

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

In the matter of:	)	Case No. 04-0270-LOD
	)	
<b>FRANK S. PREMURA</b>	)	<b><u>DIVISION ORDER</u></b>
9303 Snow Road	)	<b>Denial of Loan Officer License Application</b>
Parma Heights, Ohio 44130	)	&
	)	<b>Notice of Appellate Rights</b>

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Respondent, Frank S. Premura, submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on December 8, 2003. On February 27, 2004, the Division notified Premura that it intended to deny his loan officer license application because: (1) in 2002 he was convicted of attempted vandalism; (2) in 2002 he was convicted twice of disorderly conduct; (3) he violated R.C. 1322.07(A) by failing to disclose his 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 by state law on the licensing 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 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.

Premura requested an administrative hearing which was held on June 16, 2004. A Report and Recommendation was filed with the Division on October 4, 2004, 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 14 on page 3 of the Report and Recommendation.

Question number 5 on the Application is straightforward and not confusing. Further, violations of R.C. 1322.07 (A), (B), and (C) do not require intent.<sup>1</sup> Additionally, the inability to understand a direct question evidences a lack of the requisite fitness needed of a loan officer. On a daily basis loan originators 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 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 disapproves paragraphs 20 and 21 on pages 4 and 5 and paragraph 10 on page 6 of the Report and Recommendation.

By not disclosing his convictions in response to a question on the Application, Premura demonstrated an inclination for dishonesty. The Division cannot excuse the act of not disclosing criminal convictions merely because they occurred when the Respondent was young. Additionally, these convictions were in 2002, less than a year before he applied to be a loan officer. These convictions did not occur in the distant past, and the prospect that Respondent could still be prone to youthful indiscretions is a concern. Furthermore, the Division has a responsibility to the public to be diligent in its oversight, and this responsibility demands that not answering a question about one's criminal background accurately be taken seriously.

The Division disapproves paragraph 3 on page 5 of the Report and Recommendation.

Respondent's convictions were not minor misdemeanors as the Hearing Officer classifies them. A minor misdemeanor has a specific legal definition, which is found in R.C. 2901.02(G). The only penalty that may be imposed for a minor misdemeanor under R.C. 2901.02(G) is either a fine not exceeding one hundred dollars, or community service. However, Respondent received a five hundred dollar fine with two hundred and fifty dollars suspended in addition to three days of jail, with one day suspended for his attempted vandalism conviction. This conviction was classified as a first degree misdemeanor, not a minor misdemeanor. (State's Ex. C). Similarly, his disorderly conduct convictions were classified as fourth degree misdemeanors, and he was given 30 days suspended jail sentence on one of them. Clearly, Premura's criminal convictions were not minor misdemeanors.

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

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<sup>1</sup> R.C. 1322.07 (E) and (F) contain language of intent by using the term "knowingly," whereas R.C. 1322.07 (A), (B), and (C) do not.

The hearing officer concluded that Premura did not make a substantial misrepresentation when he answered question 5. However, the application of Respondent indicates that he answered “no” to Question 5 of the Loan Officer License Application. (See State’s Ex. A). Respondent’s statement that he had not been convicted of any offenses is a false or misleading statement. The Division finds that Respondent’s failure to disclose his convictions is a substantial misrepresentation, thus a violation of R.C. 1322.07(A). The Division also finds that Respondent’s statement that he had not been convicted of any offenses is a false or misleading statement, thus a violation of 1322.07(B).

R.C. 1322.031(A)(4) permits the Superintendent, in the Application, to request of the applicant “any further information that the superintendent requires.” Pursuant to R.C. 1322.031(A)(4), the application requests information regarding “any criminal offenses” in addition to those enumerated in R.C. 1322.031(A)(2). (See State’s Ex. A). This meant that Respondent was required to disclose his convictions for disorderly conduct and attempted vandalism. However, instead of being honest, Respondent answered “no” to Question 5. (See State’s Exhibit A). To “omit” means “fail to include; leave out...” *Webster’s New World Dictionary, Third College Edition, 1988 p. 945*. The definition of “omit” does not include any mental state or cognitive awareness. Therefore, the Division finds that Respondent omitted a statement required by law, violating R.C. 1322.07(B).

The Division finds that Respondent’s failure to disclose his convictions on his loan officer license application is conduct that constitutes “improper, fraudulent, or dishonest dealings” for the purposes of R.C. 1322.07(C). As noted above, sections R.C. 1322.07 (A), (B), and (C) do not require that an applicant violate them knowingly.<sup>2</sup>

The Division disapproves paragraph 9 on page 6 of the Report and Recommendation.

This Division, as pointed out in the previous paragraphs of this order, did prove that Respondent violated R.C. 1322.07(A), (B), and (C). Hence, Respondent did not comply with R.C. 1322.01 through 1322.12—the Ohio Mortgage Broker Act. As a result, the record indicates that Respondent did not meet the condition for licensure outlined in R.C. 1322.041(A)(2).

The Division disapproves the recommendation on page 7 of the Report and Recommendation.

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<sup>2</sup> In R.C. 1322.07 (E) and (F), contain language of intent by using the term “knowingly,” whereas R.C. 1322.07 (A), (B), and (C) do not.

Upon the review of the evidence, 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 Frank S. Premura.

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, 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 1st day of August 2006.

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**ROBERT M. GRIESER**

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