

77 South High Street, 21st Floor
Columbus, Ohio 43215-6120

Denial of Loan Officer License

Pursuant to R.C. 1322.031(B) and 1322.10(B), the Division of Financial Institutions (“Division”) conducted an investigation into the affairs of Respondent, Stephen S. Walburn, a person seeking a loan officer license from the Division. On May 20, 2004, the Division notified Respondent that as authorized by R.C. 1322.041(A)(2) and (5) it intended to deny his loan officer license application because of Respondent’s violations of the Ohio Mortgage Broker Act, and because Respondent’s character and general fitness cannot in the view of the Superintendent command the confidence of the public so as to warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of said Act. These findings were based on the following conduct set forth in the Notice’s allegations that: 1) despite becoming the Operations Manager of Ameribanc Mortgage Lending, Inc. in April 2003 the Respondent continued to broker loans on behalf of Ameribanc Mortgage, Inc. in violation of R.C. 1322.03(A)(3) and 1322.02(B); 2) despite being both the Vice President of Operations for Ameribanc Mortgage, Inc. and the Operations Manager for Ameribanc Mortgage Lending, Inc. responsible for said latter registrant’s compliance, and despite being aware that Ameribanc Mortgage, Inc. was using the unlicensed 100 Dorchester Square, Suite 102, Westerville, Ohio office to broker loans, Respondent never reported this unlawful branch office to the Division or took any action to cease this violation of R.C. 1322.02(A)(2); 3) although Respondent was aware Buckeye Land Title Agency, Inc. was controlled by Michael Davis and had an affiliated business relationship with Ameribanc Mortgage, Inc., Respondent failed to disclose this relationship to the borrowers for whom he arranged loans as required by 24 CFR § 3500.15(b) in violation of 12 U.S.C. § 2607. This failure to disclose an affiliated business relationship constitutes a violation

of R.C. 1322.07(C); and 4) Respondent was aware of problems in the prompt payment and handling of escrow payments encountered in using Buckeye Land Title Agency, Inc. by October 2003, yet Respondent placed at least eleven consumer loans in November and December 2003 with said title agency, which left eleven consumers with unpaid first mortgages notwithstanding the distribution of monies to the title company by the refinancing lender. Given Respondent's knowledge of the title's company's past problems in making timely payoffs, such placements were improper in violation of R.C. 1322.07(C).

Mr. Walburn requested a hearing and an administrative hearing was held on August 27, 2004. A Report and Recommendation was filed with the Division on December 17, 2004 finding Mr. Walburn had not violated R.C. 1322.07(C) and that his character and fitness were such as to command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. In the Report and Recommendation, the hearing officer recommended that the Division grant Stephen S. Walburn his loan officer license. 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.

The Report and Recommendation is modified or disapproved as follows. The Report and Recommendation of the Hearing Officer is adopted as to its Findings of Fact with two modifications and one disapproval. The Division also adopts the report's Conclusions of Law other than paragraph B.5. with exceptions. However, the report's Recommendation is rejected and the Discussion preceding the Recommendation is modified or disapproved as set forth below. **In sum, the Division denies Respondent's application for a Loan Officer license due to the reasons stated herein.**

In its Finding of Fact, the report, on page one in its fourth sentence starting "Said NOH was based....," needs to be modified in two respects: 1) the addition of the words "*without a license*" before the words "and remained in the employment of Ameribanc....;" and 2) strike the words "being designated" and insert the word "*becoming*." The two sentences of the next to last paragraph in that section on page two beginning "It was also brought up...." and "He held no license...." are disapproved and are stricken.

These changes revolve around two issues. The one issue is whether the Division placed the Respondent on notice that his conduct in acting as a broker without a license was an allegation in dispute. In both the Division's allegations and in its findings recited in the Notice of Hearing in this matter the Division claims that Respondent was in violation of R.C. 1322.02(B). (Ex. 13, p. 2 ¶7. and p.3 ¶ 1). R.C. 1322.02(B) provides:

“No person, on the person's own behalf or on behalf of any other person, shall act as a loan officer without first having obtained a license from the superintendent. A loan officer shall not be employed by more than one mortgage broker at any one time.”

