

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

In the matter of:	)	Case No. 04-0097-LOD
	)	
<b>ROBERT J. MILLER</b>	)	<b><u>DIVISION ORDER</u></b>
559 South Firestone Boulevard	)	<b>Denial of Loan Officer License Application</b>
Akron, Ohio 44301	)	<b>&amp;</b>
	)	<b>Notice of Appellate Rights</b>

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Respondent, Robert J. Miller, submitted a loan officer license application to the Division of Financial Institutions ("Division") on April 29, 2002. On January 22, 2004, the Division notified Miller that it intended to deny his loan officer license application because: (1) he was convicted of felonious assault in 1986; (2) he violated R.C. § 1322.07(A) by making a substantial misrepresentation on his loan officer license application; (3) 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; (4) he violated R.C. § 1322.07(C) by engaging in conduct that constitutes improper, fraudulent, or dishonest dealings; and (5) his 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 R.C. §§ 1322.01 to 1322.12—the Ohio Mortgage Broker Act.

Miller requested a hearing and an administrative hearing was held on February 25, 2004. A Report and Recommendation was filed with the Division on April 21, 2004, recommending that the Division approve Miller's application and grant him a loan officer license. No objections were filed.

In accordance with R.C. § 119.09, the Division has considered the record, consisting of the Report and Recommendation, the transcript of testimony and exhibits, as well as all applicable laws. As a result, the Division makes the following findings and conclusions.

The Division disapproves paragraph 12 on page 3.

Question 5 on the loan officer licensing application is a direct question concerning criminal convictions. The ability to read and comprehend such direct questions is vital to the fitness of a loan officer. Respondent testified that he answered incorrectly due to his own negligence when completing the application. (Transcript, pg. 30).

The Division disapproves paragraph 4 on page 6.

Miller stated on his license application that he had never been convicted of any criminal offense. He signed the license application under oath, swearing that he had completed it “fully and frankly[, and that] the answers were complete and true” when they were not. (See Exhibit 3). Miller was convicted of felonious assault, a fact that he did not disclose in answer to a direct question. This is a violation of R.C. § 1322.07(A) as one’s criminal history is a material fact required by state law to be disclosed. The legislature did not impose a statute of limitations on the age of the conviction. Therefore, respondent was required to disclose his conviction and violated R.C. § 1322.07(A) regardless of his misreading of the question as intent is not an element of this section.<sup>1</sup>

Additionally, the inability to understand a direct question evidences a lack of the requisite fitness needed of a loan officer. 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. By not being able to understand a direct question on a licensing application, respondent has demonstrated to the Division that he does not hold the requisite fitness needed to be a loan officer.

The Division disapproves paragraph 5 on page 6.

As stated above intent is not an element to prove a violation of R.C. § 1322.07(B). Further, as convictions are material facts, Miller made a false statement of a material fact when he answered Question Five (5) falsely informing the Division that he had not been convicted of any criminal offense. (See Exhibit 3).

The Division disapproves paragraph 6 on page 6.

R.C. § 1322.03(A)(4) allows the Division to request from loan officer license applicants “Any further information that the Superintendent requires”. The Superintendent requires a correct and honest answer to Question Five (5) on the loan officer license application which is not limited to the enumerated offenses found in R.C. § 1322.031(A)(2). Any criminal convictions reflect on an applicant’s character and are thus required to be disclosed. Miller did not do so, and therefore did omit a statement required by state law from his application, violating R.C. § 1322.07(B).

The Division disapproves paragraph 7 on page 6.

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<sup>1</sup> In R.C. §§ 1322.07 (E) and (F), both sections contain language of intent by using the term “knowingly.” R.C. §§ 1322.07 (A), (B), and (C) do not.

R.C. § 1322.07(C) prohibits a loan officer applicant from “[e]ngag[ing] in conduct that constitutes improper, fraudulent, or dishonest dealings.” Failing to disclose a criminal conviction constitutes improper dealings, as is the inability to answer question five (5) correctly.

The Division disapproves paragraph 8 on page 6.

As stated above, the Division does not have to prove intent to find a violation of R.C. § 1322.07(A), (B) and (C).<sup>2</sup> Therefore, even if the hearing officer believes it was a simple misreading of the question, the Division has proven such violations of the Ohio Mortgage Broker Act and to call Miller’s character and fitness into question. The Division has a responsibility to the public to be diligent in its oversight, and this responsibility demands that not answering a question about one’s criminal background accurately be taken seriously.

