

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

In the matter of:)	Case No. 05-0105-LOD
)	
TIMOTHY W. HERRON)	<u>DIVISION ORDER</u>
540 South St. Clair Street)	Denial of Loan Officer License Application
Painesville, OH 44077)	&
)	Notice of Appellate Rights

Respondent, Timothy W. Herron (“Respondent”), submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on September 8, 2004. On June 2, 2005 the Division notified Respondent that it intended to deny his Application because: (1) on or around September 3, 2004, Respondent attested in a sworn statement that information he provided about his criminal background in the Application he submitted to the Division was complete and truthful when it was not; (2) on or around September 8, 2004, in an attempt to obtain a loan officer license, Respondent provided untruthful information about his criminal background to the Division; (3) he violated R.C. 1322.07(A) by failing to disclose his conviction in the Application; (4) 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 in the Application; (5) he violated R.C. 1322.07(C), which prohibits an applicant from engaging in improper or dishonest conduct; and (6) 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 September 29, 2005. A Report and Recommendation (“Report”) was filed with the Division on March 13, 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, 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 is attached).

The Division disapproves paragraphs 2, 3, 4, 11 and 12 on pages 3, 4 and 6 of the Report.

The cases cited in the Report are not applicable to the present case. The appropriate burden of proof is delineated in the Ohio Mortgage Broker Act. (See R.C. 1322.01 to 1322.12).

The Division disapproves paragraphs 9, 11 and 12 on page 5 of the Report. R.C. 1322.07(A), (B), and (C) do not require a deliberative act for their 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. Accordingly, an applicant that fails to carefully read and answer each question in a loan officer 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) when such answer is patently untrue. Question Five on the Application does not limit the responses to felonies and Respondent was required to disclose his conviction. 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.

The Division hereby disapproves the recommendation found on page 6 of the Report and denies the loan officer license application of Timothy W. Herron.

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 21st day of December 2006.

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