

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

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In the matter of:) Case No. 05-002-MBR
AMERIMORTGAGE, INC.)
3503 Whipple Ave. NW) **DIVISION ORDER**
Canton, OH 44718) **Revocation of Mortgage Broker Certificate**
) **of Registration &**
) **Notice of Appellate Rights**

Respondent, Amerimortgage, Inc. ("Respondent") is licensed under R.C. 1322 as a mortgage broker with the Division of Financial Institutions ("Division"). On March 14, 2005 the Division notified Respondent that it intended to revoke its certificates of registration and impose a fine of \$30,000 because Respondent violated 1322.02(A), 1322.03(E), and a requirement of R.C. 1322.01(C) and (E) of the Ohio Mortgage Broker Act by operating a branch without a certificate of registration, by franchising a certificate, and by not withholding taxes for its loan officers.

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 certificates of registration, and a hearing was held on April 18, 2007. A Report and Recommendation ("Report") was filed with the Division on July 9, 2007, recommending that the Division revoke Respondent's certificate of registration. The hearing officer did not make a recommendation with respect to the fine sought by the Division. Respondent filed objections on August 23, 2007.

In accordance with R.C. 119.09, the Division has considered the record, consisting of the Report, the transcript of testimony and exhibits, Respondent's objections 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 last sentence of the Hearing Officer's Report & Recommendation (I)(C)(10) to read "Meriruth Hughes-Stemple testified that during all these times, she believed she was working from a licensed branch of Respondent." (Tr. p.4)

The Division modifies the Hearing Officer's Report & Recommendation sections (I)(C)(13), (I)(C)(16), (I)(C)(18), (I)(C)(21), and (I)(C)(22) to include "Meriruth Hughes-Stemple testified that..." before the words of the Hearing Officer.

The Division approves the Hearing Officer's Report & Recommendation section (I)(C)(20) but adds the following: Amerimortgage, Inc. was not obligated as lessee on the subject lease. Meriruth Hughes-Stemple was obligated individually on the lease. Exhibit 17.

The Division disapproves the Hearing Officer's Report and Recommendation in (I)(C)(23) that the monies were deposited in the name of Amerimortgage, Inc. because it is contrary to the record. Ms. Stemple testified that she deposited checks from Mr. Urban into the "Amerimortgage" account opened under her Social Security number and for which the paperwork was admitted into the record as Exhibit 21. Ms. Stemple testified that she opened the account indicated in Exhibit 21 for the branch office at 1675 State Road. Exhibit 21 evidences an account in the name of Meriruth Hughes-Stemple dba Amerimortgage and the identifying number on the account is Meriruth Hughes-Stemple's Social Security number. (Tr. at 100-102). Mr. Urban, the owner of Amerimortgage, Inc. did not have signing authority for the account into which Ms. Stemple deposited her branch payments, Exhibit 21. (Tr. at 135). Therefore, this account into which Ms. Stemple deposited the branch earnings was not an account of Amerimortgage, Inc.

The Division approves the Hearing Officer's Report & Recommendation (I)(C)(29) but inserts the words "used as branch" after the word "were" in the second sentence and notes that Amerimortgage, Inc. was not obligated on the lease of 122 Broad Blvd. Meriruth Hughes Stemple and Kerry White, loan officers for Amerimortgage, Inc. were individually obligated. Exhibit 17.

The Division approves (I)(C)(31) of the Hearing Officer's Report & Recommendation but states that under R.C. 1322.01(C), the definition of "employee" is "an individual for whom a mortgage broker, in addition to providing a wage or salary, pays social security and unemployment taxes, provides workers' compensation coverage, and withholds local, state, and

federal income taxes.” There was testimony and exhibits indicating that at the time Meriruth Hughes-Stemple was paid, from 2002 through 2004, her taxes were not withheld. (Exhibits 12, 12A, 12B, 23, Tr. at p. 105-107). Therefore, there is some evidence in the record indicating that Meriruth Hughes-Stemple had a relationship with Amerimortgage, Inc. other than an “employee.” However, the record is clear that from 2002-2004, Ms. Stemple was licensed as a loan officer for Amerimortgage, Inc. (Tr. p. 19-20, 30). The record also indicates that due to Ms. Stemple’s position and license as a loan officer for Amerimortgage, Inc., federal, state, and local taxes should have been withheld by Amerimortgage, Inc.

