

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

In the matter of:) Case No. M2008-765
)
UNITED CAPITAL MORTGAGE) Notice of Intent to Refuse 2008 and 2009 Mortgage Broker
OF OHIO, INC.) Renewal, Impose Fine
100 Merchant Street, Suite 175) &
Cincinnati, OH 45246) Notice of Opportunity for a Hearing
)

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 ("OMBA"), codified in Ohio Revised Code ("R.C.") Chapter 1322. In accordance therewith, the Division is accountable for the registration of mortgage brokers.

RESPONDENT

UNITED CAPITAL MORTGAGE OF OHIO, INC. ("Respondent") is a company that held an OMBA certificate of registration (MB.803150) to engage in business as a mortgage broker. Respondent's mortgage broker certificate of registration expired on April 30, 2008, and Respondent filed an application to renew its certificate of registration on or before April 30, 2008. Subsequently, Respondent filed a renewal application on or before April 30, 2009. Respondent's 2008 and 2009 renewal applications remain pending. Respondent's business address of record is 100 Merchant Street, Suite 175, Cincinnati, Ohio 45246.

NOTICE OF PROPOSED ACTION

In accordance with sections R.C. 1322.04 and 1322.10, and R.C. Chapter 119, the Division intends to REFUSE to renew Respondent's OMBA certificate of registration and impose a FINE.

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)(1)(a), as in effect in 2008 and 2009, to refuse to renew an applicant's mortgage broker certificate of registration if the Division finds that the applicant has violated "or failed to comply with any provision of sections 1322.01 to 1322.12 of the Revised Code or the rules adopted under those sections or any other law applicable to the business conducted under a certificate of registration[.]"
- B. The Division is authorized by R.C. 1322.10(A)(2), as in effect in 2008 and 2009, to impose a fine of not more than one thousand dollars for each day a violation of a law or rule is committed, repeated, or continued. If the registrant engages in a pattern of repeated violations of a law or rule, the superintendent may impose a fine not more than two thousand dollars for each day the violation is committed, repeated, or continued.

- C. R.C. 1322.01(A)(1), as in effect in 2008 and 2009, provided in part: “No person, on the person’s own behalf or on behalf of any other person, shall act as a mortgage broker without first having obtained a certificate of registration from the superintendent of financial institutions for every office to be maintained by the person for the transaction of business as a mortgage broker in this state.”
- D. R.C. 1322.02(B), as in effect in 2008 and 2009, provided in part: “No person , on the person’s own behalf or on behalf of any other person, shall act as a loan officer without having obtained a license from the superintendent.”
- E. R.C. 1322.07(C), as in effect in 2008 and 2009, prohibits registrants or applicants for a certificate of registration from engaging in conduct that constitutes improper, fraudulent, or dishonest dealings.
- F. Respondent’s only registered address of record is 100 Merchant Street, Suite 175, Cincinnati, Ohio 45246. On or about December 8, 2008, Respondent submitted a branch application for 20325 Center Ridge Road, Suite 613, Rocky River, Ohio 44116, which remains pending.
- G. From approximately May 7, 2008 to January 7, 2009, Respondent employed loan officer David M. Demian, LO.005691.
- H. On or about April 8, 2008, the Division sent David S. Nicolanti a letter informing him that his December 20, 2007 Loan Officer License Application was withdrawn for failure to successfully complete the Loan Officer Examination within 90 days from his authorization date. Mr. Nicolanti reapplied for a loan officer license on November 10, 2008. On or about January 5, 2009, upon Mr. Nicolanti’s successful passage of the Loan Officer Examination, the Division issued Mr. Nicolanti loan officer license LO.003897.002. Respondent is Mr. Nicolanti’s employer of record.
- I. Former loan officer Jeffrey A. Rocheck was issued loan officer license LO.005961. He has never been licensed to work for Respondent.
- J. On or about July 29, 2008, Respondent originated a residential mortgage loan for borrower Holloway. According to Respondent’s records, a Uniform Residential Loan Application, a Truth in Lending Disclosure Statement, a Mortgage Loan Origination Agreement, a Mortgage Loan Service Agreement, a Mortgage Loan Origination Disclosure Statement, a High Loan to Value Disclosure, a Notice of Escrow of Taxes & Regular Monthly Payment, a Notice of Change in Mortgage Terms, and a HUD/VA Addendum to Uniform Residential Loan Application bear the purported signature of loan officer David Demian. Some of these documents also list Loan Officer Number “5961” next to Mr. Demian’s purported signature. Respondent’s “All Files-Left Side Stacking Order” form for the Holloway file states that the loan officer is David Demian and that the loan was originated at the Rocky River branch. Mr. Demian did not sign these documents, did not take a loan application from Holloway, and did not originate the loan.
- K. On or about August 21, 2008, Respondent originated a residential mortgage loan for borrowers Bortz and Newsbury. According to Respondent’s records, a Uniform Residential Loan Application, a Patriot Act Customer Identification Documentation form, the Mortgage Loan Service Agreement, a Mortgage Loan Origination Disclosure Statement, a HUD/VA Addendum to Uniform Residential Loan Application, and two Notices of Escrow Taxes & Regular Monthly Payment bear the purported signature of loan officer David M. Demian. Some of these documents also list the Loan Officer Number “5961” next to Mr. Demian’s purported signature. Respondent’s “All Files-Left Side Stacking Order” form for the Bortz

