

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

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| In the matter of: |) | Case No. 04-0240-LOD |
| |) | |
| JACK G. JONES |) | <u>DIVISION ORDER</u> |
| 5579 Buxley Drive |) | |
| Westerville, Ohio 43081 |) | Denial of Loan Officer License Application |
| |) | & |
| |) | Notice of Appellate Rights |

DIVISION ORDER

On or about September 2, 2003, Jack G. Jones ("Respondent") submitted a loan officer license application to the Division of Financial Institutions ("Division"). On January 23, 2004, the Division issued Respondent a notice of the Division's intent to deny Respondent's application, and notified Respondent of his right to a hearing on the matter. Respondent requested a hearing, and pursuant thereto, an administrative hearing was held in accordance with Ohio Revised Code Chapter 119 on February 24, 2004.

The Hearing Officer filed her written Report and Recommendation ("Report") with the Division on April 16, 2004, recommending the Division approve Respondent's application and grant him a loan officer license. A copy of the Report is attached hereto and incorporated herein as Exhibit A. Respondent has not filed any objections.

In accordance with R.C. 119.09, the Division has considered the Report, applicable laws, the transcript of testimony and the exhibits. As a result, the Division modifies and/or disapproves the findings and/or conclusions listed below. Any finding and/or conclusion not specifically addressed below is approved, adopted, and incorporated herein.

- The Division modifies the first sentence in paragraph I(C)(8) on page 3 of the Report. Respondent admitted at the February 24, 2004 hearing that he had been convicted of carrying a concealed weapon in 1990. On his loan officer application, Respondent did not admit that he had been convicted of carrying a concealed weapon in 1990. Respondent did not admit his conviction to the Division until confronted by the Division. *See Exhibits 3 and 4.*
- The Division modifies paragraph I(C)(9) on page 3 of the Report. According to Exhibit 4, Respondent completed an Ohio Peace Private Security Training Program, not a "Police Officer" program as indicated by the Hearing Officer.
- The Division disapproves of paragraph I(D)(11) on page 4 of the Report. Respondent admits that he misread Question 5. *Tr.* at p.18, l. 4. Respondent indicates that he had nothing to disclose on the Application because he

thought he was to exclude minor misdemeanors. However, Respondent pled guilty¹ to a “MISDEMEANOR of the 1st Degree” according to Exhibit 5. Although Respondent may have “credibly explained” how he read Question 5, by his own reading of the question he answered it incorrectly. By Respondent’s own reading, he should have answered “yes.”

- The Division disapproves of paragraph I(D)(12) on page 4 of the Report. Respondent did not answer Question 5 truthfully, as he read the question. He answered it incorrectly because, by his own admission, he believed all minor misdemeanors should be excluded. As he pled guilty to a misdemeanor of the first degree, he should have answered Question 5 “yes.” Respondent has acknowledged that he answered the question incorrectly and falsely.
- The Division disapproves of paragraph II(B)(4) on page 5 of the Report. Respondent may have misread Question 5, however he still failed to answer it in accordance with what he thought the question was asking. Respondent thought minor misdemeanors were excluded from the question, yet he failed to report that he pled guilty to a misdemeanor of the first degree.

An applicant violates R.C. 1322.07(A) when he or she tries to obtain a license through a false or fraudulent representation of a material fact or any omission of a material fact required by state law, or make any substantial misrepresentation in any license application. An applicant’s criminal history is a material fact when determining a license application. Respondent’s failure to answer Question 5 correctly is, at the very least, an omission of a material fact, if not false representation of a material fact. The Division finds that any misrepresentation concerning an applicant’s criminal history is substantial. Respondent violated R.C. 1322.07(A).

- The Division disapproves of paragraph II(B)(5) on page 5 of the Report. As mentioned above, Respondent did not answer Question 5 as he read it, otherwise he would have disclosed his guilty plea to a misdemeanor of the first degree. As mentioned above, Respondent’s inability to answer Question 5 correctly was, at the very least, a misleading statement of a material fact if not a false statement of a material fact.
- The Division disapproves of paragraph II(B)(6) on pages 5-6 of the Report. The Hearing Officer is incorrect when she asserts that “Respondent did not violate Ohio Revised Code Section 1322.07(B) by omitting a statement required by state law from his application.” R.C. 1322.031(A) states what information is required by law to appeal on an application for a license as a loan officer. R.C. 1322.031(A)(4) states that, besides the information enumerated in subsections (A)(1) through (A)(3), an application shall provide to the Division “[a]ny further information that the superintendent requires.”

