

John R. Kasich
Governor

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

David Goodman
Director

In the matter of:)	Case No. M2010-264
)	
TED F. SPANGLER)	<u>DIVISION ORDER</u>
772 Aspen Drive)	Refusal to Renew Loan Originator License
Tipp City, OH 45371)	and Imposition of Fine
)	&
)	Notice of Appellate Rights
)	

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, as codified in Ohio Revised Code ("R.C.") Chapter 1322, and finds that this Order is necessary and appropriate, in the interest of the public, and is consistent with the purposes of the Ohio Mortgage Broker Act.

On July 6, 2010, the Division of Financial Institutions issued notice to Ted F. Spangler ("Respondent") that the Division intended to refuse to renew his loan originator license and impose a four thousand five hundred dollar (\$4,500.00) fine for the following allegations and findings:

- A. The Division is authorized by R.C. 1322.10(A)(1)(a) to refuse to issue a loan originator license if the Division finds that the applicant has violated "or failed to comply with any provisions 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 or license."
- B. The Division is authorized by R.C. 1322.10(A)(2) to "[i]mpose of fine of not more than one thousand dollars, for each day a violation of law or rule is committed, repeated or continued. If the registrant or licensee engages in a pattern of repeated violations of law or rule, the Division may impose a fine of not more than two thousand dollars for each day the violation is committed, repeated, or continued."
- C. R.C. 1322.02(B)(2) prohibits any individual from acting as a loan originator without first obtaining a license from the Division and may only be employed or associated with one mortgage broker, person or entity listed in R.C. 1322.01(G)(2) at any one time.

- D. Prior to January 1, 2010, R.C. 1322.052 required every licensed loan officer to complete at least six (6) hours of approved continuing education (“CE”) every calendar year (by December 31st).
- E. Respondent held loan officer license LO.005056 during the 2009 calendar year.
- F. Respondent failed to complete the required 6 hours of CE credit for the 2009 calendar year as required by R.C. 1322.052.
- G. R.C. 1322.041(B)(3) provides that a loan officer renewal license shall be issued if the applicant meets the conditions of R.C. 1322.041(A)(2) to (8).
- H. R.C. 1322.041(A)(2) provides that a loan officer license shall be issued if the applicant is in compliance with Chapter 1322.
- I. R.C. 1322.031(H)(3) permits a mortgage broker registrant to employ a loan officer on a temporary basis pending the transfer of that loan officer’s license to that mortgage broker if the mortgage broker received written confirmation from the Division that the loan officer is licensed under Chapter 1322.
- J. Ohio Admin. Code 1301: 8-7-11(A) requires a loan officer to file a transfer application when he desires to change his employment from one mortgage broker registrant to another.
- K. Ohio Admin. Code 1301: 8-7-11(B) authorizes a loan officer to originate mortgage loans for a new employer when the Division prints a new license identifying the new employer or, after submission of a complete transfer application, when the new employer receives written confirmation from the Division in accordance with R.C. 1322.031(E)(2) now codified as R.C. 1322.031(H)(3).
- L. On or about May 1, 2009, Respondent was issued a 2009-2010 loan officer renewal license as an employee of South Dayton Mortgage Group, Inc. MB.802517.
- M. On or about August 28, 2009, Respondent was terminated by South Dayton Mortgage Group, Inc. At that time, Respondent’s license was placed into escrow pursuant to Ohio Admin. Code 1301: 8-7-08(C)(3) and he was prohibited from originating residential mortgage loans or acting as a loan officer/originator under the OMBA. Originating mortgage loans or acting as a loan officer/originator while in escrow status is a violation of R.C. 1322.02(B).
- N. To date, Respondent has not submitted an application to the Division requesting a transfer of his license to a new employer.
- O. On or about April 30, 2010, Respondent submitted his 2010 loan originator renewal application pursuant to R.C. Chapter 1322 and the nationwide mortgage licensing system and registry. In his application, Respondent indicated that he had been

employed as a loan officer for American Mortgage Service Company from August 2009 to the present.

