

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

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| In the matter of: |) | Case No. M2008-615 |
| |) | |
| TRITON FINANCIAL GROUP, LLC |) | Notice of Intent to Revoke Mortgage Broker Registration |
| 2000 Auburn Drive, Suite 200 |) | & |
| Beachwood, OH 44122 |) | 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, codified in Ohio Revised Code ("R.C.") Chapter 1322. In accordance therewith, the Division is accountable for the registration of mortgage brokers.

RESPONDENT

TRITON FINANCIAL GROUP, LLC ("Respondent") is a company that holds a certificate of registration to engage in business as a mortgage broker pursuant to R.C. Chapter 1322. Respondent's business address of record is 2000 Auburn Drive, Suite 200, Beachwood, OH 44122. Respondent operates under mortgage broker certificate of registration number MB 803160.

NOTICE OF PROPOSED ACTION

In accordance with R.C. 1322.10 and R.C. Chapter 119, the Division intends to REVOKE Respondent's mortgage broker certificate of registration.

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) to revoke a mortgage broker certificate of registration if the Division finds that the applicant has violated "or failed to comply with any provisions 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. R.C. 1322.01(E) defines "loan officer" as "an employee who originates mortgage loans in consideration of direct or indirect gain, profit, fees, or charges". R.C. 1322.01(C) defines "employee" as "an individual for whom a mortgage broker, in addition to providing a wage or salary, pays social security and unemployment taxes, provides workers' compensation coverage, and withholds local, state, and federal income taxes."
- C. Pursuant to R.C. 1322.06(A), the Division conducted an examination of Respondent on February 21-22, 2008. During the course of this examination, the Division examiner found that Respondent treated its licensed loan officers, Andrew Morean, Kevin Gainer, Dionne Moss, and Tenia Wilson as subcontractors and reported a portion of their income on 1099 forms rather than on W-2s.

- D. By reporting some of Andrew Morean, Kevin Gainer, Dionne Moss, and Tenia Wilson's income on 1099s and not on W-2s, Respondent engaged in conduct that constitutes improper, fraudulent, or dishonest dealings in violation of R.C. 1322.07(C).
- E. R.C. 1322.072 prohibits persons from knowingly circumventing, interfering with, obstructing, or failing to cooperate, including making a false or misleading statement, failing to produce records, or intimidating or suborning any witness in connection with any examination or investigation conducted by the superintendent of financial institutions under sections 1322.01 to 1322.12 of the Revised Code.
- F. Following the Division's February 2008 Examination, on May 14, 2008, Richard Keck, Chief Examiner for Consumer Finance wrote Kevin Gainer of Triton Financial Group a letter addressing the issues raised in the February compliance examination. At this time, Kevin Gainer was the individual designated as Triton Financial Group, LLC's Operations Manager. (He became Triton Financial Group, LLC's approved Operations Manager in July 2008). The letter was sent by US regular mail and requested a response within thirty days. The Division did not receive a letter from Triton Financial Group, LLC in response to the Division's May 14, 2008 letter addressing the issues found in the Division's examination.
- G. Subsequently, on August 20, 2008, Richard Keck, Chief Examiner for Consumer Finance, wrote another letter to Kevin Gainer of Triton Financial Group, LLC, again requesting Triton Financial Group, LLC address the issues raised in the Division's examination and respond to the Division's letter on or before September 3, 2008. This letter was sent by Certified Mail to Kevin Gainer, the Operations Manager of Triton Financial Group, LLC at Respondent's business address and received on August 22, 2008. The Division received no response to its August 20, 2008 letter from any representative of Triton Financial Group, LLC.
- H. By failing to respond to the Division's May 14, 2008 and August 20, 2008 letters that addressed the compliance issues found during the February 2008 examination, Respondent violated R.C. 1322.072.
- I. R.C. 1322.064(A) states: "[n]o registrant or licensee shall fail to do either of the following: (1) Timely inform the buyer of any material change in terms of the loan." This statute defines "material change" as the following: (a) A change in the type of loan being offered, such as fixed or variable rate loan or a loan with a balloon payment; (b) a change in the term of the loan, as reflected in the number of monthly payments due before a final payment is scheduled to be made; (c) a change in the interest rate of more than .15%; (d) a change in the regular monthly payment of principal and interest of more than five percent; (e) a change regarding the escrow of taxes or insurance; (f) a change regarding the payment of private mortgage insurance.
- J. In arranging mortgage loans secured by real estate, Respondent failed to timely inform the buyer(s) of any material change(s) to the loan, in violation of R.C. 1322.064(A).
 - a. For the mortgage loan secured by 1890 Woodbrook Lane, Lyndhurst, Ohio 44124, Respondent failed to notify the buyer of the following material changes to the loan:
 - (1) A change in interest rate from .149% fixed to 7.25% variable (first mortgage and 11% variable (second mortgage).
 - (2) A change in the type of loan being offered. On November 14, 2006, the buyer signed preliminary disclosures for a fixed rate thirty year loan with an APR of .149%. On January 23, 2007, the buyer signed settlement