The Division in doing so placed Respondent on notice that his conduct as a loan officer without a license was at issue. There is no requirement that the Division explain in particular in its notice that Respondent's license had expired.

The second issue behind the above-modifications is the tendency of the Report and Recommendation to focus on Respondent seeking to become an Operations Manager for another company instead of the fact that Respondent had in fact become the Operations Manager for another company. A certificate of registration was issued to that company based on Respondent's attested representations. (Tr. p. 28-33; Ex. 1-3). The violations of R.C. 1322.03(A) and 1322.02(B) cited by the Division are not based on the fact that Respondent sought to become an Operations Manager, it is that he became an Operations Manager for a second company.

In paragraph B.5. of the Conclusion of Law the Report and Recommendation concludes that the burden of proof has been shifted to the Respondent. This paragraph is disapproved, except to the extent that this legal conclusion is meant to provide the Respondent with the ability to re-establish his character and fitness notwithstanding his violations of law. The burden of proof as to Respondent's lack of fitness or character remains upon the Division.

With respect to the Discussion in the Report and Recommendation the following modifications are adopted. In paragraph 3, p. 5 the Division modifies the Report and Recommendation by adding the following language at the end of the paragraph. *“This application for a mortgage broker certificate of registration was granted by the Division on April 4, 2003 and Respondent was its recognized operations manager. (Ex. 3; Tr. p. 32).”*

In paragraph 8, pp. 5-6, the following sentences are added at the end of the paragraph: *“However, Ameribanc Mortgage Lending, Inc. was, according to the sworn documents signed by*

Respondent and submitted to DFI, neither owned nor operated by Mike Davis, but rather was a company fully owned by Respondent for which he was also the Operations Manager. Indeed, the testimony raises issues of a violation of R.C. 1322.073. (Ex.1-3).” The Ohio Mortgage Broker Act specifically prohibits any person from acquiring an interest in an applicant or registrant for the purpose of concealing its true ownership or control. (R.C. 1322.073). Respondent’s testimony, if accepted, is that despite representing that he was the President and CEO and 100% stock owner of Ameribanc Mortgage Lending, Inc. in the application filed with DFI, in truth the entity was controlled by Mike Davis. (Ex 1 & 2; Tr. pp 140-148)

The Division modifies paragraph 9, p. 6 by adding the following sentence at the end. *“This testimony does not explain how Respondent could then sign and attest to a renewal application on behalf of Ameribanc Mortgage Lending, Inc. in April 2003. (Ex. 4; Tr. 33-34).”* To the extent that the unmodified paragraph implies acceptance of the Respondent’s explanation it is disapproved.

The Division modifies paragraphs 13 and 14, p. 6 by first combining the two paragraphs into one and then adding the following two sentences. *“This testimony does not correspond with Respondent’s earlier deposition, though, in which he stated that he was aware that there were both loan officers and telemarketers there, but thought they were working under Ameribanc Mortgage, Inc. (Ex. 8, p. 28). The 100 Dorchester Square location was also the place of business for which the Division had issued a mortgage broker certificate of registration to Respondent’s company Ameribanc Mortgage Lending, Inc. (Ex. 3).”*

The Division modifies paragraph 15, p. 6 by adding the following sentences at the end. *But the Respondent offered no testimony or evidence that Mr. Littlejohn was aware that Ameribanc Mortgage, Inc. was using Buckeye Land Title Agency, Inc. or was aware that there was a business affiliation between the two companies. Thus Respondent lacked any reason to use this as a basis for reliance of compliance.”* To the extent that the unmodified paragraph implies justifiable reliance it is disapproved.

