

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

In the matter of:)	Case No. 05-0152-LOD
)	
DONALD R. DORSEY)	<u>DIVISION ORDER</u>
2759 Delhi Drive)	Denial of Loan Officer License Application
Clinton, Ohio 44216)	&
)	Notice of Appellate Rights
)	

Respondent, Donald R. Dorsey (“Respondent”), submitted a loan officer license application to the Division of Financial Institutions (“Division”) on April 15, 2002. On January 22, 2004, the Division notified Respondent that it intended to deny his loan officer license application (“Application”) because: (1) in or around 1992, Respondent was convicted of Theft, a felony of the third degree, and Carrying a Concealed Weapon, a felony of the fourth degree; (2) in 1992, Respondent was convicted of Aggravated Assault, a felony of the fourth degree; (3) Respondent violated R.C. 1322.07(A) by failing to making a substantial misrepresentation on his Application; (4) Respondent violated R.C. 1322.07(B) by making a false statement of a material fact and by omitting a statement required on the licensing application; (5) Respondent violated R.C. 1322.07(C), by engaging in improper or dishonest conduct; (6) pursuant to R.C. 1322.031(A)(2) and 1322.041(A)(3), Respondent has not proven that he is honest, truthful, and of good reputation, and 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; and (7) 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. 1322.01 to 1322.12 – the Ohio Mortgage Broker Act.

Respondent requested an administrative hearing, which was held on March 12, 2004. A Report and Recommendation (“Report”) was filed with the Division on May 13, 2004, recommending that the Division deny Respondent's Application. On August 5, 2004, the Division issued an order denying Respondent’s Application.

Subsequently, on October 25, 2004, Respondent re-applied for a loan officer license. On August 10, 2005, the Division notified Respondent that it intended to deny his re-Application on the basis of the Division’s previous findings, and because: (1) pursuant to R.C. 1322.031(A)(2)

and 1322.041(A)(3), Respondent has not proven that he is honest, truthful, and of good reputation, and 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; and (2) 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. 1322.01 to 1322.12 – the Ohio Mortgage Broker Act.

Respondent requested an administrative hearing, which was held on November 3, 2005. A Report and Recommendation ("Report") was filed with the Division on February 21, 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 hereto.)

The Division rejects paragraph 37 on page 6 of the Report.

The Report concludes that because Respondent mistakenly thought that Driving Under the Influence was excluded from his response as a "minor misdemeanor traffic offense," that "the language assumed that the general public knew the difference between the different levels of offenses and such is not the case." This is not a reasonable conclusion to draw from the facts. The Application even states that "DUIs and DWIs are criminal offenses." (*See*, State's Exhibit 1.) Given this statement, it would be unreasonable to conclude that DUI is a minor misdemeanor.

The Division rejects paragraph 4 on page 7 of the Report.

The Report concludes in paragraph 4 that Respondent "demonstrated by a preponderance of the evidence that his activities and employment record since the conviction show that the applicant is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant will commit such an offense again." The Division disagrees with this conclusion. The Division has already established in its August 5, 2004, Division Order that Respondent violated R.C. 1322.07(A), (B) and (C) at the time of his 2002 application by failing to disclose his prior criminal record. This activity should be considered for purposes of determining the Respondent's honesty and truthfulness since the date of his convictions, and the Report apparently fails to include it when considering the question. Moreover, given the fact

that this issue is directly pertinent to the present case – another application for a loan officer license – and given the fact that Respondent again failed to include another criminal offense in his response to a question about his prior criminal record, the Division finds that Respondent has not met his burden.

The Division rejects paragraphs 6, 7, and 8 on page 8 of the Report.

The Report's findings in paragraph 7 have fallen victim to a commingled misapplication of the two separate legal standards applicable to this matter. The Report all but admits its confusion in paragraph 6. Pursuant to R.C. 1322.041, the Division "shall issue a loan officer license to the applicant if the superintendent finds that the following conditions are met:

(3) The applicant has not been convicted of or pleaded guilty to [...theft], or, if the applicant has been convicted of or pleaded guilty to such an offense, the applicant has proven to the superintendent, by a preponderance of the evidence, that the applicant's activities and employment record *since the conviction* show that the applicant is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant will commit such an offense again.

* * * *

(5) The applicant's character and general fitness 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 sections 1322.01 to 1322.12...