The Division disapproves (I)(C)(33) of the Hearing Officer’s Report & Recommendation. Samuel Urban admitted that the franchise agreement between Amerimortgage, Inc. and Ms. Stemple was being performed and followed between the time periods of 2002-2004, during a time that such agreements and arrangements violated the Ohio Mortgage Broker Act. (Tr. p. 66) The Division finds this testimony of Mr. Urban credible, since he was alerted of the Division’s allegations and findings of a violation by the Notice of Opportunity for a Hearing on the revocation of Amerimortgage, Inc.’s mortgage broker certificate of registration and the fact that Mr. Urban had nothing to gain through this admission. (The hearing officer also found Mr. Urban believable as to this issue, since in section (II)(B)(13) of the Report and Recommendation, the hearing officer found that by Mr. Urban’s own admission, Amerimortgage, Inc. violated R.C. 1322.03(E)). In contrast, Meriruth Hughes-Stemple denied that this franchise agreement was being followed. (Tr. at 109). Her testimony was self-serving, considering that the Division has pending actions to deny her mortgage broker certificate of registration application and to revoke her loan officer license due to the performance of the subject franchise agreement and actions cited herein. For this reason, the Division disagrees and disapproves of section (I)(C)(33) of the report.

The Division approves the Hearing Officer’s Report and Recommendation section (II)(B)(4) but states that the administrative rule cited by the hearing officer went into effect September 1, 2006 and the conduct the Division alleges and finds as violating the Ohio Mortgage Broker Act occurred between 2002-2005. This rule serves as guidance as to the method the Division of Financial Institutions used even during the time prior to the effective date of the

administrative rule in evaluating what constitutes a branch according to the Ohio Mortgage Broker Act.

R.C. 1322.10(A)(2) indicates that the Division may fine registrants up to one thousand dollars for each day a violation is committed, and, in case of a pattern of repeated violations of law or rule, up to two thousand dollars a day. According to these guidelines, the Division may seek \$30,000, considering the duration of the violations, although \$30,000 is clearly not the maximum the Division may seek. However, the Division finds that according to R.C. 1322.10(A)(2) it has not established that a \$30,000 fine is appropriate, especially since there was no testimony as to the ability of Respondent to pay a fine. The Division approves section (II)(B)(18) through (II)(B)(20) of the hearing officer's report and recommendation. Consequently, the Division is not imposing a fine on the Respondent.

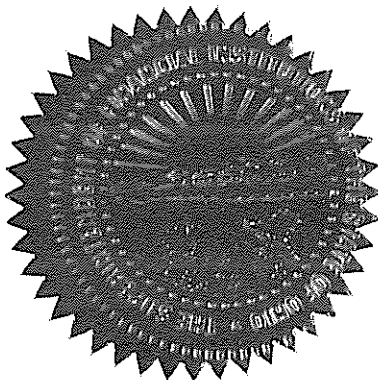
For the reasons stated above and in accordance with the hearing officer's Report and Recommendation, the Division hereby revokes the certificates of registration of Amerimortgage, Inc.


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 17TH day of SEPTEMBER 2007




RICHARD F. KECK
Acting Deputy Superintendent for Consumer Finance
Division of Financial Institutions
Ohio Department of Commerce

**STATE OF OHIO
DEPARTMENT OF COMMERCE**

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IN THE MATTER OF:

AMERIMORTGAGE, INC.

DIVISION OF FINANCIAL
INSTITUTIONS

CASE NO. 05-002-MBR

**REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER D. MICHAEL QUINN**

Issued July 5, 2007

I. FINDINGS OF FACT

A. BACKGROUND

The above-captioned matter came before this Hearing Officer, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions (hereinafter the "Division") to serve as Hearing Officer for an adjudicative hearing in accordance with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (hereinafter "O.R.C."). Said hearing was held at 10:30 AM on April 18, 2007, at 77 South High Street, 23rd Floor, West Conference Room, Columbus, Ohio.