The Division disapproves in part and modifies in part paragraph 16 as follows. The second sentence is disapproved and deleted and the following two sentences are added in its place. *“It was established by DFI through records on file with the Ohio Secretary of State that Mike Davis was a corporate officer of Buckeye Land Title Agency, Inc. Furthermore the close*

connection between Ameribanc Mortgage, Inc. and Buckeye Land Title Agency, Inc. was well-known to the Respondent as is clear from his earlier deposition. (Tr. p. 51-52; Ex 10 & 11)."

The statement in the hearing Report that the Division did not put on any evidence to show that the disclosures related to an affiliated business were insufficient, is not accurate. (Note: Respondent's testimony that he had no knowledge that the disclosures he gave were insufficient appears on Tr. p. 154 not p. 54- and the Report is modified to reflect the correct cite). However, DFI did provide evidence to show that the disclosures were not sufficient. (Tr. p. 51-52; Ex. 10) The Division thus further modifies the report by adding a new paragraph after 16 to state that:

"The language of the federal law (12 U.S.C. § 2607 and 24 C.F.R. § 3500.15(b)) cited by DFI requiring disclosure of a mortgage brokers affiliated business relationship with other settlement service providers is self-explanatory, and evidence was presented that established that the Respondent had failed to make those disclosures. (Tr. p. 51-52; Ex 10)."

In the deposition of the Respondent that was admitted into evidence and in testimony at the hearing explaining that exhibit, it was clearly established that Respondent was fully aware that Mike Davis controlled the operations of Buckeye Land Title Agency, Inc., and yet Respondent directly acknowledges that he failed to make any disclosure of this affiliated business relationship to borrowers as required by law. (Ex. 10; Tr. pp. 51-52)

The Division modifies paragraph 17, p. 7 by adding the following sentences at the end. *"Respondent's earlier testimony in deposition, however, showed that Respondent was well aware that not only he, but other loan officers had had trouble in getting payoffs through Buckeye Land Title Agency. (Ex 7, p. 17). In addition, due to these problems and given that he was not getting satisfactory answers and explanations he stopped using Buckeye Land Title Agency in September or October of 2003 as did other loan officers. Nevertheless, Respondent later that fall placed eleven loans through Buckeye Land Title Agency, Inc., each of which transactions resulted in the consumers facing the prospect of owing two mortgages due to the lack of payoff funds being transmitted. (Tr. pp. 42-44; Ex. 7 and 6)."* To the extent that the unmodified paragraph implies acceptance of the Respondent's explanation it is disapproved.

The Division modifies paragraph 18, p. 7 by adding words *"testified that he"* after "Respondent" in the second sentence; and by adding the following sentences at the end. *"As is clear from his earlier testimony in deposition, Respondent was well aware that not only he, but other loan officers had had trouble in getting payoffs through Buckeye Land Title Agency. And*

further that, due to these problems, and given that he was not getting satisfactory answers and explanations, he stopped using Buckeye Land Title Agency in September or October of 2003 as did other loan officers (Tr. pp. 42-44; Ex. 7)." To the extent that the unmodified paragraph implies acceptance of the Respondent's explanation it is disapproved.

The Division modifies paragraph 19, p. 7 by adding at its end the following sentence. *"This past use, however, occurred prior to when Respondent had become aware of significant problems in the title company's ability to fund payoffs."*