- P. American Mortgage Service Company (“AMSC”) is a registrant under the OMBA and holds registration MB.802615.
- Q. To date, AMSC has not filed a request to transfer Respondent’s loan officer/originator license or to request written confirmation that Respondent was licensed to work, therefore, no written confirmation was provided.
- R. On or about August 31, 2009, Respondent originated a USDA/Rural Housing Service mortgage loan for a borrower named Pauley on behalf of AMSC for investor Chase Home Finance-RHS. USDA/Rural Housing Service loans are not exempt from regulation under R.C. 1322.02(G)(2). The Pauley loan closed on or about December 21, 2009.
- S. On or about February 2, 2010, Respondent originated a conventional residential refinance loan for borrowers named Imwalle on behalf of AMSC. The Imwalle loan closed on or about March 24, 2010.
- T. On or about February 22, 2010, Respondent originated a USDA/Rural Housing Service mortgage loan for a borrower named Sutton on behalf of AMSC for investor Chase Home Finance-RHS. USDA/Rural Housing Service loans are not exempt from regulation under R.C. 1322.02(G)(2). The Sutton loan closed on or about April 16, 2010.

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

- 1. Respondent failed to complete six hours of CE in calendar year 2009 in violation of R.C. 1322.052, as effective prior to January 1, 2010, and R.C. 1322.041(A)(2).
- 2. Because Respondent violated R.C. 1322.052 (as effective prior to January 1, 2010) and is not in compliance with R.C. 1322.041(A)(2), the Division is authorized under R.C. 1322.10(A)(1)(a) to refuse to issue a loan officer license.
- 3. Respondent originated two USDA/Rural Housing Service mortgage loans and a conventional residential refinance mortgage loan on behalf of an OMBA registrant without first transferring his license to that registrant in violation R.C. 1322.02(B), R.C. 1322.031(H)(3), Ohio Admin. Code 1301: 8-7-11(A) and Ohio Admin. Code 1301: 8-7-11(B).
- 4. Because Respondent violated R.C. 1322.02(B), R.C. 1322.031(H)(3), Ohio Admin. Code 1301: 8-7-11(A) and Ohio Admin. Code 1301: 8-7-11(B), the Division is authorized to refuse issuance of a renewal license pursuant to R.C. 1322.041(A).

5. Because Respondent does not meet the requirements of R.C. 1322.041(A) and violated R.C. 1322.052, R.C. 1322.02(B), R.C. 1322.031(H)(3), Ohio Admin. Code 1301: 8-7-11(A) and Ohio Admin. Code 1301: 8-7-11(B), pursuant to R.C. 1322.10(A)(1)(a) the Division has the authority to refuse to renew Respondent's loan officer license.
6. Because Respondent violated R.C. 1322.052, R.C. 1322.02(B), R.C. 1322.031(H)(3), Ohio Admin. Code 1301: 8-7-11(A) and Ohio Admin. Code 1301: 8-7-11(B), the Division is authorized under R.C. 1322.10(A)(2) to impose a fine upon Respondent.
7. Because Respondent violated R.C. 1322.052, R.C. 1322.02(B), R.C. 1322.031(H)(3), Ohio Admin. Code 1301: 8-7-11(A) and Ohio Admin. Code 1301: 8-7-11(B), a fine of four thousand five hundred dollars (\$4,500.00) should be imposed pursuant to R.C. 1322.10(A)(2).
8. A fine in the amount of four thousand five hundred dollars (\$4,500.00) is reasonable, appropriate, and necessary.

The Notice also informed Respondent that he had thirty (30) days to request an adjudicatory hearing pursuant to R.C. Chapter 119 regarding the Division's allegations set forth in the Notice.

Respondent requested an administrative hearing, which was scheduled for September 9, 2010, held on that date and concluded on October 5, 2010. Respondent appeared at the hearing and waived his right to counsel. The hearing officer's report and recommendation (the "Report and Recommendation") was filed with the Division on November 1, 2010 (a copy is attached). The Report and Recommendation found that the Division established a sufficient evidentiary basis to refuse renewal of Respondent's 2010 loan originator license application and impose a fine only for Respondent's failure to comply with R.C. 1322.052. No objections were filed.

Pursuant to R.C. 119.09, the Division may approve, modify, or disapprove the recommendation of a hearing officer based upon the report, recommendation, transcript of testimony and evidence, or objections of the parties and any additional testimony and evidence permitted. In accordance therewith, the Division has considered the record, consisting of the Report and Recommendation, the transcript of testimony, exhibits and all applicable laws. Any finding and/or conclusion not specifically addressed in the attached Memorandum in Support is approved, adopted and incorporated herein.