The hearing was held at the request of Respondent Amerimortgage, Inc., of Canton, Ohio (hereinafter the "Respondent") to consider the Division's Notice of Intent to Assess Fine and Revoke Mortgage Broker Certificates of Registration, Notice of Opportunity for a Hearing (hereinafter "NOH"). Said NOH was based upon an allegation that Respondent has been operating an unauthorized and unlicensed branch office of Amerimortgage, Inc.; that Respondent, through its sole owner and manager, had franchised Amerimortgage, Inc.'s certificate of registration; and that Respondent, through its sole owner and manager, failed to withhold local, state and federal taxes, and is thereby subject to license revocation and a fine. The Division appeared and was

represented by the Ohio Attorney General's Office, Assistant Attorney General Mindy Worley. Respondent appeared and was represented by John W. Ergazos, Esq., of Canton, Ohio.

At the hearing, Division's Exhibits 1 through 12, 12A, 12B, 12C, 12D, 12E, 15, 17, and 19 through 23 were admitted into the record. Exhibit 16 was successfully objected to by Respondent and there were no Exhibits 13, 14 or 18, Respondent's Exhibits A through H were all admitted into the record; Exhibit I was proffered, after a successful objection by the Division, as discussed in the transcript (hereinafter "Tr."). All Exhibits are subject to the weight deemed to be appropriate to be afforded the documents. Two witnesses appeared for the Division, in addition to calling Mr. Samuel Urban, the President and owner of Respondent, as on cross. Samuel Urban appeared as Respondent's one witness.

The Division offered a letter, which they indicated was supplied by Ms. Stemple, reputedly written by a Marjorie Fisher who was not present at the hearing. Because the letter was not notarized, and because Respondent brought into question the legitimacy of the letter, discussion ensued whether to admit the document. The decision was to admit the letter (Exhibit 20) and determine at the time of writing the Report how much, if any, weight to grant the exhibit. After careful reflection, it has been determined that it will not be granted any weight because it cannot be authenticated. (See Tr. pp. 211-273.)

This case was originally consolidated with the Division actions against the loan officer license of Meriruth C. Hughes-Stemple, case number 05-0021-LOR and Meriruth C. Hughes-Stemple, dba Amerimortgage, case number 05-0011. The allegations arose from the same facts. The Division had issued an NOH to deny the mortgage broker certificate of registration application of Stemple-White's Amerimortgage Limited Partnership, case number 05-0011-MBD, but the previous request for a hearing was withdrawn by that Respondent as the entity was unable to afford the services of counsel and it was no longer seeking a license. Eventually, the instant matter was separated and heard on its own.

B. JURISDICTION

The Division issued the NOH against Respondent on March 14, 2005. Service was effected by certified mail on, or before, March 17, 2005. Respondent requested a hearing, which was received by the Division on, or around, April 8, 2005. By letter of April 11, 2005, the Division scheduled the hearing for April 18, 2005, but continued the hearing to an indefinite date on its own motion (Exhibit 10). Over one year later, the Division sent a letter, on July 13, 2006, which scheduled the hearing for September 6, 2006. On September 12, 2006, the Division requested a continuance to November 8, 2006. Subsequently, Respondent requested a continuance to January 19, 2007 and

then the hearing was continued to February 9, 2007, at the Division's request, and then to March 28, 2007, at Respondent's request and finally to April 18, 2007, at the Division's request, at which time the hearing went forward. (Exhibits 1-10.)

