

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

2009 JUN 24 AM 9: 09

IN RE:	:	CASE NO. M2008-630
	:	
COMMUNITY CHOICE MORTGAGE, LLC,	:	DELORES EVANS
RESPONDENT	:	HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued June 23, 2009

I. FINDINGS OF FACT

A. Background

This matter came before Delores Evans, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions ("Division") to serve as Hearing Officer for this hearing in accordance with the Ohio Administrative Procedure Act ("O.A.C.") and Ohio Revised Code ("O.R.C.") Chapter 119. The hearing was held on January 13, 2009, February 26, 2009, February 27, 2009, and April 2, 2009 at 77 South High Street, in Columbus, Ohio. For the purpose of administrative efficiency, this matter was heard simultaneously with *In re Dino Ferrando* (Case # M2008-640), *In re Brian S. Davis* (Case # M2008-657), and *Sabrina Bonacci* (Case # M2008-642) because the cases involve the same facts and witnesses. However, four separate decisions have been issued.

The Division held the hearing to consider the October 3, 2008 Notice of Intent to Revoke Mortgage Broker Certificate of Registration, Notice of Intent to Fine, and Notice of Opportunity for a Hearing ("NOH"). The Division alleged that Community Choice Mortgage, LLC ("Respondent") failed to: (1) properly submit Notice of Closure Forms to the Division; (2) maintain a physical office location in Ohio; and (3) maintain records pertaining to business transacted pursuant to the Ohio Mortgage Broker Act. The Division asserted that Respondent abandoned and discarded mortgage records. The Division seeks to revoke Respondent's mortgage broker certificate of registration and impose a fine totaling \$10,000.00 against Respondent.

James Evans, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Edward Hayman, Esq., represented Respondent, Brian Davis, and Dino Ferrando. Keevin Berman, Esq., represented Sabrina Bonacci. Brian Forbes, Esq., represented Barbara Luczywo during the proceedings. Brian Davis, Dino Ferrando, Sabrina Bonacci, Jacqueline Mallett, John Cronin, Charles Taylor, Phillip Roscoe, Kathy

Hannah, Barbara Luczywo, Wayne Luczywo, and Michelle Stefano testified at the hearing.

State's Exhibits 1 through 11 were introduced and admitted into the record. State's Exhibits 13 through 16 were introduced and admitted into the record. Respondent made a relevancy objection to State's Exhibit 12. The Hearing Officer sustained the objection. The Division proffered State's Exhibit 12 into the record. Respondent's Exhibits A through F were introduced and admitted into the record. The record was closed at the end of the day on April 2, 2009.

B. Jurisdiction and Procedural Matters

1. On October 3, 2008, the Division sent the NOH to Respondent's statutory agent via certified mail, return receipt requested. The NOH indicated that Respondent had 30 days to request a hearing concerning the matter. Service was perfected on October 6, 2008. *State's Exhibit 1*
2. On October 23, 2008, the Division received Respondent's hearing request. *State's Exhibit 1*
3. On October 28, 2008, the Division scheduled the hearing for January 13, 2009. The Division sent the hearing notice to Respondent's attorney via ordinary mail. *State's Exhibit 1*
4. The parties stipulated to the admission of State's Exhibits 1 through 4.

C. Respondent Activities

5. Respondent held a mortgage broker certificate of registration (# 802496) from the Division, which expired on April 30, 2009. *State's Exhibit 1, page 15*
6. Dino Ferrando and Brian Davis are Respondent's co-members. *State's Exhibit 11; Testimony of Mr. Ferrando; Testimony of Mr. Davis*
7. Sabrina Bonacci served as Respondent's operations manager. *State's Exhibit 4; Testimony of Ms. Bonacci*
8. Prior to September 20, 2008, Respondent's business office was located at 23660 Miles Road, Bedford Heights, Ohio 44128 ("Miles Road"). *State's Exhibit 1; Testimony of Mr. Davis*
9. In 2001, Respondent began renting office space on the second floor of the Miles Road building. *Testimony of Mr. Davis*
10. In 2005, S&L Properties, Ltd. ("S&L") purchased the Miles Road property. Wayne Luczywo owns S&L. S&L's office is located on the first floor in the Miles

