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) **Case No. 06-3319MBR**
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) **SETTLEMENT AND CONSENT ORDER**
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On March 2, 2004, the Chief Examiner for Consumer Finance sent a letter to Respondent detailing all violations noted during the January 2004 examination. In particular, the Chief Examiner noted that the mortgage loan origination disclosure statement Respondent was using did not disclose all the information required by R.C. 1322.062(A) of the OMBA. The letter further provided that “[a] Division-approved mortgage loan origination disclosure statement is enclosed for your review. In your response to this letter, please either indicate that you will use the Division’s form or revise your mortgage loan origination disclosure form to include the above listed information and include a copy of the revised form....Your

written response outlining your proposed corrective action towards the above listed violations is requested within thirty days.”

2. Respondent failed to reply to the Divisions letter within thirty days; therefore, the Division sent a second letter on April 14, 2004, reiterating the same violations set forth in the letter dated March 2, 2004. The Division again requested a response by April 30, 2004.
3. On April 23, 2004, Respondent replied to the Division’s compliance examination letters and stated the following with respect to Respondent’s mortgage loan origination disclosure statement:

The examiner that was here left me a template of a [sic] origination disclosure. I copied the disclosure on our computers and customized it with all our information along with the typed names of all loan officers originating loans.

4. On or about September 23, 2004, Respondent originated a residential mortgage loan for borrower Lee Ann Moreland for property located at 3845 East 188th Street, Cleveland, Ohio 44122.
5. The mortgage loan origination disclosure statement signed by Respondent and Lee Ann Moreland was the same as the non-compliant mortgage loan origination disclosure statement that the examiner had reviewed at the January 2004 compliance examination. Respondent failed to correct the violations as it had stated in its April 23, 2004 letter to the Division.
6. On or about November 16, 2005, Respondent originated a residential mortgage loan for borrowers Gary and Deborah Lukens for property located at 2447 Liberty Road, Stow, Ohio 44224.
7. The mortgage loan origination disclosure statement signed by Respondent and mailed to Gary and Deborah Lukens was the same as the non-compliant mortgage loan origination disclosure statement that the examiner had reviewed at the January 2004 compliance examination. Respondent failed to correct the violations as it had stated in its April 23, 2004 letter to the Division.
8. R.C. 1322.072 states that “[n]o person, in connection with any examination...conducted by the superintendent of financial institutions under section 1322.01 to 1322.12. of the Revised Code, shall knowingly...fail to cooperate, including making a false or misleading statement...”
9. Respondent knowingly failed to cooperate with the Division’s examination and made false or misleading statements in violation of R.C. 1322.072(A) when its operations manager falsely represented to the Division in his letter dated April 23, 2004, that the company had revised its mortgage loan origination disclosure statement when, in fact, it had not.
10. Respondent has violated R.C. 1322.062(A)(1)(a) because its mortgage loan origination disclosure statement does not contain the name and telephone number of the buyer.

11. Respondent has violated R.C. 1322.062(A)(1)(b) because its mortgage loan origination disclosure statement does not contain the typewritten name and the license number of the loan officer.
12. Respondent has violated R.C. 1322.062(A)(1)(c) because its mortgage loan origination disclosure statement does not contain the number designated on the registrant's certificate of registration.
13. Respondent has violated R.C. 1322.062(A)(1)(e) because its mortgage loan origination disclosure statement lacks a statement indicating whether the buyer is to pay for the services of a bona fide third party in the event the registrant is unable to assist the buyer in obtaining a mortgage.
14. Respondent has violated R.C. 1322.062(A)(1)(i) because its mortgage loan origination disclosure statement lacks a statement that the buyer has not entered into an exclusive agreement for brokerage services.
15. R.C. 1322.07(B) states that "[n]o mortgage broker, registrant, licensee or applicant for a certificate of registration...shall...[m]ake false or misleading statements of a material fact...or engage in a continued course of misrepresentations[.]"
16. Respondent made false and misleading statements of material fact in violation of R.C. 1322.07(B) by representing to the Division that it had revised its mortgage loan origination disclosure statement when, in fact, it continued to use the same unlawful form from at least September 23, 2004 to November 16, 2005.
17. Respondent engaged in a continued course of misrepresentations in violation of R.C. 1322.07(B) by continuing to give consumers a mortgage loan origination disclosure statement that failed to comply with R.C. 1322.062 even after the Division notified Respondent of its specific violations and also provided to Respondent a Division-approved form that would have corrected the violations.

Violations Arising out of the Lee Ann Moreland Mortgage Loan Transaction

18. James Artwell is the Operations Manager, as that term is defined in R.C. 1322.01(H), for Buckeye Mortgage Services, LLC. Pursuant to Ohio Administrative Code ("O.A.C.") rule 1301:8-7-12(Q), effective on September 1, 2006, the superintendent issued to James Artwell a loan officer license.
19. On or about September 23, 2004, James Artwell took a loan application to refinance a residential mortgage loan on property located at 3845 East 188th Street, Cleveland, Ohio 44122, owned and occupied by Ronald and Lee Ann Moreland. The loan sought was for approximately \$83,700.
20. On October 8, 2004, the loan closed at Lee Ann Moreland's home. James Artwell and a representative from the title company were present at the closing. At the conclusion of the closing, Lee Ann Moreland received a closing package consisting of unsigned copies of all the loan documents.

