

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

In the matter of:	)	Case No. M2008-11
	)	
<b>SCOTT D. FAZEKAS</b>	)	<b><u>DIVISION ORDER</u></b>
231 Millpond Road	)	<b>Denial of Loan Officer License</b>
Sunbury, Ohio 43074	)	<b>&amp;</b>
	)	<b>Notice of Appellate Rights</b>

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Respondent, Scott D. Fazekas (“Respondent”) submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on November 20, 2007. On April 11, 2008, the Division notified Respondent that it intended to deny his Application. On July 14, 2008, the Division amended its April 11, 2008 Notice of Intent to Deny Loan Officer License. The Division intended to deny the Application because: (i) Respondent made a substantial misrepresentation on the Application by failing to disclose that his professional teaching license was revoked, and (ii) his misrepresentation on the Application and his 2007 conviction for menacing by stalking and sexual imposition show that Respondent’s character and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 purposes of R.C. sections 1322.01 to 1322.12 of the Ohio Mortgage Broker Act.

Pursuant to R.C. 1322.10(A)(1)(a), the Superintendent of Financial Institutions may refuse to issue a loan officer license if the Superintendent finds a violation of or failure to comply with any provision of Sections 1322.01 to 1322.12 of the Revised Code or the rules adopted under those sections or any other law applicable to the business conducted under a certificate of registration.

Respondent requested an administrative hearing regarding the denial of his Application, and a hearing was held on July 22, 2008. A Report and Recommendation (“Report”) was filed with the Division on August 26, 2008, recommending that Respondent be denied a loan officer license. Respondent filed objections to the Report on September 5, 2008.

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. In addition, the Division considered the Respondent’s Objections to the Report. 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 modifies paragraph 8 on page 2 of the Report to reflect the pages in the transcript which support the findings in that paragraph. "Tr. at 56-57 and 101-102."

The Division modifies paragraph 16 on pages 3 and 4 of the Report to correct a typographical error in the Notice. The quotation on page 4 should read: "2. Respondent's actions as listed in paragraphs C through G above show that Respondent's character and general fitness do not command the confidence of the public..." instead of "C through F above." This typographical error also appeared in the Amended Notice. The issue of whether the criminal convictions contained in Paragraph G of the Notice show that Respondent lacks the requisite character and fitness to obtain a loan officer license was fully litigated by Respondent. The Division also modifies the citation at the end of paragraph 16 to correct a typographical error. It should read, "State's Exhibit A, NOH" rather than "State's Exhibit B, NOH."

The Division modifies the second sentence in paragraph 17 on page 4 of the Report to read, "The Division asserted that the Respondent's sexual imposition and menacing by stalking convictions, which involved a minor, demonstrates a breach of trust by an authority figure." The Division also modifies this paragraph to reflect the pages in the transcript which support the findings in that paragraph: "Tr. at 20, 24-28, 50-51."

The Division modifies paragraph 18 on page 4 of the Report to reflect the pages in the transcript which support the findings in that paragraph: "Tr. at 34-35, 66-67."

The Division modifies paragraph 19 on page 4 of the Report to read as follows: "When evaluating whether a loan officer has made a substantial misrepresentation on a loan officer application, the Division does not consider an applicant's state of mind or understanding of the question. Rather, the Division assesses only whether an applicant answered the question truthfully. The Division contended that there is no "knowingly" requirement in O.R.C. 1322.07(A), only that there be a substantial misrepresentation. Testimony of Ms. Mallett, Tr. at 40-45." The reason for this change is that the Division has not "adopted" an approach, as characterized in the Report, but rather the Division is interpreting its own statutes and rules. In this case, the Division is reading the plain meaning of R.C. 1322.07(A), which does not require

an intentionally false or fraudulent, or knowing misrepresentation as a condition precedent to finding that there is a substantial misrepresentation in a license application. This interpretation by the Division of its own laws has been reviewed and upheld in case law. See, *Hockenberry v. Ohio Department of Commerce*, 2007 Ohio 5555, at P11.

The Division modifies paragraph 20 on page 4 of the Report to reflect the pages in the transcript which support the findings in that paragraph: “Tr. at 68-71, 83-84, 88-91.”

The Division modifies paragraph 21 on pages 4 and 5 of the Report to reflect the pages in the transcript which support the findings in that paragraph: “Tr. at 71-76.”

The Division modifies paragraph 22 on page 5 of the Report to reflect the pages in the transcript which support the findings in that paragraph: “Tr. at 94, 83-84, 88-91, 72-73.”

The Division modifies paragraph 23 on page 5 of the Report to reflect the pages in the transcript which support the findings in that paragraph: “Tr. at 93, 87-90, 92-93.”

The Division modifies paragraph 24 on page 5 of the Report to reflect the pages in the transcript which support the findings in that paragraph: “Tr. at 78-81, 91.”

