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STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. M2010-71  
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REAL ESTATE MORTGAGE CORP., : DEBORAH K. TONGREN  
RESPONDENT : HEARING OFFICER

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HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
Issued May 5, 2010

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I. FINDINGS OF FACT

A. Background.

This matter came before Deborah K. Tongren, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions ("*Division*") to serve as Hearing Officer for this hearing in accordance with the Ohio Administrative Procedure Act, Ohio Revised Code ("*R.C.*") Chapter 119. The Division held the hearing on April 8, 2010, at 77 South High Street, Columbus, Ohio to consider the allegations in the Division's Order of Summary Suspension and Notice of Opportunity for a Hearing ("*NOH*").

In its NOH, the Division alleged that Real Estate Mortgage Corp. ("*Respondent*") failed to maintain a surety bond as required by R.C. §1322.05(A) and (F). The Division summarily suspended Respondent's mortgage broker certificate of registration and now seeks to continue the suspension. The Division also alleged that Respondent lacked the character and fitness required for certification as a mortgage broker in Ohio. The Division intends to deny Respondent's 2009 mortgage broker renewal application.

Janyce Katz, Esq., an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Anthony Siciliano, Consumer Finance General Counsel, testified at the hearing on the Division's behalf. The Division introduced State's Exhibits

A, B, C, D, E, F and G and the Hearing Officer admitted them into evidence at the hearing.

Neither Respondent, nor anyone on Respondent's behalf, appeared at the hearing. Ms. Katz represented that she had received an e-mail correspondence from Respondent's president, Mark Johnston, on the morning of the hearing. Ms. Katz provided the Hearing Officer with a copy of the e-mail, which the Hearing Officer marked as Respondent's Exhibit 1, and admitted into the record as Respondent's written statement of its position, in accordance with R.C. §119.07.

**B. The Division's NOH.**

1. On March 18, 2010 the Division sent a cover letter and the NOH to Respondent and to its statutory agent, by certified mail, return receipt requested. The NOH specified the basis for the Division's proposed action and scheduled a hearing on the matter for April 8, 2010 at 10:00 a.m. *State's Exhibit A.*
2. The Division perfected service of the NOH on March 22, 2010. *State's Exhibit B.*
3. The Division held the hearing on April 8, 2010 with only the Division in attendance.

**C. The Division's Charges.**

4. In its NOH, the Division charged that: 1) Respondent failed to maintain a surety bond as required by R.C. §1322.05(A); 2) Respondent failed to disclose on its 2009 mortgage broker renewal application that the State of Indiana had revoked its mortgage broker license on August 5, 2008; 3) Respondent lacked the required character and fitness for certification as a mortgage broker under R.C. §1322.04(A)(2) and Ohio Administrative Code ("Ohio Adm. Code") 1301.8-7-21(D). *State's Exhibit A.*

**D. Respondent's Actions.**

5. At all times relevant herein, Respondent held a certificate of registration (MB.802908) to conduct business in Ohio as a mortgage broker. *State's Exhibit A.*

6. Respondent was also licensed as a mortgage broker in the State of Indiana. *Testimony of Mr. Siciliano, Tr. at pg. 17.*
7. On July 7, 2008, the State of Indiana issued an Order of Summary Revocation against Respondent. The Order stated that, "[t]he revocation shall be deemed effective on August 5, 2008, and shall run continuously thereafter, unless Respondent: (a) becomes compliant with Ind. Code § 23-3-5-20.5(b) prior to August 5, 2008, or (b) files a written statement requesting a withdrawal of its license." *State's Exhibit G.*
8. On April 3, 2009, Respondent filed an on-line application to renew its mortgage broker certificate of registration with the Division (*2009 renewal application*). *State's Exhibit F.*
9. Respondent maintained that it had inadvertently filed its renewal application with the Division, and intends to dissolve Respondent corporation and cease origination of mortgage loans in Ohio. *Respondent's Exhibit 1.*
10. Question number 6 on the 2009 renewal application states:

Have the Mortgage Broker, Operations Manager, any owner or any officer been subject to any federal, state or military criminal or administrative investigation or order? Please include pending or ongoing investigations.

