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DIVISION OF FINANCIAL INSTITUTIONS
JUN 23 2003

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STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

77 South High Street, 21st Floor
Columbus, Ohio 43215-6120

CHECK NO 520731334
AMOUNT \$500.00
DATE 6-23-03
REC. BY SAL

In the matter of:

**FIRST OHIO BANC
& LENDING, INC.
8180 Brecksville Rd.
Brecksville, Ohio 44141**

) Case No. 03-MB-S-03

) **SETTLEMENT AND
CONSENT ORDER**

WHEREAS, 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; and

WHEREAS, First Ohio Banc & Lending, Inc. ("Respondent") is an Ohio corporation 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 26016 Detroit Rd., Westlake, Ohio 44145. Said registrant also holds licenses to operate branch office locations including one at 8180 Brecksville Road, Brecksville 44141, under the registration number MB 4524; and

WHEREAS, on June 11, 2003, the Division sent via certified mail a Notice of Intent to Assess Fine and Suspend Mortgage Broker Certificate of Registration and Notice of Opportunity for a Hearing ("the Notice") to First Ohio Banc & Lending, Inc. ("Respondent") to its main office business address; and

WHEREAS, the Notice contained allegations and findings that:

(A) In February 2003 the Registrant's branch office in Brecksville, Ohio sent out direct mailings to potential customers seeking to solicit business. The mailing consisted of a pink telephone message note urging consumers to "immediately" call the mortgage company about their "FHA refund" along with a business card from one of company's loan officers. The solicitations attempt to generate business responses by reference to refunds available to certain FHA borrowers who refinance their mortgages and are due a return of a portion of their mortgage insurance premium. Not all consumers solicited were eligible for such a refund, nor was Respondent an official conduit for obtaining such a refund. A representation that a mortgage broker has a sponsorship, approval, or affiliation that it does not have is misleading and such solicitations are an improper business practice (see R.C. § 1322.07(C)).

(B) The direct mailings of February 2003 at issue that were sent by Registrant's branch office to solicit business were advertisements pursuant to rules of the Division governing mortgage brokers. (O.A.C. § 1301:8-7-07(B)).

(C) Said February 2003 direct mailings of the Registrant's Brecksville, Ohio branch contain claims that cannot be reasonably fulfilled or substantiated in violation of O.A.C. § 1301:8-7-07 (B)(3).

WHEREAS, First Ohio Banc & Lending, Inc. denies the allegations of the Division but to avoid the cost and uncertainty of litigation agrees to enter into this Consent Order for purposes of settlement.

NOW THEREFORE, in consideration of the foregoing and the mutual promises set forth herein, the parties agree to the following:

- 1) The parties acknowledge and agree to the accuracy of the foregoing recitals.
- 2) This Settlement and Consent Order represents a compromise between the parties for the full, complete, and final settlement of all of their claims, differences, and causes of action with respect to the allegations contained in the Notice.
- 3) The parties agree that the terms of this Settlement and Consent Order bind the parties hereto, and their shareholders, partners, members, assigns, and successors in interest.
- 4) The Division hereby terminates the Notice of Intent to Assess Fine and Suspend Mortgage Broker Certificate of Registration and Notice of Opportunity of Hearing issued June 11, 2003, and agrees that it shall not, as long as Respondent is in compliance with this Settlement and Consent Order pursue the matters set forth in such Notice through its administrative process. Nothing, however, in this order shall be deemed to prevent the Division or its employees, agents, or assigns from participating in, as a witness or otherwise, any lawful action by another, or obeying any lawful court order, arising out of or related to the matters set forth in the Notice.
- 5) Nothing in this Settlement and Consent Order shall be deemed an admission of guilt or liability, or agreement with the allegations set forth in the Notice on the part of Respondent.
- 6) Respondent acknowledges lawful service and receipt of the Notice, and stipulates to the jurisdiction of the Division in this matter.
- 7) The Respondent hereby agrees to forego its administrative remedies, and waive any and all rights to an administrative hearing, as well as any right to appeal this matter or order.

- 8) This Settlement and Consent Order shall be effective on the date it is signed by the Superintendent of the Division of Financial Institutions and on such date it will become a final order.
- 9) This Settlement and Consent Order contains the entire agreement between the parties as to the matters set forth herein and no promises, conditions or obligations, either expressed or implied, other than those set forth herein, shall be binding on either party.

For purposes of effecting this Settlement and Consent Order, it is hereby ORDERED and DECREED that:

- A. The parties to this Settlement and Consent Order shall abide by the terms of this order as agreed.
- B. The Respondent shall cease and desist from soliciting business through advertisements, including the use of direct mail in the manner set forth in the Notice, in violation of the Ohio Mortgage Broker Act, R.C. § 1322.01 et seq. and the rules thereunder and shall conform its advertisements in the future to all requirements of state law.
- C. The Respondent is hereby assessed a fine in the amount of One Thousand Dollars (\$1000), half of which shall be suspended upon the Respondent's full compliance with this order during the proceeding five years. Respondent shall pay the unsuspended amount of Five Hundred Dollars (\$500) to the Consumer Finance Fund pursuant to R.C. § 1322.21 within ten days of the effective date of this Settlement and Consent Order. Payment shall be made by certified check or money order made payable to the Ohio Division of Financial Institutions delivered to the Division's counsel.

The Respondent understands that any breach of this Settlement and Consent Order will subject the Respondent to the immediate payment of the suspended portion of the fine set forth herein and may result in the reinstitution of administrative proceedings, including suspension or revocation, the imposition of additional fines and any other remedy available to the Division.

F. Scott O'Donnell
Superintendent of Financial Institutions

6-24.03

Date

Approved and Agreed

First Ohio Banc & Lending, Inc.

By: _____

Its: Kirk Dostoi
President

6.19.03
Date

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