

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

In the matter of:)	Case No. M2007-223
)	
APEX MORTGAGE SERVICES, LLC)	<u>DIVISION ORDER</u>
2550 Corporate Exchange Drive, Suite 102)	Revocation of Mortgage Broker Certificate
Columbus, Ohio 43231)	Certificate of Registration, Assessment of
)	Fine & Notice of Appellate Rights
)	

Respondent, Apex Mortgage Services, LLC (“Respondent”) is licensed under R.C. 1322 as a mortgage broker with the Division of Financial Institutions (“Division”). On or about April 11, 2008, the Division notified Respondent that it intended to revoke its certificate of registration because Respondent violated (i) R.C. 1322.02(A)(1) by failing to maintain an office location in this state for the transaction of business as a mortgage broker in this state, (ii) Ohio Administrative Code (“O.A.C.”) 1301:8-7-19(F) by closing its registered location without properly submitting Notice of Office Closure form, Parts A and B, and (iii) R.C. 1322.072 by failing to produce records in response to a Division subpoena. On or about May 12, 2008, the Division notified Respondent that it had amended the April 11, 2008 Division Notice of Intent to Revoke Certificate of Registration to also levy a fine against Respondent in the amount of one hundred sixty-five thousand dollars for the above-mentioned violations.

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.

Pursuant to R.C. 1322.10(A)(2), the Superintendent of Financial Institutions may impose a fine of not more than one thousand dollars for each day a violation of a law or rule is committed, repeated, or continued. If the registrant engages in a pattern of repeated violations of a 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.

Respondent requested an administrative hearing regarding the revocation of its certificate of registration and the imposition of a fine, and a hearing was held on July 1, 2008. A Report

and Recommendation (“Report”) was filed with the Division on August 4, 2008, recommending that Respondent be permanently barred from holding a certificate of registration in Ohio and that the Division assess a fine against Respondent in the amount of one hundred sixty-five thousand dollars (\$165,000.00). 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 third paragraph on page 1 of the Report to reflect the correct spelling of “Mallett. (Tr. p. 20)”

The Division modifies paragraph 7 on page 2 of the Report to add the following language after the last sentence: “The Division sent the subpoena by certified mail, return receipt requested, to Respondent’s statutory agent. The Division received the return receipt showing proof of delivery by the United States Postal Service on November 28, 2007.” The Division modifies paragraph 7 to reflect that the citation should be “State’s Exhibit J, pages 1-3” instead of “State’s Exhibit J.”

The Division modifies paragraph 8 on pages 2-3 of the Report to reflect the correct spelling of “Mallett” and to include a citation to pages 87-88 of the transcript.

The Division modifies paragraph 9 on page 3 of the Report to also include a citation on line 4 to Exhibit J, pp. 3-4 in addition to Exhibit I, page 1. The Division modifies the last sentence of paragraph 9 on page 3 to read: “Cincinnati Insurance notified the Division that Respondent’s surety bond was set to expire on January 12, 2008, which date is no less than 30 days after the superintendent received the notice. State’s Exhibit I, page 1 and R.C. 1322.05(E)”

The Division modifies paragraph 12 on page 3 of the Report to read: “On March 7, 2008, the Division issued an Order terminating the suspension of Respondent’s mortgage broker certificate of registration due to Cincinnati Insurance rescinding its Notice of Cancellation. States Exhibit F, page 8.”

The Division modifies paragraph 13 on page 3 of the Report to reflect that the abbreviation for Zachary Swartz is “Z. Swartz” rather than “M. Swartz.” The Division modifies

the citation at the end of paragraph 13 to be “State’s Exhibit L, page 1 and State’s Exhibit K, page 2.”

The Division modifies paragraph 14 on page 3 of the Report to reflect that the citation should be “State’s Exhibit L” instead of “State’s Exhibit K.”

The Division modifies paragraph 15 on page 3 of the Report to reflect that the citation should be “Respondent’s Exhibit 1, pages 1 and 5-8” instead of “Respondent’s Exhibit 1.”

The Division modifies paragraph 20 on page 4 of the Report to reflect that the citation should be “State’s Exhibit B, pages 2-4” instead of “State’s Exhibit B.”

The Division modifies paragraph 21 on page 4 of the Report to reflect that the citation should be “Testimony of Ms. Mallett at p. 60” instead of “Testimony of Ms. Mallett.”

The Division modifies paragraph 22 on page 4 of the Report to reflect that the citation should be “Testimony of Mr. Cronin at p. 108” instead of “Testimony of Mr. Cronin.”

The Division modifies paragraph 37 on page 6 of the Report to read, “Respondent knowingly failed to fully produce all documents specified in the Division’s November 26, 2007 Subpoena Duces Tecum within the specified time frame.” The Division is making this change because the statute requires that the Respondent knowingly fail to produce the requested documents in order to establish a violation of R.C. 1322.072.

The Division modifies paragraph 39 on page 6 of the Report to correct a typographical error; it should read “public” instead of “pubic.”

The Division modifies paragraph 40 on page 7 of the Report to correct a typographical error; it should read “\$2,000.00” instead of “\$2,000,000.”

The Division approves the first sentence of the Recommendation on page 7 of the Report that the Division has met its burden of proof. The Division disapproves the second sentence of the Recommendation because it is not authorized by the Ohio Mortgage Broker Act or any other statute to permanently bar Respondent from holding a certificate of registration for having proven the violations alleged in the NOH. Instead, the Division modifies the Recommendation to revoke the certificate of registration of Respondent for having proven the violations alleged in the NOH. The Division modifies the last sentence of the Recommendation assessing a fine against Respondent of \$50,000.00, instead of \$165,000.00. The Superintendent of the Division modifies the fine as a result of reviewing the profit and loss financial statement attached to

Respondent's Exhibit 1. The Superintendent finds a fine of \$50,000.00 to be reasonable, appropriate and necessary.

For the reasons stated above, the Division hereby revokes the certificate of registration of Apex Mortgage Services, LLC and imposes a fine against it in the amount of fifty thousand dollars (\$50,000.00). 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 19th day of September 2008.

LEIGH A. WILLIS

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