



Ohio Department of Commerce

Division of Financial Institutions
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Ted Strickland
Governor

Kimberly A. Zurz
Director

In the matter of:)	Case No. M2008-18
)	
ANDREW L. BIRCH)	SETTLEMENT AND
431 Dover Road)	CONSENT ORDER
Springfield, Ohio 45504)	
)	

WHEREAS, 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

WHEREAS, Andrew L. Birch ("Respondent") is an individual that holds active loan officer license (LO# 013144) issued by the Division pursuant to R.C. Chapter 1322. The Respondent's address of record is 431 Dover Road, Springfield, Ohio 45504, his date of birth is March 12, 1975. Respondent's employer of record is First Ohio Home Finance, Inc. whose main office operates under certificate of registration number MB 801145; and

WHEREAS, on **January 17, 2008**, the Division sent via certified mail a Notice of Intent to Impose a Fine and Notice of Opportunity for a Hearing ("the Notice") to Respondent at his home address of record which mailed Notice was received by and served upon Respondent; and

WHEREAS, the Notice contained allegations and findings that:

1. On April 24, 2005 Raymond D. and Jean C. Grumbling ("Borrowers") entered a real estate purchase contract to purchase a condominium (the "Condo") located at 1502 Ridgeview Lane, Springfield, Ohio for \$137,000.00.
2. The Borrowers intended to buy the Condo by using money generated by refinancing their house at 755 Shrine Road, Springfield, Ohio which they owned and had significant equity in. The Borrowers had already initiated steps to sell their house and believed their house would sell quickly thereby enabling them to repay the mortgage loan and enjoy unencumbered ownership of the Condo. The Borrowers expressed their intention, belief and plan to the Respondent.
3. Respondent listed the sources and amounts of income the Borrowers earned monthly on the First Ohio telemarketing application as \$1,927.00.
4. Respondent received the Borrowers' bank statements for January and March 2005 as part of the loan process. The bank statements indicated the income sources the Borrowers had

identified to Respondent. The January 2005 bank statement revealed earnings deposits equal to \$1,638.26. The March 2005 bank statement revealed earnings of \$1,405.88 and listed the remaining balance of approximately \$9,000.00 on an existing HELOC on the Borrowers' house.

5. Respondent reviewed the Borrowers' bank statements.
6. As part of the loan application, Respondent informed the lender that the Borrowers' monthly income was \$6,085.00.
7. During the Division's investigation Respondent admitted that he filled out the "easy application" wherein he listed the sources and amounts of the Borrowers' monthly income.
8. Respondent supplied the stated income amount of \$6,085.00 which the lender used to approve the Borrowers' loan.
9. Respondent overstated the monthly income of the Borrowers by more than \$4,000.00 in order to obtain for them a \$145,000.00 mortgage loan.
10. For the reasons stated in the above paragraphs, the Division contends that Respondent knowingly provided false or misleading statements on documents related to a mortgage and a mortgage application that were not bona fide errors in violation of R.C. 1322.07(E).
11. Respondent's conduct described in the above paragraphs constitutes improper, fraudulent or dishonest business practice that violates R.C. 1322.07(C).
12. Because Respondent violated R.C. 1322.07(C) and 1322.07(E), the superintendent may impose a fine upon Respondent pursuant to R.C. 1322.10(B)(2).

WHEREAS, Respondent does not admit to the allegations and contentions set forth in the Division's Notice and as outlined above, but to avoid the cost and uncertainty of litigation agrees to enter into this Consent Order for purposes of settlement.

NOW THEREFORE, in consideration of the foregoing and the mutual promises set forth herein, the parties agree to the following:

- 1) The parties acknowledge and agree to the accuracy of the foregoing recitals.
- 2) This Settlement and Consent Order represents a compromise between the parties for the full, complete, and final settlement of all of their claims, differences, and causes of action with respect to the allegations contained in the Notice.
- 3) The parties agree that the terms of this Settlement and Consent Order bind the parties hereto, and their successors in interest.

- 4) The parties agree that Respondent shall pay the Division One Thousand Dollars (\$1,000.00) as a fine as set forth in this Settlement and Consent Order. In the future, Respondent shall comply with the provisions of Chapter 1322 and the rules adopted thereunder. Respondent shall specifically refrain from providing false, misleading and/or fraudulent information on any document related to any mortgage loan originated under Chapter 1322.
- 5) The Division shall terminate its Notice of Intent to Impose a Fine and Notice of Opportunity of Hearing issued **January 17, 2008**, and agrees that it shall not, as long as Respondent is in compliance with this Settlement and Consent Order, pursue the matters set forth the Notice through its administrative process. The Division agrees that it will not initiate or pursue criminal or additional civil liability in any venue as a result of the conduct of Respondent as cited in the allegations and findings. Nothing, however, in this Order shall be deemed to prevent the Division from taking action to enforce any breach of this Order or to prevent the Division or its employees, agents, or assigns from participating in, as a witness or otherwise, any lawful action by another, or obeying any lawful court order, arising out of or related to the matters set forth.
- 6) Nothing in this Settlement and Consent Order shall be deemed an admission of guilt or liability, or agreement with the allegations set forth in the Notice on the part of Respondent.
- 7) Respondent acknowledges lawful service and receipt of the Notice, and stipulates to the jurisdiction of the Division in this matter.
- 8) This Settlement and Consent Order shall be effective on the date it is signed by the Superintendent of the Division of Financial Institutions or his designee and on such date it will become a final order.
- 9) This Settlement and Consent Order contains the entire agreement between the parties as to the matters set forth herein and no promises, conditions or obligations, either expressed or implied, other than those set forth herein, shall be binding on either party.

For purposes of effecting this Settlement and Consent Order, it is hereby ORDERED and DECREED that:

- A. The parties to this Settlement and Consent Order shall abide by the terms of this Order as agreed.
- B. Respondent shall pay a One Thousand Dollar (\$1,000.00) fine to the Consumer Finance Fund pursuant to R.C. § 1322.21 within ten days of the effective date of this Settlement and Consent Order. Payment

shall be made by certified check or money order made payable to the “Consumer Finance Fund” delivered to the Division’s counsel.

- C. The Notice of Intent to Impose a Fine and Notice of Opportunity of Hearing issued *January 17, 2008* to the Respondent is hereby terminated. Nothing shall prevent the Division, in the future, from taking any administrative or other action against Respondent for matters not addressed in this order.

Approved and Agreed:

Andrew L. Birch
Respondent

Date

Amanda Baird, Esq.
Counsel for Respondent

Date

Leigh A. Willis
Deputy Superintendent for Consumer Finance

Date