

Ted Strickland
Governor

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

Kimberly A. Zurz
Director

In the matter of:)	Case No. M2008-695
)	
MARK D. BERTKE)	<u>DIVISION ORDER</u>
3937 Eagle Stone Court)	Revocation of Loan Officer License
Dayton, Ohio 45440)	&
)	Notice of Appellate Rights

The Ohio Department of Commerce, by and through the Superintendent of the Division of Financial Institutions ("Division") and charged with the responsibility of administering and enforcing the Ohio Mortgage Broker Act, as codified in Ohio Revised Code ("R.C.") Chapter 1322, the Division finds that this Order is necessary and appropriate, in the interest of the public, and is consistent with the purposes of the Ohio Mortgage Broker Act;

On or around November 14, 2008, the Division of Financial Institutions issued notice to Mark D. Bertke ("Respondent") that the Division intended to revoke his loan officer license and impose a fine because he had: (1) failed to respond to compliance examinations letters; (2) allowed an unlicensed person to act as a loan officer; (3) failed to disclose all information required on mortgage related documents; (4) failed to accurately disclose mortgage broker compensation; and (5) failed to use a special account.

Respondent requested an administrative hearing, which was held on December 30, 2008. Respondent appeared. A Report and Recommendation was filed with the Division on February 10, 2009, recommending that the Division suspend Respondent's loan officer license, require continuing education to enable Respondent to better understand the requirements of the mortgage loan industry and impose a fine in an amount not to exceed \$1,500.00. (A copy of the Report and Recommendation is attached hereto). 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 Division disapproves the Recommendation that it impose a fine of no more than \$1,500.00. Instead, the Division imposes no fine against Respondent.

The Division also disapproves the Recommendation that it require Respondent to obtain additional continuing education. R.C. 1322.052 imposes the requirement to obtain six hours annually of continuing education upon Respondent and does not authorize the Division to impose additional continuing education. Therefore, the Division lacks the authority to unilaterally impose additional continuing education requirements upon Respondent.

The Division disapproves the Recommendation to suspend Respondent's loan officer license pursuant to R.C. Section 1322.10(A)(1)(a) for the following reasons. R.C. 1322.10(A)(1)(a) states that the superintendent "may . . . [revoke a 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[.]" The use of the word "may" grants the superintendent the discretion to decide if suspension or revocation is appropriate in a given situation. R.C. 1322.10(A)(1)(a) authorizes the superintendent to revoke for a single violation or failure to comply.

The Report and Recommendation found that Respondent had committed several violations of the Ohio Mortgage Broker Act. Respondent "allowed an unlicensed employee to engage in activities that required a loan officer license in 2007, in violation of R.C. Section 1322.02(B) and O.A.C. Rule 1301: 8-7-08(B)." (Report at p. 14 paragraph 72). In 2006 and 2007, "Respondent's failure to describe the method by which the fee to be paid by the buyer to the registrant will be calculated constitutes a violation of R.C. Section 1322.062(A)(1)(f)." (Report at p. 16 paragraphs 75 and 76, respectively). Also, "Respondent's failure to cooperate with the Division in connection with the August 20, 2008 letter constitutes a violation of R.C. Section 1322.072(A) and O.A.C. Rule 1301: 8-7-13(F)." (Report at p. 17 paragraph 83). Thus, Respondent committed four violations which constituted violations of three statutory provisions and two regulations.

Because of the seriousness of the offenses, the Division hereby revokes the loan officer license of Mark D. Bertke.

It is so ordered.

NOTICE OF RIGHT TO APPEAL

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, 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 21st day of April, 2009.

LEIGH A. WILLIS

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