

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

2009 JUN 24 AM 11:45

IN RE: : CASE NO. M2008-442
:
MORTGAGE HUNTERS, LLC, : DELORES EVANS
RESPONDENT : HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued June 24, 2009

I. FINDINGS OF FACT

A. Background

This matter came before Delores Evans, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions ("Division") to serve as the Hearing Officer for this hearing in accordance with the Ohio Administrative Code ("O.A.C.") and Ohio Revised Code ("O.R.C.") Chapter 119. The hearing was held on May 18, 2009, at 77 South High Street, Room 1936, in Columbus, Ohio.

The Division held the hearing to consider the allegation that Mortgage Hunters, LLC ("Respondent") violated O.R.C. §1322.071(B)(3), O.R.C. §1322.09, and O.R.C. §1322.07(C). The Division contends that: (1) Respondent's December 2007 advertisement failed to list Respondent's business address; (2) Respondent provided a \$20.00 bank gift card to a customer in exchange for the names of three individuals who might be interested in obtaining a mortgage; (3) Respondent engaged in improper, fraudulent, or dishonest dealings with respect to the December 2007 advertisement. The Division intends to impose a fine against Respondent in the amount of \$1,000.00.

Jennifer Croskey, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Martha Rhea, Esq., testified on behalf of the Division. No representative appeared at the hearing on Respondent's behalf. State's Exhibits 1 through 7 were introduced and admitted into the record. Respondent's Exhibit A was introduced and admitted into the record. The record was closed at the end of the day on May 18, 2009.

B. Jurisdiction and Procedural Matters

1. On March 19, 2009, the Division issued a Notice of Intent to Fine Mortgage Broker Registrant & Notice of Opportunity for a Hearing ("NOH"). The NOH informed Respondent of the Division's allegation. Respondent had 30 days to

request a hearing. The Division sent the NOH to both Respondent's statutory agent and operations manager via certified mail, return receipt requested. Service was perfected on March 21, 2009 and March 25, 2009. *State's Exhibit 2; State's Exhibit 3*

2. On April 2, 2009, the Division received Respondent's hearing request. *State's Exhibit 4*
3. On April 7, 2009, the Division sent a hearing notice to Respondent. The Division scheduled the hearing for May 18, 2009. *State's Exhibit 5*
4. On May 18, 2009, the hearing commenced. No representative appeared at the hearing on Respondent's behalf. However, Respondent's owner and operations manager submitted a written position statement. *Respondent's Exhibit A*

C. Respondent's Activities

5. Martha Rhea, an attorney examiner with the Division, reviews assigned loan officer and mortgage broker files to verify their compliance with O.R.C. Chapter 1322. Ms. Rhea reviewed Respondent's mortgage broker file. *Testimony of Ms. Rhea*
6. From 2002 until April 30, 2009, Respondent held a mortgage broker certificate of registration (# 802876). Respondent did not submit a mortgage broker certificate of registration renewal application. *Testimony of Ms. Rhea*
7. Glen Hunter is Respondent's owner and operations manager. *State's Exhibit 6; State's Exhibit 7*
8. In 2008, the Division received an anonymous tip that Respondent had mailed an improper advertisement on December 5, 2007. The tipster sent a copy of the advertisement to the Division. *State's Exhibit 6; Testimony of Ms. Rhea*
9. The December 5, 2007 advertisement was addressed "Dear Homeowner" and stated:

"Because you are one of our most valued customers, we would like to say thank you for your business and tell you how your **Mortgage Hunters LLC** experience can even be better. If you or a friend need any help with your residential or commercial property financing needs please feel free to give us a call...we will send you a **\$20.00 bank gift card (absolutely Free)** when you either call or mail three names and phone #'s of any friends, relatives, or acquaintances interested in getting pre-qualified for a residential or commercial purchase or refinance loan. You can include

yourself in this offer. We will also send you a **\$100.00 bank gift card** when any person that you send to us either refinances or purchases a property using financing services.”