and Newsbury file states that the loan officer is David Demian and that the loan was originated at the Rocky River branch. Mr. Demian did not sign these documents, did not take a loan application from Bortz and Newsbury, and did not originate the loan.

- L. On or about September 2, 2008, Respondent originated a residential mortgage loan for borrower Hach-Wilkins. According to Respondent's records, two Uniform Residential Loan Applications, a Truth in Lending Disclosure Statement, a Mortgage Loan Origination Agreement, a Mortgage Loan Service Agreement, a Mortgage Loan Origination Disclosure Statement, a High Loan to Value disclosure, two Notices of Escrow of Taxes & Regular Monthly Payment forms, a Notice of Change in Mortgage Terms, a HUD/VA Addendum to Uniform Residential Loan Application, a Broker Fee Agreement, and a Borrower's Interest Worksheet bear the purported signature of loan officer David Demian. Some of these documents also list loan officer number "5961" next to Mr. Demian's purported signature. Respondent's "All Files-Left Side Stacking Order" form for the Hach-Wilkins file states that the loan officer is Dave Demian and that the loan was originated at the Rocky River branch. Mr. Demian did not sign these documents, did not take the loan application from Hach-Wilkins, and did not originate the loan.
- M. On or about September 2, 2008, Respondent originated a residential mortgage loan for borrower Supp. According to Respondent's records, two Uniform Residential Loan Applications, a Truth in Lending Disclosure Statement, a Patriot Act Customer Identification Documentation form, a Mortgage Loan Origination Agreement, a Mortgage Loan Services Agreement, a High Loan to Value Disclosure, A Notice of Escrow of Taxes & Regular Monthly Payment, a Notice of Change in Mortgage Terms, and a HUD/VA Addendum to Uniform Residential Loan Application bear the purported signature of David Demian. Some of these documents list loan officer license number "5961" next to Mr. Demian's purported signature. A Mortgage Loan Origination Disclosure Statement issued by Respondent to Supp bears the name of David Nicolanti, the purported signature of David Demian and loan officer license number "5961." Respondent's "All Files-Left Side Stacking Order" form for the Supp file states that the loan officer is Dave Demian and that the loan was originated at the Rocky River branch. Mr. Demian did not sign these documents, did not take a loan application from Supp, and did not originate the loan.
- N. On or about September 3, 2008, Respondent originated a residential mortgage loan for borrowers named Heath. According to Respondent's records, two Uniform Residential Loan Applications, a Truth in Lending Disclosure Statement, a Mortgage Loan Origination Agreement, and a Mortgage Loan Services Agreement purport to bear the signature of David Demian. Some of these documents list loan officer license number "5961" next to Mr. Demian's purported signature. Respondent's "All Files-Left Side Stacking Order" form for the Heath file states that the loan officer is David Demian and that the loan was originated at the Rocky River branch. Mr. Demian did not sign these documents, did not take the loan application from the Heaths, or originate the loan.
- O. On or about October 10, 2008, Respondent originated a residential mortgage loan for borrower Hassing. According to Respondent's records, two Uniform Residential Loan Applications, a Truth in Lending Disclosure Statement, a Mortgage Loan Origination Agreement, a Mortgage Loan Services Agreement, a Notice of Escrow of Taxes & Regular Monthly Payments, and a Notice of Change in Mortgage Terms bear the signature of David Demian. Some of these documents list loan officer license number "5961" next to Mr. Demian's purported signature. The borrower's loan file also contains a Uniform Residential Loan Application, a Mortgage Loan Origination Disclosure Statement, a Notice of Escrow of Taxes & Regular Monthly Payment, and a High Loan to Value Disclosure, signed by David Nicolanti using the credential "5961." Respondent's "All Files-Left Side Stacking Order" form for the Hassing file states that the loan officer is Dave Demian and that the loan

