

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

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| In the matter of: |) | Case No. 05-0107MBR |
| |) | |
| HOMEBASE LENDING, LLC |) | <u>DIVISION ORDER</u> |
| 8544 Hickory Hill, Suite 6 |) | Revocation of Mortgage Broker |
| Poland, OH 44514 |) | Certificate of Registration |
| |) | & |
| |) | Notice of Appellate Rights |

Respondent, Homebase Lending, LLC (“Respondent”) is licensed under R.C. 1322 as a mortgage broker with the Division of Financial Institutions (“Division”). On or about December 27, 2005 the Division notified Respondent that it intended to revoke its certificate of registration and impose a fine of \$10,000 because Respondent violated 1322.02(A)(1), 1322.07(C), and 1322.062 of the Ohio Mortgage Broker Act by acting as a mortgage broker without an active certificate of registration, by maintaining a branch office without a certificate of registration, by allowing individuals without active loan officer licenses to act as loan officers, and by failing to provide buyers with proper mortgage loan origination disclosure statements.

Pursuant to R.C. 1322.10(A)(1)(a), the Superintendent of Financial Institutions may revoke a certificate of registration 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 revocation of its certificate of registration, and a hearing was held on October 17, 2006. A Report and Recommendation (“Report”) was filed with the Division on March 9, 2007, recommending that the Division not revoke Respondent’s certificate of registration but levy a fine in the amount of \$8,737. Respondent did not file objections.

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 modifies the Report's Findings of Fact to strike the words "ostensible" and "ostensibly" where they appear. The Division's examiner Kenneth Haynie testified that the buyer loan documents admitted as exhibits were true and accurate copies of Respondent's records regarding the subject transactions, obtained during the examination. (Tr.p. 47)

The Division modifies the Report's Findings of Fact (5)(V), last paragraph, on page 4 to state that Mark Worsencroft signed the certificate of employment for Jerry P. Latronica on September 22, 2005 not September 26, 2005.

The Division modifies the Report's Findings of Fact (5)(VI) on page 4 to omit the word "incomplete" from the first sentence. The Division modifies the second paragraph to omit any evaluation of Jerry Latronica's signature and whether it is similar or different to his signatures on other exhibits. The Hearing Officer has not qualified himself as a handwriting expert.

The Division modifies the Report's Findings of Fact (5)(VII) on page 4 to omit the word "incomplete."

The Division modifies the Report's Findings of Fact (5)(VIII) on page 4 to state that Exhibit 8 consists of eight pages, not nine.

The Division modifies the Report's Findings of Fact (5)(IX) on page 5 to omit "incomplete" with reference to the settlement statement.

The Division modifies the Report's Findings of Fact (5)(X), last paragraph, on page 6 to reflect that Mark Worsencroft signed the certificate of employment for Brian Myers on September 22, 2005, not September 5, 2005.

The Division modifies the Report's Findings of Fact (5)(XV), on page 7 to omit any evaluation of Jerry Latronica's signature and whether it is similar or different to his signatures on other exhibits. The Hearing Officer has not qualified himself as a handwriting expert. The Division adds that the check described references "Buyer: Miller" and "Property Address: 4554 Deopham Green Drive, Austintown, OH 44515."

The Division modifies the Report's Findings of Fact (5)(XVI), on page 7 to remove any reference to the settlement statement as "incomplete." The Division also modifies this paragraph to omit any evaluation of Jerry Latronica's signature and whether it is similar or different to his signatures on other exhibits. The Hearing Officer has not qualified himself as a handwriting expert.

The Division modifies the Report's Findings of Fact (5)(XVII), on page 7 to remove any reference to the settlement statement as "incomplete." The Division further modifies that Michael R. and Kimberly Rescimoto, at the time of application lived in Poland, Ohio and through the transaction purchased property in Struthers, Ohio. The hearing officer noted that the Settlement Statement was faxed from Hunter Stevens. The hearing officer does not mention that "Hunter-Stevens Land Title Agency, Ltd." was the Settlement Agent listed on the settlement statement.