Road building. Barbara Luczywo is married to Wayne Luczywo. Since May 2006, Mrs. Luczywo has served as the building manager for the Miles Road property. *Testimony of Mr. Luczywo; Testimony of Mrs. Luczywo*

Wednesday, September 16, 2008

11. On or around September 16, 2008, Mr. Ferrando and Mr. Davis informed Respondent's staff that they would be closing the business on September 20, 2008. *Testimony of Ms. Bonacci*
12. Ms. Bonacci contacted the Division to obtain closing procedure information. Ms. Bonacci obtained the necessary forms and information from the Division. Ms. Bonacci informed Mr. Davis and Mr. Ferrando about the Division's 30-day closing rule and the Mortgage Broker Office Closure Forms Part A and Part B ("Closure Forms"). *Testimony of Ms. Bonacci*
13. Ms. Bonacci completed the Closure Forms and Mr. Ferrando signed them. *Testimony of Ms. Bonacci; Testimony of Mr. Ferrando.* The Closure Forms indicated that Respondent's records were to be stored at 26401 Emery Road, Warrensville Heights, Ohio 44128 ("Emery Road"). *State's Exhibit 1, pages 11 and 12*
14. Mr. Davis and Mr. Ferrando decided to ignore the Division's 30-day closing rule and close Respondent on September 20, 2008. Ms. Bonacci felt uncomfortable with their decision and tendered her resignation. *Testimony of Ms. Bonacci*
15. Ms. Bonacci did not return to Miles Road after September 16, 2008. Ms. Bonacci denied ever discarding any records that the Division required to be maintained. *Testimony of Ms. Bonacci*

Thursday, September 18, 2008

16. Kathleen Hannah is an employee of Berman Moving & Storage and InfoShred. InfoShred is an on-site document destruction company. Respondent was an InfoShred customer. Respondent used an InfoShred receptacle bin to store its soon to be shredded documents. One receptacle bin could hold approximately 75 pounds of paper. *Testimony of Ms. Hannah*
17. On September 18, 2008, Ms. Hannah received a telephone call from a male who identified himself as an employee of Respondent. The caller requested that an InfoShred truck be sent to Miles Road for document pick up and destruction. Ms. Hannah informed the caller that InfoShred was unable to perform a site visit that day. Ms. Hannah, however, advised the caller that he could deliver the documents to the nearest InfoShred location. *Testimony of Ms. Hannah*

18. Mr. Davis and Mr. Ferrando delivered numerous documents for destruction to InfoShred. *State's Exhibit 10; Respondent's Exhibit A; Testimony of Mr. Davis; Testimony of Mr. Ferrando*
19. Approximately 500 – 600 pounds of paper was delivered, well over the amount of paper that could fit into one InfoShred bin. *Testimony of Ms. Hannah*

Saturday, September 20, 2008

20. On September 20, 2008, Mr. Davis and Mr. Ferrando, along with two movers and a few friends (not employees of Respondent), moved Respondent's belongings from Miles Road. Seven or eight filing cabinets containing Respondent's mortgage records were subsequently relocated to Emery Road. Mortgage records older than four years were placed into Respondent's InfoShred receptacle bin. *Testimony of Mr. Davis; Testimony of Mr. Ferrando*
21. Mr. Davis and Mr. Ferrando completed the move between 3 – 4 p.m. Mr. Davis closed the door to Ms. Bonacci's office, but left the door unlocked to allow InfoShred entry to retrieve the receptacle bin and documents on Monday, September 22, 2008. The InfoShred bin was closed and locked when Mr. Davis departed the Miles Road premises on September 20, 2008. InfoShred had been scheduled to retrieve the documents and receptacle bin on Monday, September 22, 2008. *Testimony of Mr. Davis*
22. Around 5:45 p.m., Ron White, a Miles Road tenant, telephoned the Luczywos to inform them that the side door to the building would not lock and that Respondent had vacated the premises. *Testimony of Mr. Luczywo*
23. When the Luczywos arrived at the Miles Road building around 6:30 p.m., no tenants were present. Mr. Luczywo proceeded to inspect and fix the side door, while Mrs. Luczywo began collecting trash that had been discarded on the lobby floor. After examining the side door, Mr. Luczywo went upstairs to Respondent's offices. Mr. Luczywo noticed papers were sticking out of the InfoShred bin. Mr. Luczywo locked the door and went downstairs. *Testimony of Mr. Luczywo*
24. While at the dumpster discarding the trash she found in the lobby, Mrs. Luczywo observed documents in the dumpster with Respondent's name on them. The documents contained individuals' social security numbers, credit report information, and other sensitive information. After discovering the documents, the Luczywos contacted the Bedford Heights Police Department. *Testimony of Mr. Luczywo; Testimony of Mrs. Luczywo*
25. Officers Chow and Majer of the Bedford Heights Police Department were dispatched to Miles Road after receiving a report of property damage and the dumping of personal information into a garbage dumpster. The officers arrived