C. PROPOSED ISSUANCE OF ORDER TO REVOKE MORTGAGE BROKER CERTIFICATE OF REGISTRATION

1. The Division is the state agency responsible for mortgage broker licensing and regulation pursuant to O.R.C. Chapter 1322.
2. A statutory requirement became effective on May 2, 2002, which, for the first time, mandated that Mortgage Loan Officers become licensed, prohibited the franchising of Mortgage Broker's licenses, and imposed numerous other regulatory requirements. (Senate Bill 76, 2001.)
3. Respondent has been operating as an Ohio mortgage broker since about 1998 and continues to do so currently. (Exhibits 11-23; Tr. p. 208, but compare pp. 15-16.)
4. Amerimortgage, Inc., has been owned and operated throughout the relevant time period by Mr. Samuel Urban (hereinafter "Mr. Urban"), who also functions as the operations manager and President. The address for Amerimortgage, Inc. was 3437 Whipple Ave., N.W., Canton, OH at the time of the effective date of the new law (2002). However, sometime thereafter, the office location was moved to 3503 Whipple Ave. N.W., Canton, where it is presently located. (Exhibits 11 through 23; Tr. pp. 15-22, 72, 132, 208.)
5. To become a mortgage broker, Ohio law requires an application to be submitted to the Division for review. (Section 1322.02, O.R.C.)
6. On or about May 21, 2004, the Division received from Ms. Meriruth C. Hughes-Stemple, at the time an employee of Respondent, a Mortgage Broker Certificate of Registration Application (hereinafter the "Application"), signed by Ms. Stemple as sole proprietor. (Exhibit 17; Tr. pp. 68-69, 108-110, 130.)
7. Ms. Stemple has been a loan officer since 1998 to 2005 and has been licensed with the Division as a loan officer since 2002 (the first year the state licensing became effective). Ms. Stemple had been employed as a loan officer with Amerimortgage, Inc. throughout the time she has been licensed, until recently. (Exhibit 11; Tr. pp. 23-24; 76-77.)

8. Ms. Stemple and others worked as loan officers, on behalf of Respondent, on a regular basis, out of offices located in Cuyahoga Falls area. (Tr. pp. 19-34; 77-81.)
9. The work that Ms Stemple and the other loan officers did on behalf of Respondent in the offices located in the Cuyahoga Falls area constituted all manner of activities related to a mortgage broker's license and mortgage broker records were kept there. (Tr. pp. 19-34, 80-87, 137, 173-174.)
10. Respondent was licensed to operate out of the address of 3437 Whipple Avenue Northwest, Canton, Ohio. Originally Ms. Stemple operated out of 395 East Tallmadge Avenue, Akron. After that, during the time of the franchise agreement, from 2000 to 2002 (see below), and for two years thereafter, she worked at 1675 State Road, Cuyahoga Falls. Then, about April 2004, that office was moved to 122 Broad Boulevard, Cuyahoga Falls, which is the office location of the proposed mortgage brokerage. During all these times, Ms. Stemple believed she was working from a licensed branch of Respondent. (Exhibit 12-E; Tr. pp. 95-96.)
11. Contained within the Application was a franchise agreement, between Ms. Stemple and Respondent, which Ms. Stemple used to demonstrate her experience. (Exhibit 12D.)
12. On or about April 1, 2000, over two years prior to the law prohibiting the franchising of mortgage broker licenses, Ms. Stemple and Mr. Urban entered into a franchising agreement whereby Ms. Stemple would operate an office of Amerimortgage, Inc., in Summit County. (Exhibit 12D; Tr. pp. 108-109.)
13. Ms. Stemple had been working as a loan officer out of an office of Amerimortgage, Inc., when the manager of that office became too ill to continue operating the office. Ms. Stemple was offered an opportunity to keep the office open by Mr. Urban. To do so, Ms. Stemple signed the franchise agreement and took the office over as manager. (Tr. p. 134.)
14. Ms. Stemple operated a franchised branch of Amerimortgage, Inc. beginning after the franchising agreement was executed on April 1, 2000. (Exhibit 12; Tr. pp. 49-50.)
15. According to Mr. Urban, that franchise agreement continued until, at least, sometime in 2004. (Exhibit 12E; Tr. pp. 49-50.)