The Division disapproves of paragraph 20, p. 7. As written the language does not make sense. An allegation that the Respondent did not hold a current mortgage broker license is both self-evident, i.e., Respondent is applying for a loan officer license, and irrelevant- the mere failure to have one is not a violation, nor is failing to renew one's loan officer license an issue or violation. It is the conducting covered loan officer activity without a loan officer license that is the issue. To the extent the language was intended to refer to that issue and any claim that this matter was not raised as an allegation, the disapproval derives from the same one objected to in the Finding of Facts above regarding the Division's allegation of a violation of R.C. 1322.02(B) and are restated and incorporated herein. Further, the Division in disapproving and striking the language of paragraph 20, adds and inserts instead the following language. *"The Division's Notice of Hearing clearly stated in its allegations that 'Despite becoming the Operations Manager of Ameribanc Mortgage Lending, Inc. in April 2003 the Respondent continued to broker loans on behalf of Ameribanc Mortgage, Inc. in violation of R.C. 1322.03(A)(3) and 1322.02(B).' The Notice again in its findings states that 'Respondent brokered loans on behalf of Ameribanc Mortgage Inc. and remained in the employment of Ameribanc Mortgage Inc. after being designated the Operations Manager for Ameribanc Mortgage Lending, Inc. in violation of R.C. § 1322.03(A)(3) and R.C. § 1322.02(B.)'(Ex. 13, p.2 ¶7). R.C. § 1322.02(B) provides that 'No person, on the person's own behalf or on behalf of any other person, shall act as a loan officer without first having obtained a license from the superintendent. A loan officer shall not be employed by more than one mortgage broker at any one time.' (Ex 13, p.3 ¶1). Respondent had fair notice that his lack of a loan officer license while conducting such business was at issue. Respondent did not hold a loan officer license with Ameribanc Mortgage, Inc., yet nevertheless conducted business as one of its loan officers for nine months. (Ex. 6; Tr. pp. 38-40; Tr. pp. 181-182)."*

The Division modifies paragraph 23, p. 7 by making the following changes. The words “*According to Respondent*” should be added and placed at the beginning of the second sentence; the words “to Respondent” should be stricken and the words “*claimed that he*” should be added before the phrase “had no reason to doubt.” These changes are necessary to clarify that this is Respondent’s version of events of what others, who were not witnesses, said to him. Second the following sentence at the end of the paragraph is added to read: “*However, R.C. § 1322.031(E)(1) requires a copy of all loan officer licenses to be “maintained and displayed at the office where the loan officer principally transacts business.” Respondent had the clear opportunity to see that his license had not been renewed, and the legal obligation pursuant to R.C. § 1322.02(B) to maintain a valid license.*” It is proper to take judicial notice of the law of Respondent’s obligations. Brokering mortgage loans without a valid license is illegal just like driving without a valid license. It is one’s own obligation to make sure that one’s license has been renewed, the Ohio Mortgage Broker Act provides for no defense that someone else failed to renew it on his or her behalf. To the extent that the unmodified paragraph implies otherwise it is disapproved.

The Division takes note that no paragraph 31 on page 8 of the Report and Recommendation exists and the subsequent paragraphs are modified to reflect the correct numbers.

The Division disapproves and strikes paragraph 32, p.8. The Notice of Hearing served on the Respondent lists several violations and speaks for itself. Respondent’s misunderstanding that the Notice primarily concerned one aspect of violation is not relevant, nor does it accurately reflect the Notice.

The Division modifies paragraph 33, p.8 by adding the following sentences at the end of the paragraph. “*Notwithstanding this consistent contention, the fact remains that Respondent not only executed and attested to a mortgage broker application, he executed an Operations Manager Profile in connection with that application, then proceeded to take the examination to qualify as the operations manager of Ameribanc Mortgage Lending, Inc., obtained and provided proof of a bond, obtained a license to operate as Ameribanc Mortgage Lending, Inc., he then less than a month later executed and attested to a Renewal Application that was submitted for said company (Ex 1, Ex. 2, and Ex 4). The legal effect of Respondent’s actions was to create separate and licensed mortgage broker company, Ameribanc Mortgage Lending, Inc. (Ex 3). As its*

operations manager, responsible under law by R.C. § 1322.01(H) for knowledge and compliance with the Ohio Mortgage Broker Act, Respondent cannot place reliance or blame on someone else without essentially establishing one's lack of fitness to command the confidence of the public and warrant the belief that the business will be operated in compliance with the law.” To the extent that the unmodified paragraph implies acceptance of the Respondent's explanation it is disapproved.