The Division disapproves paragraph 9 on page 6.

As the Division has established that Miller violated R.C. §§ 1322.07(A), (B), and (C), it cannot be said that the record supports a conclusion that Miller complies with the Ohio Mortgage Broker Act and meets that condition required for licensure by R.C. § 1322.041(A)(2).

The Division disapproves paragraph 10 on page 7 of the Report and Recommendation and the Recommendation on page 10.

The loan officer application submitted by Miller specifically asked him in question 5 whether he “[has]\*\*\*ever been convicted of\*\*\*any criminal offense[?]” (Exhibit 3.) Miller answered “no” (Id.) In answering question 5 on his loan officer application, Miller stated that he had never been convicted of any criminal offense. He signed the loan officer license application under oath before a notary public, swearing that he had completed it “fully and frankly[, and that] the answers were complete and true” when they were not. [Id.]

Miller’s failure to disclose his criminal conviction to the Division and his resulting violations of R.C. §§ 1322.07(A), (B) and (C) show that Miller’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.

The Division disapproves the recommendation on page 7.

Upon the Division’s review of the evidence, the Division finds that it has met its burden of proof and as a result, Respondent’s character and general fitness do not command the

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<sup>2</sup> In R.C. §§ 1322.07 (E) and (F), both sections contain language of intent by using the term “knowingly.” R.C. §§ 1322.07 (A), (B), and (C) do not.

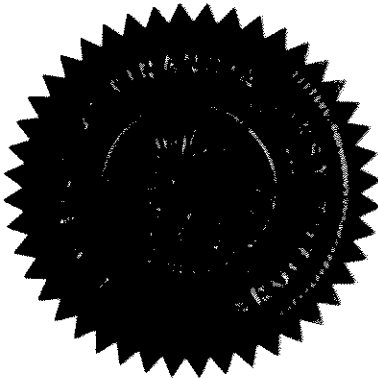
confidence of the public and warrant the belief that business will be operated honestly and fairly in compliance with the Ohio Mortgage Broker Act.

In accordance with the foregoing, the loan officer license application of Robert J. Miller 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 30th day of November 2005

**ROBERT M. GRIESER**

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

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

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IN RE: : CASE NO. 04-0097-LOD  
: :  
ROBERT J. MILLER : JANE S. ARATA, HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
Issued April 21, 2004

I. FINDINGS OF FACT

A. Background.

This matter came before Jane S. Arata, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions ("Division") to serve as Hearing Officer for this hearing in accordance with the Ohio Administrative Procedure Act, Ohio Revised Code ("R.C.") Chapter 119. The hearing was held on February 25, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Robert Miller ("Respondent") to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License and Notice of Opportunity for a Hearing ("NOH").

The Division alleged that Respondent was convicted of felonious assault and violated R.C. 1322.07(A), (B) and (C) by failing to disclose that conviction on his loan officer license application. Therefore, the Division asserted that Respondent is not eligible for a loan officer license pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322, for the following reasons:

1. Respondent violated R.C. 1322.07(A), (B) and (C) by failing to disclose the conviction on his application; and
2. 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 the Ohio Mortgage Broker Act as required by R.C. 1322.041(A)(5).

John Izzo, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Robert Woodside represented Respondent at the hearing. Respondent and Keith Karlo testified on behalf of the Respondent. At the hearing, State's Exhibits 1A, 1B, 1D, 3, 4, 5, and 6, and Respondent's Exhibits A through C were admitted into the record. (No

exhibit marked as either State's Exhibit 1C or State's Exhibit 2 was involved in the hearing.)

**B. Jurisdiction and Procedural Matters.**

The Division issued the NOH to Respondent on January 22, 2004. Respondent's hearing request was received by the Division on January 28, 2004. The Division scheduled the hearing for February 9, 2004, and continued it until February 25, 2004. The Respondent received the NOH by certified mail and received written notice of the date, time, and location of hearing.

