

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

In the matter of:)	Case No. M2010-1108
)	
DAVID S. NICOLANTI)	Notice of Intent to Revoke Loan Officer License
3903 W. 157 th Street)	&
Cleveland, OH 44111)	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 administering and enforcing the Ohio Mortgage Broker Act ("OMBA"), codified in Ohio Revised Code ("R.C.") Chapter 1322. In accordance therewith, the Division is accountable for the licensure of loan officers.

RESPONDENT

DAVID S. NICOLANTI ("Respondent") is an individual that holds a loan officer license (LO.003697.002) issued pursuant to the OMBA. Respondent's address of record is 3903 W. 157th Street, Cleveland, Ohio 44111, and his employer is OMBA registrant United Capital Mortgage of Ohio, Inc., 100 Merchant Street, Suite 175, Cincinnati, Ohio 45246.

NOTICE OF PROPOSED ACTION

In accordance with sections R.C. 1322.041 and 1322.10, and R.C. Chapter 119, the Division intends to REVOKE Respondent's OMBA loan officer license.

BASIS FOR PROPOSED ACTION

The Division has conducted an investigation of Respondent, pursuant to R.C. 1322.10(B), and has found the following:

- A. On or about April 8, 2008, the Division sent Respondent a letter informing him that his December 20, 2007 Loan Officer License Application was withdrawn for failure to successfully complete the Loan Officer Examination within 90 days from his authorization date. Respondent reapplied for a loan officer license on November 10, 2008. On or about January 5, 2009, upon Respondent's successful passage of the Loan Officer Examination, the Division issued Respondent loan officer license LO.003897.002. United Capital Mortgage of Ohio, Inc. is Respondent's employer of record.
- B. The Division is authorized by R.C. 1322.10(A)(1)(a), as in effect in 2008 and 2009, to revoke a loan officer license if the Division finds that the applicant has violated "or failed to comply with any provision of sections 1322.01 to 1322.12 of the Revised Code or the rules adopted under those sections or any other law applicable to the business conducted under a loan officer license."
- C. R.C. 1322.01(A)(1), as in effect in 2008 and 2009, provided in part: "No person, on the person's own behalf or on behalf of any other person, shall act as a mortgage broker without first having obtained a certificate of registration from the superintendent of financial

institutions for every office to be maintained by the person for the transaction of business as a mortgage broker in this state.”

- D. R.C. 1322.02(B), as in effect in 2008 and 2009, provided in part: “No person, on the person’s own behalf or on behalf of any other person, shall act as a loan officer without having obtained a license from the superintendent.”
- E. R.C. 1322.07(C), as in effect in 2008 and 2009, prohibits registrants or applicants for a certificate of registration from engaging in conduct that constitutes improper, fraudulent, or dishonest dealings.
- F. United Capital’s only registered address of record is 100 Merchant Street, Suite 175, Cincinnati, Ohio 45246. On or about December 8, 2008, United Capital submitted a branch application for 20325 Center Ridge Road, Suite 613, Rocky River, Ohio 44116, which remains pending.
- G. From approximately May 7, 2008 to January 7, 2009, United Capital employed loan officer David M. Demian, LO.005691.
- H. Former loan officer Jeffrey A. Rocheck was issued loan officer license LO.005961. He has never been licensed to work for United Capital.
- I. On or about September 2, 2008, United Capital originated a residential mortgage loan for borrower Supp. According to United Capital’s records, two Uniform Residential Loan Applications, a Truth in Lending Disclosure Statement, a Patriot Act Customer Identification Documentation form, a Mortgage Loan Origination Agreement, a Mortgage Loan Services Agreement, a High Loan to Value Disclosure, A Notice of Escrow of Taxes & Regular Monthly Payment, a Notice of Change in Mortgage Terms, and a HUD/VA Addendum to Uniform Residential Loan Application bear the purported signature of David Demian. Some of these documents list loan officer license number “5961” next to Mr. Demian’s purported signature. A Mortgage Loan Origination Disclosure Statement issued by United Capital to Supp bears the name of David Nicolanti, the purported signature of David Demian and loan officer license number “5961,” which was issued to Jeffrey A. Rocheck as noted in paragraph H. United Capital’s “All Files-Left Side Stacking Order” form for the Supp file states that the loan officer is Dave Demian and that the loan was originated at the unregistered Rocky River branch. Mr. Demian did not sign these documents, did not take a loan application from Supp, and did not originate the loan.
- J. On or about October 10, 2008, United Capital originated a residential mortgage loan for borrower Hassing. According to United Capital’s records, two Uniform Residential Loan Applications, a Truth in Lending Disclosure Statement, a Mortgage Loan Origination Agreement, a Mortgage Loan Services Agreement, a Notice of Escrow of Taxes & Regular Monthly Payments, and a Notice of Change in Mortgage Terms bear the signature of David Demian. Some of these documents list loan officer license number “5961” next to Mr. Demian’s purported signature. The borrower’s loan file also contains a Uniform Residential Loan Application, a Mortgage Loan Origination Disclosure Statement, a Notice of Escrow of Taxes & Regular Monthly Payment, and a High Loan to Value Disclosure, signed by David Nicolanti using the credential “5961.” United Capital’s “All Files-Left Side Stacking Order” form for the Hassing file states that the loan officer is Dave Demian and that the loan was originated at the unregistered Rocky River branch. Mr. Demian did not sign these documents, did not take a loan application from Hassing, and did not originate the loan.
- K. On or about November 24, 2008, United Capital originated a residential mortgage loan for borrower Gue. According to United Capital’s records, four Uniform Residential Loan