The Division disapproves of paragraph 34, pp. 8-9 and strikes it in its entirety. The paragraph as presented seems to establish ignorance of the law as an excuse. While Respondent contends he had never been active in mortgage broker business through Ameribanc Mortgage Lending, Inc., he was nevertheless its designated and authorized operations manager. As its acting operations manager, Respondent is precluded from being employed by Ameribanc Mortgage, Inc. pursuant to the terms of R.C. § 1322.03(A)(3). To the extent that Respondent explains why he signed the documents becoming the operations manager at the urging and direction of Mike Davis, Respondent only reaffirms his lack of understanding of the law as to the legal effect of his application and raises the issues of who controls Ameribanc Mortgage, Lending, Inc. and whether there has been a violation of R.C. § 1322.073. Lastly, Ameribanc Mortgage Lending, Inc. took corporate action in obtaining a bond and later in obtaining a FHA/HUD license and making two HUD mortgage loans. (Ex. 17, p. 27-28; Tr. pp. 147-151).

Further, Respondent's credibility, even if accepted, is not dispositive when he explains why he failed to make disclosures of the affiliated business relationship between Ameribanc Mortgage, Inc. and Buckeye Land Title Agency, Inc.; nor is it true to assert that the Division failed to present evidence that the disclosures were not made. These matters were previously discussed above in the modifications to paragraphs 15, 16, and the addition of a new paragraph following paragraph 16.

The Report's statement that Respondent was unaware of serious problems in placing loans through Mike Davis' Buckeye Land Title Agency, Inc. is erroneous, as is the statement that the Division presented no contradictory evidence on this point. These issues are addressed in the modifications to paragraphs 17 and 18 above. As previously noted, and as was discussed in testimony at the hearing, supported by the submitted documentary evidence of Respondent's prior deposition, the Respondent was well aware of the problems, had discussed them with other

loan officers, and stated he stopped using them for a time in the months just prior to November and December 2003. (Tr. pp. 42-44; Ex. 7 and 6).

The statement that “the Respondent had not a single violation of the act in existence at the time of the investigation,” is completely erroneous. Indeed, all the violations alleged in the Notice of Hearing occurred prior to the Division’s initial investigation in late December 2003 into Ameribanc Mortgage, Inc., let alone the subsequent investigation occasioned by Respondent’s application for a loan officer license in February 2004. The Division can only surmise that the hearing officer meant to say that the Division had not prior problems or complaints regarding the Respondent before those relating to the collapse of Ameribanc Mortgage, Inc. To the extent that this statement was meant only to refer to a lack of prior complaints, it is without significance or logic. That the Division would begin an investigation following a complaint rather than prior to a complaint is not surprising. Further a lack of complaints does not mean a lack of violations. Lastly, the hearing is on the violations as set forth in the complaint. To claim that Respondent did not have previous legal or consumer problems to the ones brought in this complaint is to add a prerequisite burden on the State that is beyond that provided in law. In this regard it is important to note that Respondent’s violations contributed in part to at least eleven families facing losses in total of over \$1 million dollars (Ex. 6; Tr. pp.38-42).

Respondent’s resignation from Ameribanc Mortgage, Inc. followed its collapse and was pro forma and not an exculpatory fact. Respondent’s cooperation in the Division’s investigation into the collapse of Ameribanc Mortgage, Inc., while appreciated, was required by R.C. § 1322.072(A). Regarding Respondent’s erroneous belief that he held a valid loan officer license with Ameribanc Mortgage Lending, such an erroneous belief does not obviate a violation of R.C. § 1322.02(B), particularly in light of the license posting requirements of R.C. § 1322.031(E)(1).

The Report wrongly concludes that Respondent failed to violate R.C. § 1322.07(C) and his general character and fitness commands confidence and warrants the belief Respondent’s business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. This finding is disapproved. As the Report and Recommendation lacks a clear listing of the findings as to each of the violations alleged in the Division’s Notice the following paragraphs are hereby added.