For the reasons provided herein and in the attached Memorandum in Support, the Division modifies the Report and Recommendation. The Division has weighed the evidence and refuses to renew Respondent's loan originator license and imposes a five hundred dollar (\$500.00) fine.

IT IS SO ORDERED.

NOTICE OF APPELLATE RIGHTS

Respondent is hereby notified that pursuant to R.C. 119.12, this Division Order may be appealed by filing a notice of appeal with the Division setting forth the Order that Respondent is appealing from and stating that the Division's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The notice of appeal may also include, but is not required to include, the specific grounds for the appeal. The notice of appeal must also be filed with the appropriate court of common pleas in accordance with R.C. 119.12. In filing the notice of appeal with the Division or court, the notice that is filed may be either the original notice or a copy of the original notice. A notice of appeal must be filed within fifteen (15) days after the date of mailing of this Division Order.

Signed and sealed this 7th day of June, 2011.

CHARLES O. MOORE
Deputy Superintendent for Consumer Finance
Division of Financial Institutions
Ohio Department of Commerce

**STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS**

**Memorandum in Support of the Division Order
To Refuse Renewal of the Loan Officer/Originator License of Ted F. Spangler and Impose
a Fine**

Case No. M2010-264

The Ohio Department of Commerce, Division of Financial Institutions (the "Division") hereby approves all of the Findings of Fact and Conclusions of Law set forth in the Administrative Hearing Officer's Report and Recommendation (the "Report and Recommendation") issued November 1, 2010, except as set forth below.

I. Findings of Fact

Based on a review of the transcript and the exhibits admitted into the record, the Division hereby modifies Paragraphs 29 through 33 of the Findings of Fact which should read as follows:

29. In 1980, Fannie Mae approved AMSCO as a seller of mortgages.⁷ *Respondent's Exhibit G; Testimony of Mr. Case.* However, the incomplete Fannie Mae contract presented by AMSCO did not specifically authorize AMSCO to originate USDA/Rural loans.

The modification is necessary because Respondent's Exhibit G was incomplete, consisting of only the first and last pages of the contract. The document did not indicate that the scope of AMSCO's authority under its Fannie Mae approval extends to USDA/Rural loans without meeting additional preconditions as discussed below. In addition, the testimony of AMSCO operations manager, William Case ("Mr. Case") failed to affirmatively state what type of loan origination was approved by Fannie Mae. Transcript pp.186-188. Respondent's Exhibit G did not authorize AMSCO to originate USDA loans.

R.C. 1322.01(G)(2)(b), and the prior effective version R.C. 1322.02(C)(1)(g), exempts mortgage bankers only if the business engaged in is authorized by the United States Department of Housing and Urban Development ("HUD/FHA"), the Federal National Mortgage Association ("FNMA" or "Fannie Mae"), the Federal Home Loan Mortgage Corporation ("FHLMC" or "Freddie Mac") and the United States Department of Veterans Affairs ("VA"). There is no blanket exemption for mortgage bankers. Additionally, as discussed more fully below, the two USDA/Rural loans originated by Respondent did not meet Fannie Mae qualifications because AMSCO's USDA authorization only applied in Kentucky.

30. In 1983, the VA approved AMSCO as a non-supervised automatic lender. *Respondent's Exhibit I; Testimony of Mr. Case.* The VA approval letter grants authority to AMSCO for VA loans made to a veteran or his/her spouse that are

reviewed and approved in AMSCO's home or main office by approved underwriters Emil Bergdolt, Casper Reamer or Eleanor Schwartz.

The modification is necessary because Respondent's Exhibit I did not include the documents enclosed with the letter. In addition, the document did not specifically indicate that AMSCO was authorized to originate or close any loan other than a VA loan. Testimony of Mr. Case failed to affirmatively state what type of loan origination was approved by the VA. Transcript pp.190-191. There is no proof that the Ohio General Assembly intended to give a blanket exemption to mortgage bankers. Respondent's Exhibit I did not authorize AMSCO to originate USDA loans.

31. In 1984, HUD approved AMSCO as a non-supervised mortgagee with participation in the direct endorsement program. *Respondent's Exhibit F; Testimony of Mr. Case.* The HUD approval letter specifically grants authority to AMSCO to originate mortgage loans in accordance with HUD underwriting policy without prior HUD review.