**C. Respondent's Loan Officer Application and Conviction for Felonious Assault.**

1. Respondent is an individual who seeks to conduct business in Ohio as a mortgage loan officer. (State's Exhibit 3; TR at 29.) (References to pages of the Hearing Transcript will be abbreviated as "TR at {page(s)}".)
2. On May 2, 2002, amendments to Ohio's Mortgage Broker Act became effective that required mortgage loan officers to be licensed by the Division. R.C. 1322.02(B).
3. On April 24, 2002, Respondent signed a Loan Officer Application ("Application") which was then submitted to the Division. The Division received the Application on April 29, 2002. (State's Exhibit 3.)
4. Respondent answered "No" to Question 5 on the Application, which asked:  
  
Have you or has any company for which you have been an officer, or more than 5% owner or director, ever been convicted of or pleaded guilty to any criminal offense including, but not limited to, theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities."  
  
(Application, State's Exhibit 3; TR at 29-30.)
5. Respondent's signature on the Application is notarized. Directly above the applicant signature line, the Application states: "Being first duly cautioned, I hereby swear or affirm that I have completed the foregoing Loan Officer Application fully and frankly. The answers are complete and true of my own knowledge." (State's Exhibit 3.)
6. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031(B).

7. Respondent's background check revealed a possible conviction for felonious assault in 1986. In response to the Division's inquiry, the Respondent submitted a copy of a Summit County Court of Common Pleas record confirming the conviction. (State's Exhibits 4 and 5.)
8. Respondent admitted that he had been convicted of felonious assault in 1986. (State's Exhibit 5; TR at 30.) Respondent explained the conviction in a letter he sent to the Division prior to the issuance of the NOH. (State's Exhibit 5.) Respondent explained in that letter, and later at the hearing, that:

In December 1985, I came home from Mount Union College for the Holiday break. At that time, I was asked to pick-up my father at a local bar (Ideal Café.) Upon entering the bar, I found my father in a fight with another patron. My father was on the ground, and the other patron (who outweighed my father by at least 100 lbs.) would not stop kicking him. I tried to stop the other patron but was unsuccessful. At the time, I thought I had no other choice but to hit the man with something to get him to stop kicking my father. The first thing I found available was a pool stick. Due to the use of a weapon (pool stick) this resulted in a felonious assault charge.

(State's Exhibit 5, TR at 36-37.)

9. Respondent has no other criminal convictions. (TR at 40.)

**D. Respondent's Failure to Disclose Conviction on Application.**

10. The Respondent did not disclose the 1986 felonious assault conviction on his Application. (State's Exhibit 3; TR at 29-30.)
11. He consistently and credibly explained that he read "any crime including, but not limited to, theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities" in Question 5 as requiring financial offenses, not other types of criminal offenses, to be disclosed. Therefore, he had thought he had nothing to disclose on the Application. (TR at 29-30, 32-34.)
12. The Hearing Officer finds that the language in Question 5 could be confusing. The Respondent read the language in Question 5 as he testified and, based upon his understanding of the question, answered it truthfully. He made a mistake but he did not try to hide the conviction from the Division or make any statement that he thought or knew was false on the application.

E. Respondent's Reputation and Character.

13. Respondent has been the Branch Manager at Accelerated Mortgage Company for the past four years. In that capacity, he hires and trains employees, and supervises the loan officers. He oversees the daily operations including the loan process. He also reviews loan proposals for compliance with underwriting guidelines. (TR at 27-29, and 38.)

14. Robert Synder, Vice President of Accelerated Mortgage Company, has known Respondent for the past four years. He provided the following opinion by letter:

Robert has always displayed a high degree of integrity, responsibility and ambition. He is definitely a leader rather than a follower. In addition to his excellent management skills, he has proven his leadership ability by being an excellent trainer to other co-workers.

He is also a dependable employee. His good judgment and outlook ensure a logical and practical approach to his endeavors. His respect for others that he works with is held high. He has the best referral business of any person in the business, which should speak loudly for itself.

(Respondent's Exhibit C, TR at 39-42.)

15. Respondent also submitted letters from two insurance agents who refer business to Respondent. Both have had favorable experiences dealing with the Respondent and have confidence in his abilities in the mortgage industry. (Respondent's Exhibit C, TR at 39-42.)
16. The three letters Respondent submitted were not the subject of testimony or authenticated by their respective authors at the hearing. Thus, even in this proceeding to which the Rules of Evidence do not strictly apply, the letters contained in Respondent's Exhibit C were considered but afforded less weight than they would have been if the respective authors had testified and been available for cross examination.
17. Respondent has been gainfully employed since he was released from prison in 1987 and has been involved in coaching wrestling and T-ball. He was the Head Wrestling Coach at Garfield Heights High School from 1988 through 1992 and was responsible for the children on the team during out of state trips. He has coached T-ball teams for the past fifteen years. For over fifteen years, parents have trusted him to teach and care for their children. (TR at 39-40.)



