

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS
77 South High Street, 21st Floor
Columbus, Ohio 43215-6120

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DIVISION OF FINANCIAL
INSTITUTIONS

2007 JAN 11 PM 5:15

In the matter of:

Richard A. Smith
dba RBK Funding
11421 West Ridge Road
Elyria, Ohio 44035

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)
) Case No. 06-3336MBF
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) SETTLEMENT AND
) CONSENT ORDER
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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, Richard A. Smith dba RBK Funding ("Respondent") is a sole proprietorship 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 11421 West Ridge Road, Elyria, Ohio 44035. Said registrant also held a license to operate a branch office location at 29550 Detroit Avenue, Suite 100, Westlake, Ohio 44145, under the registration number MB 6271. Said registrant surrendered its mortgage broker certificate of registration for its branch office location on November 1, 2006; and

WHEREAS, on September 19, 2006, the Division sent via certified mail a Notice of Violation ("the Notice") to Respondent to its main office business address; and

WHEREAS, the Notice contained allegations and findings that:

1. In or about June 2006, the Registrant's branch office in Westlake, Ohio sent out a direct mail advertisement to potential customers seeking to solicit business. The mailing consisted of a deed of trust with the potential customer's name, address, county, a lender's name, in this case, New Century Mortgage Corp., and an amount of indebtedness to the lender, in this case \$94,000. The advertisement mimics a genuine deed of trust. The cover letter to the deed of trust is entitled "ENDORSEMENT," and also contains the potential customer's name and address along with the message of "PLEASE CALL ME AT (800) 704-4725 Ext. 411 REGARDING THE ENCLOSED DOCUMENT." When potential customers call the toll-free 800 phone number, the calls are directed to a loan officer at the Westlake branch location of Respondent, Jim Hubany, according to the solicitation. The Division contends that dissemination of this advertisement constitutes an improper and dishonest business practice in violation of R.C. § 1322.07(C).

2. A direct mailing by a mortgage broker to solicit business is considered an advertisement pursuant to rules of the Division governing mortgage brokers. (See O.A.C. Rule 1301:8-7-07(C) in effect prior to September 1, 2006). The Division contends the direct mailing of this advertisement by Registrant's Westlake, Ohio branch on or about June 2006, failed to clearly identify the Registrant in a manner that prevents confusion with the name of another unrelated registrant, specifically New Century Mortgage Corporation.
3. A mortgage broker registrant is further required by law to state and clearly indicate its identity in all advertisements pursuant to R.C. § 1322.09 and O.A.C. Rule 1301:8-7-07(A)(1) in effect prior to September 1, 2006. In this advertisement, the Registrant identified itself only as "R B K," while its name, as registered with the Division, is "RBK Funding."
4. The Division contends the above-noted solicitation is misleading as to the solicitation's origin and improperly implies sponsorship or affiliation with New Century Mortgage Corp. The Division contends this solicitation is an improper and dishonest business practice in violation of R.C. 1322.07(C) is actionable by the Division pursuant to R.C. 1322.10.

WHEREAS, Respondent 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 issued on the same date as this Settlement and Consent Order, 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 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 Three Thousand Dollars (\$3000). Respondent shall pay the full amount of Three Thousand dollars (\$3000) 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.

Robert M. Grieser

ROBERT M. GRIESER
Deputy Superintendent of Financial Institutions

1-11-07

Date

Approved and Agreed:

RICHARD A. SMITH, DBA RBK FUNDING

By: Richard A. Smith

1-07-2007

Its: PRESIDENT

Date

