

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

In the matter of:	)	
<b>PHOENIX FUNDING, INC.</b>	)	Case No. 03-MB-R-02-03
<b>21 Perry Street</b>	)	
<b>Vandalia, Ohio 45377</b>	)	<b>Notice of Intent to Assess Fine and Revoke</b>
	)	<b>Mortgage Broker Certificate of Registration</b>
	)	<b>&amp;</b>
	)	<b>Notice of Opportunity for a Hearing</b>
	)	

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**JURISDICTION**

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.

Phoenix Funding, 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 106 W. Ash Street, Suite 303, Piqua, Ohio 45356, which office holds the registration number MB 2244. Said registrant also holds a license to operate a branch office at 21 Perry Street, Vandalia, Ohio 45377, under the registration number MB 2462.

**ALLEGATIONS**

Pursuant to R.C. 1322.10(B), the Division conducted an investigation into the affairs of Respondent, and as a result thereof, alleges the following:

Mark Musselman is listed as the President and Operations Manager of Respondent Phoenix Funding, Inc., a mortgage broker corporation, whose one branch address of record with the Ohio Division of Financial Institutions is 21 Perry Street, Vandalia, Ohio 45377.

On December 18, 2002 Rod Anderson, an examiner with the Ohio Division of Financial Institutions attempted to contact Respondent's branch office in Vandalia in order to conduct an examination. He left a message regarding the scheduling of the exam on an answering machine that had announced that the caller had reached Phoenix Funding. Despite leaving this message and several more calls made by Mr. Anderson between December 20 and December 31, 2002, none of his calls were ever returned by Mr. Musselman. On two occasions, however, he spoke with a person who identified herself as Mrs. Musselman, an officer of Phoenix Funding, Inc., who told him that the records had been moved to a new unregistered and unlicensed location in Vandalia, Ohio at 303 Corporate Way. A fax denoting the January scheduled exam was sent on

December 30, 2002 by examiner Anderson to a fax number provided by this Mrs. Musselman, which fax transmission was accepted. A letter designating and confirming the date of examination was sent certified mail to Respondent at the provided 303 Corporate Way, Vandalia, Ohio 45377 address by examiner Anderson on December 31, 2002, and was also sent via first class U.S. mail to the licensed address at 21 Perry Street, Vandalia, Piqua, Ohio 45377. The certified letter was later returned unclaimed on January 17, 2003. Efforts were again made on January 7 and January 15, 2003 to call the Respondent regarding the exam, but these went unanswered and unreturned. A visit by examiner Anderson to both the licensed Vandalia office and the unlicensed Vandalia office location on January 21, 2003 revealed the Perry Street location occupied by another business, and the Corporate Way (actually Corporate Center) location closed to business. The landlord at 21 Perry Street informed the Division's examiner Rod Anderson that Phoenix Funding had left sometime in late August 2002. The landlord at the 303 Corporate Center location in Vandalia informed the Division's examiner Rod Anderson that Phoenix Funding had moved there in September 2002 and left the weekend of January 18-19, 2003 after receiving an eviction notice on January 6, 2003 for non-payment of rent. The landlord also informed Mr. Anderson that Mrs. Musselman disclaimed any knowledge of her husband's whereabouts. No notice was provided by Phoenix Funding, Inc. to the Ohio Division of Financial Institutions that the company moved its location and then closed its doors and stopped business.

A mortgage broker registrant is required by law to maintain an office in Ohio pursuant to R.C. § 1322.02(A)(1). In addition, a mortgage broker registrant must maintain its records for a period of four years in accordance with R.C. § 1322.06, and such records are subject to examination upon demand of the Division. A Registrant is required by O.A.C. §1301:8-7-03(C) to provide thirty-day prior notice to the Division before moving a licensed mortgage broker office.

### **FINDINGS**

Based upon the allegations above, the Division has determined that Respondent, Phoenix Funding, Inc., has no operating office in Ohio in violation of R.C. 1322.02(A)(1); has failed to maintain the records of its transactions in a manner permitting examination in violation of R.C. 1322.06; has moved its office without proper notice to the Division in violation of O.A.C. §1301:8-7-03(C); and has knowingly failed to cooperate with an examination in violation of R.C. 1322.072(A).

### **PROPOSED ACTION**

Based upon the allegations and findings above, the Division intends to REVOKE the Mortgage Broker Certificate of Registration MB 2462 for PHOENIX FUNDING, INC. and LEVY a FINE of \$10,000.

**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 the mortgage broker certificate of registration MB 2462 for PHOENIX FUNDING, INC. and to impose a FINE of \$10,000

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 to:

State of Ohio  
Department of Commerce  
Division of Financial Institutions  
Attn: Attorney Timothy C. Winslow  
77 South High Street, 21<sup>st</sup> 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.

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 the mortgage broker certificate of registration MB 2462 for PHOENIX FUNDING, INC. and assessing a FINE of \$10,000.

Signed and Sealed this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

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F. SCOTT O'DONNELL  
Superintendent of Financial Institutions

Cc: Timothy C. Winslow, In House Counsel—Division of Financial Institutions  
Paula Paoletti, Asst. Attorney General, Business & Government Regulation