State's Exhibit 6

10. The December 5, 2007 advertisement lists Respondent's name, telephone number, and email address, but does not list Respondent's business address. Mr. Hunter signed the advertisement. *State's Exhibit 6*
11. On December 2, 2008, the Division sent a subpoena to Respondent requesting additional information and documents regarding the matter. On December 16, 2008, Respondent received the subpoena. *Testimony of Ms. Rhea*
12. On January 21, 2009, the Division received a letter from Mr. Hunter. Mr. Hunter indicated that on December 12, 2007 Annette Jenkins received a \$20.00 bank gift card in response to the December 5, 2007 advertisement. No one received a \$100.00 bank gift card. *State's Exhibit 7*
13. The nature of Respondent's and Annette Jenkins relationship is unknown. There was insufficient evidence presented that Annette Jenkins was an employee, related to, or affiliated with Respondent.
14. On March 16, 2009, Mr. Hunter informed Ms. Rhea during a telephone conversation that he mailed approximately 50 of the advertisements in question. *Testimony of Ms. Rhea*
15. The Deputy Superintendent proposes a \$1,000.00 fine against Respondent after considering all the factors listed in O.R.C. §1322.10(A)(2). *Testimony of Ms. Rhea*
16. Mr. Hunter contacted the Division and indicated that he was unable to afford an attorney for the hearing, but he wished to present a statement in writing. *Respondent's Exhibit A; Testimony of Ms. Rhea*
17. On May 14, 2009, the Division received Mr. Hunter's position statement. Mr. Hunter maintained that he mailed approximately 40 - 50 advertisements in error and that he immediately terminated the action. Respondent further stated:

“The one response we did receive we then honored. That was all there was to that. I tried to run a good clean shop. We tried to follow all the rules and did well on all audits. Due to the turn in the mortgage industry I had to close my shop and am trying to change my occupation. At my age and with my health this an extremely difficult and trying task. I am currently trying to keep my home and avoid bankruptcy. All

my life savings has went into paying off business and personal creditors (trying to do the right thing). As a small business owner I do not receive unemployment or get any bail out. There was no malice or intent to harm here. This was only a lapse and error. I am only asking for Mercy and understanding. Trying to come up with a thousand dollars at this time of my life is next to impossible. I have never had a blemish with the state on any license and hopefully will not get one now."

Respondent's Exhibit A

18. Respondent's December 2007 advertisement did not list its business address.
19. The Division presented no evidence that Respondent or Mr. Hunter had any prior violations on their Division records.

II. CONCLUSIONS OF LAW

20. The Division has procedurally complied with O.R.C. Chapter 119 and jurisdiction over this matter has been established.
21. The Division is responsible for the licensing, regulation, and enforcement of the Ohio Mortgage Broker Act, O.R.C. Chapter 1322.
22. At all times relevant to this matter, Respondent held an Ohio mortgage broker certificate of registration and hence was subject to the laws in O.R.C. Chapter 1322 and the rules promulgated pursuant to that Chapter.
23. The burden of proof lies with the Division and that burden is based on a preponderance of the evidence standard. *Sanders v. Fleckner (1950), 59 Ohio L. Abs. 135, 98 N.E. 2d 60.*
24. Administrative agencies have a duty to base their conclusions on competent evidence. *State ex rel. Chrysler Plastic Products Corp. v. Industrial Comm. (1987), 39 Ohio App.3d 15*
25. Pursuant to O.R.C. §119.12, in an administrative appeal, the trial court reviews administrative orders to determine whether such orders are supported by reliable, probative, and substantial evidence and are in accordance with law. *Huffman v. Hair Surgeon, Inc. (1985), 19 Ohio St. 3d 83, 87.*
26. Reliable evidence is dependable and trustworthy. Probative evidence tends to prove the issue in question. Substantial evidence has weight, importance, and

value. *Our Place Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571.

27. The Division alleges in its first charge that Respondent's December 5, 2007 advertisement failed to list Respondent's business address in violation of O.R.C. §1322.09.
28. O.R.C. §1322.09 states:

A mortgage broker shall disclose in any printed, televised, broadcast, electronically transmitted, or published advertisement relating to the mortgage broker's services, including on any electronic site accessible through the internet, the name and street address of the mortgage broker and the number designated on the certificate of registration that is issued to the mortgage broker by the superintendent of financial institutions under sections 1322.01 to 1322.12 of the Revised Code.

No mortgage broker shall fail to comply with this section.

29. This Hearing Officer finds a violation of O.R.C. §1322.09 because Respondent's December 2007 advertisement failed to list its business address.
30. The Division alleges in its second charge that Respondent provided a \$20.00 bank gift card to a customer in exchange for the names of three individuals who might be interested in obtaining a mortgage in violation of O.R.C. §1322.071.
31. O.R.C. §1322.071(A) and (B)(3) state:

(A) As used in this section, "bona fide third party" has the same meaning as in section 1322.08 of the Revised Code.

(B) No mortgage broker, registrant, or licensee shall do any of the following:

* * *

(3) Pay or receive, directly or indirectly, a referral fee or kickback of any kind to or from a bona fide third party or other party with a related interest in the transaction, such as a home improvement builder, real estate developer, or real estate broker or agent, for the referral of business.