The modification is necessary because Respondent's Exhibit F does not grant any authority to originate conventional or USDA loans and testimony of Mr. Case failed to affirmatively state what type of loan origination was approved by HUD. Transcript pp.184-185. There is no proof that the Ohio General Assembly intended to give a blanket exemption to mortgage bankers.

32. In 1996, The USDA approved AMSCO as an approved lender. *Respondent's Exhibit J; Testimony of Mr. Case.* However, USDA is not included as one of the Governmental entities whose approval exempts a mortgage banker from having to comply with Chapter 1322. Respondent's Exhibit J grants AMSCO authority to originate USDA/Rural loans for low and moderate income families in Kentucky.

The modification is necessary because Finding of Fact paragraph 32 is inconsistent with the law and the content of the Exhibit. Respondent's Exhibit J does not include the document, Form FmHA 1980-16, that discloses the types of loans upon which the USDA authorizes AMSCO to act as an approved lender. In addition, the authority granted by USDA to AMSCO pertains only to Kentucky and does not include loan origination activity in Ohio. The two USDA/Rural loans at issue were for Ohio residents for properties located in the State of Ohio. State's Exhibits 9-a-1, and 9-c-1; Respondent's Exhibits A and C. Furthermore, because USDA/Rural loans are not included in R.C. 1322.01(G)(2)(b) or prior version R.C. 1322.02(C)(1)(g), approval given by the USDA to AMSCO in Kentucky does not authorize AMSCO to engage in the business of originating USDA/Rural loans in Ohio except as a registered mortgage broker through a licensed loan originator.

- 33(a). Freddie Mac also approved AMSCO as a seller of mortgages.⁸ *Respondent's Exhibit H; Testimony of Mr. Case.* However, the purported Freddie Mac approval is silent as to the authority and types of loans approved by Freddie Mac. As a condition for delivery of a Rural Housing Service 502 loan to Freddie Mac, a lender is required to have the approval of the Rural Housing Service to originate mortgages. Respondent's Exhibit E.

The modification is necessary because Respondent's Exhibit H is merely an email to Mr. Case that does not clarify the authority actually granted by Freddie Mac. In addition, the testimony of Mr. Case failed to affirmatively state what type of loan origination was approved by Freddie Mac. Transcript p. 189. There is no proof that Freddie Mac authorized AMSCO to engage in the business of originating USDA loans in Ohio. In addition, Freddie Mac mandates that the lender have the USDA's approval to originate loans before it will accept Rural Housing loans. Respondent's Exhibit E. AMSCO provided no proof that it had USDA approval to originate loans in Ohio. Respondent's Exhibit H did not authorize AMSCO to originate USDA loans in Ohio.

33(b). On cross examination, Mr. Case admitted that if AMSCO did not maintain a mortgage broker certificate of registration, AMSCO would be barred from originating any loan not specifically authorized by HUD, Fannie Mae, Freddie Mac and/or the VA. Transcript pp. 264-265.

The modification is necessary because Mr. Case acknowledged that a specific authority to originate a certain type of loan is granted by HUD, Fannie Mae, Freddie Mac and the VA. The Ohio General Assembly first enacted R.C. 1322.01 through R.C. 1322.12 in Senate Bill 323 for the purpose of regulating mortgage brokers. The General Assembly granted a limited exemption from regulation to mortgage bankers. The language of the first mortgage banker exemption stated: "1322.01(D) 'Mortgage Banker' means any person that makes, services, or buys and sells mortgage loans and is approved by the United States Department of Housing and Urban Development, the United States Department of Veterans Affairs, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation." 1991 Ohio SB 323. A mortgage broker did not include a mortgage banker as defined under the act. 1991 Ohio SB 323.

In 2001, the General Assembly provided mortgage bankers with only a limited exemption from compliance with the Mortgage Broker Act when it revised the law with Senate Bill 76. Senate Bill 76 states "1322.02(C)(1) the following persons are exempt from sections 1322.01 to 1322.12 of the revised code only with respect to business engaged in or authorized by their charter, license, authority, approval, or certificate, or as otherwise authorized by division (C)(1)(g) of this section." 2001 SB 76. R.C. 1322.02(C)(1)(g) was added to state "[m]ortgage [b]anker means any person that makes, services, buys, or sells mortgage loans, that underwrites the loans, and that meets at least one of the following criteria: (i) the person has been directly approved by the United States Department of Housing and Urban Development . . . (ii) the person has been directly approved by the Federal National Mortgage Association . . . (iii) the person has been directly approve by the Federal Home Loan Mortgage Corporation . . . (vi) person has been directly approved by the United States Department of Veterans Affairs" 2001 Ohio SB 76. Thus, the General provided mortgage bankers a limited and specific exemption from the Mortgage Broker Act with respect to certain government loans but did not shield all potential origination activity engaged in by a mortgage banker from the regulatory oversight of the Division.

