

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

In the matter of:	)	Case No. M2007-684
	)	
<b>RED BRICK MORTGAGE, LLC</b>	)	<b><u>DIVISION ORDER</u></b>
9101 Antares Avenue	)	<b>Revocation of Mortgage Broker Certificate</b>
Columbus, Ohio 43240	)	<b>of Registration, Assessment of Fine &amp;</b>
	)	<b>Notice of Appellate Rights</b>

---

Respondent, Red Brick Mortgage, LLC (“Respondent”) is licensed under R.C. 1322 as a mortgage broker with the Division of Financial Institutions (“Division”). On or about November 16, 2007, the Division notified Respondent that it intended to revoke its certificate of registration and impose a fine of \$32,000 because Respondent violated 1322.07(C) by entering into a management agreement that assigned, transferred, or franchised its certificate of registration and allowed Artisan Mortgage, LLC to act as a mortgage broker without first having obtained a certificate of registration.

Pursuant to R.C. 1322.10(A)(1)(a), the Superintendent of Financial Institutions may revoke a certificate of registration if the superintendent finds a violation of or failure 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 certificate of registration.

Respondent requested an administrative hearing regarding the revocation of its certificate of registration, and a hearing was held on May 6, 2008. A Report and Recommendation (“Report”) was filed with the Division on June 9, 2008, recommending that Respondent and its members be permanently barred from holding a certificate in Ohio and that the Division assess a fine against Respondent in the amount of thirty two thousand dollars. Respondent did not file objections.

In accordance with R.C. 119.09, the Division has considered the record, consisting of the Report, 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. (The Hearing Examiner’s Report is attached).

The Division modifies the third paragraph on page 1 of the Report to reflect that Martha Rhea is an attorney examiner and not an attorney investigator. (Tr. p. 104)

The Division modifies the first paragraph on page 2 of the Report to correct the spelling of Brent Rosenthal, Esq. and Dennis Concilla, Esq.'s law firm to Carlile Patchen & Murphy, LLP.

The Division modifies paragraph 12 on page 4 of the Report to reflect that the paragraph and language quoted are a part of the Asset Purchase Agreement admitted as Exhibit 8 and not the Management Agreement admitted as Exhibits 7, 16, and 19.

The Division modifies the paragraphs 10 and 11 on page 4 of the Report to also include in the cite Exhibits 16 and 19. The Management Agreement cited in the Report as Exhibit 7 was also admitted into evidence as a part of Exhibits 16 and 19.

The Division modifies paragraph 16 on page 5 of the Report to state: "Artisan did not hold a Certificate in Ohio at the time the February 22, 2007 Agreements were executed and did not obtain one from the Division until after December 7, 2007." The record is absent any evidence that Artisan Mortgage LLC dba Red Brick Mortgage obtained a certificate of registration on December 7, 2007. The Settlement Agreement between the Division and Artisan Mortgage LLC dba Red Brick Mortgage, Exhibit 20, provided that "[i]f Respondent complies with all other terms and conditions for the approval of its pending applications, DFI will issue a mortgage broker certificate of registration with an expiration date of April 30, 2008 and a mortgage loan certificate of registration with an expiration date of June 30, 2008." (Exhibit 20, p. 4)

The Division modifies paragraph 17 on page 5 of the Report to correct the cite to "Tr. p. 18, 70" instead of "Tr. @ pg. 30-31".

The Division modifies paragraph 19 on page 6 of the Report to correct the time period during which Artisan generated approximately 167 loans. The correct time period was between February 22, 2007 through September 2007 instead of during August 2007. (Tr. p. 124)

The Division modifies the second paragraph numbered 22 on page 6 of the Report to state that on October 24, 2007, the Division advised Artisan that the Management Agreement, and the acts thereunder, were in violation of R.C. 1322. (Exhibit 19, letter of John H. Kozich, Esq.) The Report stated that the date of this communication was on October 19, 2007. Only the unsigned Termination of Management Agreement stated that this communication occurred

October 19, 2007. (Exhibit 12). The Termination of Management Agreement cannot be given much weight as it was unsigned and the author did not testify as to its contents' accuracy.