was originated at the Rocky River branch. Mr. Demian did not sign these documents, did not take a loan application from Hassing, and did not originate the loan.

- P. On or about November 24, 2008, Respondent originated a residential mortgage loan for borrower Gue. According to Respondent's records, four Uniform Residential Loan Applications, three Truth in Lending Disclosure Statements, a Mortgage Loan Origination Agreement, a Mortgage Loan Service Agreement, two Mortgage Loan Origination Disclosure Statements, a High Loan to Value Disclosure, two Notices of Escrow of Taxes & Regular Monthly Payment, two Notices of Change in Mortgage Terms, a HUD/VA Addendum to Uniform Residential Loan Application, and a Tangible Net Benefit Worksheet bear the purported signature of David Demian. Some of these documents list loan officer license number "5961" next to Mr. Demian's purported signature, although the High Loan to Value Disclosure lists loan officer number "5691." Respondent's "All Files-Left Side Stacking Order" form for the Gue file states that the loan officer is David Demian and that the loan was originated at the Rocky River branch. Mr. Demian did not sign these documents, did not take a loan application from Gue, or originate the loan. One Mortgage Loan Service Agreement bears the signature of David S. Nicolanti.
- Q. On or about December 3, 2008, Respondent originated a residential mortgage loan for borrower Kopacz. According to Respondent's records, three Uniform Residential Loan Applications, a Truth in Lending Disclosure Statement, two Mortgage Loan Origination Disclosure Statements, a Mortgage Loan Service Agreement, a Notice of Escrow of Taxes & Regular Monthly Payment, a Notice of Change in Mortgage Terms, and a HUD/VA Addendum to Uniform Residential Loan Application. Some of these documents list loan officer license number "5961" next to Mr. Demian's purported signature. Respondent's "All Files-Left Side Stacking Order" form for the Kopacz file states that the loan officer is David Demian and that the loan was originated at the Rocky River branch. Mr. Demian did not sign these documents, did not take a loan application from Kopacz, and did not originate the loan.
- R. On or about December 15, 2008, Respondent originated a residential mortgage loan for borrowers Rosser. According to Respondent's records, two Uniform Residential Loan Applications, a Truth in Lending Disclosure Statement, a Mortgage Loan Origination Agreement, a Mortgage Loan Services Agreement, a Mortgage Loan Origination Disclosure Statement, a High Loan to Value Disclosure, two Notices of Escrow of Taxes & Regular Monthly Payment, and a HUD/VA Addendum to Uniform Residential Loan Application purport to bear the signature of loan officer David Demian. Loan Officer credential "5961," or a derivative thereof, appears on some of the documents next to the purported signature of Mr. Demian. Respondent's "All Files-Left Side Stacking Order" form for the Rosser file states that the loan officer is David Demian and that the loan was originated at the Rocky River branch. Mr. Demian did not sign these documents, did not take the loan application from the Rossers, and did not originate the loan.
- S. On or about December 22, 2008, Respondent originated a residential mortgage loan for borrowers named Jacobs. According to Respondent's records, two Uniform Residential Loan Applications, two Truth in Lending Disclosure Statements, two Mortgage Loan Service Agreements, two Mortgage Loan Origination Disclosure Statements, two Notices of Escrow of Taxes & Regular Monthly Payment, a HUD/VA Addendum to Uniform Residential Loan Application, and a Tangible Net Benefit Worksheet purport to bear the signature of David Demian. Some of these documents list loan officer license number "5961" next to Mr. Demian's purported signature. Respondent's "All Files-Left Side Stacking Order" form for the Jacobs file states that the loan officer is Dave Demian and that the loan was originated at the Rocky River branch. Mr. Demian did not sign these documents, did not take a loan application from the Jacobs, and did not originate the loan.

