

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

In the matter of:)	Case No. M2010-562
)	
AMERICAN MORTGAGE)	<u>DIVISION ORDER</u>
SERVICE COMPANY)	Imposition of Fine
d/b/a Concord Mortgage Group)	&
11503 Springfield Pike, 2 nd Floor)	Notice of Appellate Rights
Cincinnati, OH 45246)	
)	

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, as codified in Ohio Revised Code ("R.C.") Chapter 1322, and 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 July 8, 2010, the Division of Financial Institutions issued notice to American Mortgage Service Company d/b/a Concord Mortgage Group ("Respondent") that the Division intended to impose a six thousand dollar (\$6,000.00) fine for the following allegations and findings:

- A. The Division is authorized by R.C. 1322.10(A)(2) to impose a fine against a mortgage broker registrant 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 or repeated violations of a law or rule, the Division is authorized to impose a fine against a mortgage broker registrant of not more than two thousand dollars for each day a violation of law or rule is committed, repeated, or continued.
- B. R.C. 1322.02(B)(2) prohibits any individual from acting as a loan originator without first obtaining a license from the Division and may only be employed or associated with one mortgage broker, person or entity listed in R.C. 1322.01(G)(2) at any one time.
- C. R.C. 1322.031(H)(3) permits a mortgage broker registrant to employ a loan officer on a temporary basis pending the transfer of that loan officer's license to that mortgage broker if the mortgage broker received written confirmation from the Division that the loan officer is licensed under Chapter 1322.

- D. R.C. 1322.07(C) prohibits a registrant from “[engaging] in conduct that constitutes improper, fraudulent, or dishonest dealings.
- E. On or about May 1, 2009, Ted F. Spangler (“Mr. Spangler”) was issued a 2009-2010 loan officer renewal license as an employee of South Dayton Mortgage Group, Inc. MB.802517.
- F. On or about August 28, 2009, Mr. Spangler was terminated by South Dayton Mortgage Group, Inc. At that time, Mr. Spangler’s license was placed into escrow pursuant to Ohio Admin. Code 1301: 8-7-08(C)(3) and Mr. Spangler was prohibited from originating residential mortgage loans or acting as a loan officer/originator under the OMBA. Originating mortgage loans or acting as a loan officer/originator while in escrow status is a violation of R.C. 1322.02(B).
- G. To date, Mr. Spangler has not submitted an application to the Division requesting a transfer of his license to a new employer.
- H. On or April 30, 2010, Mr. Spangler submitted his 2010 loan originator renewal application pursuant to R.C. Chapter 1322 and the Nationwide Mortgage Licensing System and Registry. In his application, Mr. Spangler indicated that he had been employed as a loan officer for Respondent from August 2009 to the present.
- I. Respondent holds OMBA registration MB.802615.
- J. To date, Respondent has not filed a request to transfer Mr. Spangler’s loan originator/officer license or to request written confirmation that Mr. Spangler was licensed to work, therefore, no written confirmation was provided.
- K. On or about August 31, 2009, Mr. Spangler originated a USDA/Rural Housing Service mortgage loan for a borrower named Pauley on behalf of Respondent for investor Chase Home Finance-RHS. USDA/Rural Housing Service loans are not exempt from regulation under R.C. 1322.02(G)(2). The Pauley loan closed on or about December 21, 2009.
- L. On about February 2, 2010, Mr. Spangler originated a conventional residential refinance loan for borrowers named Imwalle on behalf of Respondent. The Imwalle loan closed on or about March 24, 2010.
- M. On or about February 22, 2010, Mr. Spangler originated a USDA/Rural Housing Service mortgage loan for a borrower named Sutton on behalf of Respondent for investor Chase Home Finance-RHS. USDA/Rural Housing Service loans are not exempt from regulation under R.C. 1322.02(G)(2). The Sutton loan closed on or about April 16, 2010.

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

1. Respondent's actions as alleged herein constitute violations of R.C. 1322.07(C) and R.C. 1322.031(H)(3).
2. Because Respondent violated or failed to comply with R.C. 1322.07(C) and R.C. 1322.031(H)(3), the Division may impose a fine up to one thousand dollars (\$2,000.00) for each of Respondent's repeated violations.
3. Because Respondent violated R.C. 1322.07(C) and R.C. 1322.031(H)(3), a fine of six thousand dollars (\$6,000.00) should be imposed pursuant to R.C. 1322.10(A)(2).
4. A fine of six thousand dollars (\$6,000.00) is reasonable, appropriate and necessary.

