



Department of Commerce

Division of Financial Institutions

Ted Strickland, Governor
Kimberly A. Zurz, Director

In the matter of:

RICK L. McDONALD
6900 Long Drive Lane
Loveland, OH 45140

)
) Case No. M2010-286

) **SETTLEMENT AND CONSENT ORDER**
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WHEREAS, the Ohio Department of Commerce, by and through the Superintendent of the Division of Financial Institutions ("Division"), is charged with the responsibility of enforcing the Ohio Mortgage Broker Act, codified in Ohio Revised Code ("R.C.") Chapter 1322; and

WHEREAS, Rick L. McDonald ("Respondent") is an individual that was issued a loan officer license (LO.002834) pursuant to R.C. Chapter 1322 that expired on April 30, 2009. Respondent timely filed a 2009 renewal application which remains pending. Respondent did not file a renewal application in 2010. Respondent's address of record is 6900 Long Drive Lane, Loveland, Ohio 45140; and

WHEREAS, on March 30, 2010, the Division issued Respondent a Notice of Intent to Refuse 2009 Loan Officer License Renewal and Notice of Opportunity for a Hearing; and

WHEREAS, the Notice contained the following allegations and findings:

- A. In 2008 and 2009, Respondent was an owner and the designated and approved operations manager for OMBA registrant United Capital Mortgage of Ohio, Inc. ("United Capital").
- B. R.C. 1322.01(H) defines "operations manager" as "the individual responsible for the everyday operations, compliance requirements, and management of a mortgage broker business."
- C. The Division is authorized by R.C. 1322.10(A)(1)(a), as in effect in 2008 and 2009, to refuse to renew an applicant's loan officer license if the Division finds that the applicant has violated "or failed 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 loan officer license."
- D. R.C. 1322.01(A)(1), as in effect in 2008 and 2009, provided in part: "No person, on the person's own behalf or on behalf of any other person, shall act as a mortgage broker without first having obtained a certificate of registration from the superintendent of financial institutions for every office to be maintained by the person for the transaction of business as a mortgage broker in this state."
- E. R.C. 1322.02(B), as in effect in 2008 and 2009, provided in part: "No person, on the person's own behalf or on behalf of any other person, shall act as a loan officer without having obtained a license from the superintendent."

- F. R.C. 1322.07(C), as in effect in 2008 and 2009, prohibits registrants or applicants for a certificate of registration from engaging in conduct that constitutes improper, fraudulent, or dishonest dealings.
- G. United Capital's only registered address of record is 100 Merchant Street, Suite 175, Cincinnati, Ohio 45246. On or about December 8, 2008, United Capital submitted a branch application for 20325 Center Ridge Road, Suite 613, Rocky River, Ohio 44116, which remains pending.
- H. From approximately May 7, 2008 to January 7, 2009, United Capital employed loan officer David M. Demian, LO.005691.
- I. On or about April 8, 2008, the Division sent David S. Nicolanti a letter informing him that his December 20, 2007 Loan Officer License Application was withdrawn for failure to successfully complete the Loan Officer Examination within 90 days from his authorization date. Mr. Nicolanti reapplied for a loan officer license on November 10, 2008. On or about January 5, 2009, upon Mr. Nicolanti's successful passage of the Loan Officer Examination, the Division issued Mr. Nicolanti loan officer license LO.003897.002. United Capital is Mr. Nicolanti's employer of record.
- J. Former loan officer Jeffrey A. Rocheck was issued loan officer license LO.005961. He has never been licensed to work for United Capital.
- K. On or about July 29, 2008, United Capital originated a residential mortgage loan for borrower Holloway. According to United Capital's records, a Uniform Residential Loan Application, a Truth in Lending Disclosure Statement, a Mortgage Loan Origination Agreement, a Mortgage Loan Service Agreement, a Mortgage Loan Origination Disclosure Statement, a High Loan to Value Disclosure, a Notice of Escrow of Taxes & Regular Monthly Payment, a Notice of Change in Mortgage Terms, and a HUD/VA Addendum to Uniform Residential Loan Application bear the purported signature of loan officer David Demian. Some of these documents also list Loan Officer Number "5961" next to Mr. Demian's purported signature. United Capital's "All Files-Left Side Stacking Order" form for the Holloway file states that the loan officer is David Demian and that the loan was originated at the Rocky River branch. Mr. Demian did not sign these documents, did not take a loan application from Holloway, and did not originate the loan.
- L. On or about August 21, 2008, United Capital originated a residential mortgage loan for borrowers Bortz and Newsbury. According to United Capital's records, a Uniform Residential Loan Application, a Patriot Act Customer Identification Documentation form, the Mortgage Loan Service Agreement, a Mortgage Loan Origination Disclosure Statement, a HUD/VA Addendum to Uniform Residential Loan Application, and two Notices of Escrow Taxes & Regular Monthly Payment bear the purported signature of loan officer David M. Demian. Some of these documents also list the Loan Officer Number "5961" next to Mr. Demian's purported signature. United Capital's "All Files-Left Side Stacking Order" form for the Bortz and Newsbury file states that the loan officer is David Demian and that the loan was originated at the Rocky River branch. Mr. Demian did not sign these documents, did not take a loan application from Bortz and Newsbury, and did not originate the loan.