32. O.R.C. §1322.08(D)(1) states:

"Bona fide third party" means a person that is not an employee of, related to, or affiliated with, the registrant, and that is not used for the purpose of circumvention or evasion of this section.

33. This Hearing Officer finds that Respondent did not violate O.R.C. § 1322.07(B)(3) when a \$20.00 bank gift card was given to Annette Jenkins in response to the December 5, 2007 advertisement. There was insufficient evidence presented to establish that Annette Jenkins was a bona fide third party or other party with a related interest in a mortgage transaction.
34. This Hearing Officer finds no violation O.R.C. §1322.071(B)(3).
35. The Division alleges in its third charge that Respondent engaged in improper, fraudulent, or dishonest dealings with respect to the December 5, 2007 advertisement in violation of O.R.C. §1322.07(C).
36. O.R.C. §1322.07(C) states:

No mortgage broker, registrant, licensee, or applicant for a certificate of or license under sections 1322.01 to 1322.12 of the Revised Code shall do any of the following:

* * *

(C) Engage in conduct that constitutes improper, fraudulent, or dishonest dealings.

37. Respondent's failure to list its business address in the December 5, 2007 advertisement constitutes improper conduct in violation of O.R.C. §1322.07(C).
38. This Hearing Officer finds a violation of O.R.C. §1322.07(C).
39. The Deputy Superintendent proposes a \$1,000.00 fine against Respondent after considering all the factors listed in O.R.C. §1322.10(A)(2).
40. O.R.C. §1322.10(A)(2) states:

(A) After notice and opportunity for a hearing conducted in accordance with Chapter 119 of the Revised Code, the superintendent of financial institutions may do the following:

(2) Impose a fine 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 or licensee engages in a

pattern of repeated violations of a law or rule, the superintendent may impose a fine of not more than two thousand dollars for each day the violation is committed, repeated, or continued. All fines collected pursuant to this division shall be paid to the treasurer of state to the credit of the consumer finance fund created in section 1321.21 of the Revised Code. In determining the amount of a fine to be imposed pursuant to this division, the superintendent shall consider all of the following:

- (a) The seriousness of the violation;
- (b) The registrant's or licensee's good faith efforts to prevent the violation;
- (c) The registrant's or licensee's history regarding violations and compliance with division orders;
- (d) The registrant's or licensee's financial resources;
- (e) Any other matters the superintendent considers appropriate in enforcing sections 1322.01 to 1322.12 of the Revised Code.

41. O.R.C. §1322.01 defines the superintendent of financial institutions to include "the deputy superintendent of consumer finance as provided for in section 1181.21 of the Revised Code."

42. O.R.C. §118.21(C) states:

(C) The deputy superintendent for consumer finance shall be the principal supervisor of consumer finance companies. In that position the deputy superintendent for consumer finance shall, notwithstanding section 1321.421, division (A) of section 1321.76, and sections 1321.07, 1321.55, 1322.06, 4727.05, and 4728.05 of the Revised Code, be responsible for conducting examinations and preparing examination reports under those sections. In addition, the deputy superintendent for consumer finance shall, notwithstanding sections 1315.27, 1321.10, 1321.43, 1321.54, 1321.77, 1322.12, 4712.14, 4727.13, and 4728.10 of the Revised Code, have the authority to adopt rules and standards in accordance with those sections. In performing or exercising any of the examination, rule-making, or other regulatory

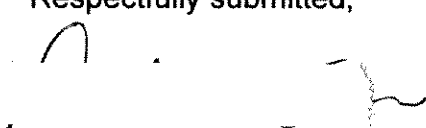
functions, powers, or duties vested by this division in the deputy superintendent for consumer finance, the deputy superintendent for consumer finance shall be subject to the control of the superintendent of financial institutions and the director of commerce.

43. The Division has met its burden of proof for imposing a fine upon Respondent with respect to Charge One and Three. However, the Division has failed to demonstrate that the proposed \$1,000.00 fine in this case should be imposed in light of the number and nature of the violations found.

III. RECOMMENDATION

Based upon the evidence submitted into the record for this case, the Division has established a sufficient evidentiary basis for imposing a fine against Respondent pursuant to O.R.C. §1322.10(A)(2) because Respondent failed to comply with provisions of O.R.C. Chapter 1322. Hence, I respectfully recommend that the Division re-evaluate the amount of the proposed fine, in light of the number and nature of violations found.

Respectfully submitted,



Delores Evans
Hearing Officer
June 24, 2009