The Notice also informed Respondent that it 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 September 9, 2010, held on that date and concluded on October 5, 2010. Respondent appeared at the hearing and was represented by counsel. The hearing officer's report and recommendation (the "Report and Recommendation") was filed with the Division on November 1, 2010 (a copy is attached). The Report and Recommendation found that the Division failed to establish a sufficient evidentiary basis for imposing a fine upon Respondent and recommended that the Division find no violations of Chapter 1322 and not fine the 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, exhibits and 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 imposes a one thousand dollar (\$1,000.00) fine.

IT IS SO ORDERED.

NOTICE OF APPELLATE RIGHTS

Respondent is hereby notified that pursuant to R.C. 119.12, this Division Order may be appealed by filing a notice of appeal with the Division setting forth the Order that Respondent is appealing from and stating that the Division's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The notice of appeal may also include, but is not required to include, the specific grounds for the appeal. The notice of appeal must also be filed with the appropriate court of common pleas in accordance with R.C. 119.12. In filing the notice of appeal with the Division or court, the notice that is filed may be either the original notice or a copy of the original notice. A notice of appeal must be filed within fifteen (15) days after the date of mailing of this Division Order.

Signed and sealed this 7th day of June, 2011.

CHARLES O. MOORE

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 Fine upon American Mortgage Service Company d/b/a Concord Mortgage
Group**

Case No. M2010-562

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 November 1, 2010, except as set forth below.

I. Findings of Fact

Based on a review of the transcript and the exhibits admitted into the record, the Division hereby modifies Paragraphs 29 through 33 of the Findings of Fact which should read as follows:

29. In 1980, Fannie Mae approved Respondent as a seller of mortgages.⁷ Respondent's Exhibit G; Testimony of Mr. Case. However, the incomplete Fannie Mae contract presented by Respondent did not specifically authorize AMSCO to originate USDA/Rural loans.

The modification is necessary because Respondent's Exhibit G was incomplete, consisting of only the first and last pages of the contract. The document did not indicate that the scope of Respondent's authority under its Fannie Mae approval extends to USDA/Rural loans without meeting additional preconditions as discussed below. In addition, the testimony of Respondent's operations manager, William Case ("Mr. Case") failed to affirmatively state what type of loan origination was approved by Fannie Mae. Transcript pp.186-188. Respondent's Exhibit G did not authorize AMSCO to originate USDA loans.

R.C. 1322.01(G)(2)(b) and the prior effective version R.C. 1322.02(C)(1)(g) exempts mortgage bankers only if the business engaged in is authorized by the United States Department of Housing and Urban Development ("HUD/FHA"), the Federal National Mortgage Association ("FNMA" or "Fannie Mae"), the Federal Home Loan Mortgage Corporation ("FHLMC" or "Freddie Mac") and the United States Department of Veterans Affairs ("VA") and loans that comply in all aspects with said authorization except amount. There is no blanket exemption for mortgage bankers. Additionally, as discussed more fully below, the two USDA/Rural loans originated by Respondent did not meet Fannie Mae qualifications because Respondent's USDA authorization only applied in Kentucky.

30. In 1983, the VA approved Respondent as a non-supervised automatic lender. Respondent's Exhibit I; Testimony of Mr. Case. However, the VA approval letter grants authority to Respondent for VA loans made by a veteran or his/her spouse

that is reviewed and approved in Respondent's home or main office by approved underwriters Emil Bergdolt, Casper Reamer or Eleanor Schwartz.

The modification is necessary because Respondent's Exhibit I did not include the documents enclosed with the letter. In addition, the document did not specifically indicate that Respondent was authorized to originate or close any loan other than a VA loan and the testimony of Mr. Case failed to affirmatively state what type of loan origination was approved by the VA. Transcript p.190-191. There is no proof that the Ohio General Assembly intended to give a blanket exemption to mortgage bankers. Respondent's Exhibit I did not authorize AMSCO to originate USDA loans

31. In 1984, HUD approved Respondent as a non-supervised mortgagee with participation in the direct endorsement program. *Respondent's Exhibit F; Testimony of Mr. Case.* However, the HUD approval letter specifically grants authority to Respondent to originate mortgage loans in accordance with HUD underwriting policy without prior HUD review.

