

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

In the matter of: ) Case No. M2008-18  
)  
**ANDREW L. BIRCH** ) **Notice of Intent to Fine**  
431 Dover Road ) **&**  
Springfield, OH 45504 ) **Notice of Opportunity for a Hearing**  
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**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.

**RESPONDENT**

Andrew L. Birch ("Respondent") is licensed by the Division as a loan officer pursuant to R.C. Chapter 1322 and holds license LO.013144. The Respondent's employer is First Ohio Home Finance, Inc. whose main office is at 385 County Line Road West, Suite 200, Westerville, Ohio 43082 which operates under certificate of registration MB.801145. The home address of Respondent is 431 Dover Road, Springfield, Ohio 45504. Respondent's date of birth is March 12, 1975.

**NOTICE OF PROPOSED ACTION**

In accordance with R.C. 1322.10, and pursuant to R.C. Chapter 119, the Division intends to IMPOSE A FINE of One Thousand Dollars (\$1,000.00) upon Respondent.

**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:

1. On April 24, 2005 Raymond D. and Jean C. Grumbling ("Borrowers") entered a real estate purchase contract to purchase a condominium (the "Condo") located at 1502 Ridgeview Lane, Springfield, Ohio for \$137,000.00.
2. When the Borrowers entered the contract to purchase the Condo, they owned a home in Springfield located at 755 Shrine Road, Springfield, Ohio (the "house").
3. The Borrowers intended to buy the Condo by using money generated by refinancing their house at 755 Shrine Road, Springfield, Ohio which they owned and had significant equity in. The Borrowers had already initiated steps to sell their house and believed their house would sell quickly thereby enabling them to repay the mortgage loan and enjoy

unencumbered ownership of the Condo. The Borrowers expressed their intention, belief and plan to the Respondent.

4. At the time of the transaction in April 2005 Respondent worked at the Springfield branch of First Ohio Home Finance, Inc. ("First Ohio") at 1021 N. Limestone Street as its sole employee at that branch office.
5. In the initial telephone contact with the Borrowers, Respondent completed an "easy application" upon a First Ohio telemarketing application form on which he documented the dates of birth, social security numbers, current mortgage and income information of the Borrowers.
6. Respondent listed the sources and amounts of income the Borrowers earned monthly on the First Ohio telemarketing application as \$1,927.00.
7. Respondent received the Borrowers' bank statements for January and March 2005 as part of the loan process. The bank statements indicated the income sources the Borrowers had identified to Respondent. The January 2005 bank statement revealed earnings deposits equal to \$1,638.26. The March 2005 bank statement revealed earnings of \$1,405.88 and listed the remaining balance of approximately \$9,000.00 on an existing HELOC on the Borrowers' house.
8. Respondent reviewed the Borrowers' bank statements, but ignored the plain and obvious information that confirmed the Borrowers' monthly income and instead claimed he only looked for information to confirm the amount of the existing HELOC loan which remained on the house.
9. As part of the loan application, Respondent affirmatively informed the lender that the Borrowers' monthly income was \$6,085.00.
10. On May 17, 2005, the Borrowers closed and signed the loan documents to obtain a refinancing of their current home through a \$145,000.00 HELOC brokered by Respondent. The initial draw on the HELOC equaled the entire amount of the loan. On May 26, 2005, the Borrowers used the cash from the HELOC to purchase the Condo.
11. The Borrowers signed at the closing a document entitled "Borrower(s) Acknowledgement of Stated Income Amount Used to Qualify for Home Equity Product" wherein they attested that their stated monthly income was \$6,085.00.
12. On July 14, 2006, the Borrowers submitted a consumer complaint form to the Division which alleged, *inter alia*, that Respondent had vastly overstated their monthly income.
13. During the Division's investigation, the Borrowers indicated that they noticed the stated income was too high, but signed so that they could obtain the money and buy the Condo. The Borrowers further stated that they had not provided that figure to the Respondent and were first presented with that figure at the closing. The Borrowers further stated that since they believed their house would sell quickly, obtaining the loan would not be to their detriment.

14. During the Division's investigation Respondent appeared before the Division on April 11, 2007 represented by legal counsel. When questioned by the Division on that day, Respondent admitted that he filled out the "easy application" wherein he listed the sources and amounts of the Borrowers' monthly income and that he reviewed the two bank statements of January and March 2005 supplied by the Borrowers.
15. Respondent further admitted that he supplied the stated income amount of \$6,085.00 which the lender used to approve the Borrowers' loan, but contended that he did not recall how that amount was derived.
16. Respondent overstated the monthly income of the Borrowers by more than \$4,000.00 in order to obtain for them a \$145,000.00 mortgage loan.
17. R.C. 1322.07 states, in part:

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 do any of the following: ...

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

(D) Knowingly make, propose, or solicit fraudulent, false, or misleading statements on any mortgage document or on any document related to a mortgage, including a mortgage application, real estate appraisal or real estate settlement or closing document. For purposes of this division, "fraudulent, false, or misleading statements" does not include mathematical errors, inadvertent transposition of numbers, typographical errors, or any other bona fide error.
18. Respondent knowingly provided false or misleading statements on documents related to a mortgage and a mortgage application that were not bona fide errors in violation of R.C. 1322.07(E).
19. Respondent's improper, fraudulent and dishonest conduct related to preparing documents related to a mortgage loan is an improper, fraudulent or dishonest business practice that violates R.C. 1322.07(C).

### **FINDINGS**

1. By knowingly providing false or misleading statements on documents related to a mortgage and a mortgage application that were not bona fide errors, Respondent has violated R.C. 1322.07(E).
2. By knowingly preparing documents related to a mortgage loan with false or misleading statements, Respondent engaged in improper, fraudulent and dishonest conduct in violation of R.C. 1322.07(C).
3. Based upon the authority granted pursuant to R.C. 1322.10(A)(2), the superintendent may impose a fine upon Respondent for his violations of R.C. 1322.07(C) and 1322.07(E).

**PROPOSED ACTION**

Based upon the allegations and findings above, the Division intends to IMPOSE A FINE of One Thousand Dollars (\$1,000.00) upon Respondent Andrew L. Birch (LO.013144).

**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 imposing a fine of one thousand dollars (\$1,000.00) on Respondent Andrew L. Birch (LO.013144).

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: Ohio Division of Financial Institutions, Attn: Lori A. Massey, Consumer Finance Attorney Examiner, 77 South High Street, 21<sup>st</sup> Floor, Columbus, Ohio 43215-6120.

At the hearing, Respondent may appear by Respondent's attorney, 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 imposing a fine in the amount of one thousand four hundred dollars (\$1,400.00) on Respondent.

Signed and sealed this 17<sup>th</sup> day of January 2008.

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**LEIGH A. WILLIS**

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