

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

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IN RE: : CASE NO. M2010-705  
:   
AMERICA'S LENDING : DEBORAH K. TONGREN  
SOLUTIONS, LTD., : HEARING EXAMINER  
RESPONDENT :

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HEARING EXAMINER'S  
REPORT AND RECOMMENDATION  
Issued November 19, 2010

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I. FINDINGS OF FACT

A. Background

1. This matter came before Deborah K. Tongren, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Department of Commerce, Division of Financial Institutions ("*Division*") to serve as Hearing Examiner for this hearing in accordance with the Ohio Administrative Procedure Act, Ohio Revised Code ("*R.C.*") Chapter 119.
2. The Division held a hearing on October 27, 2010 at 77 South High Street, Columbus, Ohio to consider the allegations contained in the Division's October 1, 2010 Order of Summary Suspension, Notice of Intent to Refuse Renewal and Notice of Hearing ("*NOH*"). On October 1, 2010, the Division suspended America's Lending Solutions, Ltd.'s ("*Respondent*") mortgage broker certificate of registration pursuant to the Division's authority under R.C. 1322.10(F)(1)(b) because Respondent allegedly failed to maintain a corporate surety bond as required by R.C. 1322.05(A) and (F).
3. James M. Evans, Esq., Assistant Attorney General with the Executive Agencies Section of the Attorney General's Office, represented the Division at the hearing. Lori Massey, a Division Consumer Finance Attorney Examiner, testified on behalf of the Division. No representative appeared at the hearing on Respondent's behalf. No one, on Respondent's behalf, contacted Mr. Evans, the Division, or the Hearing Examiner regarding Respondent's attendance at the hearing nor did Respondent provide Mr. Evans, the Division, or the Hearing Examiner with a written statement of Respondent's position, arguments, or contentions as permitted under R.C. 119.07. *Tr. at pgs. 5-6.*

4. The Division introduced State's Exhibits 1 through 4 and the Hearing Examiner admitted the documents into record.

B. **Jurisdiction**

6. On October 1, 2010, the Division summarily suspended Respondent's certificate of registration, number 803850, and issued the NOH. The NOH specified the basis for the Division's action and informed Respondent that it would hold a hearing on October 27, 2010 at 9:30 a.m. The Division sent the NOH and a cover letter to Respondent at its address of record with the Division and to Respondent's statutory agent by certified mail, return receipt requested. *State's Exhibit 1; Testimony of Ms. Massey, Tr. at pgs. 6, 14.*
7. On October 4, 2010, the Division perfected service of the NOH on Respondent's statutory agent. *State's Exhibit 1, pg. 6; Testimony of Ms. Massey, Tr. at pg. 6.*
8. The Division held the hearing on the date and at the time and location set forth in the NOH.

C. **The Division's NOH**

9. In the NOH, the Division alleged:
  - a. Respondent is without a corporate surety bond in violation of R.C. 1322.05(A) and (F); and
  - b. The Division has the authority under R.C. 1322.10(F)(1)(b) to suspend Respondent's certificate of registration for Respondent's non-compliance with R.C. 1322.05(A) and (F); and
  - c. Because Respondent failed to comply with R.C. 1322.05(A) and (F), the Division is authorized under R.C. 1322.10(F)(1)(b) to refuse to renew Respondent's mortgage broker certificate of registration.

*State's Exhibit 1*

D. **Respondent's actions**

10. Lori Massey is an attorney for the Division. Ms. Massey reviews applications, drafts notices, and initiates enforcement actions based on licensing laws. She reviewed Respondent's renewal application for a certificate of registration to ascertain whether it

possessed the statutory requirements to be granted renewal. *Testimony of Ms. Massey, Tr. at pg. 9.*

11. Respondent registered with the Ohio Secretary of State as a domestic limited liability company on April 25, 2007. The Secretary of State's filing showed that Norman E. Incze, 13001 Athens Ave., Lakewood, Ohio 44107 served as Respondent's statutory agent. *State's Exhibit 2, pgs. 14-16.*
12. On or about May 23, 2007, the Division issued a mortgage broker certificate of registration, number MB.803850.000, to Respondent. The certificate of registration authorized Respondent to engage in business as a mortgage broker in the State of Ohio. *State's Exhibit 2, pg. 9. State's Exhibit 2, pgs. 9 and 12.*
13. On May 1, 2009, the Division renewed Respondent's certificate of registration. The renewal period ran from May 1, 2009 through April 30, 2010. *State's Exhibit 2, pgs. 9, 11, and 12.*
14. On or about January 19, 2010, Respondent changed its address of record with the Division and informed the Division that its principal place of business was located at 7705 Engle Road, Suite 501, Middleburg Heights, Ohio 44130 ("*Middleburg Heights*"). The Division accepted Respondent's change of address and issued a new certificate of registration reflecting Middleburg Heights as Respondent's address of record. *State's Exhibit 2, pg. 12; Testimony of Ms. Massey, Tr. at pg. 18.*
15. On or about April 28, 2010, Respondent submitted an application to the Division to renew its certificate of registration. Respondent listed its address of record as Middleburg Heights. *State's Exhibit 3, pgs. 23-33.*
16. Respondent has only one office in Ohio. *Testimony of Ms. Massey, Tr. at pg. 24.*
17. Ohio law requires that mortgage brokers doing business in Ohio must maintain a corporate surety bond in effect at all times. *Testimony of Ms. Massey, Tr. at pg. 24.*
18. Western Surety Company issued a corporate surety bond to Respondent in accordance with Ohio law. *State's Exhibit 3, pg. 22.*
19. On or about August 5, 2010, the Division received a notice from Western Surety Company informing the Division that it was cancelling Respondent's \$50,000.00 corporate surety bond for the Middleburg Heights location. The notice informed the Division that the cancellation would take effect 30 days after receipt of the notice of cancellation. *State's Exhibit 3, pg. 20; Testimony of Ms. Massey, Tr. at pg. 20.*