The modification is necessary because Respondent's Exhibit F does not grant any authority to originate conventional or USDA loans and testimony of Mr. Case failed to affirmatively state what type of loan origination was approved by HUD. Transcript pp.184-185. There is no proof that the Ohio General Assembly intended to extend the mortgage banker exemption to encompass conventional and/or governmental loans not listed in the statute.

32. In 1996, The USDA approved Respondent as an approved lender. *Respondent's Exhibit J; Testimony of Mr. Case.* However, USDA is not included as one of the Governmental entities whose approval exempts a mortgage banker from having to comply with Chapter 1322. Respondent's Exhibit J grants it the authority to originate USDA/Rural loans for low and moderate income families in Kentucky.

The modification is necessary because Finding of Fact paragraph 32 is inconsistent with the law and the content of the Exhibit. Respondent's Exhibit J does not include the document, Form FmHA 1980-16, that discloses the types of loans upon which the USDA authorizes Respondent to act as an approved lender. In addition, the USDA letter grants Respondent authority in the Commonwealth of Kentucky not the State of Ohio. The two USDA/Rural loans at issue were for Ohio residents for properties located in the State of Ohio. State's Exhibits 9a-1, and 9-c-1; Respondent's Exhibits A and C. Furthermore, because USDA/Rural loans are not included in R.C. 1322.01(G)(2)(b) or prior version R.C. 1322.02(C)(1)(g), approval given by the USDA to Respondent in Kentucky does not authorize Respondent to engage in the business of originating conventional or USDA loans in Ohio except as a registered mortgage broker through a licensed loan originator.

- 33(a). Freddie Mac also approved Respondent as a seller of mortgages.⁸ *Respondent's Exhibit H; Testimony of Mr. Case.* However, the purported Freddie Mac approval is silent as to the authority and types of loans approved by Freddie Mac. As a condition for delivery of a Rural Housing Service 502 loan to Freddie Mac, a

lender is required to have the approval of the Rural Housing Service to originate mortgages. Respondent's Exhibit E.

The modification is necessary because Respondent's Exhibit H is merely an email to Mr. Case that does not clarify the authority actually granted by Freddie Mac. In addition, the testimony of Mr. Case failed to affirmatively state what type of loan origination was approved by Freddie Mac. Transcript p. 189. There is no proof that Freddie Mac authorized Respondent to engage in the business of originating USDA loans in Ohio. In addition, Freddie Mac mandates that the lender have the USDA's approval to originate loans before it will accept Rural Housing loans. Respondent provided no proof that it had USDA approval to originate loans in Ohio. Respondent's Exhibit E. Respondent's Exhibit H did not authorize Respondent to originate USDA loans in Ohio.

33(b). On cross examination, Mr. Case admitted that if Respondent did not maintain a mortgage broker certificate of registration, Respondent would be barred from originating any loan not specifically authorized by HUD, Fannie Mae, Freddie Mac and/or the VA. Transcript pp. 264-265.

The modification is necessary because Mr. Case acknowledged that a specific authority to originate a certain type of loan is granted by HUD, Fannie Mae, Freddie Mac and the VA. The Ohio General Assembly first enacted R.C. 1322.01 through R.C. 1322.12 in Senate Bill 323 for the purpose of regulating mortgage brokers. The General Assembly intended to only grant a limited exemption from regulation to mortgage bankers. The language of the first mortgage banker exemption stated "1322.01(D) 'Mortgage Banker' means any person that makes, services, or buys and sells mortgage loans and is approved by the United States Department of Housing and Urban Development, the United States Department of Veterans Affairs, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation." 1991 Ohio SB 323. A mortgage broker did not include a mortgage banker as defined under the act. 1991 Ohio SB 323.

