

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS
77 South High Street, 21st Floor
Columbus, Ohio 43215-6120

In the matter of:)	
)	Case No. 06-2968
NICHOLAS J. PROSSER)	
13911 Oakbrook Drive)	
North Royalton, OH 44133)	Notice of Intent to Revoke
)	Loan Officer License &
)	Notice of Opportunity for a Hearing
)	

JURISDICTION

The Ohio Department of Commerce, by and through the Superintendent of the Division of Financial Institutions ("Division"), is charged with the responsibility of enforcing the Ohio Mortgage Broker Act, codified in Ohio Revised Code ("R.C.") Chapter 1322 and the rules adopted thereunder.

RESPONDENT

Respondent Nicholas J. Prosser ("Respondent") holds a loan officer license (LO#018079) issued by the Division pursuant to R.C. 1322. Respondent's employer of record was Custom Home Loans, Inc., whose office operates under certificate of registration number MB 4883. Respondent's home address of record is 13911 Oakbrook Drive, North Royalton, OH 44133 and his date of birth is April 9, 1978.

NOTICE OF PROPOSED ACTION

In accordance with R.C. 1322.10, and pursuant to R.C. Chapter 119, the Division intends to REVOKE Respondent's loan officer license.

ALLEGATIONS

Pursuant to R.C. 1322.10(B), the Division conducted an investigation into the affairs of Respondent, and as a result thereof, alleges the following:

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.

FINDINGS

1. By improperly requesting fees in advance of closing and misappropriating those fees, Respondent has violated R.C. 1322.07 (B) and (C).

2. By failing to properly deposit advance settlement fees in the special account established by the mortgage broker pursuant to R.C. 1322.08, Respondent has violated R.C. 1322.07(C).
3. By arranging a loan out of which he was paid money to perform home improvement work, and then failing to complete the work, Respondent has violated R.C. 1322.07(C).
4. By making false and misleading statements to borrowers regarding the status of their loan applications, Respondent has violated R.C. 1322.07 (B) and (C).
5. Based upon the authority granted pursuant to R.C. § 1322.10(A)(1) by Respondent's violations of R.C. 1322.07(B) and (C), the superintendent may revoke Respondent's loan officer license.

PROPOSED ACTION

Based upon the allegations and findings above, the Division intends to REVOKE the loan officer license of Nicholas J. Prosser (LO# 018079).

NOTICE OF OPPORTUNITY FOR A HEARING ON PROPOSED ACTION

Therefore, pursuant to R.C. Chapters 1322 and 119, Respondent is hereby notified that thirty-one (31) days from the date of the mailing of this Notice, the Superintendent intends to issue an ORDER REVOKING the loan officer license of Nicholas J. Prosser (LO# 018079).

Respondent is further notified, pursuant to R.C. Chapter 119, that Respondent is entitled to a hearing on this matter. If Respondent desires to request a hearing, the request must be made in writing, and must be received in the offices of the Ohio Division of Financial Institutions within thirty (30) days of the time of the mailing of this Notice. Hearing requests should be addressed to:

**State of Ohio
Department of Commerce
Division of Financial Institutions
Attn: Attorney Timothy C. Winslow
77 South High Street, 21st Floor
Columbus, Ohio 43215-6120**

At the hearing, Respondent may appear in person, by Respondent's attorney, or by such other representative as is permitted to practice before the Agency, or Respondent may present its position, arguments, or contentions in writing, and, at the hearing, may present evidence and examine witnesses appearing for and against Respondent.

If the Ohio Division of Financial Institutions does not receive a written request for a hearing in its offices within thirty (30) days of the time of the mailing of this Notice, the Superintendent will issue an ORDER REVOKING the loan officer license LO# 005032.

Signed and Sealed this _____ day of _____, 2006.

Robert M. Grieser
Deputy Superintendent of Financial Institutions

cc: Timothy C. Winslow, In House Counsel—Division of Financial Institutions
Matt Lampke, Asst. Attorney General, Business & Government Regulation