- T. On or about June 11, 2008, Respondent originated a residential mortgage loan for borrower Sileo that closed on August 4, 2008. The loan was originated out of Respondent's Rocky River branch, and the loan officer was David Nicolanti. The branch is not registered with the Division, and Mr. Nicolanti was not a licensed loan officer at the time of the origination or closing.
- U. On or about October 13, 2008, Respondent originated a residential mortgage loan for borrowers McClary, and the loan closed on November 26, 2008. The loan was originated out of Respondent's Rocky River branch, and the loan officer was David Nicolanti. The branch is not registered with the Division, and Mr. Nicolanti was not a licensed loan officer at the time of the origination or closing.
- V. On or about November 19, 2008, Respondent originated a residential mortgage loan for borrower Costa that closed on December 12, 2008. The loan was originated out of Respondent's Rocky River branch, and the loan officer was David Nicolanti. The branch was not registered with the Division, and Mr. Nicolanti was not a licensed loan officer at the time of the origination.
- W. On or about December 3, 2008, Respondent originated a residential mortgage loan for borrower Gerke that closed on January 23, 2009. The loan was originated out of Respondent's Rocky River branch, and the loan officer was David Nicolanti. The branch was not registered with the Division, and Mr. Nicolanti was not a licensed loan officer at the time of the origination.

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

- 1. By originating loans out of an unregistered location, Respondent violated R.C. 1322.02(A)(1).
- 2. By originating loans out of an unregistered location, forging the signature of a loan officer on mortgage loan documents, and permitting an unlicensed loan officer to originate loans, Respondent violated R.C. 1322.07(C).
- 3. Because Respondent violated R.C. 1322.02(A)(1) and R.C. 1322.07(C), the Division finds Respondent's character and general fitness do not command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act, thereby failing to meet the prerequisite for certificate of registration renewal found in R.C. 1322.04(B)(3) and R.C. 1322.04(A)(10).
- 4. Because Respondent violated R.C. 1322.02(A)(1) and R.C. 1322.07(C), the Division is authorized by R.C. 1322.10(A)(1)(a) to refuse to renew Respondent's mortgage broker certificate of registration.
- 5. Because Respondent committed repeated and continued violations of R.C. 1322.02(A)(1) and 1322.07(C), the Division may impose a two thousand dollar (\$2,000.00) fine for each of Respondent's violations.
- 6. A fine in the amount of sixty-eight thousand dollars (\$68,000.00) 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 refusing to renew Respondent's Ohio Mortgage Broker Act certificate of registration and ordering payment of a sixty-eight thousand dollar (\$68,000.00) 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: Anthony Siciliano, Consumer Finance General Counsel, 77 South High Street, 21st 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 refusing to renew Respondent's certificate of registration and ordering payment of a sixty-eight thousand dollar (\$68,000.00) fine.

Signed and sealed this 30th day of March, 2010.

JOHN B. REARDON

Superintendent

Division of Financial Institutions

Ohio Department of Commerce