The Division modifies the Report's Findings of Fact (5)(XVIII), on page 8 to remove any reference to the settlement statement as "incomplete." The Division adds with reference to the check that it references Seller Rosemary J. Serbin and Buyer Gregory L. Thompson, which matches the names of the buyer and seller on the settlement statement in this exhibit and the amount of the check equals the amount of the broker fee and broker processing fee detailed on the settlement statement which was to go to Homebase Lending, LLC.

The Division modifies the Report's Findings of Fact (5)(XX), on page 8 to state that the name "Harden" appears in the memo section of the check.

The Division modifies the Report's Findings of Fact (5)(XXI), on page 8 to state that the name "Ford" appears in the memo section of the check.

The Division modifies the Report's Findings of Fact (5)(XXIII) on page 9, the fourth paragraph of the hearing officer's narrative of Respondent's exhibits to state: "The eighth page of the exhibit is an "OHIO DIVISION OF FINANCIAL INSTITUTIONS 2005 MORTGAGE BROKER RENEWAL APPLICATION" signed before a notary by Mark C. Worsencroft on April 14, 2005."

The Division disapproves the analysis on pages 10-12 of the Report. The Division also disapproves the first paragraph of the Report's Recommendation of Action on page 15 of the Report. The record of the hearing clearly established that Homebase Lending LLC did not have a certificate of registration from May 1, 2005 until one was issued on August 23, 2005. (Exhibit 4, Tr. P. 45) The Division presented documentation that Respondent originated at minimum three loans when it did not hold an active certificate of registration. The Thompson loan was originated on June 22, 2005 and closed on July 13, 2005 (Exhibit 18). The Miller loan was originated on June 6, 2005 and settled June 24, 2005 (Exhibits 14 and 15). The Bretz loan was originated on July 26, 2005 and closed on August 2, 2005 (Exhibit 16). The Division presented

the Loan Applications and Settlement Statements regarding these transactions which clearly show the origination, closing, and the fee that was paid to Respondent as a part of this transaction. The check for payment by the title company to Respondent was presented in the Miller and Thompson transactions. The Division specifically disapproves the Report's contention that the Division failed to present adequate proof or sufficient foundation that the Thompson, Miller, and Bretz transactions occurred. The evidence presented demonstrated all elements for a violation of R.C. 1322.02(A)(1) regarding the above mentioned transactions.

The record demonstrates that Respondent did not have an active certificate of registration from May 1, 2005 through August 22, 2005. Respondent was informed by a letter from the Division that it no longer held a certificate of registration, a letter that Respondent concedes that it received at least by late June 2005. (Exhibit 3, Tr. P. 103) Respondent was personally informed by an examiner of the Division to cease all business other than closing loans in the pipeline prior to April 30, 2005. (Tr. P. 45, 64). Respondent took applications, originated and closed loans that were not in its pre-April 30, 2005 pipeline.

The Division's examiner, Kenneth Haynie, testified twice that Respondent could finish what Respondent had originated prior to April 30; however, Respondent could not originate new loans. (Tr. p. 45, 64). Subsequently, immediately after Kenneth Haynie testified that he told Respondent's owner and Operations Manager that he could only close the loans that were originated prior to April 30, Respondent's attorney stated, "All right. Now, so if, in fact, you were there in July, are you saying that you came in July and said, "By the way, I'm going to go back three months or two months," or was it more characteristic, "Mark, you just can't write any new business. Anything you previously had going, finish up, but you can't write new business." Kenneth Haynie replied "Correct." (Tr. p. 64). As stated before, Kenneth Haynie had already twice expressly testified that he told Mark Worsencroft that he could only close the loans he had originated prior to April 30. This exact question was already twice asked and answered. Consequently, the Division disapproves any and all reference to Respondent's attorney's attempts to twist Mr. Haynie's testimony in this manner in the Report. Further, the Ohio Mortgage Broker Act does not allow for registrants to close those loans that were originated when the registrant believed it was licensed. It only allows a registrant to close those loans that were originated when in fact, the registrant was licensed.