16. After May 2, 2002, Mr. Urban told Ms. Stemple, and other employees, that they were not to use the word franchise, but, rather, their location was a branch. (Tr. pp. 109.)
17. Ms. Stemple paid Respondent for the branch licenses and the loan officers' licenses during the period from April 1, 2000 to at least sometime in 2005. (Exhibits 12D, 12E; Tr. pp. 93-97.)
18. At all times Ms. Stemple thought that she was working out of a licensed branch of Amerimortgage, Inc. (Tr. pp. 94-96.)
19. Also contained within the Stemple Application was a "Schedule A, Disclosure Form" wherein Ms. Stemple indicated what her background was in the mortgage industry and other pertinent information. Contained in that document was a statement, indicating that part of Ms. Stemple's employment history included "franchise owner branch of Amerimortgage, Inc." from "04/00 to present." (Exhibit 15.)
20. Included with the Stemple Application was a lease for premises dated March 15, 2004. (Exhibit 17; Tr. p. 130.)
21. Mr. Urban visited the proposed branch location on Broad Boulevard, took photos for the transfer application to the Division. (Tr. p. 135.)
22. Mr. Urban visited the proposed location for the branch office at State Road, took pictures and gave his approval for a branch office. (Tr. p. 137.)
23. Mr. Urban treated the various Cuyahoga Falls offices, run by Ms. Stemple, as branches. He sent checks to Ms. Stemple for any of the loans completed by the loan officers located in that office based upon the fees Respondent earned. The fees were a percentage of the loan amount and Ms. Stemple would receive between 85 and 90 per cent of the total fees. She would deposit these monies into a checking account in the name of Amerimortgage, Inc. Mr. Urban would either send Ms. Stemple the entire check covering all fees of the loan closing, including his percentage, or send Ms. Stemple her portion of the fees from a loan closing on a check written from an account held in the name of Amerimortgage, Inc. (Tr. pp. 97-104.)
24. Mr. Urban's approval was required by him on all new hires. (Tr. pp 118, 143, 146.)

25. Mr. Urban had regular conversations with Ms. Stemple concerning Amerimortgage, Inc., business. (Tr. pp. 130-132.)
26. Mr. Urban came to the Cuyahoga offices. (Tr. pp. 144.)
27. Ms. Stemple maintained a checking account on behalf of the franchise location, from which she wrote checks to cover commission payments to loan officers and other branch expenses. Mr. Urban did not have signing authority on the Cuyahoga Falls checking account that Ms. Stemple opened for the Amerimortgage office. (Exhibit 21; Tr. pp. 97-104, 111, 135.)

28. Ms. Meriruth C. Hughes-Stemple was a public accountant. She is not a CPA. (Tr. p. 88.)
29. Ms. Stemple conducted some accounting business out the offices she rented on behalf of Respondent. However, the offices in Cuyahoga Falls area were offices of Respondent, not Ms. Stemple's accounting offices. (Tr. pp. 76, 112-113.)
30. Ms. Stemple prepared W-2s and other similar type of work for the employees and offices located either on State Road or Broad Boulevard in Cuyahoga Falls. (Tr. pp. 139-140, 158.)
31. Ms. Stemple was an employee of Amerimortgage, Inc. Testimony indicated that the copies of checks comprising Exhibits 12B and 23 were signed by Mr. Urban. (Exhibits 12B, 23; Tr. pp. 221-225.)
32. Mr. Urban did not timely pay the withholding taxes for Ms. Stemple for 2001, 2002 and 2003 until July 16, 2004. While no evidence was offered whether taxes were withheld and not paid, the presumption is that since the checks to the employees were paid at the same time, the withholding taxes were never withheld. (Exhibits 12B, 23; Tr. pp. 221-225.)
33. The body language, facial expressions, voice characteristics and directness of responses to questions all evidenced the truthful, serious, credible testimony of Ms Stemple.
34. The apparent evasiveness of Mr. Urban did not enhance his credibility.

II. CONCLUSIONS OF LAW

A. JURISDICTIONAL ISSUE

1. The Division has complied with Chapter 119.

B. REVOCATION OF MORTGAGE BROKER CERTIFICATE OF REGISTRATION

2. The Division has the burden of going forward and the burden of proof for the violations they have alleged Respondent committed.
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3. Mr. Urban's actions may be attributed to Respondent. Respondent acted through Mr. Urban.