The Division modifies the first sentence of paragraph 25 on page 5 of the Report to read: “Respondent and his wife testified that even though he did not commit the crimes for which he was accused, it was best for their family that he pleads guilty to avoid a lengthy trial, additional legal fees, and further public embarrassment. Respondent and his wife further testified that they want to move on with their lives. Respondent voluntarily surrendered his teaching license to the Ohio Department of Education and found new employment with Freedom Banc Mortgage (“Banc”). Testimony of Respondent and Melissa Fazekas, Tr. at 100, 137-183, 144, 148-150.” The reason for this change is to clarify that the Respondent and his wife testified and it is their belief and contention that he did not commit the crimes to which he pled guilty. The Division is making no such finding. The Division objected to testimony collaterally attacking the criminal convictions based on relevance. See Transcript at 163-168.

The Division modifies the third sentence of paragraph 26 on page 5 of the Report to read: “Respondent did not remember receiving any correspondence from the State Board of Education informing him that his teaching license had been revoked.” The reason for this change is because Respondent testified that he did not remember receiving such correspondence, not that he definitively never received it. The Division also modifies paragraph 26 to reflect the pages in the transcript which support the finding in that paragraph: “Tr. at 56-60, 101-102, 108-109.”

The Division modifies the second sentence of paragraph 27 on page 5 of the Report to read: “In September or October 2007, the Banc hired Respondent as an assistant to the loan officers.” The reason for this change is because the testimony Steve Harris reflects that Respondent was hired in September or October last year. The Division also modifies paragraph 27 to reflect the pages in the transcript which support the finding in that paragraph: “Tr. at 115-120.”

The Division modifies paragraph 28 on page 5 of the Report to reflect the pages in the transcript which support the findings in that paragraph: “Tr. at 118-119, 122.”

The Division modifies the first sentence of paragraph 29 on page 6 of the Report to read: “At the hearing, Marc Steir, Executive Minister at Westerville Christian Church, testified on behalf of Respondent.” The reason for this change is to correct an error in the Report. Respondent is a “ministry partner” while Mr. Steir is “Executive Minister.” The Division also modifies paragraph 29 to reflect the pages in the transcript which support the findings in that paragraph: “Tr. at 126-129.”

The Division modifies paragraph 30 on page 6 of the Report to reflect the pages in the transcript which support the findings in that paragraph: “Tr. at 132, 134.

The Division modifies paragraph 31 on page 6 of the Report to reflect the pages in the transcript which support the findings in that paragraph: “Tr. at 144, 149, 153-154.

The Division modifies paragraph 32 on page 6 of the Report to reflect the pages in the transcript which support the findings in that paragraph: “Tr. at 96-97, 171-172.”

The Division disapproves paragraphs 38, 39, 40 and 45. R.C. 1322.041(A)(3), albeit correctly cited in paragraph 38, was improperly analyzed in paragraphs 39, 40, and 41 of the Report. R.C. 1322.041(A)(3) does not apply to the case at bar. In addition, the Division’s Notice of Intent to Deny Respondent a loan officer license did not include as the basis for its denial any allegation that Respondent was convicted of any crimes listed in R.C. 1322.031(A)(2) or referenced in R.C. 1322.041(A)(3). The Division’s Amended Notice was based solely on the allegations that Respondent violated 1322.07(A) and that Respondent lacked the character and fitness required pursuant to 1322.041(A)(6).

When R.C. 1322.041(A)(3) states, “...if the applicant has been convicted of or pleaded guilty to any *such* offense other than theft...” the statute is referring to any other offense listed in R.C. 1322.031(A)(2), but not theft. The word “such” refers to the statutory section cited in the

sentence immediately preceding the burden-shifting language. It is not referring broadly to any other criminal offense. Since Respondent was not convicted of or pleaded guilty to any of the offenses listed in R.C. 1322.031(A)(2), the burden shifting analysis in R.C. 1322.041(A)(3) does not apply to Respondent's case.

The Division adds the following conclusion of law to the Report: "Respondent's 2007 convictions for Menacing by Stalking and Sexual Imposition of a minor student while he was in a position of authority as her teacher, as well as the permanent revocation of his teaching certificate, shows that he lacks the requisite character and general fitness to 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 of the Revised Code. Similar to a teacher, a loan officer is both in a position of authority over other individuals and in a position of trust. After reviewing the entire record of this proceeding, the Division does not find the requisite character and fitness to issue Respondent a loan officer license. The Division agrees with the Hearing Examiner's conclusions in paragraph 41, that despite Respondent's steadfast belief that he is innocent of the 2007 convictions, it is impossible to ignore, and improper to re-litigate, the fact that Respondent pled guilty, was convicted of and remains on probation for such crimes."

The Division approves the Recommendation on page 8 of the Report that the Respondent should be denied a loan officer license.

For the reasons stated above, the Division hereby denies the loan officer license of Scott D. Fazekas.

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 26th day of September 2008.

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**LEIGH A. WILLIS**

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