Respondent offered at the hearing only explanations for these violations or for why it thought it had properly renewed its mortgage broker certificate of registration and loan officer licenses. However, the core allegation is not whether Homebase Lending LLC believed it had a certificate of registration and its loan officers were licensed, it is whether Respondent in fact had a certificate of registration and licensed loan officers when it was operating. Respondent claimed that although by the time the Division examiner visited Respondent it was aware that it did not renew and had received written notice from the Division to cease operations due to this fact, it contends that it was told by the examiner that it could close loans in its pipeline without regard to when the application was taken. By the end of June Respondent had received written notice from the Division that it was “**required to cease all activity regulated by the Ohio Mortgage Broker Act**” (emphasis in the original). Respondent closed loans on July 13 and on or before August 1 for which loan applications were taken on June 22 and 21st respectively (Exhibits 18 and 19). Regardless of any excuse, Respondent did not have an active certificate of registration when both these transactions were originated and closed, therefore, the evidence demonstrates that Respondent violated R.C. 1322.02(A)(1) with respect to the loans documented in Exhibits 18 and 19.

The Division provided two procedures to all renewal applicants for a certificate of registration in 2005 so that they could confirm whether the Division received the renewal application. The Division’s instructions with the renewal applications included an option for a registrant to include a self-addressed stamped envelope with the application in order to receive a written confirmation that the Division received its application. (Exhibit B) Respondent acknowledged that it sent a self-addressed stamped envelope with its application (Tr. P. 95) and acknowledged that Respondent did not receive the written acknowledgement of receipt of the application from the Division. (Tr. p. 99). In addition, Respondent’s member and operations manager, Mark Worsencroft, testified that he did not inquire as to or determine whether the Division cashed the check he purportedly sent with the renewal application. (Tr. p. 100). At the hearing, Respondent failed to present a check, cashed by the Division, for the application fee or even that the company’s check register showed an uncashed check for the application. Instead, Worsencroft conceded at the hearing that he had turned the paperwork over to his secretary who he could not attest mailed the application to the Division. (Tr. p. 77)

The Report is hereby disapproved to the extent that it relies upon Respondent's unverifiable explanations as excuses for violations of the law. Someone may think, for example, that she has a valid driver's license because a clerk at the bureau of motor vehicles told her she had an extra month grace period after her birthday at expiration, but that does not affect whether she was operating under a valid license. As with this example, the Report places the Division in the position of disapproving Respondent's unsupported assertions. Rather than relying on the written letters from the Division, the written requirements of the law which the operations manager is tasked for compliance, or the testimony of the Division's examiner contradicting Respondent as to his instructions, the Report gives great weight to Worsencroft's hearsay testimony that someone at the Division told him differently. This is not, and cannot be, a proper approach in evaluating the evidence and compliance with licensing laws.

The Division disapproves the Report's Conclusions of Law, Charge Number Two. The Division alleged in its Notice that by allowing unlicensed individuals to act as loan officers for Respondent, Respondent has violated R.C. 1322.07(C) by engaging in improper dealings. The Report states that the Division failed to establish improper, fraudulent, or dishonest dealings by the Respondent because it did not offer evidence to prove that the named individuals worked for direct or indirect gain, profit, fees, or charges and because the Division failed to establish that the named individuals were "employees" of the Respondent. The record is clear that unlicensed individuals originated and closed mortgage loans for Homebase Lending. Despite its loan officers' lapse in licensure, the Notice sent by the Division informing them of their loss of licensure (Exhibits 5, 10), and the clear awareness of the problem as evidenced by the execution of new loan officer license applications on July 13, 2007 by three of its loan officers (Exhibits 5, 10, 12), Respondent continued to use these unlicensed loan officers to originate and close loans after that date. Another two loan officers never even submitted their loan officer license applications to the Division until September 17, 2005; yet they originated mortgage loans on behalf of the Respondent prior to that time.