4. A principle question raised in this case is what constitutes a branch. Actually, the statutory and rule language do not differentiate between the principal and branch offices. All must be registered the same way. Section 1322.02(A)(1), O.R.C., states that "No person ... shall act as a mortgage broker without first having obtained a certificate of registration ... for every office to be maintained by the person for the transaction of business as a mortgage broker in this state." Section 1301:8-7-02(E), O.A.C., amplifies the above statute. The administrative rule states:

"... A person must register a location as an office ... where any of the following activities occur or conditions exist: (1) Financial and mortgage information is solicited from the public for sale to a mortgage broker; (2) Records required by rule 1301:8-7-06 of the Administrative Code are maintained; (3) Printed or electronic advertisements indicate that mortgage lending or brokering is conducted; or (4) Any location that is held out to the general public as a location at which the registrant, an employee of the registrant, or any agent of the registrant provides mortgage brokerage services.

There has been overwhelming evidence that the two locations in Cuyahoga Falls were locations where Respondent, through its employees, conducted business, held itself out as conducting business, and maintained records as a mortgage broker. Although the words "branch" or "main office" are not used in the statute, a plain reading of the language indicates *any* office must be registered. It was necessary, pursuant to the statute and rule quoted above, that Respondent obtain a certificate of registration for the Cuyahoga Falls offices and that was not done.

5. In addition, the question of what constitutes an office would appear to be answered as a place where the business of a mortgage broker was routinely carried out. Despite Respondent's arguments that the business of a mortgage broker may be conducted anywhere (home, office, McDonald's), if the business of a mortgage broker (customer meetings, record creation and maintenance, etc.) is routinely carried out at a specific location, that location is an office. Added to that, testimony indicated that the records of the business were maintained at the Cuyahoga Falls locations. Again, Respondent was required to obtain a certificate of registration for the Cuyahoga Falls offices.

6. Ms. Stemple's uncontradicted testimony was that Mr. Urban told her the location was a licensed branch location and she had given him checks to cover the fees. Mr. Urban also obviously knew that the Cuyahoga Falls locations were functioning as branches when, after receiving fees from a loan closing, he would either write a check to cover the portion of the fees owing to the branch or he would send Ms. Stemple the entire check to deposit and distribute, including his percentage.
7. The next issue relating to the allegations by the Division deals with whether or not Respondent had "franchised" its license. This raises two issues: first, what is a "franchise" in this context, and second, was Respondent on notice that such conduct was prohibited.
8. Section 1322.03(E), O.R.C., became effective May 2, 2002, and states, "A certificate of registration, or the authority granted under such a certificate, is not transferable or assignable and cannot be franchised by contract or any other means."
9. The prohibition exists without a definition in statute. It is pervasive enough to be considered a readily accepted form of doing business. Black's Law Dictionary (Fifth Edition) defines "franchise," in part, as follows:

In its simplest terms, a franchise is a license from owner (*sic*) of a trademark or trade name permitting another to sell a product or service under that name or mark. More broadly stated, a 'franchise' has evolved into an elaborate agreement under which the franchisee undertakes to conduct a business or sell a product or service in accordance with methods and procedures prescribed by the franchisor, and the franchisor undertakes to assist the franchisee through advertising, promotion and other advisory services. *H&R Block, Inc. v. Lovelace*, 208 Kan. 538 ...

10. The document which was created in 2000 and designated "Franchise Agreement" suggests that Respondent and Mr. Urban were aware of the term and proceeded accordingly. Although when the agreement was signed, the prohibition did not exist, Mr. Urban's testimony was that it continued to exist from May 2, 2002 when the prohibition came into effect, to sometime in 2004 when the Division brought it to his attention that it was a violation. The first check in Exhibit 12E indicates that, at least as of April 22, 2005, Mr. Urban was still receiving and cashing checks he was given to license the Cuyahoga Falls office.
11. Through its common usage in the business world, "franchise" would seem to be a term generally understood by Respondent and Mr. Urban.
12. While Mr. Urban claimed that he was unaware that the franchise agreement was a violation of the Mortgage Broker Act, ignorance of the law is not excuse.
13. By its President's own admission, Respondent violated section 1322.03(E), O.R.C., at least between 2002 and 2004.
14. The last of the Division's allegations deals with the failure of Respondent to withhold local, state and federal taxes during 2001, 2002 and 2003 while Stemple was in the Cuyahoga Falls offices.
15. Ample and credible testimony identified the checks which comprise Exhibits 12B and 23 as having been drawn on Respondent's account by Mr. Urban. Testimony also indicated that Exhibits 12, 12A and 12C indicate how the checks were drawn to pay two employees and Respondent's tax liability, in particular as it relates to Exhibit 12C. The dates of the checks match the dates on Exhibit 12A. Mr. Urban admits that he signed and sent the letter to the SSA and the IRS. All of this information indicates that Respondent did not pay the employees' local, state, and federal withholding taxes for the years 2001, 2002 and 2003.
16. Having found the withholding taxes were not paid, the Division charges Respondent with a violation of sections 1322.01(C) and (E), O.R.C. The sections cited are definitions, not prohibitions. The sections define, respectively, an "employee" and a "loan officer." They do not impose a requirement on Respondent to withhold taxes. Those requirements do exist outside of the Mortgage Broker Act, but the Division does not have the authority to enforce tax laws.