The Division modifies paragraph 25 on page 7 of the Report to state that Artisan Mortgage, LLC dba Red Brick Mortgage obtained a certificate of registration after December 7, 2007. (Tr. p. 119, Exhibit 20).

The Division modifies paragraph 26 on page 7 of the Report to state: "On April 8, 2008, Respondent attempted to surrender its Certificate of Registration. In the cover letter Brent D. Rosenthal, Respondent's counsel at the time, stated that 'Red Brick Mortgage, LLC, a dissolved Ohio limited liability company, is hereby surrendering its license to engage in the business of a mortgage broker in the State of Ohio.'" (Exhibit 4).

The Division disapproves paragraph 41 on page 10 of the Report. The Division's evidence demonstrated that Respondent violated R.C. 1322.07(C). R.C. 1322.04(A)(10) states: "The applicant's financial responsibility, experience, character, and general fitness command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of sections 1322.01 to 1322.12 of the Revised Code." R.C. 1322.04(A)(10) sets forth a condition that must be met before a certificate of registration may be issued by the Superintendent. By proving a violation of R.C. 1322, the Division has proven that Respondent does not meet the character and fitness requirement for holding or being issued a certificate of registration.

The Division disapproves paragraph 43 on page 10 of the Report. 1301:8-7-02(K)(6)(b)(i) of the Ohio Administrative Code states: "A person may voluntarily surrender an active certificate of registration as long as the person is not under investigation by the division, or the superintendent has not issued a notice of opportunity under Chapter 119 of the Revised Code." Although Respondent attempted to surrender its Certificate of Registration, due to the Division's administrative action, Respondent was not authorized to surrender the certificate. Revocation is a proper action by the Division. Further, the Division is not authorized by the Ohio Mortgage Broker Act or any other statute to permanently bar Respondent from holding a certificate of registration due to the proven violation. Since the Notice named only Red Brick Mortgage, LLC, adjudication of the rights of Respondent's members Winkhaus and Barlow would be violations of due process. Consequently, the Division disapproves the Report's recommendation that action be taken with respect to Respondent's members' rights.

Due to the reasoning in the preceding paragraph and 1301:8-7-02(K)(6)(b)(i), the Division modifies paragraph 42 on page 10 of the Report to state: “[a]lthough Respondent attempted to voluntarily relinquish its Certificate prior to the hearing on this matter, there is no question it was licensed by the Division during the time period at issue in this matter, and therefore it was subject to the laws, rules, and regulations as an Ohio mortgage broker.”

The Division modifies the first two sentences of paragraph 45 on page 10 of the Report to state: “[a]lthough Respondent attempted to surrender its Certificate to the Division, it was licensed by the Division during the time period that the violations took place. The fact that it later attempted to surrender its license does not make it any less culpable.”

The Division approves the Recommendation’s finding that the Division has met its burden of proof that Respondent violated R.C. 1322.07(C). Because R.C. 1322.04(A)(10) is a requirement for licensure, the Division finds that Respondent did not violate this statute but that the Division demonstrated that Respondent does not have the financial responsibility, experience, character, and general fitness to command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of sections 1322.01 to 1322.12 of the Revised Code. For reasons stated above, the Division disapproves the recommendation that Respondent and its members be permanently barred from holding a certificate of registration in Ohio. The Division approves the Report’s recommendation that the Division assess a fine against the Respondent in the amount of thirty two thousand dollars.

For the reasons stated above, the Division hereby revokes the certificate of registration of Red Brick Mortgage, LLC dba Red Brick Mortgage and fines Red Brick Mortgage, LLC in the sum of \$32,000. Pursuant to R.C. 1322.10(A)(2), such fine shall be made payable to the treasurer of state to the credit of the Consumer Finance Fund created in compliance with R.C. 1321.21. Said fine shall be paid within 90 days of this Order.

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 29<sup>th</sup> day of July, 2008.

---

**LEIGH A. WILLIS**

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