

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

In the matter of:)	Case No. M2008-569
)	
BAYVIEW MORTGAGE, INC.)	Notice of Intent to Deny Mortgage Broker
1080 Fishinger Road)	Renewal Application and Impose a Fine
Columbus, Ohio 43221)	&
)	Notice of Opportunity for a Hearing
)	

JURISDICTION

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, codified in Ohio Revised Code ("R.C.") Chapter 1322. In accordance therewith, the Division is accountable for the registration of mortgage brokers.

RESPONDENT

BAYVIEW MORTGAGE, INC. ("Respondent") is a company that held a certificate of registration to engage in business as a mortgage broker pursuant to R.C. Chapter 1322. Respondent's mortgage broker certificate of registration expired on April 30, 2008, and Respondent filed an application to renew its certificate of registration. The renewal application remains pending. Respondent's business address of record is 1080 Fishinger Road, Columbus, Ohio 43221.

NOTICE OF PROPOSED ACTION

In accordance with sections 1322.04 and 1322.10 of the R.C., and R.C. Chapter 119, the Division intends to DENY Respondent's 2008 renewal application for a mortgage broker certificate of registration and impose a FINE.

BASIS FOR PROPOSED ACTION

The Division has conducted an investigation of Respondent, pursuant to R.C. 1322.10(B), and has found the following:

- A. The Division is authorized by R.C. 1322.10(A)(1)(a) to refuse to renew an applicant's mortgage broker certificate of registration 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 certificate of registration[.]"
- B. The Division is authorized by R.C. 1322.04(B) to issue a renewal certificate of registration if the applicant complies with R.C. 1322.01 to 1322.12 and its character and general fitness commands the confidence of the public and warrants the belief that the business will be operated honestly and fairly in compliance with the purposes of sections 1322.01 to 1322.12.
- C. 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.”

- D. R.C. 1322.06(B) requires registrants to “maintain records pertaining to business transacted pursuant to sections 1322.01 to 1322.12 . . . for four years.”
- E. R.C. 1322.06(B) prohibits registrants from failing to comply with the record keeping requirement.
- F. Ohio Admin. Code 1301:8-7-06(A) requires registrants to “maintain records pertaining to business transacted pursuant to section 1322.01 to 1322.12 of the revised code for four calendar years” commencing on the “date the loan is closed” for registrants who do not service the loans. The four year records retention period for Registrants who service loans “commences on the date the loan is paid in full or the date the licensee ceases to service the loan.”
- G. The Division is required by Ohio Admin. Code 1301:8-7-21(G) to consider if an applicant “[h]as engaged in any conduct which would reflect on the reputation for honesty, integrity or competence in business” in order to determine an applicant’s character and general fitness.
- H. In or about 1994, Union Mortgage Services of Cleveland, Inc. (“Union Mortgage”) submitted an application for a certificate of registration in order to transact business under R.C. 1322.01 to 1322.12. The application indicated that James P. Simpson owned fifty percent (50%) of Union Mortgage and was its President.
- I. In or around 1994, certificate of registration MB.800309 was issued to Union Mortgage.
- J. From 1994 until the present, Union Mortgage made no indication of any change in ownership on the annual renewal applications submitted to the Division.
- K. In or about 2001, Respondent submitted an application for a certificate of registration in order to transact business under R.C. 1322.01 to 1322.12. The application indicated that James P. Simpson owned thirty-three percent (33%) of Respondent and was its Secretary.
- L. In or around 2001, certificate of registration MB.802462 was issued to Respondent.
- M. Since at least 2003, James P. Simpson has been the designated operations manager of Respondent and responsible for the day to day operations of Respondent and compliance with R.C. Chapter 1322 and the rules adopted thereunder. See, R.C. 1322.01(H), R.C. 1322.03(A)(3) and Ohio Admin. Code 1301:8-7-02(L).
- N. On or about December 26, 2006, the Ohio Secretary of State cancelled the Articles of Incorporation of Union Mortgage and it ceased to be a corporation. The Ohio Secretary of State notified Union Mortgage’s statutory agent, James P. Simpson, of the cancellation. To date, Union Mortgage has not been reinstated as a corporation.
- O. In or around 2007, files and papers from Union Mortgage were discovered in a dumpster in Cleveland, Ohio.
- P. The files removed from the dumpster related to residential mortgage refinance loan transactions that occurred from approximately January 2004 until March 2004.

