

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

77 South High Street, 21st Floor
Columbus, Ohio 43215-6120

CHECK NO. 256684016
AMOUNT \$5000.-
DATE SEP 14 2004
REC. BY [Signature]

In the matter of:

MIDWEST FINANCIAL &
MORTGAGE SERVICES, INC.)

3216 Dixie Highway
Erlanger, KY 41018

Case No. 04-0035-MBF

SETTLEMENT AND
CONSENT ORDER

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, Midwest Financial & Mortgage Services, Inc. ("Respondent") is registered as a foreign corporation in Ohio and holds a active mortgage broker certificates of registration issued by the Division pursuant to R.C. 1322. Respondent's main office is located at 3216 Dixie Highway, Erlanger, KY 41018 and operates under certificate of registration MB#2763. Respondent has branch offices at 6964 Tylersville Road, West Chester, OH 45069 which operates under the certificate of registration MB#2764, 5550 West Central Avenue, Toledo, OH 43615 which operates under the certificate of registration MB# 2765 and 2600 Corporate Exchange- Suite 150, Columbus, OH 43235 which operates under the certificate of registration number MB 4942; and

WHEREAS, on April 9, 2004, the Division sent via certified mail a Notice of Intent to Assess Fine and Suspend Mortgage Broker Certificate of Registration and Notice of Opportunity for a Hearing ("the Notice") to Midwest Financial & Mortgage Services, Inc. ("Respondent") to its main office business address and statutory agent; and

WHEREAS, the Notice contained allegations and findings that:

1. During October 2002, Paul Blackburn, a loan officer licensed with Midwest Financial & Mortgage Services, Inc. contacted customers of Northern Ohio Investment Company and falsely represented to them that he worked for Northern Ohio Investment Company. The customer called Northern Ohio Investment Company to verify that Paul Blackburn worked for them and discovered that he did not. When the customer confronted Mr. Blackburn with this information, Mr. Blackburn indicated that he "works with"

Northern Ohio Investment Company and other lenders in order to get the best deal for his customers.

2. Subsequently, in October 2002, the attorney for Northern Ohio Investment Company communicated with Dan Schlueter, the owner of Midwest Financial & Mortgage Services, Inc., both in writing and by telephone and requested that employees of Midwest Financial & Mortgage Services, Inc. immediately stop representing that they work for Northern Ohio Investment Company. The attorney also requested that Midwest Financial & Mortgage Services, Inc. stop representing that they “work with” Northern Ohio since Northern Ohio Investment Company never deals with third party loan originators and has never purchased a loan from Midwest Financial & Mortgage Services, Inc.
3. A direct mailing by a mortgage broker to solicit business is considered an advertisement pursuant to rules of the Division governing mortgage brokers. (See O.A.C. § 1301:8-7-07(B)).
4. In January 2004, the Registrant sent out a direct mailing to potential customers seeking to solicit business. The mailing consisted of a telephone message note referring to the customer by his or her first name and contained the date of a purported phone call, 1-8. The message asks the consumer to please call Pete Isaacs at 419-537-5909 “In regards to your FHA refund due from Northern Ohio Inv.”
5. Peter Isaacs was licensed with the Division as a loan officer working for Midwest Financial & Mortgage Services from February 3, 2003 to February 2, 2004.
6. The return envelope of the January 2004 advertisement lists as the return address “Midwest Financial & Mortgage Services, Inc., 5550 W. Central Ave., Toledo, OH 43615.”
7. A mortgage broker registrant is required by law to state and clearly indicate its identity in all advertisements pursuant to R.C. 1322.09 and O.A.C. 1301-8-7-07(A)(1). The January 2004 mailing of the registrant’s Toledo, Ohio branch failed to identify the mortgage broker on the face of the advertisement.
8. A mortgage broker registrant must state its street address in all advertisements and may not solely provide a phone number under R.C. 1322.09 and O.A.C. 1301:8-7-07(A)(2). The January 2004 mailing of the registrant’s Toledo, Ohio branch provided no address for the Registrant on the face of the advertisement.

9. A registrant is required to provide its certificate of registration number in all advertisements under R.C. 1322.09 and O.A.C. 1301:8-7-07(A)(1). The January 2004 advertisement failed to state the registrant's mortgage broker certificate of registration number.
10. R.C. 1322.07(C) prohibits registrants from engaging in conduct that constitutes improper, fraudulent, or dishonest dealings. The above described advertisement implies a connection with Northern Ohio Investment Co., and this solicitation is an improper and dishonest business practice in violation of R.C. 1322.07(C).
11. R.C. 1322.07(B) prohibits registrants from making false or misleading statements of a material fact, omissions of statements required by state law, or false promises regarding a material fact, through advertising or other means, or engage in a continued course of misrepresentations. The above-described advertisement makes a false or misleading statement of material fact in that it implies a connection with Northern Ohio Investment Company when in actuality none exists. Through this advertisement and previous solicitations the registrant has engaged in a continued course of misrepresentations in that it has repeatedly implied a connection with Northern Ohio Investment Company when in reality there is no connection or relationship.
12. On or about March 17, 2004, Respondent sent out another direct mailing in the form of a post card to potential customers to solicit business. This advertisement states "2nd NOTICE PLEASE CALL CONCERNING YOUR 2nd MORTGAGE RATE REDUCTION PLEASE CALL: ASK FOR WES (SENIOR LOAN OFFICER) AT: 614-918-2999 OR: 866-329-4359" This advertisement includes MB NO. 4942 and prominently displays the BBB logo as well as the Equal Housing Lender logo.
13. A mortgage broker registrant is required by law to state and clearly indicate its identity in all advertisements pursuant to R.C. 1322.09 and O.A.C. 1301:8-7-07(A)(1). The March 2004 advertisement failed to identify the mortgage broker on the front or the back of the post card advertisement.
14. A mortgage broker registrant must state its street address in all advertisements and may not solely provide a phone number under R.C. 1322.09 and O.A.C. 1301:8-7-07(A)(2). The March 2004 advertisement failed to state the street address of the Respondent on either the front or the back of the postcard.
15. R.C. 1322.07(C) prohibits registrants from engaging in conduct that constitutes improper, fraudulent, or dishonest dealings. The Division contends that the March 2004 advertisement constitutes an improper, fraudulent, or dishonest dealing since the postcard fails to mention the name