The record demonstrates that Jerry Latronica conducted loan originations on behalf of Respondent on August 24, 2005 (Exhibit 7- Sankey loan), September 19, 2005 (Exhibit 6- Rader loan), July 26, 2005 (Exhibit 16- Bretz loan), and June 6, 2005 (Exhibit 15- Miller loan). The record demonstrates that the named loans closed and that Homebase Lending received compensation from the closing of the named loans. The record demonstrates that Jerry

Latronica's loan officer license expired on April 30, 2005. (Tr. p. 25, Exhibit 5). On July 22, 2005, the Division wrote Jerry Latronica a letter stating that his loan officer license has been cancelled due to nonrenewal and that he may not originate mortgage loans in Ohio until he obtains a loan officer license. (Exhibit 5) Further, the record demonstrates that Jerry Latronica knew that he did not have an active loan officer license on July 13, 2005, on which date, he signed a loan officer license application under oath which he did not submit to the Division until September 15, 2005. (Exhibit 5)

Similarly, the record establishes in the hearing's record that Brian Myers conducted loan originations on behalf of Respondent on September 8, 2005 involving Theodore Ostavitz (Exhibit 11), even though his loan officer license expired on April 30, 2005. The Division reminded him by letter dated July 22, 2005 of his lack of a loan officer license, and Mr. Myers was certainly aware of his lack of license by July 13, 2005 as evidenced by his completion of a new loan officer license application form on that date (Exhibit 10). This application was not submitted to the Division until September 15, 2005, and a new license was not issued until September 26, 2007. (Exhibit 10) The Ostavitz loan transaction was conducted at a time when Mr. Myers held no loan officer license.

While the record lacks direct evidence that the unlicensed individuals that originated loans were compensated for those transactions, the record contains evidence in the form of settlement statements and title company checks that Respondent was paid for the loans the unlicensed individuals originated (Exhibits 6, 9, 14, 16, 17, 18). Since Respondent was paid for these transactions, it can be inferred that the loan officers received compensation for these transactions, especially since individuals such as Jerry Latronica originated multiple transactions. A loan officer would not broker a second, third, and fourth loan if he was not paid for the first and had information that the broker, his employer, was compensated.

The Division disapproves the second paragraph of the Report's Recommendation of Action on page 15 of the Report. Additional evidence of R.C. 1322.07(C) violations by Respondent allowing unlicensed individuals to perform duties reserved for licensed loan officers was shown through admissions of Respondent's owner and Operations Manager, Mark Worsencroft. During cross examination, Mark Worsencroft testified about Respondent's business practices regarding the training of unlicensed loan officer new hires, which involves performing duties of a loan officer under supervision of a licensed loan officer. Unlicensed loan

officer trainees routinely originate loans for Respondent. (Tr. p. 91-92) The unlicensed loan officers “would take applications, usually with someone in the room.” (Tr.p.90) He stated that the unlicensed individual’s name appears on the loan (Tr. p.92). Mark Worsencroft testified that if the loan officer trainee gets paid for the loan, he gets a split commission with the loan officer that gets credit for the loan. (Tr. p. 115). During this testimony, Mark Worsencroft admitted to all elements of the R.C. 1322.07(C) violation alleged by the Division in its Notice.

The Division disapproves the Report’s Conclusions of Law, Charge Number Two on pages 12-13 of the Report, specifically the Report’s assertion that establishing that the named individuals were “employees” of Respondent (and consequently the broker is providing a wage or salary, paying social security taxes, providing workers compensation coverage, and withholds local, state, and federal income taxes per R.C 1322.01(C)) is a necessary element of demonstrating that these individuals were acting as loan officers without a license. The elements listed in R.C. 1322.01(C) are factors that may prove that an individual should be licensed but are not required in proving that an individual is acting as an unlicensed loan officer.

The Division disapproves the Report’s Conclusions of Law, Charge Number Three on pages 13-14 of the Report. The Report found that no evidence or testimony was introduced that established that Respondent failed to provide the disclosures required by R.C. 1322.062(A). The Division presented the testimony of Kenneth Haynie, examiner for the Division of Financial Institutions. Mr. Haynie testified about the document admitted as Exhibit 22: “they call it a Broker Retention Agreement, which takes place of the Mortgage Loan Origination Disclosure Statement.” (Tr. P. 56) He continued: “This is the—This is the newest form. When they got relicensed, this is the form that they used at that time.” (Tr. P. 58). This testimony indicates that Homebase Lending, LLC had only one form for the document required to fulfill the requirements of R.C. 1322.062(A). The Division presented evidence in the form of a Broker Retention Agreement, which according to its examiner’s testimony takes the place of the Mortgage Loan Origination Statement, but fails to satisfy the requirements of R.C. 1322.062(A). Respondent failed to present any documents which complied with the requirements of R.C. 1322.062(A) for the transactions referenced at the hearing or for any other transactions.

