

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

In the matter of:)	Case No. M2006-9992884
)	
DAVID A. SAMPLES)	<u>DIVISION ORDER</u>
788 Huron Street)	Denial of Loan Officer License Application
Grafton, Ohio 44044)	&
)	Notice of Appellate Rights
)	

Respondent, David A. Samples (“Respondent), submitted a loan officer license application to the Division of Financial Institutions (“Division”) on January 23, 2003 (hereafter, “2003 Application”). That application was statutorily withdrawn for failure to respond to the Division’s request for further information. On or about October 13, 2004, Respondent submitted a second application for a loan officer license (“2004 Application”). On February 24, 2006, the Division issued an Order denying Respondent’s 2004 Application because: (1) Respondent violated R.C. 1322.07(A) by failing to disclose a prior criminal conviction in response to a question on his Application; (2) Respondent violated R.C. 1322.07(B) by making a false statement of a material fact and by omitting a statement required on the licensing application; (3) Respondent violated R.C. 1322.07(C), by engaging in improper or dishonest conduct; and (4) because 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 R.C. 1322.01 to 1322.12 – the Ohio Mortgage Broker Act.

Subsequently, on May 25, 2006, Respondent submitted a second loan officer license application (“2006 Application”). On July 6, 2006, the Division notified Respondent that it intended to deny his 2006 Application because: (1) Respondent had previously violated R.C. 1322.07(A), (B) and (C) by failing to disclose a prior criminal conviction in response to a

question on his 2003 and 2004 Applications; (2) Respondent had violated R.C. 1322.07(A), (B) and (C) by failing to disclose a prior license denial in response to a question on his 2006 Application; and (3) because 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.

Respondent requested an administrative hearing which was held on September 29, 2006. A Report and Recommendation ("Report") was filed with the Division on March 20, 2007, recommending that the Division deny Respondent's 2006 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 Report is attached hereto.)

The Division modifies paragraph 12 on page 7 of the Report.

In this paragraph, the Report characterizes question 4 of the 2006 Application as an "unnecessary, technical, bureaucratic trap." The question asks whether "[h]ave you ever had any type of approval or application to conduct business (such as a license or certificate of authority) denied . . .?" (Emphasis in original.) (State's Exhibit D.) This is a straightforward question, and an appropriate degree of emphasis is applied in order to assist the applicant. A truthful response to the question is necessary, because it prompts the Division to look at why an individual may have had a previous application denied. It is neither unnecessary, technical, nor a bureaucratic trap. The present case only illustrates the need.

The Division disapproves paragraphs 17 on page 8 of the Report.

The Report states that there is nothing in the Ohio Mortgage Broker Act "which suggests Respondent should be held accountable indefinitely for any mistake made on an earlier

Application.” This is incorrect. Pursuant to R.C. 1322.041(A)(2), the Division cannot issue a loan officer license to an applicant who has failed to comply with – or has previously violated – sections 1322.01 to 1322.12 of the Ohio Mortgage Broker Act, including R.C. 1322.07. As a result, the Division’s previous finding that Respondent violated R.C. 1322.07 is relevant to the present case involving Respondent’s re-application. Respondent’s previous violations of R.C. 1322.07 were plead specifically in the Notice of the Division’s intent to deny Respondent’s 2006 Application, and Respondent was given a full opportunity at the September 29, 2006 hearing to introduce new evidence or testimony on these issues; or, in other words, to re-litigate these earlier findings.

The Division disapproves paragraphs 20 and 21 on pages 8 and 9 of the Report.

The Report concludes that the Division failed to establish violations of R.C. 1322.07 on either the 2004 or 2006 Applications. As an initial matter, the Respondent’s violations of R.C. 1322.07(A), (B) and (C) were already the subject of the February 24, 2006, Division Order denying Respondent’s 2004 Application, and are not subject to reversal in this proceeding. As for the 2006 Application, the paragraph 20 of the Report states that the only evidence introduced was Respondent’s “confusing testimony.” This is incorrect. The issue is whether Respondent substantially misrepresented his administrative record when he submitted an untruthful response to the Division in question 4.

As stated above, Respondent’s 2004 Application was denied on February 24, 2006. When asked whether Respondent had “ever had any type of approval or application to conduct business (such as a license or certificate of authority) denied . . .,” Respondent’s answered “no.” (See, State’s Exhibit D.) The Division finds that Respondent’s unqualified denial of any prior adverse administrative action was a substantial misrepresentation in violation of R.C. 1322.07(A). No further evidence is necessary in order for the Division to state a prima facie case on this matter.

Furthermore, the Report concluded that Respondent's denial of any prior adverse administrative actions did not qualify as either a false or misleading statement of material fact within the meaning of R.C. 1322.07(B), or improper or dishonest conduct within the meaning of R.C. 1322.07(C). In paragraph 20, the Report stated that "[s]ince definitions found in statute, case law and Black's Dictionary indicate that 'false,' 'misleading' and 'misrepresentation' require a deliberate act, the Division has not met its burden." The Report does not provide citations to the statutes or case law being referred to, so the Division is not able to respond to this statement, except to say that it disagrees with whatever law is being applied to this issue. Respondent's intent when falsely filling out his loan officer license application is irrelevant to the Division's determination. R.C. 1322.07 (E) and (F) both contain language of intent by using the term "knowingly." R.C. 1322.07 (A), (B), and (C) do not.

Accordingly, the Division finds that Respondent violated R.C. 1322.07(A) by failing to disclose a prior adverse administrative action in response to a question on the Application; violated R.C. 1322.07(B) by making a false statement of a material fact and by omitting a statement required on the licensing application; and violated R.C. 1322.07(C), by engaging in improper or dishonest conduct during the course of submitting his Application for a loan officer license. Further, the Division finds that 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. See, R.C. 1322.041(A)(5).

Upon consideration of the record, the Division hereby accepts the hearing officer's recommendation and denies the loan officer license application of David A. Samples.

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, 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 8th day of May 2007.

RICHARD F. KECK

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