

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

In the matter of:	)	Case No. 05-0171-LOD
	)	
<b>JEFFREY A. RAINS</b>	)	<b><u>DIVISION ORDER</u></b>
6260 Pine Cone Drive	)	<b>Denial of Loan Officer License Application</b>
West Carrollton, Ohio 45449	)	<b>&amp;</b>
	)	<b>Notice of Appellate Rights</b>

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Respondent, Jeffrey A. Rains ("Respondent"), submitted a loan officer license application to the Division of Financial Institutions ("Division") on April 12, 2002. The April 12, 2002 application was withdrawn by the Division on December 6, 2002 due to Respondent's failure to provide requested documentation. On February 1, 2005, Respondent submitted a second loan officer license application. On November 21, 2005 the Division notified Respondent that it intended to deny his loan officer license application because: (1) In or around 1990, in the Municipal Court of Miamisburg, Ohio, Respondent was convicted of petit theft, a first degree misdemeanor; (2) in or around 1991, in the Court of Common Pleas, Warren County, Ohio, Respondent was convicted of trafficking in marihuana, a third degree felony; (3) 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 the theft, drug trafficking, or any criminal offense involving money or securities; (4) on or around January 10, 2005, Respondent attested in a sworn statement that information he provided about his criminal background on his second loan officer license application he submitted to the Division was complete and truthful when it was not, as it did not disclose his 1990 petit theft conviction; (5) on or around February 1, 2005, in an attempt to obtain a loan officer license, Respondent provided untruthful information about his criminal background to the Division, as he did not disclose his 1990 petit theft conviction; (6) on or around April 9, 2002, Respondent attested in a sworn statement that information he provided about his criminal background on his loan officer license application he submitted to the Division was complete and truthful when it was not, as he did not disclose his 1990 petit theft conviction; (7) on or around April 12, 2002, in an attempt to obtain a loan officer license, Respondent provided untruthful information about his criminal background to the Division, as he did not disclose his 1990 theft conviction; (8) he

violated R.C. 1322.07(A) by failing to disclose both convictions on his loan officer license applications; (9) 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 on the licensing applications; (10) he violated R.C. 1322.07(C), which prohibits an applicant from engaging in improper or dishonest conduct; and (11) 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 January 19, 2006. A Report and Recommendation was filed with the Division on July 3, 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 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. Any finding and/or conclusion not specifically addressed below is approved, adopted, and incorporated herein. (The Hearing Examiner's Report and Recommendation is attached).

The Division disapproves paragraphs 6 - 12 on pages 7 – 8 of the Report and Recommendation.

Respondent was convicted of petit theft, a first degree misdemeanor, in 1990 and trafficking in marihuana, a third degree felony, in 1991. (State's Exh. A). Respondent failed to disclose the theft conviction in his applications. (State's Exhs. A and D). Question 5 of the second application 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 **any criminal offense**? Exclude minor misdemeanor traffic and parking offenses. (DUI's and DWI's are criminal offenses.) (Emphasis in original).

In response, Respondent only disclosed the drug trafficking conviction. (Id.). Respondent stated that he did not disclose the theft offense because he misinterpreted the question. (Tr., pp. 14, 26, 29). In setting forth his reasoning, Respondent asserts that he thought Question 5 advised him to "exclude minor misdemeanors" and that the petty theft conviction was a misdemeanor that should be excluded. (Tr., p. 14). Respondent's theft conviction was a first degree misdemeanor, not a minor misdemeanor. The application required Respondent to disclose his theft conviction, and he failed to do so.

Information concerning an applicant's criminal history is a material fact for licensing purposes, as loan officers receive customers' confidential financial information and advise those customers on what may be their biggest financial investment. With this in mind, the Division finds that Respondent violated R.C. 1322.07(A) which prohibits an applicant from "mak[ing] any substantial misrepresentation in any \*\*\* license application." In Question 5 of the application, Respondent was asked, in part, whether he has "ever been convicted of any criminal offense[.]" (State's Ex. A). As discussed above, Respondent answered disclosed his drug trafficking conviction but not the theft conviction, thereby making a substantial misrepresentation on his loan officer license application. The hearing officer found that Respondent did not violate R.C. 1322.07(A), finding that Respondent, based on his misunderstanding of the question, did not make a statement that he knew or thought was false. Violations of 1322.07(A), or for that matter R.C. 1322.07(B) and (C), do not require a mental state, or intent, for their violation. In contrast, R.C. 1322.07(E) and (F) contain language of intent by using the term "knowingly", whereas R.C. 1322.07(A), (B), and (C) do not. The 10<sup>th</sup> Appellate District's decision in *Webb v. State Med. Bd.*, 146 Ohio App.3d 621, 628, is inapplicable as the Court did not consider R.C. 1322.07.

By answering "No" to Question 5 on the license application, Respondent violated R.C. 1322.07(B), which prohibits an applicant from "[m]ak[ing] false or misleading statements of a material fact, [or] omissions of statements required by state law[.]" The term "omission" means "the neglect to perform what the law requires." (*Blacks Law Dictionary, Sixth Edition*, 1990, p. 1086.) Despite having a theft conviction, Respondent made a false statement of a material fact required by law by not disclosing his full criminal history. The Division also finds that Respondent's failure to disclose his criminal convictions to the Division constitutes improper dealings in violation of R.C. 1322.07(C).

Because Respondent violated R.C. 1322.07(A), (B), and (C), the Division does not find that his character and fitness commands the confidence of the public and warrants the belief that the business will be operated honestly and fairly in compliance with the Ohio Mortgage Broker Act. The Division also finds that because of the violation of R.C. 1322.07 Respondent does not meet the condition for licensure listed in R.C. 1322.041(A)(2).

Lastly, the Division disapproves the Recommendation on page 9 of the Report and Recommendation.

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, does not support the conclusion that Respondent meets the conditions for licensure required by 1322.041(A)(2) and (5).

For the reasons stated above, the Division hereby denies the loan officer license application of Jeffrey A. Rains.

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 31<sup>st</sup> day of July 2006.

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**ROBERT M. GRIESER**

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