



Department of Commerce

Division of Financial Institutions

Ted Strickland, Governor
Kimberly A. Zurz, Director

In the matter of:

**UNITED CAPITAL MORTGAGE
OF OHIO, INC.**

100 Merchant Street, Suite 175
Cincinnati, OH 45246

)
) Case No. M2008-765
)
) **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, United Capital Mortgage of Ohio, Inc. ("Respondent") is an Ohio corporation that was issued a mortgage broker certificate of registration (MB.803150) pursuant to R.C. Chapter 1322 that expired on April 30, 2008. Respondent timely filed a 2008 renewal application and later a 2009 renewal application which remain pending. Respondent did not file a renewal application in 2010. Respondent's business address of record is 100 Merchant Street, Suite 175, Cincinnati, Ohio 45246; and

WHEREAS, on March 30, 2010, the Division issued Respondent a Notice of Intent to Refuse 2008 and 2009 Mortgage Broker Renewal and Impose Fine and Notice of Opportunity for a Hearing; and

WHEREAS, the Notice contained the following allegations and findings:

- 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, prohibited 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.
- X. By originating loans out of an unregistered location, Respondent violated R.C. 1322.02(A)(1).
- Y. 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).
- Z. 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).
- AA. 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.

BB. 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.

CC. A fine in the amount of sixty-eight thousand dollars (\$68,000.00) is reasonable, appropriate, and necessary.

WHEREAS, a hearing on this matter was scheduled for Tuesday, July 27, 2010 at 9:30 a.m. in Room 1916 of the Vern Riffe Center for Government and the Arts, 77 South High Street in Columbus, Ohio; the hearing has been continued by Order of the Hearing Examiner until September 16, 2010;

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

- 1) Respondent admits to the accuracy of the Division's allegations and findings as cited above.
- 2) Respondent acknowledges lawful service and receipt of the Notice and stipulates to the jurisdiction of the Division in this matter.
- 3) To fully resolve this matter, Respondent requests the withdrawal of its 2008 and 2009 renewal applications. Further, Respondent and its officer and shareholder, Rick McDonald, agree not to hold any direct or indirect interest in, be employed in, seek licensure in, or be engaged in any business or activity regulated by the Ohio Department of Commerce, Division of Financial Institutions or any successor agency, department, or division responsible for the regulation of financial institutions.
- 4) Respondent hereby agrees to forego its administrative remedies and waives any and all rights to an administrative hearing, as well as any right to appeal this matter or order.
- 5) The Division hereby accepts the withdrawal of Respondent's 2008 and 2009 renewal applications effective the date of the last signature below and terminates the Notice of Intent to Refuse 2008 and 2009 Mortgage Broker Renewal and Impose Fine and Notice of Opportunity for a Hearing issued March 30, 2010. No fine is to be paid as part of this Settlement and Consent Order by Respondent or its officer or shareholder.
- 6) If Respondent or its officer and shareholder appear to have violated or breached any term or condition of this Settlement and Consent Order, the Division reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including alleged violations of any law occurring before, on, or after the effective date of this Settlement and Consent Order.
- 7) This Settlement and Consent Order shall be effective on the date it is signed by the Deputy Superintendent of the Division of Financial Institutions and on such date it will become a final order.

- 8) 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.
- 9) Nothing in this Settlement and Consent Order shall be deemed to prevent the Division or its employees, agents, or assignees 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.
- 10) The parties agree that the terms of this Settlement and Consent Order bind the parties hereto, and their shareholders, partners, members, assignees, and successors in interest.
- 11) Respondent releases the Division, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter. Respondent shall not seek attorney fees or other costs arising from the within matter.
- 12) This Settlement and Consent Order shall be considered a public record as that term is used in R.C. 149.43, and may be reported to appropriate organizations, data banks, and governmental bodies, or released to the general public.
- 13) This Settlement Agreement in no way binds or limits future actions the Division may take with respect to United Capital Mortgage of Ohio, Inc. or any other person, individual, or company, for the same or similar violations.
- 14) Respondent has been advised by the Division to seek legal counsel if it has any questions concerning the terms and/or effect of this Settlement and Consent Order.
- 15) Respondent must submit this Settlement and Consent Order completed per the terms dictated herein, no later than **September 9, 2010**.

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 Notice of Intent to Refuse 2008 and 2009 Mortgage Broker Renewal and Impose Fine and Notice of Opportunity for a Hearing issued March 30, 2010 is hereby terminated.

LEIGH A. WILLIS Date
Deputy Superintendent for Consumer Finance
Ohio Division of Financial Institutions

Approved and Agreed:

RICK McDONALD
Officer and Shareholder
United Capital Mortgage of Ohio, Inc.

Date