

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

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| IN THE MATTER OF: | : | CASE NO. M2008-533 |
| | : | |
| TRANSHIO MORTGAGE AND | : | |
| LOAN, INC., | : | LISA M. FINNEGAN |
| RESPONDENT. | : | HEARING OFFICER |
| | : | |

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued September 18, 2009

I. FINDINGS OF FACT

A. Background

1. This matter came before Lisa M. Finnegan, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Department of Commerce, Division of Financial Institutions ("Division"), to serve as Hearing Officer for this hearing in accordance with the Ohio Administrative Procedure Act, Ohio Revised Code ("R.C.") Chapter 119. The Division held the hearing on July 10, 2009 at 77 South High Street, 23rd Floor, Columbus, Ohio, 43215.

2. The Division held the hearing to consider the allegations in the December 31, 2008 Notice of Intent to Revoke Mortgage Broker Certificate of Registration and Notice of Opportunity for a Hearing ("NOH"). In the NOH, the Division alleged that TransOhio Mortgage and Loan, Inc. ("Respondent"), failed to maintain the following: an alphabetical index of buyers, copies of disclosures other than settlement statements, buyer files, and a special account. The Division also alleged that Respondent failed to notify the Division of legal actions taken against it, that Respondent failed to disclose its certificate of registration number in its advertisements, and that Respondent failed to provide any of the disclosures to borrowers required by state and federal law. In addition, the Division alleged fraudulent activity for a borrower in connection with six loans.

3. Todd A. Nist, Esq., an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Respondent did not have an attorney to represent it at the hearing, as required by R.C. § 119.07. Jacqueline S. Mallett, Esq., Kenneth E. Haynie, and Sheila Zoldak testified on behalf of the Division. James R. Crosby, the operations manager for Respondent, testified on behalf of Respondent.

4. The hearing in this matter was held simultaneously with the case captioned *In the Matter of: James R. Crosby*, Case No. M2008-750; however, the Hearing Officer is issuing a separate Report and Recommendation for the matter involving James R. Crosby, the operations manager for Respondent, and the instant matter.

5. The Hearing Officer admitted State's Exhibits 1-A, 1-B, 2-A, 2-B, 3-A, 3-B, 4, 5, 6-A, 6-B, 7, 8, and 9 into the record. The Hearing Officer also admitted into the record without objection Respondent's Exhibits C, D, F, G, H, L, M, O, P, R, and T. The Hearing Officer admitted Respondent's Exhibits N and Q into the record over the Division's relevancy objection. The Hearing Officer did not admit Respondent's Exhibit E, which consisted of copies of mortgage loan files that pre-dated the Division's compliance examination, based on the Division's relevancy objection. The Hearing Officer did not admit Respondent's Exhibit S on the basis that it contained settlement negotiations between Respondent and the Division. *Transcript ("Tr.") at 101, 125*. Respondent did not introduce Respondent's Exhibits A, B, I, J, and K. The Hearing Officer admitted Respondent's exhibits in accordance with R.C. § 119.07, which permits a corporation to present its positions, arguments, and contentions in writing.

6. The Hearing Officer held the record open until July 17, 2009 for the parties to submit additional documents. On July 16, 2009, the Division submitted to the Hearing Officer six United States Department of Housing and Urban Development settlement statements ("HUDS"). The Hearing Officer marked the six HUDS as State's Exhibit 10 and admitted them into the record. The Hearing Officer closed the record at 5:00 p.m. on July 17, 2009.

B. Jurisdiction and Procedural Matters

7. The Division issued the NOH to Respondent on December 31, 2008. In the NOH, the Division indicated that it sought to revoke Respondent's mortgage broker certificate of registration. The NOH also notified Respondent that it was entitled to an opportunity for a hearing on the matter. Respondent was required to request a hearing within thirty days of the time of the mailing of the NOH. *State's Exhibit 1-B*.

8. The Division sent the NOH to Respondent's operations manager and to Respondent's statutory agent by certified mail, return receipt requested. The Division obtained service on Respondent's statutory agent on January 5, 2009. *State's Exhibit 1-B*.