35. Fannie Mae has partnered with RHS on the Section 502 Guaranteed Rural Housing ("GRH") loans. GRH loans that are guaranteed by RHS can be submitted to Fannie

Mae's DU for analysis. Loans that receive a RHS guarantee are acceptable for delivery to Fannie Mae regardless of the DU rating, if the lender ensures that specified conditions are satisfied. *Respondent's Exhibit L. In order to sell GRH loans to Fannie Mae, the lender must have Fannie Mae Seller/Servicer and Rural Housing Service approval. Respondent's Exhibit D.*

The modification is necessary because Finding of Fact paragraph 35 misidentifies Respondent's Exhibit D as Respondent's Exhibit L. In addition, Fannie Mae mandates that the lender have its and USDA's approval to originate loans as a condition for accepting GRH loans. As noted

earlier, AMSCO only had USDA approval with respect to GRH loans originated for low and moderate income borrowers in Kentucky.

The Division hereby disapproves Finding of Fact Paragraph 42 as it pertains to the Sutton and Pauley loans. Because the Sutton and Pauley loans were not exempt from OMBA regulation, Respondent required an active loan officer/originator license to originate the two loans. In addition, Find of Fact Paragraph 42 is inconsistent with the testimony, the exhibits, the preconditions set by Fannie Mae and Freddie Mac to accept delivery of Rural Housing loans, the Ohio Mortgage Broker Act and the intent of the Ohio General Assembly.

II. Conclusions of Law

Based on a review of the transcript and the exhibits admitted into the record in this case and the Findings of Fact set forth herein and in the Report and Recommendation, the Division hereby disapproves Conclusion of Law Paragraph 68 because the mortgage banker exemption depends upon whether the mortgage banker is engaged in the type of business that has been approved by HUD, Fannie Mae, Freddie Mac or the VA. The Division also disapproves Conclusion of Law 68 because that conclusion of law misinterprets the holding in *Guth*.

Conclusion of Law Paragraph 68 relies upon the holding in *Guth v. Allied Home Mortgage Capital Corp.* (July 7, 2008), 12th Dist., 2008 Ohio App. Lexis 2871, 2008-Ohio-3386. In *Guth*, the court concludes that the OMBA mortgage banker exemption applies "only with respect to business * * * authorized by division [R.C. 1322.02](C)(1)(g) [now R.C. 1322.01(G)(2)(b)] of this section." *Guth* at P19. Emphasis in original. Because the Appellee, Allied, was acting as a mortgage broker in the transaction at issue in *Guth*, the court found that the Appellees were not exempt from the OMBA. *Guth* at P30. Conclusion of Law Paragraph 68 misinterprets the holding of *Guth*, stating that the court determined the exemption did not apply because Appellee Allied did not provide the funding in the transaction. Based upon the actual holding of *Guth*, Respondent's employer, AMSCO, failed to prove it was entitled to an exemption for its USDA/Rural housing loans because it was not engaged in the type of business specifically authorized by HUD, Fannie Mae, Freddie Mac or the VA.

The Division also disapproves Conclusion of Law Paragraphs 70 and 71 because these Conclusions of Law are inconsistent with the testimony, the exhibits, Fannie Mae and Freddie Mac preconditions, the Ohio Mortgage Broker Act and the intent of the Ohio General Assembly.

III. Recommendation

Based on the Findings of Fact and Conclusions of Law, as set forth above, the Division hereby modifies the Report and Recommendation. The Division has weighed the evidence and hereby imposes a fine of five hundred dollars (\$500.00) upon Respondent for originating two mortgage loans under the jurisdiction of the Ohio Mortgage Broker Act while his license was in escrow status. Because Respondent violated R.C. 1322.052, 1322.02(B) and Ohio Admin. Code 1301:8-7-08(C)(3), the Division refuses to renew Respondent's 2010 loan originator license.

Signed and sealed this 7th day of June, 2011.

CHARLES O. MOORE

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