A)(5).

For the reasons stated above, the Division hereby denies the loan officer license application of Keith E. Kufrin.

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 19th day of December 2006.

ROBERT M. GRIESER

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