9. On January 28, 2009, Respondent submitted a request for a hearing to the Division. *State's Exhibit 2-B*.

10. On January 30, 2009, the Division sent to Respondent a notice of hearing letter scheduling the hearing on the matter for February 9, 2009, and within the same notice, the Division continued the hearing on its own motion to March 11, 2009. *State's Exhibit 3-B*.

11. On March 11, 2009, Respondent requested and received a continuance for the purpose of obtaining counsel. *March 11, 2009 Tr. at 4*. On March 12, 2009, the Division sent to Respondent a notice of hearing letter and the Order Continuing Hearing to April 24, 2009. *State's Exhibit 3-B*.

12. On April 24, 2009, Respondent requested and received a second continuance for medical reasons. On May 1, 2009, the Division sent to Respondent a notice of hearing letter and the Order Continuing Hearing to July 10, 2009. *State's Exhibit 6-A*.

13. The Division held the hearing on the date, time, and location specified in the Division's May 1, 2009 notice of hearing letter. At the commencement of the hearing on July 10, 2009, the Hearing Officer advised Mr. Crosby, Respondent's operations manager, of Respondent's right to counsel. Mr. Crosby stated that Respondent did not have an attorney and was no longer seeking counsel to represent it at the hearing. *Testimony of James R. Crosby, Tr. at 9*.

C. The Division's Compliance Examination of Respondent

14. Respondent is an Ohio corporation that holds a mortgage broker certificate of registration issued by the Division to originate residential mortgage loans pursuant to R.C. Chapter 1322. The Division issued Respondent's mortgage broker certificate of registration on November 16, 2006. *State's Exhibit 1-A; State's Exhibit 8; Testimony of Jacqueline S. Mallett, Tr. at 126-127*.

15. On February 4 and 5, 2008, the Division's consumer finance examiner, Kenneth E. Haynie, conducted a compliance examination of Respondent. *Testimony of Kenneth E. Haynie, Tr. at 15, 33*.

16. The compliance examination covered the time-period from January 2007 until the compliance examination on February 5, 2008. *Testimony of Kenneth E. Haynie, Tr. at 22-23, 39*.

17. Respondent brokered only six loan transactions in 2007. Three transactions were residential and three were commercial. The Division examined only the three residential transactions during the compliance examination. *Testimony of Kenneth E. Haynie, Tr. at 40; State's Exhibit 10*.

Alphabetical Index of Buyers

18. During 2007, Respondent did not maintain an alphabetical index of buyers for whom it obtained mortgage loans, as required by Ohio Adm.Code 1301:8-7-06(H)(1). *Testimony of Kenneth E. Haynie, Tr. at 16-18, 51. State's Exhibit 4, pgs. 1 & 8*.

19. Respondent had an opportunity to prepare and present an alphabetical index of buyers from its computer program on the day of the compliance examination, but did not do so. *Testimony of Kenneth E. Haynie, Tr. at 36-37*.

Buyer Files

20. Mortgage brokers are required to keep a separate file for each buyer for a period of four years. Each file must contain copies of documents such as the buyer's original application, credit reports, and Mortgage Loan Origination Disclosure Statements ("MLODS"). *Testimony of Kenneth E. Haynie, Tr. at 20-22, 54-55; State's Exhibit 4, pgs. 1 & 8.*

21. During 2007, Respondent did not maintain any buyer files. The documents were shredded. *Testimony of Kenneth E. Haynie, Tr. at 20-22, 54-55; State's Exhibit 4, pgs. 1 & 8.*

Signed Copies of Disclosures to Buyers

22. Respondent was required to keep copies of the MLODS and all disclosures signed by buyers. Respondent did not keep copies of the MLODS or any other disclosures signed by buyers in 2007. The only documents signed by buyers that Respondent retained were the HUDS. *Testimony of Kenneth E. Haynie, Tr. at 18-20; State's Exhibit 4, pgs. 1 & 8.*

23. Respondent kept unsigned copies of the MLODS and other buyers' disclosures on its computer software program "Encompass." There was no evidence that Respondent also maintained signed copies of MLODS and other disclosures on its computer program. *Testimony of Kenneth E. Haynie, Tr. at 19-20, 36, 50.*