of the solicitor and asks the consumer to “call concerning your 2nd mortgage rate reduction” leading the consumer to believe that he or she is being contacted by his or her second mortgage holder.

WHEREAS, The Division asserts that subsequent to its Notice of Intent to Assess a Fine and Suspend Mortgage Broker Certificate of Registration & Notice of Opportunity for a Hearing issued to Respondent on April 13, 2004, Respondent has continued to make improper solicitations for potential customers. On July 27, 2004, the Division received a consumer complaint regarding a direct mail solicitation sent by Respondent. The solicitation stated “SECOND NOTICE. Please call about July’s mortgage payment! Call Mortgage Line 1-800-543-8949. Ask for Chris C.- Senior Acct Mgr” The consumer believed that the mailing was from her mortgage holder, informing her of a problem with her July house payment. Upon reaching Chris C., believed to be Christopher Coriell, a licensed loan officer with Midwest Financial & Mortgage Services, Inc., she was informed that she received the card through mistake. The Division contends that this solicitation constitutes improper, fraudulent, or deceptive dealings as it causes consumers to believe that their mortgage holders are contacting them about their mortgages and mortgage payments.

WHEREAS, Midwest Financial & Mortgage Services, Inc. admits the allegations of the Division but avers that any violation was due to error not intent, and further, to avoid the cost and uncertainty of litigation Respondent agrees to enter into this Consent Order for purposes of settlement.

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

- 1) The parties acknowledge and agree to the accuracy of the foregoing recitals.
- 2) This Settlement and Consent Order represents a compromise between the parties for the full, complete, and final settlement of all of their claims, differences, and causes of action with respect to the allegations contained in the Notice.
- 3) The parties agree that the terms of this Settlement and Consent Order bind the parties hereto, and their shareholders, partners, members, assigns, and successors in interest.
- 4) The Division hereby terminates the Notice of Intent to Assess Fine and Suspend Mortgage Broker Certificate of Registration and Notice of Opportunity of Hearing issued April 9, 2004, and agrees that it shall not, as long as Respondent is in compliance with this Settlement and Consent Order pursue the matters set forth in such Notice through its administrative process. Nothing, however, in this order shall be deemed to prevent the Division or its employees, agents, or assigns 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.

- 5) Other that set forth herein, nothing in this Settlement and Consent Order shall be deemed an admission of guilt or liability, or agreement with the allegations set forth in the Notice on the part of Respondent.
- 6) Respondent acknowledges lawful service and receipt of the Notice, and stipulates to the jurisdiction of the Division in this matter.
- 7) The Respondent hereby agrees to forego its administrative remedies, and waive any and all rights to an administrative hearing, as well as any right to appeal this matter or order.
- 8) This Settlement and Consent Order shall be effective on the date it is signed by the Superintendent of the Division of Financial Institutions and on such date it will become a final order.
- 9) 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.

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 Respondent shall cease and desist from soliciting business through advertisements, including the use of direct mail that contain false or misleading statements of material fact or that constitute improper, fraudulent, or dishonest dealings in violation of the Ohio Mortgage Broker Act, R.C. § 1322.01 et seq. and the rules thereunder and shall conform its advertisements in the future to all requirements of state law.
- C. The Respondent shall cease in its dealings with the public or any potential customers from representing or implying an affiliation with any financial institution with which it has no affiliation.
- D. The Respondent is hereby assessed a fine in the amount of Ten Thousand (\$10,000), \$5,000 of which shall be suspended upon the Respondent's full compliance with this order during the proceeding five years. Respondent shall pay the unsuspended amount of Five Thousand Dollars (\$5,000) to the Consumer Finance Fund pursuant to R.C. § 1322.21 within ten days of the effective date of this Settlement and Consent Order. Payment shall be made by certified check or

money order made payable to the Ohio Division of Financial Institutions delivered to the Division's counsel.

The Respondent understands that any breach of this Settlement and Consent Order will subject the Respondent to the immediate payment of the suspended portion of the fine set forth herein and may result in the reinstitution of administrative proceedings, including suspension or revocation, the imposition of additional fines and any other remedy available to the Division.

Robert M. Grieser
Robert M. Grieser
Deputy Superintendent of Financial Institutions

9-14-04
Date

Approved and Agreed

Midwest Financial & Mortgage Services, Inc.

By: Dan Schuette

9-3-04
Date

Its: President

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