

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

In the matter of:)	Case No. 05-0084-LOD
)	
DAVID A. SAMPLES)	<u>DIVISION ORDER</u>
35184 Elm Road)	Denial of Loan Officer License Application
Grafton, Ohio 44044)	&
)	Notice of Appellate Rights

Respondent, David A. Samples (“Respondent”), submitted a loan officer license application to the Division of Financial Institutions (“Division”) on October 13, 2004. On March 18, 2005, the Division notified Respondent that it intended to deny his loan officer license application because: (1) On or around October 7, 2004, 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; (2) on or around October 13, 2004, in an attempt to obtain a loan officer license a second time, Respondent provided untruthful information about his criminal background to the Division; (3) on or around January 2, 2003, 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; (4) on or around January 23, 2003, in an attempt to obtain a loan officer license, Respondent provided untruthful information about his criminal background to the Division; (5) he violated R.C. 1322.07(A) by failing to disclose his convictions on his loan officer license applications; (6) 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; (7) he violated R.C. 1322.07(C), which prohibits an applicant from engaging in improper or dishonest conduct; and (8) 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 May 12, 2005. A Report and Recommendation was filed with the Division on September 15, 2005, 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 paragraph 8 on page 3 of the Report and Recommendation, which concerns the evidentiary weight afforded to State's Exhibit 5C, not Exhibit 5B as it is referenced in the Report itself. Exhibit 5C is a print-out captioned as follows: "Elyria Municipal Court, Criminal/Traffic Docket; The State of Ohio, Columbia Township vs. David A. Samples; Case # 2001CRB01614." On January 4, 2005, the Clerk of Elyria Municipal Court certified the document as "Truly taken from computerized records now on file in my office[.] Witness my hand and seal of said court." This certified document indicates that David A. Samples was initially charged with Domestic Violence, a fourth degree misdemeanor, and that the charge was modified to Disorderly Conduct-Persisting, also a fourth degree misdemeanor. Additionally, Exhibit 5C states that a no-contest plea and finding of guilt were entered on August 30, 2001 and that Mr. Samples was levied a \$250 fine and costs of \$79.25. Because Exhibit 5C was a certified record of the Elyria Municipal Court, it should be and is afforded evidentiary weight.¹

The Division modifies paragraph 23 on page 5 of the Report and Recommendation. Although Respondent claims that he did not know he had entered a plea of no-contest to the disorderly conduct charge, he admitted to paying a fine of \$250 and court costs of \$79.25. (Transcript, pp. 50-52.) Respondent also remembers appearing in court two or three times and the court imposing a suspended 30-day jail sentence. (Transcript, pp. 52, 53, and 55.)

The Division disapproves paragraphs 24 and 25 on page 5 of the Report and Recommendation. Question 5 of the Loan Officer Application is a straightforward question that asks whether Respondent has been convicted of or pleaded guilty to any criminal offense. Specifically, Question 5 asks:

Have you or has any company for which you have been an officer, or more than 5% owner or director, ever been convicted of or pleaded guilty to **any criminal offense**? Exclude minor misdemeanor traffic and parking offenses. (DUIs and DWI's are criminal offenses.) (Emphasis in original.)

¹ Although not significant, it is worth noting that the Report and Recommendation afforded zero evidentiary weight to State's Exhibit 5C, a certified court record, yet Respondent's Exhibits A-E, which were objected to on hearsay grounds and as not being notarized documents, were apparently afforded some weight in paragraph 30 on page 6 of the Report and Recommendation. (Tr. p., 63).

Despite having a disorderly conduct conviction in 2001, for which he appeared in court two or three times and paid a fine and court costs, Respondent answered “No” to Question 5. (Transcript, pp. 52-53). Respondent’s failure to carefully read and provide an honest answer to a direct question evidences a lack of the requisite fitness required of a loan officer.

As concerns the complexity of the language in Question 5, on a daily basis loan officers 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 understanding a straightforward 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.

The Division disapproves paragraphs 4, 5, 6, 7, 8, 9, and 10 on pages 6 and 7 of the Report and Recommendation.

