

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

In the matter of:)	Case No. 05-0106-LOD
)	
PIERRE S. BOSWELL)	<u>DIVISION ORDER</u>
20755 North Vine Avenue)	Denial of Loan Officer License Application
Euclid, OH 44119)	&
)	Notice of Appellate Rights

Respondent, Pierre S. Boswell (“Respondent”), submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on April 7, 2005. On June 2, 2005 the Division notified Respondent that it intended to deny his Application because: (1) in or around 1986, in the Municipal Court of Elyria, Ohio, Respondent was convicted of unauthorized use of a motor vehicle; (2) Respondent had not proven that he is honest, truthful, and of good reputation, and that there is no basis in fact for believing that he will not commit another criminal offense involving theft or any criminal offense involving money or securities; (3) on or around March 17, 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; (4) on or around April 7, 2005, in an attempt to obtain a loan officer license, Respondent provided untruthful information about his criminal background to the Division; (5) he violated R.C. 1322.07(A) by failing to disclose his conviction in the Application; (6) 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; (7) he violated R.C. 1322.07(C), which prohibits an applicant from engaging in improper or dishonest conduct; and (9) 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 October 6, 2005. A Report and Recommendation (“Report”) was filed with the Division on December 19, 2005, 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 Report is attached).

The Division disapproves paragraphs 10 and 11 on page 3; paragraphs 16 and 17 on page 5; and paragraphs 4, 5, 7, 8, 9, 10 and 11 on pages 8 and 9 of the Report.

Respondent was convicted of unauthorized use of property in 1986 in the Elyria Municipal Court and did not disclose the conviction in the Application. (State's Exs. 1 and 3). The offense was a misdemeanor for which Respondent was fined and sentenced to six months in jail, with credit for time served and the balance suspended. (State's Ex. 3). 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. 1). Respondent answered "No." (State's Ex. 1).

Question 5 explicitly inquired as to whether Respondent had ever been convicted of any criminal offense. Respondent was asked not only about felony offenses, but rather about any criminal offenses. Respondent testified that when he read the question "it seemed pretty clearcut and dry" and that he "understood it clearly." (Tr., p. 20, 68). Contrastingly, Respondent also testified that he was "baffled" by the sentence "[e]xclude minor misdemeanor traffic and parking offenses." (Tr., p. 21). Evidently, Respondent bore some uncertainty as to whether he answered the question completely and truthfully, having discussed his answer with his operations manager. (Tr., pp. 20-21, 24-25).

If Respondent had doubt as to how to answer Question 5, he should have erred in favor of full disclosure. In fact, page 1 of the Application cautioned:

You must answer each question on this application fully and truthfully. Any omission, untruthful answer, or incomplete answer may result in your being denied the privilege of * * * acting as a loan officer[.] (Emphasis in original).

Page 1 of the Application also warned Respondent:

If you have any doubts about whether any matter should be reported on this application, report it.

Respondent was duly alerted that he should err on the side of full disclosure of his criminal history, and he elected otherwise.

Information concerning an applicant's criminal history is a material fact for licensing purposes, regardless of how long ago the conviction occurred. 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." (*Merriam-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, ¶¶ 4, 5, and 7, pp. 6 and 7). 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. Here, Respondent's failure to disclose his criminal background on the Application was due to his failure to verify what information was sought by a straightforward question. Respondent testified that he was "baffled" by the question. Yet, Respondent affirmed before a notary that his Application was "complete and true" and shortly thereafter filed the Application, containing a false and incomplete answer as to his criminal history, with the Division. (State's Ex. 1).

In total, Respondent's activities do not show that he is honest, truthful, and of good reputation and that there is no basis in fact for believing that he will commit another criminal offense again involving theft. In Respondent's favor were positive character references via reference letters from an employer, namely the General Manager of K & G Fashion Superstore, and the Pastor of Respondent's church. (Respondent's Exs. A and B). Respondent also personally testified as to the services he has provided to his church. (Tr., pp. 64, 73-77). However, Respondent's testimony concerning his volunteerism and the reference letters, which

were admitted over hearsay objections, are overshadowed by Respondent's failure to disclose his conviction for unauthorized use of an automobile—a conviction for which he served time in jail. Because of this recent act of dishonesty, the Division cannot find that Respondent is honest, truthful, and of good reputation pursuant to R.C. 1322.041(A)(3).

Additionally, Respondent's inability to understand a direct question—or to seek clarification when one is “baffled” by a 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, evaluate and explain complicated mortgage documents is a vital part of the job. By not understanding a simple question on the Application, Respondent has demonstrated to the Division that he does not hold the requisite fitness required of a loan officer. 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 Recommendation on page 8 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, the record, as discussed above, does not support the conclusion that Respondent meets the conditions for licensure set forth in 1322.041(A)(2), (3), and (5).

For the reasons stated above, the Division hereby denies the loan officer license application of Pierre S. Boswell.

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 7th day of November 2006.

ROBERT M. GRIESER

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