17. There cannot be a violation of a definitional statute unless there is specific language alerting the license holder that there exists a prohibition. No such language is present in sections 1322.01(C) or (E). Consequently, Respondent cannot be said to have violated those sections.
18. No testimony or legal arguments were brought forth to amplify why or how the Division chose \$30,000 as the amount of the fine. Section 1322.10(A)(2), O.R.C., indicates that the Division has the authority to fine up to one thousand dollars for each day a violation is committed, and, under certain conditions, up to two thousand dollars a day. The statute goes on to state:
-
- In determining the amount of a fine to be imposed pursuant to this division, the superintendent shall consider all of the following:
- (a) The seriousness of the violation;
 - (b) The registrant's or licensee's good faith efforts to prevent the violation;
 - (c) The registrant's or licensee's history regarding violations and compliance with division orders;
 - (d) The registrant's or licensee's financial resources;
 - (e) Any other matters the superintendent considers appropriate in enforcing sections 1322.01 to 1322.12 of the Revised Code.
19. Evidence has suggested that these are considered serious violations and that Respondent took steps to avoid detection of at least one of the violations. However, Respondent's history, resources and any other matters were not discussed or evidence presented. Since the franchise violation went on for at least two years and the branch violation went on for approximately three years, it appears that the Division is not fining the maximum for the entire time, but no indication for the time period was offered.
20. If the \$30,000 fine was for the three violations, and the Division only proved two violations, then reducing the fine by one-third would be logical. However, intuitively, the branch violation and the franchise violation were far more serious than the alleged failure to withhold employment taxes. If the Respondent does not have the resources to pay a fine of such magnitude, it would be questionable to level such a fine in addition to revoking Respondent's license to do business. However, this is all speculation.

C. DISCUSSION

Respondent was in business prior to the 2002 statute change which imposed more restrictions on the industry, including requiring that loan officers be licensed and prohibiting franchising. The evidence indicates that Respondent did not take the steps necessary to comply with all the new restrictions, and, in the case of the non-licensed branches, appears to have deliberately evaded compliance.

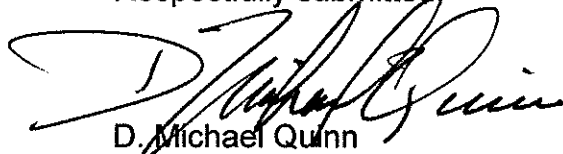
It may well be that the amount of the fine the Division is seeking is reasonable under the circumstances. However, those circumstances were never presented so it is not possible to judge the fine according to the statutory guidelines.

III. RECOMMENDATION

The Division has proven two of the three violations alleged against Respondent. Respondent did not present sufficient evidence to rebut the allegations. The evidence points to Respondent's owner and manager deliberately failing to register the offices as branches. Consequently, the recommendation to the Superintendent of Financial Institutions is to **REVOKE THE MORTGAGE BROKER CERTIFICATE OF REGISTRATION OF AMERIMORTGAGE, INC.**

The Division has not demonstrated how they determined what fine should be imposed against Respondent for the violations, so no recommendation can be made without more information.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. Michael Quinn", is written over the typed name.

D. Michael Quinn
Administrative Hearing Officer
July 5, 2007
Docket No. 06-DFI-165