

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

In the matter of:)	Case No. 04-0386-LOD
)	
STEPHEN S. WALBURN)	<u>DIVISION ORDER-ON REMAND</u>
297 East Whittier Street)	Denial of Loan Officer License Application
Columbus, Ohio 43206)	&
)	Notice of Appellate Rights

Respondent, Stephen S. Walburn, submitted a loan officer license application to the Division of Financial Institutions ("Division") on February 24, 2004. On May 20, 2004, the Division notified Respondent that it intended to deny his loan officer license application because: (1) Respondent brokered loans on behalf of Ameribanc Mortgage, Inc. and remained in the employment of Ameribanc Mortgage, Inc. after being designated the Operations Manager for Ameribanc Mortgage Lending, Inc. in violation of R.C. 1322.03(A)(3) and 1322.02(B); (2) Respondent failed to disclose to buyers the affiliated business relationship between Ameribanc Mortgage, Inc. and Buckeye Land Title Agency, Inc. as required by 24 CFR 3500.15(b) and 12 U.S.C. 2607, and such failure constitutes a violation of R.C. 1322.07(C); (3) as an operations manager, Respondent continued to place buyers with Buckeye Land Title Agency, Inc. despite having known or should have known that the title company's payment problems presented an unacceptable risk to buyers constituting a violation of R.C. 1322.07(C); (4) Respondent's violations of R.C. 1322.01 to 1322.12 as set forth further in the Notice failed to comport with the licensure requirement of R.C. 1322.041(A)(2); (5) Respondent's violations of R.C. 1322.01 to 1322.12 as set forth further in the Notice along with Respondent's failure to report or take action to cease Ameribanc Mortgage, Inc.'s improper branch activities at 100 Dorchester Square, Suite 102, Westerville Ohio, has caused the Division to find that Respondent's character and general fitness cannot command the confidence of the public so as to warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act as required by R.C. 1322.041(A)(5); and (6) denial of Respondent's loan officer application due to the violations of law set forth in the Notice is permitted and proper pursuant to R.C. 1322.10(A)(1)(a).

Respondent requested an administrative hearing, which was held on August 27, 2004. A Report and Recommendation was filed with the Division on December 17, 2004, recommending that the Division approve Respondent's application and grant him a loan officer license. A copy of the Report and Recommendation is attached to this Order. No objections were filed by Respondent.

On August 18, 2005, the Division issued a Division Order disapproving and modifying, in part, the Report and Recommendation and ultimately ordering the denial of Respondent's loan officer license application. In accordance with R.C. 119.12, Respondent timely filed a Notice of Appeal of Division Order with the Division and a copy to the Franklin County Court of Common Pleas. On November 17, 2006, the Common Pleas Court issued a Decision and Entry on Merits of Appeal that both affirmed in part and reversed in part the Division Order and remanded the case to the Division for further consideration in light of those errors and a redetermination as to whether Respondent's application should be approved. Specifically, the Court found as follows: (1) the Division's Notice did not sufficiently allege unlicensed loan officer activity in violation of R.C. 1322.02(B); (2) Respondent was operations manager of Ameribanc Mortgage Lending, Inc.; (3) there is reasonable, probative and substantial evidence to support Respondent's violation of R.C. 1322.07(C) for not having provided buyers with affiliated business disclosure statements but not for improperly referring business to Buckeye Land Title Agency, Inc.; and (4) there is reasonable, probative and substantial evidence to support the conclusion that Respondent does not satisfy the character and fitness requirement for licensure in R.C. 1322.041(A)(5) because of his failure to report Ameribanc Mortgage, Inc.'s improper branch activities at 100 Dorchester Square, Suite 102, Westerville, Ohio.

In accordance with R.C. 119.09 and the instructions on remand from the Franklin County Court of Common Pleas, the Division has considered the record, consisting of the Report and Recommendation, the transcript of testimony and exhibits, as well as all applicable laws. As a result, the Division makes the following findings and conclusions. Any finding and/or conclusion not specifically addressed below is approved, adopted, and incorporated herein. (A copy of the Report is attached).

The Division disapproves and modifies an interpretation of law found in paragraph 5 on pages 4 and 5 of the Report and Recommendation. Under R.C. 1322.041(A)(5), the Division had the burden to show that Respondent's character and general fitness do not command the confidence of the public and warrant the belief that the business will be operated honestly and

fairly in compliance with the Ohio Mortgage Broker Act. Accordingly, Paragraph 5 on pages 4 and 5 of the Report and Recommendation is modified to reflect the accurate legal burden.

The Division disapproves paragraph 34 on pages 8 and 9 as well as the Recommendation on page 9 of the Report and Recommendation. As found by the Court, the facts in the record support the conclusion that Respondent was operations manager of Ameribanc Mortgage Lending, Inc., which had as its registered office location 100 Dorchester Square, Suite 102, Westerville, Ohio. That same location is where Ameribanc Mortgage, Inc. conducted activities subject to the Ohio Mortgage Broker Act despite that location not being one of its registered locations. Ameribanc Mortgage, Inc.'s activities at 100 Dorchester Square at the registered location of another mortgage broker are prohibited by R.C. 1322.02(A)(2), which forbids a person from acting or holding that person's self out as a mortgage broker under the authority or name of a registrant without first having obtained a certificate of registration from the Division for every office to be maintained by the person for transacting business as a mortgage broker in Ohio. Respondent, as Ameribanc Mortgage Lending, Inc.'s operations manager, was the "individual responsible for the everyday operations, compliance requirements, and management of a mortgage broker business." See R.C. 1322.01(H). Because Respondent failed to report Ameribanc Mortgage, Inc.'s improper activities at Ameribanc Mortgage Lending, Inc.'s registered location, the Division finds that Respondent fails to meet the requisite character and fitness requirement for loan officer licensure set forth in R.C. 1322.041(A)(5).

Furthermore, the Division finds sufficient evidence in the record to conclude that Respondent violated R.C. 1322.07(C) by failing to properly disclose to buyers the affiliated business relationship between Ameribanc Mortgage, Inc. and Buckeye Land Title Agency, Inc. as required by 12 U.S.C. 2607 and 24 CFR 3500.15(b). Because Respondent violated R.C. 1322.07(C), denial of his loan officer license application is permissible and appropriate under R.C. 1322.10(A)(1)(a).

In accordance with the foregoing, the loan officer license application of Stephen S. Walburn is hereby denied.

It is so ordered.

NOTICE OF APPELLATE RIGHTS

Respondent is hereby notified that pursuant to R.C. 119.12, this Order may be appealed 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, pursuant to R.C. 119.12, 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 6th day of May 2009.

LEIGH A. WILLIS

Deputy Superintendent for Consumer Finance
Division of Financial Institutions
Ohio Department of Commerce