at Miles Road around 6:00 pm on September 20, 2008. *Testimony of Officer Chow*

26. Officers Chow and Officer Majer observed that the telephone wires had been severed in the second floor telephone room. *Testimony of Officer Chow; Testimony of Officer Majer; Respondent's Exhibit F*
27. Officer Chow observed and confiscated from the dumpster what he believed to have been a mortgage file. Officer Chow poured bleach on the remaining files in the dumpster in an effort to destroy the documents and prevent someone from reading the information. Officer Chow later destroyed the file he confiscated from the dumpster. *Testimony of Officer Chow; Testimony of Officer Majer*
28. Charles Taylor, another Miles Road tenant, was also at the building on September 20, 2008. Mr. Taylor observed a white truck and Mr. Ferrando and Mr. Davis moving a file cabinet. Mr. Taylor did not observe anyone discarding files into the dumpster nor did he subsequently see any files in the dumpster on September 20, 2008. *Testimony of Mr. Taylor*
29. Phillip Roscoe, another Miles Road tenant, was working on centerpieces in the foyer of the building on September 20, 2008. Phillip Roscoe witnessed Mr. Ferrando and Mr. Davis, along with a group of men, moving office furniture and boxes. Mr. Roscoe did not see anyone discarding files into the dumpster nor did he subsequently see any files in the dumpster on September 20, 2008. Mr. Roscoe departed the building sometime after Mr. Ferrando and Mr. Davis left the premises. *Testimony of Mr. Roscoe*

Monday, September 22, 2008 – Tuesday, September 23, 2008

30. On September 22, 2008, Ms. Luczywo left a voice mail message with the Division regarding the files she and her husband discovered in the dumpster on September 20, 2008. *Testimony of Mrs. Luczywo*
31. On September 23, 2008, Jacqueline Mallett, an attorney examiner with the Division, returned Mrs. Luczywo's telephone call. Ms. Mallett informed Mrs. Luczywo that she had a legal obligation to secure the files or she could be held liable. *Testimony of Mrs. Luczywo*

Wednesday, September 24, 2008

32. John Cronin, an investigator with the Division, was assigned to investigate allegations that Respondent had abandoned and improperly disposed of records pertaining to business transacted pursuant to the Ohio Mortgage Broker Act. *Testimony of Mr. Cronin*