(Emphasis added.) Id. The Division has alleged that both of these sections have been implicated by Respondent's conduct: in committing the offenses, and by failing to disclose the offenses on his Application. (See, Report at para. 8, pg. 8.) In accordance with R.C. 1322.041(A)(3), any evidence of convictions which occurred *after* the date of Respondent's theft conviction, in addition to other activity such as violating R.C. 1322.07, as discussed in paragraph 8, is relevant when considering the Respondent's activities since the date of the underlying conviction. Furthermore, pursuant to R.C. 1322.041(A)(5), all of Respondent's activities, including those which were the subject of the Division's previous findings in its August 5, 2004 Division Order, are relevant to the question of Respondent's character and general fitness, as this section requires the Division to consider the totality of the evidence, not just what has occurred since the date of an underlying conviction.

The Division rejects paragraphs 11 and 12 on pages 8 and 9 of the Report.

The Report concluded in paragraph 11 that Respondent "answered Question 5 on the 2004 application affirmatively and correctly," then finds in paragraph 12 that "[t]he fact that Respondent revealed his more major offenses demonstrates that he really did believe that he gave the Division a full accounting on the 2004 application." The Division finds that Respondent

failed to disclose all of his prior criminal convictions in response to the question have you “ever been convicted of **any criminal offense**? Exclude minor misdemeanor traffic and parking offenses. (DUIs and DWIs are criminal offenses.)” (Emphasis in original.) (*See*, State’s Exhibit 1.) Respondent obviously understood that DUIs were required to be disclosed, because he disclosed two of them, in 1992 and 1994. (*See*, *Id.*) However, Respondent’s disclosure was incomplete, as he failed to include the most recent DUI, in 1998. (*See*, Transcript of Proceedings, November 3, 2005, pp. 47-48.) Furthermore, at the hearing, Respondent testified as follows:

Q. Okay. Now, since 1992 have you been convicted of any other crimes?

A. No.

Q. Have you been charged with any other crimes?

A. No.

Id., at 39. The Division cannot reconcile Respondent’s testimony with his disclosures on the 2004 application, although this testimony would seem to be consistent with his omission of the 1998 offense. Respondent’s only explanation is that he asked the court for documentation, and the information provided is what he was given. No further evidence is provided in support of this except Respondent’s unrefuted self-serving testimony. The Division finds this not well-taken.

The Division rejects paragraph 14 on page 9 of the Report.

The Report asserts that “[t]here is nothing noted in Chapter 1322, O.R.C., which suggests Respondent should be held accountable indefinitely for any mistake made on an earlier Application.” The Division strongly disagrees with this mis-statement of the law applicable to the present case. R.C. 1322.041(A)(2) only permits the Division to issue a license to an applicant who complies with the other sections of the Ohio Mortgage Broker Act, and section 1322.07 states that:

No mortgage broker, registrant, licensee, **or applicant for a certificate of registration or license** under sections 1322.01 to 1322.12 of the Revised Code shall do any of the following:

(A) Obtain a certificate of registration or license through any 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 registration or license application;

(B) Make false or misleading statements of a material fact, omissions of statements required by state law, or false promises regarding a material fact, through advertising or other means, or engage in a continued course of misrepresentations;

(C) Engage in conduct that constitutes improper, fraudulent, or dishonest dealings;

(Emphasis added.) R.C. 1322.07, et seq. The Division has previously found that Respondent violated R.C. 1322.07(A), (B) and (C), arising from his failure to disclose his previous convictions on the 2002 Application. There is nothing in section 1322.041 that says a violation of 1322.07 is not a continuing bar to licensure.

The Report goes on to conclude that “sufficient time has elapsed to allow Respondent to have learned from that mistake.” The Division disagrees, in light of the degree of misrepresentations involved on his 2002 Application and the severity of the underlying offenses at issue; including three felony convictions, one of which was for Theft.¹ There is nothing in the Revised Code which provides guidance for how long an applicant should remain barred from becoming licensed as a loan officer, due to having committed a violation of R.C. 1322.07, except for the language contained in R.C. 1322.041.²

Upon consideration of the Report, the Division rejects the Recommendation. Accordingly, Respondent's Application is hereby denied.

It is so ordered.

¹ Furthermore, the Respondent should be aware of the recent amendment to the Ohio Mortgage Broker Act, which prohibits anyone with a prior theft conviction from being issued a license. See, R.C. 1322.041(A)(3), eff. Jan. 1, 2007.

² Although not applicable to the present case, Ohio Administrative Code 1301:8-7-09(D), eff. Sep. 1, 2006, prohibits anyone from applying for a loan officer license for two years, if that person was previously found to have violated R.C. 1322.07.

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 29th day of January 2007.

RICHARD F. KECK

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