- M. On or about September 2, 2008, United Capital originated a residential mortgage loan for borrower Hach-Wilkins. According to United Capital's records, two Uniform Residential Loan Applications, a Truth in Lending Disclosure Statement, a Mortgage Loan Origination Agreement, a Mortgage Loan Service Agreement, a Mortgage Loan Origination Disclosure Statement, a High Loan to Value disclosure, two Notices of Escrow of Taxes & Regular Monthly Payment forms, a Notice of Change in Mortgage Terms, a HUD/VA Addendum to Uniform Residential Loan Application, a Broker Fee Agreement, and a Borrower's Interest Worksheet bear the purported signature of loan officer David Demian. Some of these documents also list loan officer number "5961" next to Mr. Demian's purported signature. United Capital's "All Files-Left Side Stacking Order" form for the Hach-Wilkins file states that the loan officer is Dave Demian and that the loan was originated at the Rocky River branch. Mr. Demian did not sign these documents, did not take the loan application from Hach-Wilkins, and did not originate the loan.
- N. On or about September 2, 2008, United Capital originated a residential mortgage loan for borrower Supp. According to United Capital's records, two Uniform Residential Loan Applications, a Truth in Lending Disclosure Statement, a Patriot Act Customer Identification Documentation form, a Mortgage Loan Origination Agreement, a Mortgage Loan Services Agreement, a High Loan to Value Disclosure, A Notice of Escrow of Taxes & Regular Monthly Payment, a Notice of Change in Mortgage Terms, and a HUD/VA Addendum to Uniform Residential Loan Application bear the purported signature of David Demian. Some of these documents list loan officer license number "5961" next to Mr. Demian's purported signature. A Mortgage Loan Origination Disclosure Statement issued by United Capital to Supp bears the name of David Nicolanti, the purported signature of David Demian and loan officer license number "5961." United Capital's "All Files-Left Side Stacking Order" form for the Supp file states that the loan officer is Dave Demian and that the loan was originated at the Rocky River branch. Mr. Demian did not sign these documents, did not take a loan application from Supp, and did not originate the loan.
- O. On or about September 3, 2008, United Capital originated a residential mortgage loan for borrowers named Heath. According to United Capital's records, two Uniform Residential Loan Applications, a Truth in Lending Disclosure Statement, a Mortgage Loan Origination Agreement, and a Mortgage Loan Services Agreement purport to bear the signature of David Demian. Some of these documents list loan officer license number "5961" next to Mr. Demian's purported signature. United Capital's "All Files-Left Side Stacking Order" form for the Heath file states that the loan officer is David Demian and that the loan was originated at the Rocky River branch. Mr. Demian did not sign these documents, did not take the loan application from the Heaths, or originate the loan.
- P. On or about October 10, 2008, United Capital originated a residential mortgage loan for borrower Hassing. According to United Capital's records, two Uniform Residential Loan Applications, a Truth in Lending Disclosure Statement, a Mortgage Loan Origination Agreement, a Mortgage Loan Services Agreement, a Notice of Escrow of Taxes & Regular Monthly Payments, and a Notice of Change in Mortgage Terms bear the signature of David Demian. Some of these documents list loan officer license number "5961" next to Mr. Demian's purported signature. The borrower's loan file also contains a Uniform Residential Loan Application, a Mortgage Loan Origination Disclosure Statement, a Notice of Escrow of Taxes & Regular Monthly Payment, and a