33. On September 24, 2008, Mr. Cronin performed a site visit of Miles Road. Mr. Luczywo escorted Mr. Cronin around the premises. Mr. Cronin observed no business activity in Respondent's offices. Mr. Cronin also observed that Respondent's InfoShred receptacle bin was unlocked and open with documents visibly inside. *Testimony of Mr. Cronin*
34. Mr. Cronin observed remnants of documents in the Miles Road dumpster that had bleach on them. *State's Exhibit 6; Testimony of Mr. Cronin*
35. State's Exhibit 6 depicts the photographs that Mr. Cronin took of the dumpster. *State's Exhibit 6; Testimony of Mr. Cronin*
36. Mr. Cronin confiscated a multitude of Respondent's documents during his visit to Miles Road. Many of the documents contained confidential information such as social security numbers, credit history, and telephone numbers. *Testimony of Mr. Cronin*
37. Mr. Cronin created a spreadsheet describing the documents found by the Luczywos in the dumpster on September 20, 2008. Many of the documents found in the dumpster were mortgage files. *State's Exhibit 7; Testimony of Mr. Cronin*
38. Mr. Cronin created a second spreadsheet describing the documents he retrieved from Respondent's offices on September 24, 2008. Several of the documents found in Respondent's offices were mortgage files. *State's Exhibit 9; Testimony of Mr. Cronin*
39. Mr. Cronin created a third spreadsheet describing the documents he retrieved from Respondent's InfoShred bin on September 24, 2008. Many of the documents found in the InfoShred bin were mortgage files. *State's Exhibit 10*
40. State's Exhibit 8 contains redacted photocopied samples of documents that Mr. Cronin confiscated on September 24, 2008 from Miles Road. *Testimony of Mr. Cronin; State's Exhibit 8*
41. Mr. Cronin confiscated buyer Uloma Curry ("Curry") original loan documents that contained blue ink signatures. The following documents were found in the Curry file: Affiliated Business Arrangement Disclosure Statement Notice, the Mortgage Loan Origination Disclosure Statement, the Federal Equal Credit Opportunity Act Disclosure, the Housing Financial Discrimination Act of 1977 Fair Lending Notice, the Disclosure Notices, the Servicing Disclosure Statement, the Truth in Lending Disclosure Statement, the Appraisal Disclosure, the Borrower's Certification & Authorization form, the Request for Verification of Rent form, the Uniform Residential Loan Application, the Good Faith Estimate, and a Purchase Agreement. Curry signed many of the documents on or about July 3, 2006.

Testimony of Ms. Mallett; State's Exhibit 8, pages 108 – 144 (State's Exhibit 8 represents photocopied versions of original Curry documents)

42. Mr. Cronin did not perform a site visit of the Emery Road location. Mr. Cronin never contacted Ms. Bonacci, Mr. Davis, or Mr. Ferrando during his investigation of the matter. *Testimony of Mr. Cronin*

Events occurring after Wednesday, September 24, 2008

43. On September 29, 2008, the Division received Respondent's Closure Forms. *State's Exhibit 1, pages 11 and 12*
44. The Division proposes a \$10,000.00 fine against Respondent. The Deputy Superintendent calculated the \$10,000.00 fine by assigning a \$1,000.00 penalty to ten of Respondent's files that were confiscated by Mr. Cronin on September 24, 2008. The Deputy Superintendent considered the factors listed in O.R.C. §1322.10(A) to determine the amount of the fine. *Testimony of Ms. Mallett*
45. Respondent raised O.R.C. §119.14 as a defense to the Division's charge that it failed to properly submit Closure Forms to the Division in violation of O.A.C. 1301:8-7-19(F).
46. The Division did not present any evidence that the Deputy Superintendent considered and calculated the proposed fine based upon a violation of O.A.C. 1301:8-7-19(F).
47. There was no evidence presented that Respondent had any prior violations on its record.
48. There was no evidence presented of Respondent's inability to pay the Division's proposed fine, beyond the fact that Respondent is currently closed.

II. CONCLUSIONS OF LAW

49. The Division has procedurally complied with O.R.C. Chapter 119 and jurisdiction has been established over this matter.
50. The Division is responsible for the administration, regulation, and enforcement of the Ohio Mortgage Broker Act, O.R.C. Chapter 1322 and the rules promulgated under that Chapter.
51. At all times relevant to this matter, Respondent held a mortgage broker certificate of registration and was subject to the laws in O.R.C. Chapter 1322 and the rules promulgated pursuant to that Chapter.