21. At the closing, Lee Ann Moreland signed an acknowledgement form certifying that the final HUD-1 Settlement Statement presented to her on October 8, 2004, was a true and accurate statement of all receipts and disbursements made on her account in that transaction. Specifically, the HUD-1 Settlement Statement she certified on that date showed on line 303 that she would receive \$4,000 out of the proceeds of the closing, and on line 801 that Buckeye Mortgage Services would receive a loan origination fee of \$1,343.56.
22. On October 14, 2004, the title company disbursed the funds from its escrow account. Funds were not disbursed, however, as represented on the HUD-1 Settlement Statement Lee Ann Moreland acknowledged, certified and received at the closing of the loan. Specifically, the final HUD-1 Settlement Statement provided to the lender showed on line 303 that Lee Ann Moreland received \$2,567.18 not \$4,000.00, and on line 801 that Buckeye Mortgage Services received a loan origination fee of \$2,761.38 not \$1,343.56, and on line 1115 that Titles Etc. received a wire transfer fee of \$15, which fee was not previously disclosed.

23. R.C. 1322.07 states in part:

No mortgage broker, registrant, licensee or applicant for a...license under sections 1322.01 to 1322.12 of the Revised Code shall do any of the following:

(B) Make false or misleading statements of material fact, omissions of statements required by state law, or false promises regarding a material fact, through advertising or other means, or engage in a continued course of misrepresentation;

(C) Engage in conduct that constitutes improper, fraudulent, or dishonest dealings....

(E) Knowingly make...fraudulent, false, or misleading statements on any mortgage document or on any document related to a mortgage, including a...real estate settlement or closing document....

24. Respondent has violated R.C. 1322.07(B), 1322.07(C) and 1322.07(E) by causing the final HUD-1 Settlement Statement to be altered, changed or revised without Lee Ann Moreland's knowledge, consent or signature after the loan closed. Respondent knowingly caused the broker fee paid to Buckeye Mortgage Services, LLC to be increased by \$1,417.82 and caused the cash paid to borrower Lee Ann Moreland to be correspondingly decreased by the same amount.

Failure to Disclose Pending Lawsuit

25. Respondent completed and submitted its 2005 Mortgage Broker Renewal Application to the Division in April 2005. James Artwell, who signed as Respondent's president, and Scot Pataky, who signed as Respondent's vice president attested to the truthfulness and accuracy of the information in the application. The 2005 Mortgage Broker Renewal Application asks: "Within the past sixteen (16) months...[h]as the registrant or any owner, partner, shareholder, member, officer, director, operations manager been named in any civil or administrative action that involved insurance, securities, or consumer or real estate lending or brokering? Include pending actions."

26. Respondent responded “No” to the above question on the 2005 renewal application. Respondent did not answer this question truthfully, and failed to disclose the following lawsuit filed against Respondent and its owner and operations manager, James Artwell:

Court: Cuyahoga County Common Pleas Court
Case Name: Charlotte Byrd v. Approved Federal Savings Bank, Sovereign Bancorp Inc., James Artwell, Title Associates Inc., and Buckeye Mortgage Services, LLC.
Case Number: CV-04-526778
Date Filed: 04/01/2004
Service Perfected: 07/14/2004

27. According to R.C. 1322.07(A), no mortgage broker, registrant, licensee or applicant for a certificate of registration or license under sections 1322.01 to 1322.12 of the Revised Code shall obtain a certificate of registration or license through any false or fraudulent representation of a material fact or any omission of a material fact required by state law, or make any substantial misrepresentation in any registration or license application.
28. According to R.C. 1322.07(B), no mortgage broker, registrant, licensee or applicant for a certificate of registration or license under sections 1322.01 to 1322.12 of the Revised Code shall make false or misleading statements of a material fact, omissions of statements required by state law, or engage in a continued course of misrepresentations.
29. Respondent made false representations of material fact required by state law and a substantial misrepresentation on its 2005 Mortgage Broker Renewal Application by responding “No” to question 8 on said application and failing to disclose that Respondent and its owner and operations manager, James Artwell, had a pending lawsuit related to consumer or real estate lending or brokering filed against them in Cuyahoga County Common Pleas Court.
30. The above misrepresentation and false statement was known to Respondent as it concerns its operations manager and majority owner, James Artwell, who was one of the persons wrongfully attesting to the information provided on the 2005 Mortgage Broker Renewal Application.
31. R.C. 1322.05(B)(1) states that “[t]he registrant shall give notice to the superintendent by certified mail of any action that is brought by a buyer against the registrant or loan officer of the registrant alleging injury by a violation of any provision of sections R.C. 1322.01 to 1322.12 of the Revised Code, and of any judgment that is entered against the registrant or loan officer of the registrant by a buyer injured by a violation of any provision of sections 1322.01 to 1322.12 of the Revised Code. The notice shall provide details sufficient to identify the action or judgment, and shall be filed with the superintendent within ten days after the commencement of the action or notice to the registrant of entry of a judgment.”
32. Respondent violated R.C. 1322.05(B)(1) by failing to give notice to the Division of the lawsuit filed by Charlotte Byrd. Ms. Byrd brought claims associated with the refinancing of her residential mortgage loan on property located at 4101 East 153rd Street in Cleveland, Ohio. The Plaintiff in her lawsuit claimed violations of the Ohio Mortgage Broker Act, breach of fiduciary duty, fraud, detrimental reliance, civil conspiracy, and conversion against James Artwell. The Plaintiff in her lawsuit also claimed respondeat superior and corporate

