

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

In the matter of:)	Case No. 06-0041-LOD
)	
SCOTT R. MELARAGNO)	<u>DIVISION ORDER</u>
1334 Palmer House Court)	Denial of Loan Officer License Application
Columbus, OH 43235)	&
)	Notice of Appellate Rights
)	

Respondent, Scott R. Melaragno (“Respondent”), submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on November 16, 2004. On February 13, 2006, the Division notified Respondent that it intended to deny his Application because: (1) in or around September 1999, Respondent was found guilty of possession of LSD, a felony of the fifth degree; (2) in or around October 2002, Respondent was convicted of Possession of cocaine, a felony of the fifth degree; (3) Respondent attested in a sworn statement that information he provided in his Application was complete and truthful when it was not; (4) Respondent provided untruthful information to the State of Ohio, Department of Commerce, Division of Financial Institutions; (5) Respondent violated R.C. 1322.07(A), (B), and (C) by attesting to the accuracy of the Application and not disclosing his complete criminal history in his Application, which was filed with the Division; and (6) 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. sections 1322.01 to 1322.12, the Ohio Mortgage Broker Act.

Respondent requested an administrative hearing, which was held on April 11, 2006. A Report and Recommendation (“Report”) was filed with the Division on October 18, 2006, recommending that the Division approve 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 of paragraphs 10 (page 3), 3 (page 4), the last sentence of paragraph 4 (page 4), the last sentence of paragraph 5 (page 5), paragraph 6 (page 5), paragraph 7 (page 5), and the last sentence of paragraph 8 (page 6) of the Report.

Paragraph 10 is disapproved because regardless of what Respondent “believed” to be the correct answer to question 5 on the Application, he did nothing to ensure the accuracy of the answer. Additionally, the quotation of question 5 in the Report is incorrect. The question does not state “Exclude minor misdemeanors traffic and parking offenses”. Misdemeanor is not plural. The question clearly states “Exclude minor misdemeanor traffic and parking offenses”. Therefore, even if respondent was careless enough to act on a mere belief, he still should have been able to read a simple question and correctly include what he “believed” to be a minor misdemeanor in his answer.

In paragraphs 3, 6, 7, and 8 (pages 4-6) of the Report, the general contention is that “Respondent had nothing to gain” by excluding one of his felony drug convictions. The Division strongly disagrees. By not disclosing multiple convictions, Respondent is attempting to eliminate the possibility that the Division will see a pattern of criminal behavior, especially in this case where both convictions include felony drug charges. This is not a case of one “stupid” mistake. Two recent felony convictions reflect poorly on Respondents character. Further, the omission itself is a negative reflection of Respondents character and is an attempt to mislead the Division to gain an advantage in the licensing process. Therefore, the evidence presented by Respondent is not sufficient to overcome the Division’s evidence as indicated in paragraph 4 (page 5) of the Report.

Regarding paragraph 5 (page 5), the statement that intent is a necessary element to establish a violation of 1322.07 is incorrect. Unlike the Medical Board statutes considered in *Webb* (cited in the Report at page 5), R.C. 1322.07(A), (B), and (C) do not require a deliberative act to establish a 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. An applicant who, regardless of intent, fails to carefully read and answer each question in a 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) if his answer is untrue.

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).

Here, Respondent failed to disclose his criminal background on the Application. Respondent's testimony as noted in paragraph 10 on page 3 of the Report indicates that he did not give much thought to his criminal history even though he was convicted of two felonies. Yet, Respondent affirmed before a notary that his Application was "complete and true" and shortly thereafter filed the Application, containing a false answer as to his criminal history, with the Division. (State's Ex. A). Respondent's actions constitute a violation of 1322.07(A), (B), and (C).

Respondent's 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.

Upon consideration of the record, the Division hereby rejects the hearing officer's recommendation. The Application of Scott R. Melaragno is 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 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 22nd day of November 2006.

ROBERT M. GRIESER
Deputy Superintendent for Consumer Finance
Division of Financial Institutions
Ohio Department of Commerce