In 2001, the General Assembly provided mortgage bankers with only a limited exemption from compliance with the Mortgage Broker Act when it revised the law with Senate Bill 76. Senate Bill 76 states "1322.02(C) (1) the following persons are exempt from sections 1322.01 to 1322.12 of the revised code only with respect to business engaged in or authorized by their charter, license, authority, approval, or certificate, or as otherwise authorized by division (C)(1)(g) of this section." 2001 SB 76. R.C. 1322.02(C)(1)(g) was added to state "[m]ortgage [b]anker means any person that makes, services, buys, or sells mortgage loans, that underwrites the loans, and that meets at least one of the following criteria: (i) the person has been directly approved by the United States Department of Housing and Urban Development . . . (ii) the person has been directly approved by the Federal National Mortgage Association . . . (iii) the person has been directly approved by the Federal Home Loan Mortgage Corporation . . . (vi) person has been directly approved by the United States Department of Veterans Affairs" 2001 Ohio SB 76. Thus, the General Assembly provided mortgage bankers a limited and specific exemption from the mortgage broker act with respect to certain government loans but did not shield all potential origination activity engaged in by a mortgage banker from the regulatory oversight of the Division.

35. Fannie Mae has partnered with RHS on the Section 502 Guaranteed Rural Housing (“GRH”) loans. GRH loans that are guaranteed by RHS can be submitted to Fannie Mae’s DU for analysis. Loans that receive a RHS guarantee are acceptable for delivery to Fannie Mae regardless of the DU rating, if the lender ensures that specified conditions are satisfied. Respondent’s Exhibit L. In order to sell GRH loans to Fannie Mae, the lender must have Fannie Mae Seller/Servicer and Rural Housing Service approval. Respondent’s Exhibit D.

The modification is necessary because Finding of Fact paragraph 35 misidentifies Respondent’s Exhibit D as Respondent’s Exhibit L. In addition, Fannie Mae mandates that the lender have its and USDA’s approval to originate loans as a condition for accepting GRH loans. As noted earlier, Respondent only had USDA approval with respect to GRH loans originated for low and moderate income borrowers in Kentucky.

The Division hereby disapproves Finding of Fact Paragraph 42 as it pertains to the Sutton and Pauley loans. Because the Sutton and Pauley loans were not exempt from OMBA regulation, Respondent was required to indicate it employed Ted F. Spangler by transferring his license before the two loans were originated. In addition, Finding of Fact Paragraph 42 is inconsistent with the testimony, the exhibits, the preconditions set by Fannie Mae and Freddie Mac to accept delivery of Rural Housing loans, the Ohio Mortgage Broker Act and the intent of the Ohio General Assembly.

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 disapproves Conclusion of Law Paragraph 55 because the mortgage banker exemption depends upon whether the mortgage banker is engaged in the type of business that has been approved by HUD, Fannie Mae, Freddie Mac or the VA. The Division also disapproves Conclusion of Law 55 because that conclusion of law misinterprets the holding in *Guth*.

Conclusion of Law Paragraph 55 relies upon the holding in *Guth v. Allied Home Mortgage Capital Corp.* (July 7, 2008), 12th Dist., 2008 Ohio App. Lexis 2871, 2008-Ohio-3386. In *Guth*, the court concludes that the OMBA mortgage banker exemption applies “only with respect to business * * * authorized by division [R.C. 1322.02](C)(1)(g) [now R.C. 1322.01(G)(2)(b)] of this section.” *Guth* at P19. Emphasis in original. Because the Appellee, Allied, was acting as a mortgage broker in the transaction at issue in *Guth*, the court found that the Appellees were not exempt from the OMBA. *Guth* at P30. Conclusion of Law Paragraph 55 misinterprets the holding of *Guth*, stating that the court determined the exemption did not apply because Appellee Allied did not provide the funding in the transaction. Based upon the actual holding of *Guth*, Respondent failed to prove it was entitled to an exemption for its USDA/Rural housing loans because it was not engaged in the type of business authorized by HUD, Fannie Mae, Freddie Mac or the VA.

The Division also disapproves Conclusion of Law Paragraphs 57 and 58 because these Conclusions of Law are inconsistent with the testimony, the exhibits, Fannie Mae and Freddie Mac preconditions, the Ohio Mortgage Broker Act and the intent of the Ohio General Assembly.

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 hereby imposes a fine of one thousand dollars (\$1,000.00) upon Respondent for allowing Ted F. Spangler to originate USDA/Rural mortgage loans under the jurisdiction of the Ohio Mortgage Broker Act while Mr. Spangler's license was in escrow status.

Signed and sealed this 7th day of June, 2011.

CHARLES O. MOORE

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