52. The burden of proof lies with the Division and that burden is based on a preponderance of the evidence standard. *Sanders v. Fleckner* (1950), 59 Ohio L. Abs. 135, 98 N.E. 2d 60.
53. Administrative agencies have a duty to base their conclusions on competent evidence. *State ex rel. Chrysler Plastic Products Corp. v. Industrial Comm.* (1987), 39 Ohio App.3d 15
54. Pursuant to O.R.C. §119.12, in an administrative appeal, the trial court reviews administrative orders to determine whether they are supported by reliable, probative, and substantial evidence and are in accordance with law. *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St. 3d 83, 87.
55. Reliable evidence is dependable and trustworthy. Probative evidence tends to prove the issue in question. Substantial evidence has weight, importance, and value. *Our Place Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571.
56. In the first charge, the Division alleges that Respondent failed to timely submit Closure Forms to the Division in violation of O.A.C. 1301:8-7-19(F).
57. O.A.C. 1301:8-7-19(F) provides that:

At least thirty days prior to the closure of a registered office location, the registrant shall notify the division by filing a "Notice of Office Closure – Part A" form approved by the division. The form shall indicate the custodian of the records and the location where the records will be maintained in compliance with rule 1301:8-7-06 of the Administrative Code. Within five business days after the closure, the certificate of registration issued to that location shall be surrendered to the division by returning it to the division along with the "Notice of Office Closure – Part B" form approved by the division.
58. Respondent closed on September 20, 2008 and the Division received Respondent's Closure Forms on September 29, 2008.
59. Respondent failed to submit Closure Form Part A to the Division thirty days prior to the close of the business. Respondent also failed to submit Closure Form Part B to the Division within five days of the closing of Respondent.
60. Respondent violated O.A.C. 1301:8-7-19(F). The Division has met its burden of proof with respect to Charge One.

61. The Division alleges in its second charge that Respondent failed to maintain an office location in Ohio in violation of O.R.C. §1322.02(A)(1) and O.A.C. 1301:8-7-02(G).
62. O.R.C. §1322.02(A)(1) provides that a registrant shall maintain an office location in this state for the transaction of business as a mortgage broker.
63. O.A.C. 1301:8-7-02(G) provides that every registrant shall maintain at all times at least one office located in the state of Ohio.
64. Respondent held a mortgage broker certificate of registration that expired on April 30, 2009. Between September 20, 2008 and April 30, 2009, Respondent failed to maintain an office in Ohio.
65. Respondent violated O.R.C. §1322.02(A)(1) and O.A.C. 1301:8-7-02(G). The Division has met its burden of proof with respect to Charge Two.
66. The Division alleges in its third charge that Respondent failed to maintain records pertaining to business transacted pursuant to the Mortgage Broker Act in violation of O.R.C. §1322.06(B) and O.A.C. 1301:8-7-06(A) and (B).
67. O.R.C. §1322.06(B) provides that a registrant shall maintain for four years records pertaining to business transacted, which includes all mortgage loan origination disclosure statements prepared in accordance with O.R.C. §1322.062 for four years.
68. O.A.C. 1301:8-7-06(H)(3) states:
 - (H) Every registrant must make, maintain, keep current and preserve the following books and records in a legible and readily accessible format:
 - (3) Individual Buyer Files. Each registrant shall create, maintain, and keep current, a separate file for each application received. Each individual buyer file shall contain, when applicable, at least the following:
 - (a) A copy of the original loan application signed and dated by the buyer and the individual originating the loan, including any attachments, supplements, or addenda thereto;
 - (b) Credit information such as written authorizations to order credit report(s), verifications, credit reports, and any correspondence regarding credit repair;

(c) Signed and dated copies of any and all contractual agreements or understandings, including, but not limited to, any interest rate lock-ins or loan commitments, broker or co-broker agreements, and all notes and memoranda of conversations or meetings with any mortgage applicant or any other party in connection with that mortgage loan application or its ultimate disposition;

(d) A copy of the original signed and dated mortgage loan origination disclosure statement, as well as any revised copies, as mandated by section 1322.062 of the Revised Code and in compliance with rule 1301:8-7-15 of the Administrative Code;

(e) Copies of all applicable federal disclosures given to the individual buyer, including but not limited to:

(i) The original dated, as well as any revised: Good Faith Estimate; HUD-1 and HUD 1-A settlement statements; Required Use Disclosure; Affiliated Business Arrangement Disclosure; and or Mortgage Servicing Disclosure, as required under the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. sections 2601-2617, and the rules promulgated thereunder, known as Regulation X and codified in 24 C.F.R. Part 3500 and in effect on January 1, 2007. Each HUD statement shall comply with the disclosure requirements of paragraph (H)(2) of this rule;