The Ohio Mortgage Broker Act states at R.C. § 1322.03(A)(3) that: “If the applicant is a partnership, corporation, limited liability company, or any other business entity or association, the applicant shall designate an employee or owner of the applicant as the applicant's operations manager. While acting as the operations manager, the employee or owner shall not be employed by any other mortgage broker.” It is uncontroverted that an application was submitted to the Division to gain a mortgage broker certificate of registration for Ameribanc Mortgage Lending, Inc.; that in this application Respondent claimed that he was President-CEO and 100% stockholder; that Respondent was the company's designated Operations Manager; that Respondent procured the bond necessary for the new company to become licensed; that the Respondent successfully took the examination to be this new company's Operations Manager; that a certificate of registration was granted by the Division on April 4 2003 for Ameribanc Mortgage Lending, Inc. as a mortgage broker in Ohio; and that Respondent attested to a renewal application to the Division for Ameribanc Mortgage Lending, Inc. on April 21, 2003. (Ex. 1 – Ex 4). By granting the Respondent's applications and his passage of the test, Respondent became, according to the Division and by law, Ameribanc Mortgage Lending, Inc.'s Operation Manager. It is further not in dispute that Respondent was not submitted as a loan officer as part of Ameribanc Mortgage, Inc.'s April 2003 renewal application and that Respondent's loan officer license was not renewed by the Division in April of 2003 or at any time thereafter (Ex 5). Respondent also does not contest that he continued to work and make loans for Ameribanc Mortgage, Inc. until late December 2004 (Tr. pp. 181-182).

Respondent argued that because he did not participate in Ameribanc Mortgage Lending, Inc. conducting mortgage broker business, that Respondent never really “acted” as its operation manager. (Tr. p. 66, p. 136, pp. 138-141). Respondent stated he signed the documents at the direction of Mike Davis of Ameribanc Mortgage, Inc. with the belief they would allow Ameribanc Mortgage Lending, Inc. to conduct business as a mortgage lender wholesaler in the future (Tr. pp. 142- 146). Respondent testified that he was only ever employed by Ameribanc Mortgage, Inc. and never received any salary or money through Ameribanc Mortgage Lending, Inc.(Tr. p. 126). The term “act” is not synonymous with “employee.” The Ohio Mortgage Broker Act does not recognize or provide for dormant mortgage broker certificates of registration. Ameribanc Mortgage Lending, Inc. had a valid mortgage broker certificate of registration. Its operations manager was the Respondent. The law provides that if the designated operations

manager departs, the mortgage broker is obligated to designate a new one, and notify the Division within ten days of that designation. R.C. § 1322.04(D). There was no contention by Respondent that Ameribanc Mortgage Lending, Inc. had ever designated, or that the Division ever approved of, any other person to act as that company's operations manager. Lastly, Ameribanc Mortgage Lending, Inc. was not a dormant company, but in fact had in at least two cases brokered mortgage loans. (Ex. 17 pp. 27-28; Tr. pp. 147-151). Respondent was the acting operations manager of Ameribanc Mortgage Lending, Inc. While acting as said company's operations manager, Respondent continued employment for another mortgage broker, Ameribanc Mortgage, Inc., in violation of R.C. § 1322.03(A)(3) as alleged.

