

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

In the matter of: ) Case No. M2008-118  
)  
**MICHAEL W. ELSASSER** ) **NOTICE OF INTENT TO IMPOSE A FINE**  
6750 Hamilton Road ) **&**  
Middletown, Ohio 45044 ) **NOTICE OF OPPORTUNITY FOR 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 administering and enforcing the Ohio Mortgage Broker Act, codified in Ohio Revised Code ("R.C.") Chapter 1322 and the Ohio Mortgage Loan Act, codified in R.C. Chapter 1321. In accordance therewith, the Division is accountable for the registration of mortgage brokers.

**RESPONDENT**

**MICHAEL W. ELSASSER** ("Respondent") is an individual who held a loan officer license number 001874 issued pursuant to R.C. Chapter 1322. Respondent's loan officer license expired on April 30, 2008 and was renewed in 2008. Respondent's home address of record is 6750 Hamilton Road, Middletown, Ohio 45044. Respondent employer of record is ACF Mortgage, LLC, 1081 North University Boulevard, Suite C, Middletown, Ohio 45042.

**NOTICE OF PROPOSED ACTION**

In accordance with sections 1322.04 and 1322.10 of the R.C., and R.C. Chapter 119, the Division intends to FINE Respondent.

**BASIS FOR PROPOSED ACTION**

The Division has conducted an investigation of Respondent, pursuant to R.C. 1322.10(B), and has found the following:

- A. The Division is authorized by R.C. 1322.10(A)(2) to "[i]mpose of fine of not more than one thousand dollars, for each day a violation of law or rule is committed, repeated or continued. If the registrant or licensee engages in a pattern of repeated violations of law or rule, the Division may impose a fine of not more than two thousand dollars for each day the violation is committed, repeated, or continued."
- B. The Division is authorized by R.C. 1322.06(A) to examine mortgage broker records that "[pertain] to business transacted pursuant to sections 1322.01 to 1322.12 of the Revised Code."

- C. R.C. 1322.07(C) prohibits mortgage brokers from “[e]ngaging in conduct that constitutes improper, fraudulent, or dishonest dealings [.]”
- D. R.C. 1321.52(A) prohibits any person from engaging in the business of lending or collecting the person’s own or another persons money, credit or chooses in action for such loan without first obtaining a certificate of registration issued under R.C. 1321.51 to 1321.60.
- E. Since at least 2001, Respondent was the President, sole shareholder and designated operations manager of Mortgage First, Inc. (“Mortgage First”) f/k/a 3M Mortgage, Inc.
- F. Since at least 2001, Respondent made no indication of any change in ownership or of operations manager on the annual renewal applications Mortgage First submitted to the Division.
- G. The Division has never issued a certificate of registration to authorize Respondent to engage in business under R.C. 1321.51 to 1321.60.
- H. As the operations manager of Mortgage First f/k/a 3M Mortgage, Inc., Respondent was responsible for the day to day operations of Mortgage First and compliance with R.C. Chapter 1322 and the rules adopted thereunder. See, R.C. 1322.01(H), R.C. 1322.03(A)(3) and Ohio Admin. Code 1301:8-7-02(L).
- I. In a compliance examination conducted pursuant to R.C. 1322.06 on or about July 14 and 15, 2003, it was determined that Mortgage First improperly retained up front fees collected from buyers in violation of R.C. 1322.08(B).
- J. In a compliance examination conducted pursuant to R.C. 1322.06 on or about July 14 and 15, 2003, it was determined that Mortgage First funded loans under the name of 3M Mortgage, Inc. without first obtaining registration under R.C. 1321.51 to 1321.60 in violation of R.C. 1321.52(A) and R.C. 1322.07(C).
- K. In a compliance examination conducted pursuant to R.C. 1322.06 on or about July 30 and 31, 2007, it was determined that Mortgage First improperly retained up front fees collected from buyers in violation of R.C. 1322.08(B).
- L. In a compliance examination conducted pursuant to R.C. 1322.06 on or about July 30 and 31, 2007, it was determined that Mortgage First funded loans under its own name without first obtaining registration under R.C. 1321.51 to 1321.60 in violation of R.C. 1321.52(A) and R.C. 1322.07(C).
- M. In a compliance examination conducted pursuant to R.C. 1322.06 on or about July 30 and 31, 2007, it was determined that Mortgage First collected loan origination fees in excess of the fee permitted under R.C. 1321.59(D) in violation of R.C. 1322.07(C).
- N. In a compliance examination conducted pursuant to R.C. 1322.06 on or about July 30 and 31, 2007, it was determined that Mortgage First failed to maintain a special account required by R.C. 1322.08(A) and Ohio Admin. Code 1301: 8-7-05.

- O. In a compliance examination conducted pursuant to R.C. 1322.06 on or about July 30 and 31, 2007, it was determined that Mortgage First improperly influenced appraisals in violation of 1322.07(G) and Ohio Admin. Code 1301: 8-7-23.

As a result of the findings listed above, the Division has determined that:

1. Respondent was responsible for compliance with Chapter 1322 at Mortgage First.
2. Respondent improperly retained up front fees paid by buyers in violation of R.C. 1322.08(B).
3. Respondent failed to maintain a special account to pay bona fide third party fees as required by R.C. 1322.08(A) and Ohio Admin. Code 1301: 8-7-05(A).
4. Respondent funded loans under the names 3M Mortgage, Inc. and Mortgage First without first obtaining registration under R.C. 1321.51 to 1321.60 in violation of R.C. 1321.52(A) and R.C. 1322.07(C).
5. Respondent collected loan origination fees in excess of the fee permitted under R.C. 1321.59(D) in violation of R.C. 1322.07(C).
6. Respondent improperly allowed the influencing of appraisals in violation of R.C. 1322.07(G) and Ohio Admin. Code 1301: 8-7-23.
7. Because Respondent violated R.C. 1322.06, R.C. 1322.08(A), R.C. 1322.08(B), Ohio Admin. Code 1301: 8-7-05, Ohio Admin. Code 1301: 8-7-23, R.C. 1322.07(G), 1321.52(A) and R.C. 1322.07(C), the Division is authorized under R.C. 1322.10(A)(2) to impose a fine upon Respondent.
8. A fine in the amount of twelve thousand seven hundred fifty dollars (\$12,750.00) is reasonable, appropriate, and necessary.

#### **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 to Respondent ordering payment of a twelve thousand seven hundred fifty dollar (\$12,750.00) fine under the Ohio Mortgage Broker Act.

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 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. At the hearing, a corporation must have a representative that is permitted to practice before the Agency, such as an attorney.

**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 to Respondent ordering payment of a twelve thousand seven hundred fifty dollar (\$12,750.00) fine.**

Signed and sealed this 10<sup>th</sup> day of October, 2008.

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**LEIGH A. WILLIS**

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