

Ted Strickland
Governor

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

Kimberly A. Zurz
Director

In the matter of:)	Case No. M2008-526
)	
BENJAMIN L. WILCOX)	<u>DIVISION ORDER</u>
794 Jentes Road)	Imposition of Fine
Wooster, Ohio 44691)	&
)	Notice of Appellate Rights
)	

The Ohio Department of Commerce, by and through the Superintendent of the Division of Financial Institutions ("Division") and charged with the responsibility of administering and enforcing the Ohio Mortgage Broker Act, as codified in Ohio Revised Code ("R.C.") Chapter 1322, finds that this Order is necessary and appropriate, in the interest of the public, and is consistent with the purposes of the Ohio Mortgage Broker Act;

On November 25, 2008, the Division of Financial Institutions issued notice to Benjamin L. Wilcox ("Respondent") that the Division intended to impose a fine of twelve thousand dollars (\$12,000.00) and that set forth the following allegations and findings:

- A. On or about June 12, 2006, Respondent submitted an application for a loan officer license which identified Respondent's employer as Home Loan USA Corporation.
- B. On or about July 24, 2006, the Division requested Respondent provide additional information within 21 days of the date of the letter. The letter stated that review of Respondent's application could not proceed without the information and warned that if the requested information was not received within ninety (90) days, Respondent's application would be withdrawn.
- C. On or about September 20, 2006, the Division received a "Loan Officer License Transfer Application" from Freedom Banc Mortgage Services, Inc. ("Freedom Banc") indicating that effective September 12, 2006 Respondent was its new employee. The Transfer Application included a certificate of employment that was not notarized and a blank "Request for Confirmation of Loan Officer License Status" form.
- D. Because Freedom Banc failed to request written confirmation of Respondent's loan officer status to work, no written confirmation was provided.

- E. On or about November 7, 2006, the Division withdrew Respondent's 2006 loan officer license application for failure to respond to the Division's request for information necessary to complete his application and informed Respondent that he was not authorized to originate mortgage loans governed under R.C. Chapter 1322 "in consideration of direct or indirect gain, profit, fees or charges." The Division further informed Respondent that to work as a loan officer he would have to submit a new loan officer license application.
- F. In a compliance examination conducted pursuant to R.C. 1322.06 on March 12, 2008, it was determined that Respondent originated residential mortgage refinance loans in violation of R.C. 1322.02(B).
- G. The records obtained during the compliance examination indicate that on or about September 21, 2006, October 5, 2006, October 17, 2006, October 21, 2006, November 9, 2006 and November 22, 2006, Respondent originated and/or acted as a loan officer on behalf of Freedom Banc to refinance six residential mortgage loans.
- H. The records obtained during the compliance examination indicate that Freedom Banc was paid for brokering the six residential mortgage refinance loans originated by Respondent.
- I. On or about January 8, 2007 the Division received a loan officer license application from Respondent seeking to obtain a loan officer license to work as an employee of Freedom Banc. The January 8, 2007 application was withdrawn on July 2, 2007 for failure to submit requested information. Respondent submitted another application on October 10, 2007 to work for Mortgatopia, LLC and a loan officer license was issued to Respondent on November 8, 2007.
- J. Respondent violated R.C. 1322.02(B), which prohibits any person from acting as a loan officer without first having obtained a license from the superintendent.
- K. Because Respondent violated R.C. 1322.02(B), the Division is authorized under R.C. 1322.10(A)(2) to impose a fine upon Respondent.
- L. Because Respondent committed repeated and continued violations of R.C. 1322.02(B), the Division may impose a fine up to two thousand dollar (\$2,000.00) for each of Respondent's six violations.
- M. A fine in the amount of twelve thousand dollars (\$12,000.00) is reasonable, appropriate, and necessary.

The Notice also informed Respondent that he had thirty (30) days to request an adjudicatory hearing pursuant to R.C. Chapter 119 regarding the Division's allegations set forth in the Notice.

