

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

In the matter of:

**NICHOLAS J. PROSSER
13911 Oakbrook Drive
North Royalton, OH 44133**

)
) **Case No. 06-2968**
)
) **DIVISION ORDER**
) **Revocation of Loan Officer License**

WHEREAS, 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, codified in Ohio Revised Code ("R.C.") Chapter 1322, the Division 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; and

WHEREAS, Nicholas J. Prosser ("Respondent") held an active loan officer license at the time of the issuance of the Notice of Hearing (LO#018079) issued by the Division pursuant to R.C. Chapter 1322; and

WHEREAS, on April 27, 2006, the Division issued Respondent a Notice of Intent Revoke Loan Officer License & Notice of Opportunity for a Hearing which notice was served upon Respondent by U.S. certified mail as shown by return receipt; and

WHEREAS, based on the Division's investigation said notice contained the following allegations and findings:

1. Respondent was employed by Custom Home Loans, Inc. from approximately June 2004 to February 2006.
2. On or about August 30, 2004, Respondent took a loan application to refinance a residential mortgage on property located at 1129 Second St., Lorain, OH 44052, owned and occupied by Richard and Ruth McElroy. The loan sought was for approximately \$58,500. Respondent requested a \$600 advance of money to pay for certain settlement costs that are ordinarily paid at closing. Respondent stated that the fees must be paid in cash. After accepting payment of \$600 cash from the borrowers, Respondent converted the money to his own personal use. The monies were never used to pay for fees related to the loan, nor were the monies deposited or processed through the mortgage broker's special account established pursuant to R.C. 1322.08.
3. The McElroy's loan closed on October 12, 2004. The McElroy's received a \$10,693.39 disbursement at closing. Immediately thereafter, Mr. McElroy wrote a

check for approximately \$3,000 payable to "Nick Prosser, Custom Home Loans" pursuant to an agreement with Respondent in which Respondent was contracted to install a new roof on the McElroy home. Respondent cashed the check, started work on, but never completed the roofing job.

4. When Mr. McElroy later told Operations Manager, Kame Spain, at Custom Home Loans, Inc. about the \$600 cash payment made prior to closing, she returned the \$600 via a check dated August 3, 2005 from Custom Home Loans, Inc. payable to Richard McElroy.
5. Respondent's employer, Custom Home Loans, Inc., later learned about his failure to finish the roofing job and paid another contractor to complete the work on the McElroy home and required Respondent to repay Custom Home Loans, Inc.
6. On or about December 7, 2005, William Obuch asked Respondent to arrange a loan for a commercial property located at 424 W. Thornton St., Akron, OH 44301. Respondent requested an advance of money to pay for certain settlement costs. Mr. Obuch paid Respondent \$250 for the application fee and \$250 for the appraisal fee.
7. The advanced payments by Mr. Obuch to the Respondent were neither used to pay for the application fee to Custom Home Loans, Inc., nor used to pay for an appraisal fee. Rather, the money was converted to the Respondent's personal use.
8. Respondent further made misleading statements to Mr. Obuch regarding the status of his loan application. Mr. Obuch was erroneously led to believe that his loan was actively being processed. As a result of Respondent's misleading statements, Mr. Obuch was forced to arrange for another loan at the last moment with a different lender in order to meet the closing deadline and acquire the property.
9. On or about December 16, 2005, Wajdi (a.k.a. Angelo) Iwais asked Respondent to arrange for a loan on a commercial property located at 3340 W. 25th St., Cleveland, OH 44113. Respondent requested an advance of money to pay for certain settlement costs. Respondent, although an employee of Custom Home Loans, Inc., told Mr. Awais to make the checks payable to him since he had already paid the fees "out of his own pocket." Mr. Iwais wrote a check payable to Respondent for the amount of \$250 for an appraisal fee. Mr. Awais' sister, Salwa Race, wrote a check payable to Respondent for the amount of \$200 for a loan processing fee.
10. The advanced payments by Mr. Awais and Ms. Salwa were neither used to pay for the application fee to Custom Home Loans, Inc., nor used to pay for an appraisal fee. Rather, the checks were cashed by Respondent and converted to the Respondent's personal use.
11. Respondent made misleading statements to Mr. Awais regarding the status of his loan application. Mr. Awais was erroneously led to believe that his loan was actively being processed. In truth and fact, Respondent had not procured a lender to fund the

purchase. As a result of Respondent's misleading statements, Mr. Awais was unable to meet the closing deadline and was unable to acquire the property.

12. R.C. 1322.07 states in part:

No...licensee or applicant for a...license under sections 1322.01 to 1322.12 of the Revised Code shall...

(B) [m]ake false or misleading statements of material fact, omissions of statements required by state law, or false promises regarding a material fact, through advertising or other means, or engage in a continued course of misrepresentation;

(C) [e]ngage in conduct that constitutes improper, fraudulent, or dishonest dealings....

13. Respondent has violated R.C. 1322.07(C) by (i) charging application and appraisal fees in advance of closing and keeping the money for his personal use, (ii) arranging to receive part of the proceeds from a loan he originated for a borrower in exchange for home improvement work, and then failing to complete the work as promised, and (iii) failing to place advance settlement fees purportedly received on behalf a mortgage broker into the special account as required by R.C. 1322.08.
14. Respondent has violated R.C. 1322.07(B) by (i) making false and misleading statements to borrowers about the need to pay advance settlement charges and the true nature of those payments, and (ii) making false and misleading statements to borrowers regarding the status of their loan applications.
15. According to R.C. 1322.10(A)(1), the Superintendent of Financial Institutions may revoke a loan officer license if the superintendent finds a violation of or failure to comply with any provision of R.C. 1322.01 to R.C. 1322.12.

WHEREAS, Respondent has failed to respond and request a hearing in writing to the Division within thirty (30) days of the mailing of the above-referenced Notice of Opportunity for a Hearing in this matter as required by the notice provided pursuant to R.C. Chapter 119, and

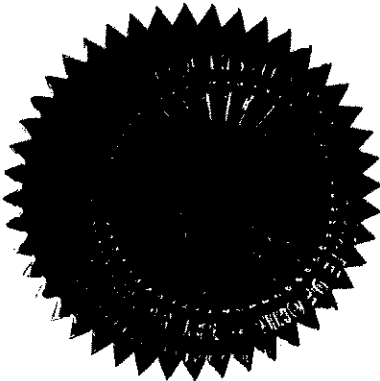
WHEREAS, the Notice issued by the Division properly informed Respondent of the Division's intent to revoke his loan officer license, as well as informed him of his opportunity for a hearing.

NOW THEREFORE, the Division adopts the facts set forth in the allegations as true, and finds and holds that the acts set forth therein establish that Respondent has violated R.C. 1322.07(C) and has failed to demonstrate sufficient character and general fitness as required by R.C. 1322.041(A)(5).

It is hereby ORDERED and DECREED that Respondent Nicholas J. Prosser's loan officer license be, and hereby is, revoked.

NOTICE OF RIGHT TO APPEAL

Respondent is hereby notified that this order may be appealed, pursuant to R.C. 119.12, 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 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 23rd day of June, 2006.

The signature has been removed for security purposes

ROBERT M. GRIESER
Deputy Superintendent for Consumer Finance
Division of Financial Institutions
Ohio Department of Commerce