

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

In the matter of:)	Case No. 06-3320-LOR
)	
JAMES H. ARTWELL)	DIVISION ORDER
155 Essex Lane)	Revocation of Loan Officer License
Medina, Ohio 44256)	&
)	Notice of Appellate Rights
)	

Respondent, James H. Artwell ("Respondent") is licensed under R.C. Chapter 1322, the Ohio Mortgage Broker Act, as a loan officer by the Division of Financial Institutions ("Division"). On December 5, 2006 the Division notified Respondent that it intended to revoke his loan officer license because Respondent violated 1322.07(B), (C) and (E) of the Ohio Mortgage Broker Act in a particular loan transaction involving borrower Lee Ann Moreland by causing her final HUD-1 Settlement Statement to be altered, changed or revised without her knowledge, consent, or signature.

Pursuant to R.C. 1322.10(A)(1)(a), the Superintendent of Financial Institutions may revoke a loan officer 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 or any other law applicable to the business conducted under a certificate of registration.

Respondent requested an administrative hearing regarding the revocation of his loan officer license, and a hearing was held on June 20, 2007. A Report and Recommendation was filed with the Division on August 7, 2007, recommending that the Division not revoke Respondent's loan officer license. Respondent did not file any objections to the Report and Recommendation.

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 of fact and conclusions of law. Any finding and/or conclusion not specifically addressed below is approved, adopted, and incorporated herein. (The Hearing Examiner's Report and Recommendation is attached).

I. FINDINGS OF FACT

A. Jurisdiction and Procedural History

The Division approves Section A of the Findings of Fact in its entirety.

B. Loan Officer License Revocation

The Division approves Paragraphs 1-2, 4-5, 7-14, and 17-20 of Section B of the Findings of Fact in their entirety.

The Division modifies Paragraph 3 of the Findings of Fact on page 2 of the Report and Recommendation to read as follows:

In September 2004, Buckeye Mortgage, through Respondent, began to arrange to refinance a mortgage loan on residential property owned by Lee Ann Moreland located at 3845 East 188th Street, Cleveland, Ohio. (Tr. at 80 & 172). Respondent testified that he spoke to Mr. and Mrs. Moreland, drafted the disclosure documents, and took them to her house for signature. (Tr. at 174). One of the disclosure documents was a Good Faith Estimate (“GFE”) of closing costs dated September 23, 2004, which is required pursuant to the Real Estate Settlement and Procedures Act of 1974, as amended, (“RESPA”). (Tr. at 19, 30, 174 & State’s Ex. C). Lee Ann Moreland testified that she had never seen this GFE; the date was not written in her handwriting; the signature was “close” and “looks like it might be a photocopy;” and, finally, it was her custom to always fill in the date in instances where a form requested a date next to her signature. (Tr. at 82-83). The GFE listed a loan origination fee of \$2,000.00. (Tr. at 30).

The Division approves the first sentence of Paragraph 5 and then modifies Paragraph 5 to add the following at the end of the paragraph: “Respondent promised Mrs. Moreland that she would receive \$4,000.00 from the proceeds of the closing. (Tr. at 173, 176, 179, 190, 198, 202, 204, 207, 209).”

The Division approves the first sentence of Paragraph 6 of the Findings of Fact on page 2 of the Report and Recommendation. However, the Division corrects a factual error in the second sentence of Paragraph 6. Mrs. Moreland received a fixed interest rate of 5.9% (Tr. at 101), however, her interest rate on her previous loan was not 11.9673 percent as indicated in Paragraph 6 of the Findings of Fact. The number 11.9673 represents the per diem dollar amount of interest projected to be due and disclosed in the Good Faith Estimate in State’s Ex. C. (State’s Ex. C, Tr. at 101). Mrs. Moreland’s previous loan had an interest rate that was “in the eights.” (Tr. at 173).

The Division modifies Paragraph 15 of the Findings of Fact on page 4 of the Report and Recommendation to correct a typographical error in which the final words of the sentence were omitted and should read “Buckeye Mortgage Services, LLC.”

The Division modifies Paragraph 16 of the Findings of Fact on page 4 of the Report and Recommendation to read as follows:

After conducting an investigation, the Division issued the NOH to revoke Respondent's loan officer license alleging that Respondent violated R.C. 1322.07(B) by falsely promising that Mrs. Moreland would receive \$4,000.00 from the proceeds of the loan, when, in fact she did not. The Division further alleged that Respondent violated R.C. 1322.07(C) by causing the Final HUD-1 Settlement Statement to be altered, changed or revised without Mrs. Moreland's knowledge, consent or signature after the loan closed. Finally, the Division alleged that Respondent violated R.C. 1322.07(C) by knowingly causing the HUD-1 Settlement Statement to be altered, changed or revised after the closing without Mrs. Moreland's knowledge, consent or signature. (State Ex. A).

II. CONCLUSIONS OF LAW

A. Jurisdiction

The Division approves Section A of the Conclusions of Law on page 5 of the Report and Recommendation in its entirety.

B. Loan Officer License Revocation

The Division approves Paragraphs 1 and 2 of Section B of the Conclusions of Law on page 6 of the Report and Recommendation in their entirety.