- Q. The files removed from the dumpster contained confidential financial information about the consumers which included social security numbers, bank account information, bank account numbers, bank statements, credit reports, credit scores, pay stubs, W-2 forms, retirement account information and/or investment account information.
- R. In addition, the files removed from the dumpster contained personal information about the consumers which included names, dates of birth, addresses, telephone numbers and place(s) of employment.
- S. In or around 2008, Respondent submitted an application to renew its certificate of registration.

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

- 1. Respondent and Union Mortgage were owned, in part, by James P. Simpson.
- 2. Respondent's owner and operations manager James P. Simpson, by virtue of his ownership of Union Mortgage, became liable for the actions of Union Mortgage when the Articles of Incorporation were cancelled in 2006.
- 3. Respondent's owner and operations manager failed to maintain records in compliance with R.C. 1322.06(A) and Ohio Admin. Code 1301:8-7-06(A).
- 4. Because Respondent's owner and operations manager failed to maintain records in compliance with R.C. 1322.06(A) and Ohio Admin. Code 1301:8-7-06(A), the Division is authorized to deny Respondent's application for a mortgage broker renewal certificate of registration.
- 5. Because the conduct engaged in by Respondent's owner and operations manager reflects on its reputation for honesty, integrity or competence in business, the Division is authorized to deny Respondent's mortgage broker renewal certificate of registration based upon character and general fitness.
- 6. Because Respondent's owner and operations manager violated R.C. 1322.06(A) and Ohio Admin. Code 1301:8-7-06(A), the Division may impose a ten thousand dollar (\$10,000.00) fine upon Respondent.
- 7. Because Respondent's owner and operations manager violated R.C. 1322.06(A) and Ohio Admin. Code 1301:8-7-06(A), Respondent's Renewal Application should be denied pursuant to 1322.10 (A)(1)(a) and a fine of ten thousand dollars (\$10,000.00) should be imposed pursuant to R.C. 1322.10(A)(2).

NOTICE OF OPPORTUNITY FOR A HEARING ON PROPOSED ACTION

Therefore, pursuant to R.C. Chapters 1322 and 119, Respondent is hereby notified that thirty-one (31) days from the date of the mailing of this Notice, the Superintendent intends to issue an Order denying Respondent's renewal application and ordering payment of a ten thousand dollar (\$10,000.00) fine under the Ohio Mortgage Broker Act.

Respondent is further notified, pursuant to R.C. Chapter 119, that Respondent is entitled to a hearing on this matter. If Respondent desires to request a hearing, the request must be made in writing, and must be received in the offices of the Ohio Division of Financial Institutions within thirty (30) days of the time of the mailing of this Notice. Hearing requests should be addressed: Ohio Division of

Financial Institutions, Attn: Lori A. Massey, Consumer Finance Attorney Examiner, 77 South High Street, 21st Floor, Columbus, Ohio 43215-6120.

At the hearing, Respondent may appear in person, by Respondent's attorney, or by such other representative as is permitted to practice before the Agency, or Respondent may present its position, arguments, or contentions in writing, and, at the hearing, may present evidence and examine witnesses appearing for and against Respondent. At the hearing, a corporation must have a representative that is permitted to practice before the Agency, such as an attorney.

If the Ohio Division of Financial Institutions does not receive a written request for a hearing in its offices within thirty (30) days of the time of the mailing of this Notice, the Superintendent will issue an Order denying Respondent's renewal application and ordering payment of a ten thousand dollar \$10,000.00 fine.

Signed and sealed this 3rd day of September, 2008.

LEIGH A. WILLIS

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