¹ Respondent states in Exhibit 4 that he pled guilty to a misdemeanor.

This includes the information on the Application, asking about an applicant's criminal history. Respondent's inability to provide the Division information concerning his guilty plea to a misdemeanor of the first degree is an omission of a statement required by state law, and thus a violation of R.C. 1733.07(B).

- The Division disapproves of paragraph II(B)(7) on page 6 of the Report. Respondent was not confused by Question 5. He states that he thought it did not concern minor misdemeanors, yet never explains why he did not inform the Division of his guilty plea to a misdemeanor of the first degree. It was clearly improper for Respondent to answer Question 5 "no" when he knew that, in 1990, he had pled guilty to a misdemeanor of the first degree. Respondent violated R.C. 1322.07(C).
- The Division disapproves of paragraph II(B)(8) on page 6 of the Report. As mentioned above, Respondent answered Question 5 wrong. Even if one believes that Respondent thought he did not need to disclose minor misdemeanors in response to Question 5, this does not explain why he did not disclose that he pled guilty to a misdemeanor of the first degree in 1990. At the very least, Respondent omitted a material fact in the licensure process, and that is improper. As mentioned above, Respondent violated R.C. 1322.07(A), (B), and (C), by answering Question 5 incorrectly.²
- The Division disapproves of paragraph II(B)(9) on page 6 of the Report. By proving violations of R.C. 1322.07(A), (B), and (C), the Division has established Respondent's inability to comply with sections 1322.01 through 1322.12 of the Ohio Revised Code.
- The Division disapproves of paragraph II(B)(10) on page 6 of the Report.

The Respondent stated at the hearing that he misread Question 5 on the application. However, under his reading of Question 5, Respondent still should have disclosed that he had pled guilty to a misdemeanor of the first degree on the application. Instead, he chose to answer that he had no convictions of any criminal offenses. The omission of a material fact is a violation of R.C. 1322.07(A), (B), and (C). Respondent's inability to answer Question 5 correctly is evidence that his character and general fitness do not command the confidence of the public and does not warrant the belief that his business would be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

² It does not matter why Respondent incorrectly answered Question 5. R.C. 1322.07 lists the intent is for the violations contained in each subsection. Violations of R.C. 1322.07(E) and (F) require an act that is done "knowingly." There is no specific intent for violations of R.C. 1322.07(A), (B), (C), or (D); therefore, these are strict liability violations.

Question 5 is not confusing; it asks if an applicant has been convicted of any criminal offenses, and asks that they exclude minor misdemeanor traffic and parking offenses. Respondent was convicted of Carrying a Concealed Weapon, which is neither a minor misdemeanor traffic offense nor a parking offense. Respondent's inability to understand Question 5 and answer it correctly is evidence that his character and general fitness do not command the confidence of the public and does not warrant the belief that his business would be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

Respondent's inability to answer Question 5 correctly is not a mere "mistake" as the Hearing Officer believes. The ability to read and comprehend questions on applications is vital to the fitness of a loan officer. Respondent cannot command the confidence of the public if he cannot read and understand the questions on his own application for a license. In addition, Respondent even answered Question 5 incorrectly if he truly believed he was to exclude "minor misdemeanors." He pled guilty to a misdemeanor of the first degree, and should have disclosed this to the Division.

- The Division disapproves the Recommendation found on page 6. Respondent violated R.C. 1322.07(A), (B), and (C) by failing to answer Question 5 on the Application correctly. The Division does not find Respondent's explanation as credible, since he should have disclosed his conviction since it was not a minor misdemeanor but a misdemeanor of the first degree. Respondent's character and general fitness do not command the confidence of the public and does not warrant the belief that his business would be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

Upon consideration of the hearing officer's report and recommendation, the Division modifies the Recommendation as indicated above. Accordingly, Respondent's application for a loan officer license is hereby denied.

NOTICE OF RIGHT TO APPEAL

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 5th day of December 2005

ROBERT M. GRIESER

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