18. Keith Karlo, who has known Respondent for twelve years, testified about Respondent's reputation in the community and handling of a residential mortgage for him. When Mr. Karlo first started his car wash business, Respondent helped him through tough times by voluntarily helping with the work. Respondent refused compensation of any type for providing this help. Mr. Karlo explained that Respondent could be counted on to be there when someone needs him. When a mutual friend fell upon hard times, Respondent let him stay in his rental property without charge. Respondent has also been a good father to three children and helps care for his own father. Mr. Karlo was very credible and it is clear that Respondent is dependable and is well respected in his community. Mr. Karlo was also pleased with Respondent's handling of his residential mortgage. (TR at 44-52.)

## **II. CONCLUSIONS OF LAW**

### **A. Jurisdiction and Procedural Matters.**

The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.

### **B. Loan Officer License Application.**

1. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.
2. Ohio Revised Code Section 1322.041(A) provides that a loan officer license shall be issued if the Superintendent of Financial Institutions finds that certain conditions are met, including:

(2) The applicant complies with sections 1322.01 to 1322.12 of the Revised Code.

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(5) The applicant'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.

R.C. 1322.041(A)(2) and (5).

3. Respondent was convicted of felonious assault in 1986.


4. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application. The Respondent did not make a substantial misrepresentation when he responded to Question 5 on the Application. He misread the question and answered truthfully based upon his understanding of the question. More importantly, the failure to disclose this 1986 conviction for felonious assault is not a substantial misrepresentation for the purposes of this licensing process eighteen years later.
5. Ohio Revised Code Section 1322.07(B) prohibits a loan officer license applicant from making false or misleading statements of a material fact or omissions of statements required by state law. The Respondent did not make a false or misleading statement of a material fact when he responded to Question 5 on the Application. He misread the question and answered truthfully based upon his understanding of the question. The existence of a 1986 conviction for felonious assault is not a material fact for the purposes of this licensing process eighteen years later.
6. Ohio Revised Code Section 1322.031(A)(2) requires a loan officer license applicant to include in his or her application a statement as to whether he or she has been convicted of or pleaded guilty to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities. That Section does not require a conviction for felonious assault to be disclosed on an application for a loan officer license. Therefore, the Respondent did not violate Ohio Revised Code Section 1322.07(B) by omitting a statement required by state law from his application.
7. Ohio Revised Code Section 1322.07(C) prohibits a loan officer license applicant from engaging in "improper, fraudulent, or dishonest dealings." Respondent misread a question and answered truthfully based upon that misreading of the question. These activities alone do not amount to engaging in "improper, fraudulent, or dishonest dealings" for the purposes of R.C. 1322.07(C).
8. There is no basis for establishing any violations of R.C. 1322.07(A), (B) or (C) by the Respondent.
9. The Division, having failed to establish any violation of R.C. 1322.07(A), (B), or (C), has likewise not established any lack of compliance with R.C. 1322.01 through 1322.12 of the Revised Code. Therefore, the record only supports a conclusion that Respondent complies with R.C. 1322.01 through 1322.12 and meets that condition required for licensure by 1322.041(A)(2).

10. The Respondent admitted that he made a mistake while reading the application. The old conviction relied upon by the Division and the fact that the Respondent misread a question do not prove that the Respondent is not fit to work in an industry that he has worked in for the past four years. The Respondent's testimony, Mr. Karlo's testimony and the reference letters offered by Mr. Snyder, Mr. Boldt, and Mr. Securo, establish that 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 Ohio's Mortgage Broker Act as required by R.C. 1322.041(A)(5).

### III. RECOMMENDATION

The Respondent has met the conditions set forth in Ohio Revised Code Section 1322.041(A)(2) and (5). Therefore, I respectfully recommend that the Superintendent of the Division of Financial Institutions issue Respondent a loan officer license pursuant to R.C. 1322.041.

Respectfully submitted,

  
Jane Stempel Arata  
Administrative Hearing Officer  
April 21, 2004