Special Account

24. During the compliance examination, Mr. Haynie found that Respondent failed to keep a special account as required by R.C. § 1322.08(A). Mr. Haynie explained that a mortgage broker is required to maintain a bank account at all times to process fees collected on behalf of third parties, such as appraiser fees and credit report fees. Mr. Haynie learned from Mr. Crosby, Respondent's operations manager, that Respondent's bank closed the special account in July 2007 due to inactivity. *Testimony of Kenneth E. Haynie, Tr. at 23-25, 51-52. State's Exhibit 4, pgs. 1 & 8.*

25. Respondent's Exhibit G, a copy of Respondent's National City bank account from 2005, and Respondent's Exhibit F, a copy of Respondent's National City bank account from 2009, show that the account numbers on both documents are the same. The fact that the account number is the same on both documents does not establish that the account remained open at all times in 2007. *Respondent's Exhibits G and F.*

26. The record remained open for seven days after the hearing on the instant matter for Respondent to submit copies of bank statements showing that its special account was not closed in 2007. *Tr. at 131-133.* Respondent did not submit any evidence to show that it maintained a special account at all times in 2007.

27. Respondent did not maintain a special account at all times in 2007. *Testimony of Kenneth E. Haynie, Tr. at 23-25, 51-52. State's Exhibit 4, pgs. 1 & 8.*

Disclosure of Legal Actions

28. The Division alleged in the NOH that Respondent had failed to notify the Division of legal actions taken against it as required by R.C. § 1322.05(B). *State's Exhibit 1-A, paragraph L.* The Division withdrew this allegation at the hearing. *Tr. at 105-107.*

Disclosure of Registration Number in Advertisements

29. During the compliance examination, Mr. Haynie found that Respondent failed to disclose its certificate of registration number in an advertisement as required by R.C. § 1322.09. *Testimony of Kenneth E. Haynie, Tr. at 27-30; State's Exhibit 7.*

30. Sheila Zoldak, a consumer finance examiner with the Division, stated that in March 2006, the Division implemented a new computer system that changed all mortgage broker certificate of registration numbers. When mortgage brokers renewed their certificate of registrations in April 2006, the Division printed the new registration numbers on the certificates and sent the certificates to the mortgage brokers. *Testimony of Sheila Zoldak, Tr. at 67-68, 72-73.*

31. Prior to March 2006, Respondent's certificate of registration number was MB 3510. *State's Exhibit M.*

32. After March 2006, Respondent's certificate of registration number was MB.802467.000. *State's Exhibit 8.*

33. Respondent used its old certificate of registration number, MB 3510, instead of its new certificate of registration number, MB.802467.000, in an advertisement that appeared in CityNews newspaper dated June 7 – 13, 2007. *Respondent's Exhibit L.*

Required Disclosures to Borrowers

34. In the NOH, the Division alleged that Respondent “* * * failed to provide any of the disclosures required under state and federal law to the borrower as required by R.C. 1345.02(F)(1).” *State's Exhibit 1-B.*

35. At the hearing, Mr. Haynie explained that examples of required disclosures are the addendum to the Good Faith Estimate, the tax escrow disclosure, and “insurance forms.” *Testimony of Kenneth E. Haynie, Tr. at 30-33, 60; State's Exhibit 4, pgs. 3 and 9.*

36. Mr. Crosby admitted to Mr. Haynie during the compliance examination that he was unaware of some of the required disclosures. *Testimony of Kenneth E. Haynie, Tr. at 31*. There was no evidence that Respondent knowingly failed to provide disclosures to borrowers.

Fraudulent Activity

37. In the NOH, the Division alleged that it suspected Respondent of fraudulent activity in connection with a buyer named Keith Spikes, in violation of R.C. § 1322.07(E). *State's Exhibit 1-B*.

38. The Division did not present any evidence on the allegation that Respondent was involved in fraudulent activity in connection with a buyer named Keith Spikes.

II. CONCLUSIONS OF LAW

A. Jurisdiction

39. The Division has procedurally complied with R.C. Chapter 119 and has established jurisdiction over this matter.

B. Proposed Revocation of Respondent's Loan Officer License

40. The Division is the state agency responsible for the licensing and regulation of mortgage brokers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322, and the rules promulgated thereunder.