High Loan to Value Disclosure, signed by David Nicolanti using the credential "5961." United Capital's "All Files-Left Side Stacking Order" form for the Hassing file states that the loan officer is Dave Demian and that the loan was originated at the Rocky River branch. Mr. Demian did not sign these documents, did not take a loan application from Hassing, and did not originate the loan.

- Q. On or about November 24, 2008, United Capital originated a residential mortgage loan for borrower Gue. According to United Capital's records, four Uniform Residential Loan Applications, three Truth in Lending Disclosure Statements, a Mortgage Loan Origination Agreement, a Mortgage Loan Service Agreement, two Mortgage Loan Origination Disclosure Statements, a High Loan to Value Disclosure, two Notices of Escrow of Taxes & Regular Monthly Payment, two Notices of Change in Mortgage Terms, a HUD/VA Addendum to Uniform Residential Loan Application, and a Tangible Net Benefit Worksheet bear the purported signature of David Demian. Some of these documents list loan officer license number "5961" next to Mr. Demian's purported signature, although the High Loan to Value Disclosure lists loan officer number "5691." United Capital's "All Files-Left Side Stacking Order" form for the Gue file states that the loan officer is David Demian and that the loan was originated at the Rocky River branch. Mr. Demian did not sign these documents, did not take a loan application from Gue, or originate the loan. One Mortgage Loan Service Agreement bears the signature of David S. Nicolanti.
- R. On or about December 3, 2008, United Capital originated a residential mortgage loan for borrower Kopacz. According to United Capital's records, three Uniform Residential Loan Applications, a Truth in Lending Disclosure Statement, two Mortgage Loan Origination Disclosure Statements, a Mortgage Loan Service Agreement, a Notice of Escrow of Taxes & Regular Monthly Payment, a Notice of Change in Mortgage Terms, and a HUD/VA Addendum to Uniform Residential Loan Application. Some of these documents list loan officer license number "5961" next to Mr. Demian's purported signature. United Capital's "All Files-Left Side Stacking Order" form for the Kopacz file states that the loan officer is David Demian and that the loan was originated at the Rocky River branch. Mr. Demian did not sign these documents, did not take a loan application from Kopacz, and did not originate the loan.
- S. On or about December 15, 2008, United Capital originated a residential mortgage loan for borrowers Rosser. According to United Capital's records, two Uniform Residential Loan Applications, a Truth in Lending Disclosure Statement, a Mortgage Loan Origination Agreement, a Mortgage Loan Services Agreement, a Mortgage Loan Origination Disclosure Statement, a High Loan to Value Disclosure, two Notices of Escrow of Taxes & Regular Monthly Payment, and a HUD/VA Addendum to Uniform Residential Loan Application purport to bear the signature of loan officer David Demian. Loan Officer credential "5961," or a derivative thereof, appears on some of the documents next to the purported signature of Mr. Demian. United Capital's "All Files-Left Side Stacking Order" form for the Rosser file states that the loan officer is David Demian and that the loan was originated at the Rocky River branch. Mr. Demian did not sign these documents, did not take the loan application from the Rossers, and did not originate the loan.
- T. On or about December 22, 2008, United Capital originated a residential mortgage loan for borrowers named Jacobs. According to United Capital's records, two Uniform Residential Loan Applications, two Truth in Lending Disclosure Statements, two