Applications, three Truth in Lending Disclosure Statements, a Mortgage Loan Origination Agreement, a Mortgage Loan Service Agreement, two Mortgage Loan Origination Disclosure Statements, a High Loan to Value Disclosure, two Notices of Escrow of Taxes & Regular Monthly Payment, two Notices of Change in Mortgage Terms, a HUD/VA Addendum to Uniform Residential Loan Application, and a Tangible Net Benefit Worksheet bear the purported signature of David Demian. Some of these documents list loan officer license number "5961" next to Mr. Demian's purported signature, although the High Loan to Value Disclosure lists loan officer number "5691." United Capital's "All Files-Left Side Stacking Order" form for the Gue file states that the loan officer is David Demian and that the loan was originated at the unregistered Rocky River branch. Mr. Demian did not sign these documents, did not take a loan application from Gue, or originate the loan. One Mortgage Loan Service Agreement bears the signature of David S. Nicolanti.

- L. On or about June 11, 2008, Respondent acted as the loan officer for a residential mortgage loan for borrower Sileo that closed on August 4, 2008. The loan was originated out of United Capital's Rocky River branch. The branch is not registered with the Division, and Respondent was not a licensed loan officer at the time of taking the initial loan application or closing.
- M. On or about October 13, 2008, Respondent acted as the loan officer for a residential mortgage loan for borrowers named McClary, and the loan closed on November 26, 2008. The loan was originated out of United Capital's Rocky River branch. The branch is not registered with the Division, and Respondent was not a licensed loan officer at the time of taking the initial loan application or closing.
- N. On or about November 19, 2008, Respondent acted as the loan officer for a residential mortgage loan for borrower Costa that closed on December 12, 2008. The loan was originated out of United Capital's Rocky River branch. The branch was not registered with the Division, and Respondent was not a licensed loan officer at the time of taking the initial loan application or closing.
- O. On or about December 3, 2008, Respondent acted as the loan officer for a residential mortgage loan for borrower Gerke that closed on January 23, 2009. The loan was originated out of United Capital's Rocky River branch. The branch was not registered with the Division, and Respondent was not a licensed loan officer at the time of taking the initial loan application.

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

- 1. Respondent's actions, as listed above, violated R.C. 1322.02(B).
- 2. By holding himself out to borrowers as a licensed loan officer, Respondent violated R.C. 1322.07(C).
- 3. By originating loans out of an unregistered location, Respondent violated R.C. 1322.07(C).
- 4. Because Respondent violated R.C. 1322.02(B) and R.C. 1322.07(C), the Division is authorized by R.C. 1322.10(A)(1)(a) to revoke Respondent's OMBA loan officer license.

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 Respondent's Ohio Mortgage Broker Act loan officer license.

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: Ohio Division of Financial Institutions, Attn: Anthony Siciliano, Consumer Finance General Counsel, 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 Respondent's OMBA loan officer license.

Signed and sealed this 30th day of March, 2010.

JOHN B. REARDON
Superintendent
Division of Financial Institutions
Ohio Department of Commerce