41. As an Ohio licensed mortgage broker, Respondent is required to comply with R.C. Chapter 1322.

C. Alphabetical Index of Buyers

42. Ohio Adm.Code 1301:8-7-06(H)(1) requires every registrant to make, maintain, keep current and preserve the following books and records in a legible and readily accessible format:

(1) An alphabetical index of all buyers for whom the registrant has obtained mortgage loans, which lists the dates of the loan obtained for the buyers, the amounts of the loans, the individual responsible for originating the loan, and the identity of the lenders that funded or purchased the loan;

43. As a licensed registrant, Respondent failed to maintain an alphabetical index of buyers for whom it obtained mortgage loans in 2007, in violation of Ohio Adm.Code 1301:8-7-06(H)(1).

D. Signed Copies of Disclosures to Buyers

44. R.C. § 1322.06(B) requires that a registrant shall maintain records pertaining to business transacted pursuant to R.C. §§ 1322.01 to 1322.12, including copies of all MLODS prepared in accordance with R.C. § 1322.062, for four years.

45. As a licensed registrant, Respondent failed to maintain signed copies of the disclosures to buyers in 2007 including MLODS, in violation of R.C. § 1322.06(B)

E. Buyers' Files

46. Ohio Adm.Code 1301:8-7-06(H)(3) requires every registrant to maintain individual buyer files with copies of the loan application, credit information, contracts, the MLODS, all federal disclosures, appraisals, and receipts collected by the registrant from the buyer on behalf of third-party service providers such as appraisers and title companies, among others, and copies of applicable disclosures required by state law.

47. As a licensed registrant, Respondent failed to maintain buyer files in 2007, in violation of Ohio Adm.Code 1301:8-7-06(H)(3).

F. Special Account

48. R.C. § 1322.08(A)(1) requires that no registrant shall fail to maintain a special account. R.C. § 1322.08(D)(2) defines “special account” to mean “a depository account with a financial institution, the deposits of which are insured by the federal deposit insurance corporation, that is separate and distinct from any personal or other account of the registrant, and that is maintained solely for the holding and payment of fees for services performed by bona fide third parties and received by the registrant from buyers that the registrant assists in obtaining mortgages.”

49. As a licensed registrant, Respondent failed to maintain a special account at all times in 2007, in violation of R.C. § 1322.08(A)(1).

G. Disclosure of Legal Actions

50. At the hearing, the Division withdrew its allegation that Respondent failed to notify the Division of legal actions taken against it.

H. Disclosure of Registration Number in Advertisements

51. R.C. §1322.09 requires that a mortgage broker shall disclose in advertisements the certificate of registration number that is issued to the mortgage broker by the Division.

52. As a licensed registrant, Respondent failed to disclose its correct certificate of registration number in a 2007 newspaper advertisement, in violation of R.C. § 1322.09.

I. Fraudulent Activity

53. The Division did not establish that Respondent was involved with fraudulent activity in connection with six loans for a borrower by the name of Keith Spikes, in violation of R.C. § 1322.07(E).

J. Required Disclosures to Borrowers


54. R.C. § 1345.02(F)(1) states that it is a deceptive practice to knowingly fail to provide disclosures in connection with residential mortgage transactions required under state and federal law.

55. The Division did not establish that Respondent knowingly failed to provide disclosures in connection with residential mortgage transactions required under state and federal law. Accordingly, the Division did not meet its burden of proof that Respondent violated R.C. § 1345.02(F)(1).

III. RECOMMENDATION

Based upon the evidence submitted into the record for this case, the Division has established that Respondent violated R.C. §§ 1322.06(B), 1322.08(A) and 1322.09, and Ohio Adm.Code 1301:8-7-06(H)(1) and (H)(3). Because two of the five violations were record-keeping violations involving only three transactions, the Hearing Officer respectfully recommends that the Division not revoke Respondent's mortgage broker certificate of registration.

Respectfully submitted,


Lisa M. Finnegan
Administrative Hearing Officer
September 18, 2009