documents for a first mortgage in the amount of \$880,000 with a variable interest rate of 7.25% with a balloon and also signed settlement documents for a second mortgage in the amount of \$220,000 with a variable interest rate of 11%.

- (3) A change in the regular monthly payment of principal and interest of more than five percent. The initial disclosures list a monthly mortgage payment of \$1350 for the entire amount borrowed. At settlement, the borrower agreed to a first and second mortgage for which the monthly payments combined were \$9,369 (plus balloon payments).
- b. For the mortgage loan secured by 3400 East Galloway Drive, Richfield, OH 44286, Respondent failed to notify the buyer of the following material changes to the loans:
- (1) The second mortgage had a change in interest rate from 7.750% (variable) with the preliminary disclosures to 6.990% (variable) at settlement without redisclosure.
 - (2) A change in the type of loan being offered. In the case of the mortgage which was a first lien on the property, on January 10, 2007, the buyer signed preliminary disclosures for a thirty year fixed rate loan. On February 13, 2007 the buyer signed settlement documents for a thirty year mortgage with a variable rate.
 - (3) A change in the regular monthly payment of principal and interest of more than five percent. At the time of preliminary disclosures, Respondent disclosed a combined monthly payment for the 1st and 2nd mortgages of \$8,336.35. At settlement, the monthly payment for the combined first and second mortgages was \$7,082.97. The difference between the proposed monthly mortgage payment and the monthly mortgage payment at settlement was more than five percent.
- K. R.C. 1322.064(A)(2) states: [n]o registrant or licensee shall fail to...[t]imely inform the buyer if any fees payable by the buyer to the registrant or lender increase by more than ten percent or one hundred dollars, whichever is greater.
- L. In arranging mortgage loans secured by real estate located at 1890 Woodbrook Lane, Lyndhurst, Ohio 44124 and 3400 East Galloway Drive, Richfield, OH 44286, Respondent failed to timely inform the buyer(s) of any fees payable by the buyer to the registrant that increased by more than ten percent, in violation of R.C. 1322.064(A)(2).
- M. Respondent is a "supplier" as defined in R.C. 1345.01(C).
- N. R.C. 1345.031(A) states: "No supplier shall commit an unconscionable act or practice concerning a consumer transaction in connection with a residential mortgage. Such an unconscionable act or practice by a supplier violates this section whether it occurs before, during, or after the transaction."
- O. R.C. 1345.031(B)(2) states: "Engaging in a pattern or practice of providing consumer transactions to consumers based predominantly on the supplier's realization of the foreclosure or liquidation value of the consumer's collateral without regard to the consumer's ability to repay the loan in accordance with its terms, provided that the supplier may use any reasonable method to determine a borrower's ability to repay."
- P. In arranging mortgage loans secured by real estate located at 1890 Woodbrook Lane, Lyndhurst, Ohio 44124, 3400 East Galloway Drive, Richfield, OH 44286, and 2574 Fairwood Drive, Pepper Pike, Ohio 44124, Respondent originated the mortgage loan

without regard to whether the buyer was able to repay the loan and failed to use any reasonable method to determine a borrower's ability to repay the mortgage loan in violation of R.C. 1345.031(A).

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

1. Respondent's actions listed in paragraph D violated R.C. 1322.07(C).
2. Respondent's actions listed in paragraphs G-I violated R.C. 1322.072.
3. Respondent's actions listed in paragraph J-M violated R.C. R.C. 1322.064(A)(2).
4. Respondent's actions listed in paragraphs N-Q violated R.C. 1345.031(A).
5. Because Respondent violated or failed to comply with R.C. sections 1322.07(C), 1322.072, 1322.064(A)(2) and 1345.031(A), the Division is authorized under R.C. 1322.10(A)(1)(a) to revoke Respondent's mortgage broker certificate of registration.

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 revoking Respondent's mortgage broker certificate of registration.

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: Martha Rhea, Consumer Finance Attorney Examiner, 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 revoking Respondent's mortgage broker certificate of registration.

Signed and sealed this 2nd day of February, 2009.

LEIGH A. WILLIS

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