In addition to alleging a violation of R.C. § 1322.03(A)(3) for the Respondent continuing to broker loans on behalf of Ameribanc Mortgage, Inc. despite becoming the operations manager of Ameribanc Mortgage Lending, Inc., the Division claimed that Respondent was also in violation of R.C. § 1322.02(B). This code provision states that: "No person, on the person's own behalf or on behalf of any other person, shall act as a loan officer without first having obtained a license from the superintendent. A loan officer shall not be employed by more than one mortgage broker at any one time." As noted above, Respondent did not dispute that he continued to act as a loan officer for Ameribanc Mortgage, Inc., even though he lacked a license to do so. Respondent instead contends that the Notice of Hearing provided by the Division was not legally sufficient to raise the matter at hearing. This contention is in error, due to the plain language of the Notice and the statute. Respondent further testified that he was unaware that Ameribanc Mortgage, Inc. failed to renew his loan officer license in April 2003 (Tr. p. 163) While Respondent's explanation of inadvertent error may be a factor in determining his character, it is not a factor in whether one is in violation of R.C. § 1322.02(B). It is clear from the facts presented that Respondent was brokering loans and acting as a loan officer on behalf of Ameribanc Mortgage, Inc. in violation of R.C. § 1322.02(B).

With regard to the issue of whether Respondent was also unlawfully employed as a loan officer for more than one mortgage broker at the same time, the Respondent contended that as he did not receive any wage or salary from Ameribanc Mortgage Lending, Inc. and was not otherwise an "employee" as that term is defined by R.C. § 1322.01(C), he cannot be considered "employed" by them. (Tr.p. 64 and pp. 138-141) While the Division contested this interpretation at the hearing as being overly narrow, upon review it appears that the Division is constrained by

the language of the statute, even if it was not the intent to apply the definition of “employee” to such a situation. Thus the Respondent is not in violation of R.C. § 1322.02(B) by reason of his employment with Ameribanc Mortgage, Inc. given the particular facts in this case.

The Division alleged that Respondent violated R.C. § 1322.07(C) by failing to properly disclose to consumer borrowers the affiliated business relationship between Ameribanc Mortgage, Inc. and Buckeye Land Title Agency, Inc. as required by 12 U.S.C. § 2607 and 24 CFR § 3500.15(b). (Ex 13 p.3 ¶10). In R.C. § 1322.07(C) the law prohibits a mortgage broker registrant, applicant, or licensee from: “Engag[ing] in conduct that constitutes improper, fraudulent, or dishonest dealings....” The federal Real Estate Settlement Procedures Act (RESPA) generally prohibits kickbacks or giving or getting anything of value for referral of business. 12 U.S.C. § 2607(a). This does not prohibit “affiliated business arrangements” so long as certain disclosures are made, including the existence of the arrangement. 12 U.S.C. § 2607(c)(4).

Respondent was well aware that Mike Davis was in fact running Buckeye Land Title Agency, Inc. in addition to Ameribanc Mortgage, Inc. Respondent even testified that if he had any problems with payments from the title company that the one title office employee could not handle that he would take the problem over to Mike Davis.(Tr. pp. 157-162; Ex 10 p. 11; Ex 7). Respondent was arranging loans on behalf of Ameribanc Mortgage, Inc. throughout 2003, and admitted that he did not make any disclosures to the consumer borrowers that he referred to Buckeye Land Title Agency, Inc. that there was an affiliated business relationship between the two companies. (Ex. 10 p. 11; Tr. pp.152-154). Respondent, seeks to explain and excuse this violation by claiming that an outside compliance review was conducted by a former DFI attorney and no mention was made about the need to make the REPSA disclosures as to the affiliated business relationship. However, as already noted, the Respondent offered no testimony or evidence that the compliance reviewer was even aware that Ameribanc Mortgage, Inc. was using Buckeye Land Title Agency, Inc. or was aware that there was a business affiliation between the two companies. Thus Respondent lacked any reason to use this as a basis for reliance of compliance. The evidence makes clear that Respondent was required by law pursuant to 12 U.S.C. § 2607 and 24 CFR § 3500.15(b) to disclose the relationship and failed to do so. Such failure was improper conduct in violation of R.C. § 1322.07(C).