Respondent requested an administrative hearing, which was scheduled for February 9, 2009 and was continued because Respondent sought additional time to retain legal counsel. The hearing was then rescheduled to April 23, 2009 and was held that day before an administrative hearing officer. Respondent appeared at the April 23, 2009 hearing. The hearing officer's report and recommendation (the "Report and Recommendation") was filed with the Division on May 15, 2009 (a copy is attached). The Report and Recommendation found that the Division's evidence did not support a finding of violations of R.C. Chapter 1322 and recommended the Division not impose a fine upon Respondent. No objections were filed.

Pursuant to R.C. 119.09, the Division may approve, modify, or disapprove the recommendation of a hearing officer based upon the report, recommendation, transcript of testimony and evidence, or objections of the parties and any additional testimony and evidence permitted. In accordance therewith, the Division has considered the record, consisting of the Report and Recommendation, the transcript of testimony and exhibits, as well as all applicable laws. Any finding and/or conclusion not specifically addressed in the attached Memorandum in Support is approved, adopted and incorporated herein.

For the reasons provided herein and in the attached Memorandum in Support, the Division modifies the Report and Recommendation. The Division has weighed the evidence and considered the factors enumerated in R.C. 1322.10(A)(2) and imposes a fine of twelve thousand dollars (\$12,000.00) against Benjamin L. Wilcox.

Respondent, Benjamin L. Wilcox, is hereby ordered to pay the Division a fine in the amount of twelve thousand dollars (\$12,000.00). Payment shall be in the form of a cashier's check or money order, made payable to "Treasurer of State," and, within ninety (90) days of Respondent's receipt of this Order, shall be submitted with a copy of this Order to: Ohio Division of Financial Institutions, Attn: Lori A. Massey, Consumer Finance Attorney, 77 South High Street, 21st Floor, Columbus, Ohio 43215-6120.

IT IS SO ORDERED.

NOTICE OF RIGHT TO APPEAL

Respondent is hereby notified that pursuant to R.C. 119.12, this Order may be appealed by filing a notice of appeal with the Ohio Division of Financial Institutions setting forth the order appealed from and the grounds for the appeal. A copy of such notice of appeal must, pursuant to R.C. 119.12, also be filed with the court of common pleas of the county in which the place of

business of the Respondent is located, or the county in which the Respondent is a resident. A notice of appeal must be filed within fifteen (15) days after the date of mailing of this Order.

Signed and sealed this 25th day of June 2010.

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

**STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS**

**Memorandum in Support of the Division Order
To Impose a \$12,000 Fine Against Benjamin L. Wilcox**

Case No. M2008-526

The Ohio Department of Commerce, Division of Financial Institutions (the "Division") hereby approves all of the Findings of Fact and Conclusions of Law set forth in the Administrative Hearing Officer's Report and Recommendation (the "Report and Recommendation") issued May 15, 2009, except as set forth below.

I. Findings of Fact

Based on the findings of fact in a review of the transcript and the exhibits admitted into the record, the Division hereby modifies paragraphs 15 and 28 which should read as follows:

15. Because he thought he had a loan officer license, on September 20, 2006, Respondent filed a Loan Officer License Transfer Application with the Division ("Transfer Application"). Respondent listed mortgage broker Freedom Banc as his new employer effective September 12, 2006.

The modification is necessary because Finding of Fact Number 15 incorrectly stated that Respondent filed the transfer application "for unknown reasons." At the hearing, Respondent testified that he tried to transfer his license to Freedom Banc because he was under the impression that he had a license.

28. Freedom Banc occasionally sent Respondent to pick up loan documents from prospective buyers. At these visits Respondent gathered tax and payroll information, and had the borrowers initial and sign documents. Respondent met with all seven borrowers listed in the Notice.

The modification is necessary because Finding of Fact Number 28 incorrectly describes the activities Respondent admitted he engaged in while working for Freedom Banc. Respondent admitted that he met with all seven borrowers upon whose loans the Division alleges he acted as a loan officer without a license, including the loan for his sister's neighbors, the Wallaces.