(ii) The original dated, as well as any revised Truth in Lending Disclosure Statement, as required by the federal Truth in Lending Act, 15 U.S.C. sections 1601-1667f., and the rules promulgated under the act, known as Regulation Z, found in 12 C.F.R. Part 226 and in effect on January 1, 2007; and

(iii) Copies of any disclosure required by the federal Equal Credit Opportunity Act, 15 U.S.C. sections 1691-1691f, and the corresponding rules, titled Regulation B, found in 12 C.F.R. Part 202 effective January 1, 2007, including any required thirty-day notification; notice of right to receive a copy of the appraisal; and denial notices;

(f) A copy of each appraisal and the corresponding appraisal invoice;

(g) Receipts or other documentation acceptable to the superintendent for any fees collected by the registrant from the buyer on behalf of third-party service providers such as real estate appraisers, title companies, credit reporting services, and couriers, including receipts for any rate lock fees collected from buyers on behalf of mortgage lenders, or flood plain certification reports. This rule shall apply whether or not the collection or receipt of the fees occurs prior to the closing of the loan or the fees are paid to the registrant from the proceeds of the loan: and

(h) Copies of applicable disclosures required by state law.

69. O.A.C. 1301:8-7-06(A) and (B) state:

(A) In accordance with division (B) of section 1322.06 of the Revised Code, a registrant shall maintain records pertaining to business transacted pursuant to sections 1322.01 to 1322.12 of the Revised Code for four calendar years. If the loan is not serviced by the registrant, the retention period commences on the date the loan is closed or, if the loan is not closed, the date of the withdrawal or turndown of the loan application. If the loan is serviced by the registrant, the retention period commences on the date the loan is paid in full or the date the licensee ceases to service the loan.

(B) If a person surrenders its certificate of registration or otherwise ceases to engage in business as a mortgage broker, such person shall nonetheless preserve the records required by this rule.

70. Mr. Cronin confiscated buyer Curry's original mortgage file on September 24, 2008 from Respondent's former business address, Miles Road.
71. Even though Respondent ceased to engage in business as a mortgage broker on September 20, 2008, Respondent was required to maintain mortgage records for four years pursuant to O.R.C. §1322.06(B) and O.A.C. 1301:8-7-06(A) and (B).
72. Respondent failed to maintain buyer Curry's 2006 mortgage file for four years.
73. Respondent violated O.R.C. §1322.06(B) and O.A.C. 1301:8-7-06(A) and (B). The Division has met its burden of proof with respect to Charge Three.
74. The Division alleges in its fourth charge that Respondent violated O.R.C. §1322.07(C).
75. O.R.C. §1322.07(C) states:

No mortgage broker, registrant, licensee, or applicant for a certificate of or license under sections 1322.01 to 1322.12 of the Revised Code shall do any of the following:

* * *

(C) Engage in conduct that constitutes improper, fraudulent, or dishonest dealings.

76. Respondent's failure to maintain buyer Curry's 2006 mortgage file for four years constitutes improper conduct in violation of O.R.C. §1322.07(C).
77. Respondent's failure to timely submit Closure Forms to the Division constitutes improper conduct in violation of O.R.C. §1322.07(C).
78. Respondent's failure to maintain an office location in Ohio constitutes improper conduct in violation of O.R.C. §1322.07(C).
79. The Division has met its burden of proof with respect to Charge Four.
80. The Division alleges in its fifth charge that Respondent violated O.R.C. §1322.081(A)(3) and (4).
81. O.R.C. §1322.081(A)(3) and (4) state:

(A) A registrant, licensee, and any person required to be registered or licensed under this chapter, in addition to duties imposed by other statutes or common law, shall do all of the following:

* * *

(3) Act with reasonable skill, care, and diligence;

(4) Act in good faith and with fair dealing in any transaction, practice, or course of business in connection with the brokering or originating of any mortgage loan.