The Division is commanded by statute to investigate the criminal backgrounds of all loan officer license applicants. (See R.C. 1322.031(B)). The application for a loan officer license requires applicants to provide a statement as to whether or not they have ever been convicted of any criminal offense. Such an inquiry is specifically authorized by R.C. 1322.031(A)(4), which permits the Division to inquire as to “[a]ny further information.” The Superintendent of the Division has determined that information concerning convictions is material to the licensing process. Therefore, information concerning an applicant’s criminal history is a material fact for licensing purposes.

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 whether he has “ever been convicted of **any criminal offense**[.]” (Exhibit 3.) Respondent answered “No”, 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 misreading 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.²

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

² In R.C. 1322.07(E) and (F), both sections contain language of intent by using the “knowingly”, whereas R.C. 1322.07(A), (B), and (C) do not.

material fact, [or] omissions of statements required by state law[.]” As discussed previously, the Division is permitted by law to inquire as to an applicant’s criminal history. (See R.C. 1322.031(A)(4)). The term “omission” means “the neglect to perform what the law requires.” (*Blacks Law Dictionary, Sixth Edition*, 1990, p. 1086.) By answering “No” to a question concerning his criminal background, and despite having a recent conviction, Respondent made an omission of a statement required by law. The Division also finds that Respondent’s failure to disclose his criminal conviction to the Division, when asked in a clear and straightforward question, constitutes improper dealings in violation of R.C. 1322.07(C).

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. Therefore, the record does not support the conclusion that Respondent meets the condition for licensure required by 1322.041(A)(2).

The Division disapproves paragraph 11 on page 7 and the Recommendation on page 8 of the Report and Recommendation.

As previously stated, the Division cannot find that Respondent did not know that he had a criminal conviction in 2001, which should have been disclosed in the Application. Respondent acknowledged that he appeared in court two or three times in the criminal case that resulted in his 2001 conviction for disorderly conduct. (Transcript, p. 53.) Additionally, Respondent testified that he was fined for the conviction, and he also recalled the court imposing a 30-day suspended jail sentence. (Transcript, pp. 50, 52-53.) Despite all of this, Respondent failed to disclose his recent conviction to the Division.

In presenting his case for licensure, Respondent provided his own testimony and six character reference letters. Although favorable, the character letters provided by Respondent were hearsay as the letters’ authors were unavailable for cross-examination. (Transcript, p. 63-64.) None of the character letters addressed the conviction or Respondent’s failure to disclose the conviction. (Exhibits A-F.) As mandated by the Ohio General Assembly, the Division has a responsibility to be diligent in its oversight, and this responsibility demands that not accurately answering a question about one’s criminal background be taken seriously. Respondent should have disclosed his conviction, and his testimony and letters of support do little to mitigate this failure. Accordingly, the Division finds that Respondent’s non-disclosure of his conviction and the resulting violations of R.C. 1322.07(A), (B), and (C) show that his character and general fitness do not command the confidence of the public and warrant the belief that his business will

be operation honestly and fairly in compliance with the Ohio Mortgage Broker Act. (R.C. 1322.041(A)(5)).

Further, the Division finds that the language in Question 5 is not “confusing”. Question 5 asks whether the applicant has ever pleaded guilty to or been convicted of a criminal offense. (Exhibit 3.) Given the complex nature of mortgage loan documents that loan officers routinely handle and explain to consumers, Question 5 is not beyond ordinary comprehension. It is not too much to expect a loan officer license applicant to understand Question 5 considering that, on a daily basis, loan officers guide consumers through a maze of documents towards what is most often their largest financial investment. The Division has the duty to protect Ohio consumers and to secure that only those fit for licensure become loan officers. Based on Respondent’s failure to accurately answer Question 5, the Division finds that Respondent does not hold the requisite character and general fitness to originate loans.

Upon reviewing the evidence presented, the Division finds that 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 Ohio Mortgage Broker Act.

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

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 24th day of February 2006.

ROBERT M. GRIESER

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