

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

In the matter of:)	Case No. 04-0343-LOD
)	
PAUL L. BELLI)	<u>DIVISION ORDER</u>
104 South 24th Street)	Denial of Loan Officer License Application
Weirton, West Virginia 26062)	&
<hr/>)	Notice of Appellate Rights

Respondent, Paul L. Belli, submitted a loan officer license application to the Division of Financial Institutions (“Division”) on January 8, 2004. On April 5, 2004, the Division notified Respondent that it intended to deny his loan officer license application because: (1) in 1983 he was convicted of battery in Hancock County, West Virginia; (2) in 1999 he was convicted of failure to pay child support in Hancock County, West Virginia; (3) he violated R.C. 1322.07(A) by failing to fully disclose his criminal convictions on his loan officer license application; (4) he violated R.C. 1322.07(B) by making a false statement of a material fact or by omitting a statement required on the licensing application and to the Division; (5) he violated R.C. 1322.07(C) by engaging in conduct that constitutes improper, fraudulent, or dishonest dealings; and (6) because his 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 R.C. 1322.01 to 1322.12 – the Ohio Mortgage Broker Act.

Respondent requested a hearing and an administrative hearing was held on August 10, 2004. The hearing officer’s Report and Recommendation (“Report”) was filed with the Division on April 5th, 2005, recommending that the Division approve Respondent’s application and grant him a loan officer license. 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. In consideration thereof, 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 Officer's Report and Recommendation is attached hereto.)

The Division disapproves paragraph 12 on page 3.

When Respondent completed his loan officer license application he answered no to question 5, which asked whether he had "ever been convicted of **any criminal offense**? Exclude minor misdemeanor traffic and parking offenses." (Emphasis in the original.) (State's Exhibit A, "Loan Officer Application," Question 5, at p. 2.) The application was signed by Respondent attesting that the answers were complete and true.

In paragraph 12 on page 3, the Hearing Officer incorrectly states the content of Question 5, cites the wrong exhibit number, and cites the wrong pages of the trial transcript. It should cite exhibit A and page 34 of the hearing transcript.

The Division disapproves paragraphs 15 and 16 on page 4.

The seriousness of ever being convicted of a crime should be an unforgettable moment in ones' life, not simply be relegated to the hinterlands of recollection. Moreover, despite the Hearing Officer's feeling that Respondent's memory had undoubtedly faded, or that he was confused, Respondent was in fact able to testify in great detail about the facts surrounding his offenses. (*See*, Report, at p. 4; Transcript, at pp. 37, 111-113.) The record reflects that Respondent was convicted of battery in or around 1983, and was convicted of failure to pay child support in 1999. (*See*, State's Exhibits B and C.) Respondent testified that he recalled the battery conviction. (Transcript of Proceedings, August 10, 2004, at pp. 34-37.) Respondent testified that he recalled the conviction for failure to pay child support, and in fact had to go see a probation officer three times. (Transcript, at pp. 38-39.) Respondent testified, and the certified

journal entry indicates, that at the time of his conviction the Court explained the difference between a criminal matter and a civil infraction, and that Respondent acknowledged his understanding of the difference.

Well, that's probably correct. I'm sure I acknowledged something. But whether I absolutely understood it in full, you know, I deal with people all day and I explain different loan programs to them and they always say yes they understand it, and then depending on, you know, let me know if you don't understand it, we'll go over it 48 times.

(Transcript, at pp. 41-42.) Respondent's testimony does not support his assertion that he did not understand he was being convicted of a criminal offense, but rather, that if he was confused at the time regarding an important personal matter, he would have made sure he took efforts to understand what action was being taken against him. It simply defies reason to say that one can be arrested, or surrender one's self to the police after being notified of an arrest warrant, as Respondent testified, and now swear under oath that you did not understand it was a criminal offense. It is neither convincing nor believable, and reflects negatively upon Respondent's character and general fitness under R.C. 1322.041(A)(5).