Mortgage Loan Service Agreements, two Mortgage Loan Origination Disclosure Statements, two Notices of Escrow of Taxes & Regular Monthly Payment, a HUD/VA Addendum to Uniform Residential Loan Application, and a Tangible Net Benefit Worksheet purport to bear the signature of David Demian. Some of these documents list loan officer license number “5961” next to Mr. Demian’s purported signature. United Capital’s “All Files-Left Side Stacking Order” form for the Jacobs file states that the loan officer is Dave Demian and that the loan was originated at the Rocky River branch. Mr. Demian did not sign these documents, did not take a loan application from the Jacobs, and did not originate the loan.

- U. On or about June 11, 2008, United Capital originated a residential mortgage loan for borrower Sileo that closed on August 4, 2008. The loan was originated out of United Capital’s Rocky River branch, and the loan officer was David Nicolanti. The branch is not registered with the Division, and Mr. Nicolanti was not a licensed loan officer at the time of the origination or closing.
- V. On or about October 13, 2008, United Capital originated a residential mortgage loan for borrowers McClary, and the loan closed on November 26, 2008. The loan was originated out of United Capital’s Rocky River branch, and the loan officer was David Nicolanti. The branch is not registered with the Division, and Mr. Nicolanti was not a licensed loan officer at the time of the origination or closing.
- W. On or about November 19, 2008, United Capital originated a residential mortgage loan for borrower Costa that closed on December 12, 2008. The loan was originated out of United Capital’s Rocky River branch, and the loan officer was David Nicolanti. The branch was not registered with the Division, and Mr. Nicolanti was not a licensed loan officer at the time of the origination.
- X. On or about December 3, 2008, United Capital originated a residential mortgage loan for borrower Gerke that closed on January 23, 2009. The loan was originated out of United Capital’s Rocky River branch, and the loan officer was David Nicolanti. The branch was not registered with the Division, and Mr. Nicolanti was not a licensed loan officer at the time of the origination.
- Y. As owner and operations manager, Respondent permitted United Capital to originate loans out of an unregistered location, permitted United Capital to forge the signature of a loan officer on mortgage loan documents, and permitted an unlicensed loan officer to originate loans in violation of R.C. 1322.07(C).
- Z. Because Respondent violated R.C. 1322.07(C) and failed, as owner and operations manager, to adequately ensure United Capital’s compliance with the OMBA, the Division finds 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, thereby failing to meet the prerequisite for loan officer license renewal found in R.C. 1322.041(B)(3) and R.C. 1322.041(A)(6).
- AA. Because Respondent violated R.C. 1322.07(C), the Division is authorized by R.C. 1322.10(A)(1)(a) to refuse to renew Respondent’s OMBA loan officer license.

WHEREAS, a hearing on this matter was scheduled for Tuesday, July 27, 2010 at 9:30 a.m. in Room 1916 of the Vern Riffe Center for Government and the Arts, 77 South High Street in Columbus, Ohio; the hearing has been continued by Order of the Hearing Examiner until September 16, 2010;

NOW THEREFORE, in consideration of the foregoing and the mutual promises set forth herein, the parties agree to the following:

- 1) Respondent neither admits nor denies the Division's allegations and findings as cited above, but in the interest of resolving this matter, Respondent agrees to the terms of this Settlement and Consent Order.
- 2) Respondent acknowledges lawful service and receipt of the Notice and stipulates to the jurisdiction of the Division in this matter.
- 3) To fully resolve this matter, Respondent requests the withdrawal of his 2009 renewal application. Further, Respondent agrees not to hold any direct or indirect interest in, be employed in, seek licensure in, or be engaged in any business or activity regulated by the Ohio Department of Commerce, Division of Financial Institutions or any successor agency, department, or division responsible for the regulation of financial institutions.
- 4) Respondent hereby agrees to forego his administrative remedies and waives any and all rights to an administrative hearing, as well as any right to appeal this matter or order.
- 5) The Division hereby accepts the withdrawal of Respondent's 2009 renewal application effective the date of the last signature below and terminates the Notice of Intent to Refuse 2009 Loan Officer License Renewal and Notice of Opportunity for a Hearing issued March 30, 2010.
- 6) If Respondent appears to have violated or breached any term or condition of this Settlement and Consent Order, the Division reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including alleged violations of any law occurring before, on, or after the effective date of this Settlement and Consent Order.
- 7) This Settlement and Consent Order shall be effective on the date it is signed by the Deputy Superintendent of the Division of Financial Institutions and on such date it will become a final order.
- 8) This Settlement and Consent Order contains the entire agreement between the parties as to the matters set forth herein and no promises, conditions or obligations, either expressed or implied, other than those set forth herein, shall be binding on either party.
- 9) Nothing in this Settlement and Consent Order shall be deemed to prevent the Division or its employees, agents, or assignees from participating in, as a witness or otherwise, any lawful action by another, or obeying any lawful court order, arising out of or related to the matters set forth in the Notice.

- 10) The parties agree that the terms of this Settlement and Consent Order bind the parties hereto, and their shareholders, partners, members, assignees, and successors in interest.
- 11) Respondent releases the Division, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter. Respondent shall not seek attorney fees or other costs arising from the within matter.
- 12) This Settlement and Consent Order shall be considered a public record as that term is used in R.C. 149.43, and may be reported to appropriate organizations, data banks, and governmental bodies, or released to the general public.
- 13) This Settlement Agreement in no way binds or limits future actions DFI may take with respect to Respondent or any other person, individual, or company, for the same or similar violations.
- 14) Respondent has been advised by the Division to seek legal counsel if he has any questions concerning the terms and/or effect of this Settlement and Consent Order.
- 15) Respondent must submit this Settlement and Consent Order completed per the terms dictated herein, no later than September 9, 2010.

For purposes of effecting this Settlement and Consent Order, it is hereby ORDERED and DECREED that:

- A. The parties to this Settlement and Consent Order shall abide by the terms of this Order as agreed.
- B. The Notice of Intent to Refuse 2009 Loan Officer License Renewal and Notice of Opportunity for a Hearing issued March 30, 2010 is hereby terminated.

LEIGH A. WILLIS Date
Deputy Superintendent for Consumer Finance
Ohio Division of Financial Institutions

9/9/10

Approved and Agreed:

RICK L. McDONALD Date

9-3-2010

AFFIDAVIT

State of Ohio)
County of Hamilton

The undersigned, Rick L. McDonald, residing at 6900 Long Drive Lane, Loveland, OH 45140, after being first duly cautioned and sworn, deposes and says that:

1. I am the president of United Capital Mortgage of Ohio, Inc (hereinafter "the Company").
2. Jeff Jacocks was employed by the Company sometime in April 2008 as a loan officer recruiter, a position he held until the Company closed its doors. At no time was Mr. Jacocks a shareholder or officer of the Company, nor was he a loan officer nor did he have underwriting or oversight responsibilities regarding loan transactions.
3. Mr. Jacocks did not acquire 25% ownership in the Company nor become a vice-president of the Company as indicated in the Company's 2009 certificate renewal application.

Further Affiant Sayeth Not.


Rick L. McDonald

Sworn to before me and subscribed in my presence this 7th day of September, 2010.



WENDY R COX
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
August 30, 2014
Recorded in
Warren County

Notary Public