82. Respondent failed to act with reasonable skill, care, and diligence in violation of O.R.C. §1322.081(A)(3) when it failed to maintain buyer Curry's 2006 mortgage file for four years.
83. Respondent failed to act with reasonable skill, care, and diligence in violation of O.R.C. §1322.081(A)(3) when it failed to timely submit Closure Forms to the Division.

84. Respondent failed to act with reasonable skill, care, and diligence in violation of O.R.C. §1322.081(A)(3) when it failed to maintain an office location in Ohio.
85. This Hearing Officer finds a violation of O.R.C. §1322.081(A)(3).
86. There was insufficient evidence presented that Respondent failed to act in good faith and fair dealing with respect to the brokering or originating of any mortgage loan in violation of O.R.C. §1322.081(A)(4).
87. The Division alleges in its sixth charge 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 purposes of the Ohio Mortgage Broker Act.
88. Respondent's failure to: (1) properly submit Notice of Closure Forms to the Division; (2) maintain a physical office location in Ohio; and (3) maintain records pertaining to business transacted pursuant to the Ohio Mortgage Broker Act demonstrates that Respondent's character and general fitness does not command the confidence of the public to warrant the belief that it would be operated honestly and fairly in compliance with the Ohio Mortgage Broker Act. O.R.C. 1322.04(A)(10)

Sanctions – The Division seeks to impose a \$10,000 fine against Respondent and revoke Respondent's loan officer license

89. O.R.C. §1322.10(A)(2) states:

(A) After notice and opportunity for a hearing conducted in accordance with Chapter 119 of the Revised Code, the superintendent of financial institutions may do the following:

(2) Impose a fine of not more than one thousand dollars, for each day a violation of a law or rule is committed, repeated, or continued. If the registrant or licensee engages in a pattern of repeated violations of a law or rule, the superintendent may impose a fine of not more than two thousand dollars for each day the violation is committed, repeated, or continued. All fines collected pursuant to this division shall be paid to the treasurer of state to the credit of the consumer finance fund created in section 1321.21 of the Revised Code. 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.

90. The Division seeks to levy a \$10,000.00 fine against Respondent based upon the charges contained in the NOH.
91. The Division has met its burden of proof for imposing a fine upon Respondent in light of the above violations.
92. O.R.C. §119.14(A) states:

(A) For any small business that engages in a paperwork violation, the state agency or regulatory authority that regulates the field of operation in which the business operates shall waive any and all administrative fines or civil penalties on that small business for the violation, if the paperwork violation is a first-time offense.
93. Based on O.R.C. §119.14, I recommend that the Division waive any fine associated with Respondent's failure to timely submit the Closure Forms to the Division. Respondent committed a paperwork violation that was its first offense.
94. Moreover, the Division did not present any evidence that the Deputy Superintendent considered or calculated a proposed fine for the paperwork violation.
95. O.R.C. §1322.10(A)(1)(a) authorizes the Division to revoke a mortgage broker certificate of registration for lack of compliance with any provision of O.R.C. Sections 1322.01 through 1322.12.
96. The Division seeks to revoke Respondent's mortgage broker certificate of registration because Respondent failed to comply with provisions of O.R.C. Chapter 1322.
97. The Division has established that Respondent violated provisions O.R.C. Chapter 1322. Therefore, sufficient evidence exists to revoke Respondent's mortgage broker certificate of registration.

III. RECOMMENDATION

Based upon the evidence submitted into the record for this case, the Division has established a sufficient evidentiary basis for revoking Respondent's mortgage broker certificate of registration pursuant to O.R.C. §1322.10(A)(1)(a) because Respondent failed to comply with provisions of O.R.C. Chapter 1322. Therefore, I respectfully recommend that Respondent's mortgage broker certificate of registration be revoked.

The Division has also established a sufficient evidentiary basis for imposing a fine against Respondent pursuant to O.R.C. §1322.10(A)(2) because Respondent failed to comply with provisions of O.R.C. Chapter 1322.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Delores Evans", is written over a faint, circular official stamp.

Delores Evans
Hearing Officer
June 23, 2009