The Division disapproves Paragraphs 3 and 4 of the Conclusions of Law on pages 6-7 of the Report and Recommendation in their entirety. The evidence shows that the HUD-1 was changed after Mrs. Moreland signed it, and without her knowledge, consent or signature. Regardless of who physically altered the broker fee on the Final HUD-1, the change benefited Respondent because he received an increase in his broker fee of \$1,417.82. This increase resulted in a corresponding decrease in the cash proceeds paid to Mrs. Moreland. The agency is not required to present direct evidence that Respondent, a licensee, violated the law; rather, a licensing agency is allowed to prove a violation based on circumstantial evidence. Digrat v. Ohio Liquor Control Comm'n, 2001 Ohio 8861. There is no requirement that a violation be proved by direct evidence. The agency may draw reasonable inferences based on the evidence before it. VFW Post 8586 v. Ohio Liquor Control Comm'n, (1998) 83 Ohio St. 3d 79, 82.

In this case, the fact that the change in the Final HUD-1 financially benefited only Respondent creates a reasonable presumption based on circumstantial evidence that Respondent must have somehow been responsible for the change. The fact that Mrs. Moreland had never seen the initial GFE and did not believe the signature to be hers is further evidence that

documents prepared by Respondent were altered, changed or revised without Mrs. Moreland's knowledge, consent or signature. Moreover, Respondent's explanation of why his fee sheet contained the higher loan origination fee is not credible and convincing. Respondent should have known what he was charging for his broker fee as he is the person who set this fee and should have disclosed it on the Mortgage Loan Origination Disclosure Statement as required by R.C. 1322.062(A)(1).

The Division approves all of Paragraph 5 of the Conclusions of Law on page 7 of the Report and Recommendation except for the last sentence which states as follows:

What the evidence does demonstrate is that Respondent gave Mrs. Moreland the Closing HUD-1 and that it was replaced with the Final HUD-1 by someone other than Respondent after the closing took place.

On the contrary, the evidence presented shows that Respondent presented Mrs. Moreland with the Closing HUD-1, and after the closing either changed it himself or directed another individual from Titles Etc. to change it in order to increase his broker fee and make the deal go through. Respondent directly profited from this change.

The Division disapproves Paragraph 6 of the Conclusions of Law on page 7 of the Report and Recommendation in its entirety. At a minimum, Mr. Burrie of Titles Etc. admitted that an employee of Titles Etc., over whom he had supervisory authority, altered the HUD-1 after it was signed by Mrs. Moreland and without her knowledge, consent or signature in order to charge a \$15 wire fee that the title company forgot to include in the other HUD-1 statements. While Mr. Burrie's testimony about what occurred at the closing differed from the testimony of Respondent and Mrs. Moreland, such contradiction does not preclude the Division from inferring that someone from Titles Etc. altered the broker fee on the Final HUD-1 at the direction of Respondent.

The Division disapproves Paragraph 7 of the Conclusions of Law on page 7 of the Report and Recommendation in its entirety. The Division successfully impeached Respondent with his own deposition testimony. At his sworn deposition, Respondent stated that someone from the title company was present and conducted the closing which took place at Mrs. Moreland's home. At the hearing, Respondent stated that he personally conducted the closing and that no one from the title company was present. His reason for the discrepancy was that he made a mistake at his deposition, remembered he made a mistake while driving home from the deposition, but failed to

contact the Division to correct it. For a loan that was disputed by the consumer almost immediately after the closing, it is hard to imagine that Respondent could have forgotten a fact as crucial as who closed the loan.

The Division disapproves Paragraph 8 of the Conclusions of Law on page 7-8 of the Report and Recommendation in its entirety. Respondent testified at the hearing that he closed the loan at Mrs. Moreland's home and that no one from Titles Etc. accompanied him. Mrs. Moreland corroborated this testimony. Therefore, Respondent was, in fact, responsible for the delivery of the closing documents to Mrs. Moreland and their return to Titles Etc. upon completion of the closing. It is, therefore, possible to conclude that Respondent was the settlement agent or an affiliate of the settlement agent.

The Division modifies Paragraph 9 of the Conclusions of Law on page 8 of the Report and Recommendation to read as follows:

The Division has established that Respondent promised Mrs. Moreland that she would receive \$4,000.00 from the proceeds of the loan. The Closing HUD-1 Respondent had her sign at closing indicated such. The Closing HUD-1 was changed after Mrs. Moreland signed it, and without her knowledge, consent or signature. Mrs. Moreland received less than \$4,000.00. Therefore, the Division has established that Respondent violated R.C. 1322.07(B). In addition, making false promises is improper and dishonest conduct which violates R.C. 1322.07(C).

The Division has also established that Respondent received a larger broker fee than what was indicated on the Closing HUD-1. Respondent financially benefited from this change. Based on this fact, a reasonable inference can be drawn that Respondent was responsible for causing the HUD-1 Settlement Statement to be altered, changed or revised after the closing and without Mrs. Moreland's knowledge, consent or signature. Causing changes to the HUD-1 Settlement Statement after closing and without the knowledge, consent or signature of Mrs. Moreland is improper and dishonest conduct which violates R.C. 1322.07(C).

III. RECOMMENDATION

The Division disapproves the Recommendation on page 8 of the Report and Recommendation in its entirety. For the reasons stated above, the Division REVOKES the loan officer license of Respondent, James H. Artwell.

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 21st day of November 2008.

LEIGH A. WILLIS

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