

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

STATE OF OHIO *EX REL.*
RICHARD CORDRAY
ATTORNEY GENERAL, et al.

Plaintiffs,

v.

RANDALL MORTGAGE
SERVICES, INC., et al.,

Defendants.

CASE NO. 07-CVH-12-16960

JUDGE HORTON

**AGREED ENTRY
AND ORDER**

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COMMON PLEAS COURT
FRANKLIN CO. OHIO

This matter came to be heard upon the filing of a complaint by the Ohio Attorney General and the Superintendent of the Ohio Department of Commerce, Division of Financial Institutions (Plaintiffs), alleging that Defendants Randall Mortgage Services, Inc. ("Randall"), Sydmar Investments, Inc. ("Sydmar"), and Robert R. Shepherd ("Shepherd"), collectively "Defendants," violated various provisions of Ohio's Consumer Sales Practices Act, R.C. §§ 1345.01 *et seq.* and the Ohio Mortgage Broker Act, R.C. §§ 1322.01 *et seq.*

On January 2, 2009 this Court entered a Default Judgment against corporate Defendants Randall and Sydmar, the Order containing, inter alia, Findings of Fact, Conclusions of Law, Declaratory and Injunctive Relief, and an Order to pay civil penalties and costs. As identical claims remained pending against individual Defendant Shepherd, a damages hearing was not held at that time so no monetary Order has been issued against Defendants Randall and Sydmar.

On June 15, 2009 this Court issued a Decision and Entry Denying Defendant Robert Shepherd's Motion to Dismiss For Failure to State A Claim. The Court rejected Shepherd's position that Plaintiffs are precluded from arguing individual liability through the doctrine of

piercing the corporate veil on claims under the Mortgage Broker Act, R.C. §§1322.01 et seq., and the Consumer Sales Practices Act, R.C. §§1345.01 et seq.

Defendant Shepherd submits to the personal jurisdiction of this Court and consents to this Agreed Entry and Order (“Agreed Order”) pursuant to R.C. §1345.07(F). Defendant Shepherd further consents to the following Findings of Fact, Conclusions of Law, and Remedies, although Defendant Shepherd specifically denies any personal liability with respect to the claims asserted in this action.

FINDINGS OF FACT

1. Defendant Randall was, at all relevant times hereto, an Ohio corporation which held a mortgage broker certificate of registration issued by the Ohio Division of Financial Institutions, MB #800012, until it surrendered its mortgage broker certificates of registration in August 29, 2007. Defendant Randall was dissolved on November 20, 2007.
2. Defendant Sydmar was, at all relevant times hereto, an Ohio corporation and the parent company of Defendant Randall Mortgage Services, Inc. Defendant Sydmar was dissolved on November 20, 2007. Defendant Shepherd was, at all relevant times hereto, the sole owner of Defendant Sydmar.
3. Defendant Shepherd, at all relevant times hereto, was a loan officer and the operations manager, LO/OM #001178, for Defendant Randall and was its president. Defendant Shepherd’s loan officer license has since expired and there was no attempt to renew the license in 2009.
4. Defendant Randall was a “mortgage broker” as defined in R.C. §1322.01(G)(1), as said Defendant held itself out to Ohio consumers as being able to assist buyers as defined in R.C.

§1322.01(A) to obtain a mortgage loan for home purchase and refinancing in return for money.

5. Defendant Randall operated offices in Dublin, Fairlawn, and Cincinnati, Ohio where Defendant Randall solicited and provided consumers with mortgage broker services by assisting such consumer buyers in obtaining first lien mortgage loans to purchase homes for residential use or to refinance loans on their existing homes. Defendant Randall was initially issued a certificate of registration as a mortgage broker by the Division of Financial Institutions pursuant to the Ohio Mortgage Broker Act, R.C. §§1322.01 et seq. on April 16, 1993 and agreed to voluntarily surrender its certificates of registration on August 29, 2007.
6. As part of its normal course of business, Defendant Randall took loan applications from consumer buyers for mortgages, obtained credit information, and gathered verifications on financial and employment information provided.
7. These applications, records, and verifications included private financial information regarding the consumer buyers' debts, current loan account information, wages, credit agency reports, bank account information, social security numbers and, on occasion, tax filing information. This information would be used for underwriting purposes to determine if the consumer buyers qualified for a loan or particular loan product.
8. The Ohio Mortgage Broker Act, R.C. §1322.06(B) requires that the records of Defendant Randall (hereinafter referred to as business records) be maintained for a period of four (4) years pursuant to the record keeping requirements of O.A.C. 1301:8-7-06.
9. Defendant Randall maintained its business records at its main office location at 655 Metro Place South, Suite 600, Dublin, Ohio 43017.