*State's Exhibit F.*
11. Respondent answered question number 6 on its 2009 renewal application, "NO." *State's Exhibit F.*
12. As of the date of the hearing, April 7, 2010, Respondent had not met Indiana's conditions for reinstatement of its Indiana mortgage broker's license. *Testimony of Mr. Siciliano, Tr. at pg. 17.*
13. On February 8, 2010, The Hartford Fire Insurance Company, Bond Center sent a notice to the Division which showed that it was cancelling

Respondent's \$80,000.00 surety bond, effective March 14, 2010.<sup>1</sup> *State's Exhibit C.*

14. A surety bond protects Ohio consumers in the event of malpractice or wrong-doing on behalf of a mortgage broker. *Testimony of Mr. Siciliano, Tr. at pgs. 14-15.*
15. On February 8, 2010, the Division sent a letter to Respondent, by ordinary mail, informing Respondent that it was in violation of R.C. §1322.05 for failing to maintain a surety bond of \$80,000.00 for its main office and three branch offices. *State's Exhibit E.*
16. In his written statement dated April 7, 2010, Mark Johnston, Respondent's president, maintained that he was in the process of dissolving the corporation, and acknowledged that he had not renewed Respondent's surety bond. He further stated, "I will never operate Real Estate Mortgage Corp. as a Lender." *Respondent's Exhibit 1.*
17. Respondent did not provide the Division with documentation to indicate that Respondent had closed its mortgage broker main and branch offices. *Testimony of Mr. Siciliano, Tr. at pg. 17.*
18. The Division maintained that Respondent failed to truthfully answer question number 6 on its 2009 renewal application because it did not inform the Division of its August 5, 2008 revocation in the State of Indiana. Consequently, the Division alleged that Respondent lacked the character and fitness required of a mortgage broker in Ohio. *Testimony of Mr. Siciliano, Tr. at pg. 12.*

## II. CONCLUSIONS OF LAW.

### A. Jurisdiction.

19. Respondent received proper notice of the hearing in accordance with R.C. §119.07. It was, therefore, appropriate for the hearing to proceed in its absence. *Reed v. State Med. Bd. (1988), 40 Ohio App.3d 124, 125-26.*

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<sup>1</sup> Ohio law requires a \$50,000.00 surety bond for a main office location, and a \$10,000.00 for each branch office. Respondent maintained a main office and three branch offices.

20. The Division has complied with the procedural requirements of R.C. Chapter 119 and jurisdiction over this matter has been established.

**B. Respondent's Certificate of Registration.**

21. The Division licenses and regulates mortgage brokers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.

***1. Respondent's failure to maintain a surety bond.***

22. R.C. §1322.05(A) requires that each licensee who conducts business in Ohio must obtain and maintain a surety bond, in effect at all times. A \$50,000.00 bond is required for the registrant's main office and a \$10,000.00 bond is required for each additional office. R.C. §1322.05(A).
23. R.C. §1322.05(F) provides that "No registrant shall fail to comply with this section. Any registrant that fails to comply with this section shall cease all mortgage broker activity in this state until the registrant complies with this section."
24. Ohio Adm. Code 1301:8-7-14(C) provides, in pertinent part:

(C) Surety bonds required as a condition for registration under section 1322.05 of the Revised Code, shall be continuously maintained. Should a lapse in coverage occur, in compliance with division (F) of section 1322.05 of the Revised Code, the registrant shall cease all mortgage broker activity governed by chapter 1322. of the Revised Code until the registrant can present to the superintendent of the division of financial institutions evidence that the registrant has obtained a proper surety bond which extends through the duration of the registration period. A registrant that experiences a lapse in or break in coverage of its surety bond shall present evidence which satisfies the superintendent that the registrant conducted no mortgage broker or origination activities during the period in question. Failure to obtain a surety bond that complies with section 1322.05 of the Revised Code and the provisions of this rule within sixty days of the first date of a lapse in coverage, or engaging in any mortgage broker activity governed by chapter 1322. of

the Revised Code without a proper bond in place, is grounds for revocation of the registrant's certificate of registration.