20. On August 20, 2010, the Division sent two letters: one to Western Surety Company acknowledging receipt of the notice of cancellation and one to Respondent informing Respondent that Western Surety Company intended to cancel Respondent's corporate surety bond. The letter to Respondent also informed Respondent that the Division would initiate enforcement action against Respondent if Respondent did not surrender its registration or take action to ensure that "continuous and adequate bond coverage" was in place. *State's Exhibit 3, pgs. 18 and 19.* Both letters were sent by ordinary mail and were not returned to the Division. *Testimony of Ms. Massey, Tr. at pg. 21.*
21. Respondent did not reinstate its corporate surety bond or contact anyone at the Division regarding reinstatement or replacement of its corporate surety bond. *Testimony of Ms. Massey, Tr. at pgs. 23-24.*
22. The Division intends to refuse to renew Respondent's certificate of registration because Respondent failed to maintain a corporate surety bond in effect at all times. *Testimony of Ms. Massey, Tr. at pgs. 27-28.*

## II. CONCLUSIONS OF LAW

### A. Jurisdiction

23. Respondent received proper notice of the hearing in accordance with R.C. 119.07. It was, therefore, appropriate for the hearing to proceed in Respondent's absence. *Reed v. State Med. Bd. (1988), 40 Ohio App.3d 124, 125-26.*
24. The Division has complied with the procedural requirements of R.C. Chapter 119 and has established jurisdiction over this matter.

### B. Respondent's renewal application

25. The Division is the state agency responsible for the licensing and regulation of mortgage brokers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.
26. The Division is charged with an ongoing duty to ensure that, once licensed, a licensee continues its operations in a manner that "commands the confidence of the public and warrants the belief that the business will be operated honestly and fairly in compliance with the purposes of sections 1322.01 to 1322.12 of the Revised Code." R.C. 1322.04.

27. R.C. 1322.05 sets forth the requirement for a licensee to maintain a corporate surety bond and provides:

**(A)(1) No registrant shall conduct business in this state, unless the registrant has obtained and maintains in effect at all times** a corporate surety bond issued by a bonding company or insurance company authorized to do business in this state. The bond shall be in favor of the superintendent of financial institutions and in the penal sum of one-half per cent of the aggregate loan amount of residential mortgage loans originated in the immediately preceding calendar year, but not exceeding one hundred fifty thousand dollars. Under no circumstances, however, shall the bond be less than fifty thousand dollars and an additional penal sum of ten thousand dollars for each location, in excess of one, at which the registrant conducts business. The term of the bond shall coincide with the term of registration. A copy of the bond shall be filed with the superintendent. The bond shall be for the exclusive benefit of any buyer injured by a violation by an employee of the registrant, loan originator employed by or associated with the registrant, or registrant of any provision of sections 1322.01 to 1322.12 of the Revised Code or any rule adopted thereunder. The aggregate liability of the corporate surety for any and all breaches of the conditions of the bond shall not exceed the penal sum of the bond. [Emphasis added]

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(F) No registrant or licensee employed by or associated with a person or entity listed in division (G)(2) of section 1322.01 of the Revised Code shall fail to comply with this section. Any registrant or licensee that fails to comply with this section shall cease all mortgage broker or loan originator activity in this state until the registrant or licensee complies with this section.

28. The Division has established that Respondent failed to maintain a corporate surety bond in violation of R.C. 1322.05(A) and R.C. 1322.05(F).
29. To protect the public interest, the superintendent of the Division has the authority to suspend, without a prior hearing, the certificate of registration of any licensee who fails to comply with R.C. 1322.05(F). R.C. 1322.05(F)(1)(b).
30. The Hearing Examiner concludes that the Division properly suspended Respondent's certificate of registration under R.C. 1322.05(F)(1)(b) for Respondent's violation of R.C. 1322.05(F), failure to maintain a corporate surety bond in effect at all times.

31. A licensee who fails to maintain a corporate surety bond shall cease all mortgage broker activity in Ohio until its surety bond is reinstated. R.C. 1322.05(F).
32. The Hearing Examiner concludes that the Division has demonstrated a sufficient evidentiary basis on which to refuse renewal of Respondent's certificate of registration under R.C. 1322.10(F)(1)(b) because Respondent failed to maintain a corporate surety bond in violation of R. C. 1322.05(A) and (F).

### III. RECOMMENDATION

The Division provided a sufficient evidentiary basis for a summary suspension of Respondent's certificate of registration for a violation of R.C. 1322.05(F), failure to maintain a surety bond. The Hearing Examiner respectfully recommends that the Superintendent continue the suspension of Respondent's certificate of registration until it has reinstated its corporate surety bond and has met all other Division requirements for reinstatement.

Based upon the evidence submitted into the record, the Hearing Examiner also recommends that the Superintendent refuse to renew Respondent's certificate of registration and order Respondent to cease and desist all mortgage broker activity in the State of Ohio pursuant to R.C. 1322.05(F).

Respectfully submitted,

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Deborah K. Tongren (0010872)  
Hearing Examiner