

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS
77 South High Street, 21st Floor
Columbus, Ohio 43215-6120

In the matter of:)	
)	
RICHARD A. SMITH)	Case No. 06-3336MBF
dba RBK Funding)	
11421 West Ridge Road)	
Elyria, Ohio 44035)	Notice of Intent to Assess Fine and Suspend
)	Mortgage Broker Certificate of Registration
)	&
)	Notice of Opportunity for a Hearing
)	

JURISDICTION

The Ohio Department of Commerce, by and through the Superintendent of the Division of Financial Institutions ("Division"), is charged with the responsibility of enforcing the Ohio Mortgage Broker Act, codified in Ohio Revised Code ("R.C.") Chapter 1322.

Richard A. Smith dba RBK Funding ("Respondent") is a sole proprietorship registered with the Division as a mortgage broker pursuant to R.C. Chapter 1322. The business address of record for Respondent's main office is 11421 West Ridge Road, Elyria, Ohio 44035, registration number MB 5614. A branch office was also registered with the Division and was located at 29550 Detroit Avenue, Suite 100, Westlake, Ohio 44145, registration number MB 6271. The Registrant surrendered its mortgage broker certificate of registration for this branch office location on November 1, 2006.

ALLEGATIONS

Pursuant to R.C. 1322.10(B), the Division conducted an investigation into the affairs of Respondent, and as a result thereof, alleges the following:

FINDINGS

1. In or about June 2006, the Registrant's branch office in Westlake, Ohio sent out a direct mail advertisement to potential customers seeking to solicit business. The mailing consisted of a deed of trust with the potential customer's name, address, county, a lender's name, in this case, New Century Mortgage Corp., and an amount of indebtedness to the lender, in this case \$94,000. The advertisement mimics a genuine deed of trust. The cover letter to the deed of trust is entitled "ENDORSEMENT," and also contains the potential

customer's name and address along with the message of "PLEASE CALL ME AT (800) 704-4725 Ext. 411 REGARDING THE ENCLOSED DOCUMENT." When potential customers call the toll-free 800 phone number, the calls are directed to a loan officer at the Westlake branch location of Respondent, Jim Hubany, according to the solicitation. The Division contends that dissemination of this advertisement constitutes an improper and dishonest business practice in violation of R.C. § 1322.07(C).

2. A direct mailing by a mortgage broker to solicit business is considered an advertisement pursuant to rules of the Division governing mortgage brokers. (See O.A.C. Rule 1301:8-7-07(C) in effect prior to September 1, 2006). The Division contends the direct mailing of this advertisement by Registrant's Westlake, Ohio branch on or about June 2006, failed to clearly identify the Registrant in a manner that prevents confusion with the name of another unrelated registrant, specifically New Century Mortgage Corporation.
3. A mortgage broker registrant is further required by law to state and clearly indicate its identity in all advertisements pursuant to R.C. § 1322.09 and O.A.C. Rule 1301:8-7-07(A)(1) in effect prior to September 1, 2006. In this advertisement, the Registrant identified itself only as "R B K," while its name, as registered with the Division, is "RBK Funding."
4. The Division contends the above-noted solicitation is misleading as to the solicitation's origin and improperly implies sponsorship or affiliation with New Century Mortgage Corp. The Division contends this solicitation is an improper and dishonest business practice in violation of R.C. 1322.07(C) is actionable by the Division pursuant to R.C. 1322.10.

PROPOSED ACTION

Based upon the allegations and findings above, the Division intends to SUSPEND the Mortgage Broker Certificate of Registration MB 5614 for RICHARD A. SMITH DBA RBK FUNDING for a period of six months and LEVY a FINE of \$10,000.

NOTICE OF OPPORTUNITY FOR A HEARING ON PROPOSED ACTION

Therefore, pursuant to R.C. Chapters 1322 and 119, Respondent is hereby notified that thirty-one (31) days from the date of the mailing of this Notice, the Superintendent intends to issue an ORDER SUSPENDING the mortgage broker certificate of registration MB 5614 for RICHARD A. SMITH, DBA RBK FUNDING for a period of six months effective upon the issuance of this order, and to impose a FINE of \$10,000.

Respondent is further notified, pursuant to R.C. Chapter 119, that Respondent is entitled to a hearing on this matter. If Respondent desires to request a hearing, the request must be made in writing, and must be received in the offices of the Ohio Division of Financial Institutions within thirty (30) days of the time of the mailing of this Notice. Hearing requests should be addressed to:

State of Ohio
Department of Commerce
Division of Financial Institutions
Attn: Attorney Timothy C. Winslow
77 South High Street, 21st Floor
Columbus, Ohio 43215-6120

At the hearing, Respondent may appear in person, by Respondent's attorney, or by such other representative as is permitted to practice before the Agency, or Respondent may present its position, arguments, or contentions in writing, and, at the hearing, may present evidence and examine witnesses appearing for and against Respondent.

If the Ohio Division of Financial Institutions does not receive a written request for a hearing in its offices within thirty (30) days of the time of the mailing of this Notice, the Superintendent will issue an ORDER SUSPENDING the mortgage broker certificate of registration MB 5614 for RICHARD A. SMITH, DBA RBK FUNDING and assessing a FINE of \$10,000.

Signed and Sealed this 11th day of January, 2007.

ROBERT M. GRIESER
Deputy Superintendent of Financial Institutions