\* \* \*

25. The Division has established that Respondent failed to maintain a surety bond, in violation of R.C. §1322.05(A).
26. The Superintendent of the Division is required to suspend the certificate of registration of any licensee who fails to comply with R.C. §1322.05(A). R.C. §1322.10(F).
27. This Hearing Officer finds that the Division properly issued a summary suspension of Respondent's certificate of registration for its failure to maintain a surety bond.
28. The Division has demonstrated a sufficient evidentiary basis on which to suspend Respondent's mortgage broker activity in Ohio because Respondent failed to maintain a surety bond in accordance with R.C. §1322.05(A). R.C. §1322.05(F) and Ohio Adm. Code 1301:8-7-14(D).

***2. Respondent's character and fitness.***

29. The Division is charged with an ongoing duty to ensure that, once licensed, the licensee continues its operations in a manner that " \* \* \* commands the confidence of the public and warrants the belief that the business will be operated honestly and fairly in compliance with the purposes of sections 1322.01 to 1322.12 of the Revised Code." R.C. 1322.04(A)(10).
30. Ohio Adm. Code 1301:8-7-21(D) provides, in pertinent part:

In determining "character and general fitness" as those terms are used in division (A)(10) of section 1322.04 of the Revised Code and division (A)(6) of section 1322.041 of the Revised Code, the superintendent of the division of financial institutions shall consider, inter alia, whether the applicant, registrant or licensee:

\* \* \*

(D) Has been refused or denied registration or licensing by any state or federal agency granted disciplinary or regulatory authority by state or federal law;\*\*\*

*Ohio Adm. Code 1301:8-7-21(D).*

31. R.C. §1322.07 provides, in pertinent part:

No registrant, licensee, person required to be registered or licensed under sections 1322.01 to 1322.12 of the Revised Code, or individual disclosed in an application as required by division (A)(2) of section 1322.03 of the Revised Code shall do any of the following:

(A) Obtain a mortgage broker certificate of registration or loan originator 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;

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(C) Engage in conduct that constitutes improper, fraudulent, or dishonest dealings;\*\*\*

32. The Division has demonstrated a sufficient evidentiary basis on which to deny Respondent's 2009 renewal application for a mortgage broker certificate of registration under R.C. §1322.04(A)(10) and Ohio Adm. Code 1301:8-7-21 because the State of Indiana revoked Respondent mortgage broker certification of registration in 2008.
33. The Division has demonstrated a sufficient evidentiary basis on which to deny Respondent's 2009 renewal application for a mortgage broker certificate of registration under R.C. §1322.07(A) because Respondent failed to inform the Division that the State of Indiana had revoked its mortgage broker certificate of registration in 2008.
34. The Division has demonstrated a sufficient evidentiary basis on which to deny Respondent's 2009 renewal application for a mortgage broker certificate of registration under R.C. §1322.07(C) because Respondent's

failure to truthfully answer question number 6 on the renewal application constitutes improper and/or dishonest dealings.

### III. RECOMMENDATION.

The Division provided a sufficient evidentiary basis to continue the summary suspension of Respondent's certificate of registration for a violation of R.C. §1322.05(A), failure to maintain a surety bond.

The Division has also provided a sufficient evidentiary basis under R.C. §§1322.04(A)(10), 1322.07(A) and 1322.07(C) to refuse to grant Respondent's application to renew its mortgage broker certificate of registration.

Based upon the evidence submitted, this Hearing Officer respectfully recommends that the Superintendent order Respondent to cease and desist all mortgage broker activity in the State of Ohio, pursuant to R.C. §1322.05(F), and that the Superintendent continue the suspension of Respondent's certificate of registration until Respondent has met the Division's requirements for reinstatement.

Respectfully submitted,

Deborah K. Tongren  
Hearing Officer