10. Pursuant to the rules issued by the Division of Financial Institutions pursuant to the Ohio Mortgage Broker Act, “[i]f a person surrenders its certificate of registration or otherwise ceases to engage in business as a mortgage broker, such person shall nonetheless preserve the records required by this rule.” OAC 1301:8-7-06(B).
11. Defendant Randall’s business records constitute “consumer information” as that term is defined under the federal Fair and Accurate Credit Transaction Act rule promulgated at 16 C.F.R. 682.1(b), in that the records contain material from “consumer reports” or are derived from consumer reports as that term is defined by the federal Fair Credit Reporting Act, 15 U.S.C. 1681a(d). The term credit report includes materials businesses receive with information relating to employment background, check writing history, or residential history.
12. Pursuant to federal law, 15 U.S.C. 1681w and 16 CFR 682.3, mortgage brokers are required to properly dispose of any consumer information by “taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.” Failure to do so is considered an unfair or deceptive act or practice in violation of the Federal Trade Commission Act, 15 U.S.C. 45(a).
13. Defendant Randall is subject to the federal Gramm-Leach-Bliley Act, 15 U.S.C. 6801 et seq. as a financial institution per 15 U.S.C. 6809(3), and is regulated by the Federal Trade Commission and thus subject to the FTC’s Standards for Safeguarding Customer Information, 16 CFR 314 (“Safeguards Rule”). The business records maintained by Defendant Randall constitute “nonpublic personal information” and “customer information” as those terms are defined in 15 U.S.C. 6809(4) and 16 CFR 314.2(b).

14. The Gramm-Leach-Bliley Act requires mortgage brokers to develop and implement an information security program for disposal and storage of customer information so as to protect against “unauthorized access to or use of such information that could result in substantial harm or inconvenience to any consumer.” (16 CFR 314.3(b)(3)) Violations of the Gramm-Leach-Bliley Act and its accompanying Safeguards Rule are considered an unfair or deceptive act or practice in violation of the FTC Act, 15 U.S.C. 45(a).
15. On or about September 1, 2007, Defendant Randall left business records containing customer and consumer information when vacating its main office location at 655 Metro Place South, Suite 600, Dublin, Ohio. The Attorney General of Ohio, Consumer Protection Section, and the Ohio Department of Commerce, Division of Financial Institutions, have not received any complaints concerning any alleged identity theft related to these business records of Defendant Randall.

CONCLUSIONS OF LAW

1. The actions alleged in the Complaint occurred in the State of Ohio, Franklin County, and are governed by Ohio’s Consumer Sales Practices Act, R.C. §§1345.01 et seq., and Ohio Administrative Rules, OAC 109:4-3-01 et seq., adopted pursuant to R.C. §1345.05, and the Ohio Mortgage Broker Act (OMBA), R.C. §§1322.01 et seq.
2. For purposes of this Agreed Entry and Order only, Defendant Shepherd agrees that he was a “supplier” as defined in R.C. §1345.01(C) when he engaged directly or indirectly in the business of effecting “consumer transactions” in Franklin County and other counties in the State of Ohio for purposes that were primarily personal, family or household within the meaning specified in R.C. §§1345.01(A) and (D).

3. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. §1345.04 of the Ohio Consumer Sales Practices Act and R.C. §§1322.10 and 1322.11 of the Ohio Mortgage Broker Act.
4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3) and has authority to grant injunctive and declaratory relief pursuant to R.C. §§1322.10(B), 1322.11(B)(1), and 1345.07(A).
5. Ohio Attorney General Richard Cordray is a proper party to commence these proceedings under the authority provided by the Consumer Sales Practices Act, R.C. §§1345.01 et seq.
6. John Reardon, Superintendent of the Ohio Department of Commerce, Division of Financial Institutions, is a proper party to commence these proceedings under the authority provided by the Ohio Mortgage Broker Act, R.C. §§1322.01 et seq.
7. The owner, president, corporate officers or operations manager of a mortgage broker may be held individually liable for violations of R.C. §§1322.01 et seq. and R.C. §§1345.01 et seq. for the abandonment of business records, by the company in which the individual holds those positions, based upon either an alter ego/piercing the corporate veil theory or by personally participating in the business records abandonment.
8. The owner, president or operations manager of a mortgage broker as defined in R.C. §1322.01(G)(1) is personally responsible for ensuring the proper maintenance of the mortgage broker's business records and, where a mortgage broker abandons those business records in violation of the Ohio Mortgage Broker Act, the owner, operations manager or president has personally engaged in conduct that constitutes improper dealings in violation of R.C. §1322.07(C) and R.C. §1345.02(A).