The Division disapproves the third paragraph of the Report’s Recommendation of Action on page 15 of the Report. Respondent’s mortgage loan origination disclosures (MLOD) in the form of its Broker Retention Agreement were also shown to be in violation of R.C. §

1322.062(A)(1)(f). The law requires that the mortgage loan origination disclosure statement include: “A statement that describes the method by which the fee to be paid by the buyer to the registrant will be calculated.” The Division interprets this provision to require a disclosure of a specific percentage or dollar amount, so that the consumer would be fully apprised of the fee to be charged by the mortgage broker for its services. Merely providing a range of cost as 1% to 5% as the Respondent did is not viewed as sufficient for compliance with this provision of the law, according to the Division. The Division’s reasonable interpretation of the statutes that it regulates is entitled to deference, and thus the violation has been shown on the face of the documents presented. Further, Respondent made the error of placing its old mortgage broker certificate of registration number on its Broker Retention Agreement following its August 23, 2005 reissuance which set forth a new and different number for the Respondent’s mortgage broker certificate. See R.C. 1322.062(A)(1)(c). Consequently, the Division demonstrated that Respondent violated R.C. 1322.062 in providing insufficient MLODs to its buyers.

The Division modifies the Hearing Officer’s Report and Recommendation’s Conclusions of Law, Charge Number Four and the fourth paragraph of the Report’s Recommendation of Action on page 15. The Division presented sufficient evidence that the Respondent was using an unauthorized branch office location in Warren, Ohio from which it conducted mortgage broker business. HomeBase Lending, LLC concedes that its loan officers would use the office location, which location clearly carried the publicly posted signage of the Respondent. (Tr. p. 87-88) Nor can the Respondent dispute that its unlicensed Warren office was listed in the local Yellow Pages under mortgage broker notwithstanding the requirement of R.C. § 1322.02(A)(2). (Exhibit 23)

The Division disapproves the fifth paragraph of the Report’s Recommendation of Action on page 15. Under R.C. 1322.10(A)(2), the Division is authorized to “[i]mpose a fine of not more than one thousand dollars, for each day a violation of law or rule is committed, repeated, or continued. If the registrant or licensee engages in a pattern of repeated violations of law or rule, the superintendent may impose a fine of not more than two thousand dollars for each day the violation is committed, repeated, or continued.” The Report’s findings do not justify this recommendation of a \$8,737.00 fine through the number of violations found. However, based on the Division’s findings, a \$10,000 fine is warranted. The testimony of Worsencroft established that the branch location in Warren, Ohio was being held out as Respondent’s office and was used by Respondent for several months. (Tr. p. 87-90) Consequently, the existence of the branch

along with the corresponding advertisements justifies this fine alone, as the Division is authorized to fine in the amount of \$1,000 per violation or per day of violation. In addition, the Division presented evidence in the form of five Broker Retention Agreements which did not fulfill the statutory disclosure requirements of R.C. 1322.062. Also, the Division demonstrated that the Thompson, Bretz, and Miller loans were originated by Respondent and closed during a time that Respondent did not hold a valid certificate of registration.

For the reasons stated above, the Division hereby revokes the certificate of registration of Homebase Lending, LLC and fines Homebase Lending, LLC in the sum of \$10,000. This fine amount is permitted by R.C. 1322.10(A)(2) and justified by the evidence of violations contained in the Exhibits and hearing transcript. Pursuant to R.C. 1322.10(A)(2), such fine shall be made payable to the treasurer of state to the credit of the Consumer Finance Fund created in compliance with R.C. 1321.21. Said fine shall be paid within 90 days of this Order.

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 25th day of July, 2008.

LEIGH A. WILLIS

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