Except for the modifications noted above to paragraphs 15 and 28, the Division accepts and adopts the Findings of Fact as set forth in the Report and Recommendation. With respect to Respondent's activities, the Report and Recommendation found, in pertinent part, as follows (the paragraph numbers are as they appear in the Report and Recommendation):

12. On June 12, 2006 Respondent filed a fourth loan officer license application with the Division. Home Loan USA, Inc. was listed as Respondent's employer.
13. On July 24, 2006, the Division sent a letter to Respondent requesting additional information that was needed to further process his loan officer license application. The

letter indicated that if the requested information was not received within 90 days then the application would be withdrawn.

14. Respondent did not hold a loan officer license between June 12, 2006 and July 24, 2006.
15. Because he thought he had a loan officer license, on September 20, 2006, Respondent filed a Loan Officer License Transfer Application with the Division ("Transfer Application"). Respondent listed mortgage broker Freedom Banc as his new employer effective September 12, 2006.
16. On November 7, 2006, the Division withdrew Respondent's fourth loan officer license application pursuant to O.R.C. 1322.031(D) because Respondent failed to timely respond to the Division's request for additional information. The letter informed Respondent that he was not authorized to originate mortgage loans.
17. Respondent did not hold a loan officer license between July 24, 2006 and November 7, 2006.
18. On January 8, 2007, Respondent filed a fifth loan officer license application with the Division. Freedom Banc was listed as Respondent's employer.
26. Respondent did not hold a loan officer license while employed at Freedom Banc.
28. Freedom Banc occasionally sent Respondent to pick up loan documents from prospective buyers. At these visits Respondent gathered tax and payroll information, and had the borrowers initial and sign documents. Respondent met with all seven borrowers listed in the Notice.

II. Conclusions of Law

Based on a review of the transcript and the exhibits admitted into the record in this case and the Findings of Fact set forth herein and in the Report and Recommendation, the Division hereby modifies the Conclusions of Law by making the following modification to paragraphs 49 through 52 of the Report and Recommendation, which should read as follows:

49. Respondent acted as a loan officer when he gathered tax and payroll information and had borrowers sign and initial documents. By engaging in these actions, Respondent violated R.C. 1322.02(B) and O.A.C. 1301: 8-7-08(B).

The modification is necessary because Respondent admitted that he engaged in conduct that constitutes acting as a loan officer under the Ohio Administrative Code. The Notice alleges that Respondent acted as a loan officer without a license and/or originated mortgage loans. Evidence presented that proves any part of the allegation should be given equal consideration. In this case, Respondent admitted to actions that constituted acting as a loan officer when he had no loan officer license. Respondent's admission to violations of law should not be ignored.

50. Although Respondent did not sign any of the mortgage documents, Respondent, by his own admission, originated (or assisted in the origination of) the seven residential loans referenced in the Notice.

The modification is necessary because Respondent admitted that he met with all seven residential loan borrowers referenced in the Notice and that one of the seven was his sister's next door neighbor. Respondent further admitted that he gathered tax and payroll information from the seven and had them sign and initial mortgage related documents. Respondent's actions constitute violations of the OMBA and its rules.

51. Respondent denied that he signed the loan documents contained in State's Exhibit 5.

The modification is necessary because the Respondent admitted that he acted as a loan officer without a license on all seven loans.

52. The evidence established that the Respondent acted as a loan officer without a license on the seven loans referenced in the Notice while employed with Freedom Banc. Therefore, there is a basis for imposing a fine.

The modification is necessary to make Conclusion of Law 52 consistent with the facts and the evidence presented at the hearing.

III. Recommendation

Based on the Findings of Fact and Conclusions of Law, as set forth above, the Division hereby modifies the Report and Recommendation. The Division has weighed the evidence and considered the factors enumerated in R.C. 1322.10(A)(2) and imposes a fine of twelve thousand dollars (\$12,000.00) against Benjamin L. Wilcox.

Signed and sealed this 25th day of June, 2010.

LEIGH A. WILLIS

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