9. The owner, president, or operations manager of a mortgage broker is personally responsible for the mortgage broker's failure to properly store or dispose of its business records containing "customer information" and "consumer information" as those terms are defined in the federal laws designed to protect personal financial information from improper disclosure and prevent identity theft under the Fair and Accurate Credit Transaction Act and the Gramm-Leach-Bliley Act and the rules promulgated thereunder. In allowing the mortgage broker to abandon those business records, an owner, president, or operations manager commits unfair and deceptive acts or practices in violation of R.C. §1345.02(A).
10. The owner, president, or operations manager of a mortgage broker who fails to maintain records for business transacted as a mortgage broker violates R.C. §1322.06(B) and OAC 1301:8-7-06(B).
11. The owner, president, or operations manager of a mortgage broker commits an unfair and deceptive act or practice in violation of R.C. §1345.02(A) and engages in improper dealings in violation of R.C. §1322.07(C) by abandoning business records containing "customer information" and "consumer information" as those terms are defined in the federal laws designed to protect personal financial information from improper disclosure and prevent identity theft under the Fair and Accurate Credit Transaction Act and the Gramm-Leach-Bliley Act and the rules promulgated thereunder.
12. This Agreed Order does not constitute a finding of liability against Defendant Shepherd. Pursuant to R.C. §1345.10(A) this Agreed Order is a consent judgment entered before any testimony has been taken and therefore it is not admissible as prima-facie evidence of the

facts on which it is based in subsequent proceedings under R.C. §1345.09 against Defendant Shepherd or his successor or assigns.

ORDER

THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that:

- A. It is hereby DECLARED that the acts and practices described above in the Findings of Fact and Conclusions of Law violate the Ohio Consumer Sales Practices Act, R.C. §§1345.01 et seq. and the Ohio Mortgage Broker Act, R.C. §§1322.01 et seq.
- B. Defendant Shepherd, directly or indirectly, or through any corporate device, partnership or association, in connection with any consumer transactions in Ohio, is hereby PERMANENTLY ENJOINED from engaging in acts or practices described above in the Conclusions of Law.
- C. As a means of ensuring compliance with this Court's Order and with the consumer protection laws of Ohio and the Ohio Mortgage Broker Act and, as a compromise and settlement without admission of personal liability, Defendant Shepherd agrees and is hereby ORDERED to, within five (5) business days, take possession of, store, and maintain, all at his own expense, using a shipper approved by Plaintiff Ohio Department of Commerce, Division of Financial Institutions, the Randall Mortgage Services, Inc. business records referred to above in Finding of Fact 15, for the period of time required by law, and shall otherwise comply with state and federal law regarding the maintenance and disposition of those business records, including all reporting requirements.
- D. Defendant Shepherd shall permit the Plaintiffs, either individually or collectively, via their designated representatives, to examine and copy, after 3 business days' written notice, all records required to be maintained pursuant to R.C. § 1322.06 and OAC.

1301:8-7-06. Written notice for purposes of this provision shall be provided to Defendant Shepherd at: William D. Kloss, Jr., Vorys, Sater, Seymour and Pease, LLP 52 East Gay Street, Columbus, Ohio 43215.