The Division disapproves paragraph 9 on page 6, and the third and fourth sentences of the discussion on page 8.

Failure to pay child support is a criminal offense in the State of West Virginia. (*See*, Exhibit C.) Respondent's conduct at that time gave rise to both civil and criminal liability, and it was plain error by the Hearing Officer to characterize it as essentially a civil matter. As for the battery conviction in 1983, the mitigating circumstances surrounding the commission of that offense which reflected positively on his character then, are outweighed by his more recent non-disclosure of the conviction and false attestation to his criminal record on the application. (*See*, Exhibit C.)

Furthermore, the Division takes particular exception to the Hearing Officer's comment in the fourth sentence of the Discussion on page 8. Neither of the offenses are of the type enumerated in R.C. 1322.031(A)(2), the commission of which would require the Division to deny his application, regardless of whether Respondent disclosed them honestly and truthfully. Respondent's denial was not made on that basis, nor could it have been. To reiterate, Respondent violated R.C. 1322.07(A) by failing to fully disclose his criminal convictions on his loan officer license application; Respondent violated R.C. 1322.07(B) by making a false statement of a material fact or by omitting a statement required on the licensing application and to the Division; Respondent violated R.C. 1322.07(C) by engaging in conduct that constitutes improper, fraudulent, or dishonest dealings; and, because of his non-disclosure and false attestation in his application, 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.

The Division disapproves paragraph 10 on page 7.

Respondent presented his own self-serving testimony; the testimony of a co-worker who is also his fiancé, and who would benefit financially if Respondent is legally authorized to originate loans; and four un-sworn letters. (Transcript, at pp. 79-85.) The testimony of these others is not sufficient to carry Respondent's burden, and the Hearing Officer's finding in paragraph 10 on page 7 conflicts with his earlier finding in paragraph 20 on page 5.

The Division disapproves paragraphs 13, 14, and 16 on page 7.

Respondent's argument in defense, essentially, is that due to the superfluity of accusations being made against him, he reasonably failed to ascertain or remember that one of the charges resulted in a criminal conviction. Respondent testified that he did not believe that he

had ever had a conviction. (Transcript, at pp. 120-121.) The Hearing Officer agreed and in paragraphs 13, 14 and 16 on page 7, found that his conduct did not constitute a violation of either R.C. 1322.07(A), (B) or (C) under a negligence standard.

The Hearing Officer's belief that R.C. 1322.07(A), (B) and (C) require at least a showing of negligence by the applicant is mistaken. R.C. 1322.07 (A), (B), and (C) do not require any showing of negligence or intent by the applicant in completing his application truthfully or attesting to his criminal history.¹ Respondent's non-disclosure of his past convictions evidences a present day dishonesty. The omission constituted a substantial misrepresentation on a license application in violation of R.C. 1322.07(A). Respondent's non-disclosure violated R.C. 1322.07(B) as it was an omission of statement required by state law. Additionally, Respondent's failure to divulge his criminal record on a license application constituted improper, fraudulent, or dishonest dealings pursuant to R.C. 1322.07(C).

Moreover, the inability to understand a direct question evidences a lack of the requisite general fitness needed of a loan officer. Loan originators deal with consumers' personal financial information on a daily basis, and counsel them on what is most often their largest financial investment. Details are important, as is the ability to understand and explain the gravity of one's actions and the consequences therefrom. By not being able to understand a direct question on a licensing application, or worse, by omitting unfavorable information, respondent has demonstrated to the Division that he does not hold the requisite character and general fitness needed to be a loan officer required by R.C. 1322.041(A)(5).

¹ R.C. 1322.07 (E) and (F) both require sections contain language of intent by using the term "knowingly." R.C. 1322.07 (A), (B) and (C) do not.

In accordance with the foregoing, the Division disapproves the last sentence of the discussion and the recommendation on page 8. The Division concludes that Respondent's loan officer license application should be 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, 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 27th day of April 2006.

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