liability of Buckeye Mortgage Services, LLC. Respondent and James Artwell received service of Byrd's complaint on July 14, 2004. On September 22, 2004, Respondent and James Artwell filed their Answer to Byrd's Complaint.

WHEREAS, Respondent admits the Division's allegations contained in paragraphs 1 through 17 and 25 through 32 above, but denies the allegations contained in paragraphs 18 through 24 above. However, in order to avoid the cost and uncertainty of litigation Respondent agrees to enter into this Settlement and Consent Order for purposes of settlement.

NOW THEREFORE, in consideration of the foregoing and the mutual promises set forth herein, the parties agree to the following:

- I. The parties acknowledge and agree to the accuracy of the foregoing recitals.
- II. This Settlement and Consent Order represents a compromise between the parties for the full, complete, and final settlement of all of their claims, differences, and causes of action with respect to the allegations contained in the Notice.
- III. The parties agree that the terms of this Settlement and Consent Order bind the parties hereto, and their owners, shareholders, partners, members, assigns, and successors in interest.
- IV. The Division shall terminate the Notice of Intent to Revoke Mortgage Broker Certificate of Registration and Notice of Opportunity of Hearing issued December 5, 2006, and agrees that it shall not, as long as Respondent is in compliance with this Settlement, pursue the matters set forth in such Notice through its administrative process. Nothing, however, in this Settlement and Consent Order shall prevent the Division from presenting evidence and testimony in support of the allegations of fact and findings of law set forth in this Notice at the administrative proceeding to revoke the loan officer license of James H. Artwell, Case No. 06-3320LOR. Further, nothing in this Settlement and Consent Order shall be deemed to prevent the Division or its employees, agents, or assigns from participating in, as a witness or otherwise, any lawful action by another, or obeying any lawful court order, arising out of or related to the matters set forth in the Notice.
- V. Except as otherwise specifically acknowledged and agreed to herein, nothing in this Settlement and Consent Order shall be deemed an admission of guilt or liability with the allegations set forth in the Notice on the part of Respondent.
- VI. The Division expressly reserves the right to institute formal proceedings based upon any violation of or noncompliance with any provision of the Ohio Mortgage Broker Act or Ohio Mortgage Loan Act not specifically addressed herein, whether occurring before or after the effective date of this Settlement and Consent Order.
- VII. Respondent acknowledges lawful service and receipt of the Notice, and stipulates to the jurisdiction of the Division in this matter.
- VIII. The Respondent hereby withdraws its request for a hearing and agrees to forego its administrative remedies, and waives any and all rights to an administrative hearing or any right to appeal this matter or order.

- IX. By executing this Settlement and Consent Order, the Respondent agrees to allow the Division to revoke its Mortgage Broker Certificate of Registration, MB 4788.
- X. This Settlement and Consent Order shall be effective on the date it is signed by the Superintendent of the Division of Financial Institutions or his designee and on such date it will become a final order.
- XI. This Settlement and Consent Order contains the entire agreement between the parties as to the matters set forth herein and no promises, conditions or obligations, either expressed or implied, other than those set forth herein, shall be binding on either party.

For purposes of effecting this Settlement and Consent Order, it is hereby ORDERED and DECREED that:

- A. The parties to this Settlement and Consent Order shall abide by the terms of this order as agreed.
- B. Respondent's Mortgage Broker Certificate of Registration, MB 4788, be, and hereby is, revoked as agreed.
- C. The Division hereby terminates the Notice of Intent to Revoke Mortgage Broker Certificate of Registration and Notice of Opportunity of Hearing issued December 5, 2006.

The Respondent understands that any breach of this Settlement and Consent Order may result in the reinstitution of administrative proceedings, including suspension or revocation, the imposition of additional fines and any other remedy available to the Division.

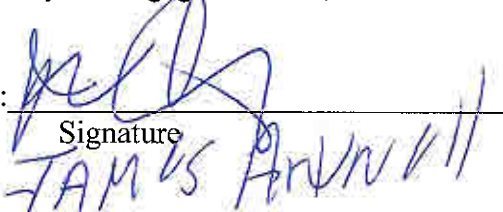


John B. Reardon
Superintendent of Financial Institutions

6/22/07
Date

Approved and Agreed

Buckeye Mortgage Services, LLC.

By: 
Signature

Print Name

Its:

President

6-20-07
Date