The Division further alleged that the Respondent was in violation of R.C. § 1322.07(C) due to his continued use of Buckeye Land Title Agency, Inc. in late 2003. According to the Notice of Hearing “[a]s an operations manager, Respondent knew or should have known, that the title company’s payment problems presented an unacceptable risk to the buyers, and that such conduct under the circumstances constitutes improper dealings in violation of R.C. 1322.07(C).”(Ex 13 p.4 ¶3). It was established through Respondent’s own testimony at deposition that he was aware of the problems previous consumers had had working through Buckeye Land Title Agency, Inc. As a result of those problems Respondent discussed the matter with other loan officers at Ameribanc Mortgage, Inc. who had similar concerns, and decided, along with others, to stop using Buckeye Land Title Agency, Inc. (Ex. 7, pp.16-17). The testimony of Respondent at the hearing attempted to paint a picture of a few minor problems that had easily been handled in the past once the matter was brought to the attention of Mike Davis. (Tr.p. 156-158). This testimony is belied by his earlier acknowledgement at deposition, that “Because the explanations we were getting, I was not satisfied with them.” (Ex. 7 p.17) Given that Respondent was not getting satisfactory answers and explanations he stopped using Buckeye Land Title Agency in September or October of 2003 as did other loan officers. Nevertheless, Respondent later placed eleven loans through Buckeye Land Title Agency, Inc., each of which transactions resulted in the consumers facing the prospect of owing two mortgages due to the lack of payoff funds being transmitted. (Tr. pp. 42-44; Ex. 7 and 6). Explanations that these consumers may have previously used the title company without problem are not a mitigating excuse. Once one discovers that a surgeon has a serious drinking problem, one does not refer others simply because they previously went to him and made out okay. As the Division contends, Respondent, as an operations manager responsible for regulatory compliance knew or should have known that placing consumer borrowers with Buckeye Land Title Agency, Inc. presented an unacceptable risk to the buyers, and that such conduct under the circumstances constituted improper dealings in violation of R.C. 1322.07(C).

With respect to the Division’s claim that the Respondent’s failure to inform the Division that Ameribanc Mortgage, Inc. was operating an illegal branch office at the very location where Respondent had claimed that his new business was going to operate, and that such failure reflected negatively on Respondent’s fitness and character, Respondent generally denied at the hearing that he had knowledge that conduct other than telemarketing was going on at the 100

Dorchester, Westerville, Ohio location. (Tr.p. 151-152). However, this denial is undercut by his previous deposition testimony that he was aware that the location was being used by loan officers as well as for telemarketing purposes. (Ex. 8, p. 28). Further, as the Operations Manager of Ameribanc Mortgage Lending, Inc., who had attested to both an application to conduct business at that location, and a renewal application stating the same, it was incumbent on the Respondent to determine what operations were in fact being conducted there. Respondent was also the Vice President of Operations of Ameribanc Mortgage, Inc. and as such also bears some responsibility for knowing where that company is conducting branch operations. In short, while the parties dispute whether Respondent knew there were loan officers operating at the 100 Dorchester Square, Westerville location, it is clear that one or two loan officers did operate there on behalf of Ameribanc Mortgage, Inc., that this location was not an authorized branch location (Ex. 9; Ex 5; Tr. p. 37). Respondent's purported failure to know what was occurring at that location reflects poorly on his fitness to ensure business will be conducted fairly in accordance with the Ohio Mortgage Broker Act. Together with the above noted violations of law such conduct prevents the Division from making a finding under R.C. §1322.041(A)(5).

As a result of Respondent's violations set forth herein as well as his conduct which raises issues which prevent the warranting of the belief as to his fitness to operate his business fairly in compliance with the purposes of the Ohio Mortgage Broker Act, the Division is authorized and justified in denying Respondent's application for a loan officer license.

In accordance with the foregoing, the Division concludes that the loan officer license application of Stephen S. Walburn should be, and is hereby denied.

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 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 Respondent is located, or in 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 18th day of August, 2005.

ROBERT M. GRIESER

ROBERT M. GRIESER

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