- E. It is further ORDERED that, pursuant to R.C. §§ 1322.10(A)(2), Defendant Randall Mortgage Services, Inc. is assessed a fine in the amount of Two Thousand Five Hundred Dollars (\$2,500.00). Payment shall be by certified check or money order made payable to the CONSUMER FINANCE FUND and sent c/o Anthony Siciliano, 77 South High Street, 21st Floor, Columbus, Ohio 43215. The execution of this Agreed Order constitutes the acknowledgement of payment of the amount due under this paragraph.
- F. It is further ORDERED that, pursuant to R.C. §1345.07(D), Defendant Randall Mortgage Services, Inc. is assessed a civil penalty of Fifteen Thousand Dollars (\$15,000.00) with the entire amount suspended for strict compliance with this Agreed Order.
- G. It is further ORDERED that Defendant Randall Mortgage Services, Inc. shall pay the amount of Five Thousand Dollars (\$5,000.00) related to attorneys' fees and costs. Payment shall be by certified check or money order made payable to the "Ohio Attorney General" and sent c/o Johnathan Ward, Consumer Protection Compliance Officer, 30 East Broad St., 14th Floor, Columbus, Ohio 43215.
- H. Defendant Shepherd, while not admitting any liability, individually guarantees the financial obligations of Defendant Randall Mortgage Services, Inc. under this Agreed Order. The amount due the Ohio Attorney General pursuant to Agreed Order Paragraph G shall be paid in monthly consecutive installments of Five Hundred Dollars (\$500.00) with the first payment due on or before January 15, 2010 with each subsequent payment due on or before the 15th day of each subsequent month until paid in full.

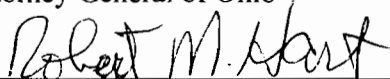
- I. This Agreed Order may be considered in any future application submitted by Defendant Randall Mortgage Services, Inc. or Defendant Sydmar Investments, Inc. for any license or certificate of registration issued by the Department of Commerce.
- J. It is further ORDERED that in the event that either Plaintiff must initiate legal action or incur any costs to compel the Defendants to abide by this Agreed Order, Defendants shall be liable to the Plaintiff, for all related enforcement costs, including, but not limited to attorneys fees, investigative or other enforcement costs, and the balance of the suspended civil penalty.
- K. It is further ORDERED that this Agreed Order shall not be deemed to preclude any investigation or enforcement action against Defendant Shepherd for occurrences, which are not the subject matter of this Agreed Order, or which have transpired after the filing of the Agreed Order, under any legal authority granted to Plaintiffs.
- L. Defendant Shepherd is ORDERED to pay all court costs.

SO ORDERED.

DATE

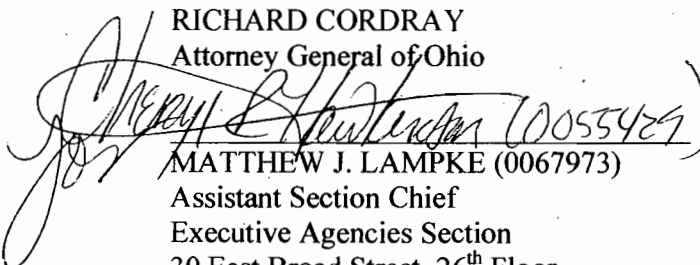
JUDGE HORTON

APPROVED BY
RICHARD CORDRAY
Attorney General of Ohio

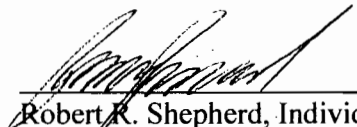

Robert M. Hart (0014852)
Assistant Attorney General
Consumer Protection Section
30 East Broad Street, 14th floor
Columbus, Ohio 43266-0410
614.466.1305
614.466.8898 (facsimile)
robert.hart@ohioattorneygeneral.gov

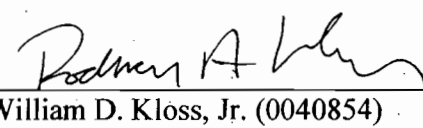
Counsel for Plaintiff
Ohio Attorney General
Rich Cordray

RICHARD CORDRAY
Attorney General of Ohio


MATTHEW J. LAMPKE (0067973)
Assistant Section Chief
Executive Agencies Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3428
614.466.2980
866.403.3979 (fax)
matthew.lampke@ohioattorneygeneral.gov

Counsel for Plaintiff
Division of Financial Institutions
John Reardon, Superintendent


Robert R. Shepherd, Individually
and as authorized representative of Defendants
Randall Mortgage and Sydmar Investments


William D. Kloss, Jr. (0040854)
Rodney A. Holaday (0068018)
Vorys, Sater, Seymour & Pease LLP
52 East Gay Street, P.O. Box 1008
Columbus, Ohio 43216-1008
614.464.6400
614.464.6350 (facsimile)

Counsel for Defendant Robert R.
Shepherd