



Department of Commerce

Division of Financial Institutions

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DIVISION OF FINANCIAL INSTITUTIONS

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Ted Strickland, Governor
Kimberly A. Zurz, Director

In the matter of:

GARY M. TACKETT
820 Princeton Avenue
Fairborn, Ohio 45324

) Case No. M2010-367
)
) **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, Gary M. Tackett ("Respondent") is an individual who holds a loan officer license (LO.010850) issued by the Division to originate residential mortgage loans pursuant to R.C. Chapter 1322. The Respondent's address of record is 820 Princeton Avenue, Fairborn, Ohio 45324, his date of birth is June 29, 1950. Respondent's employer of record is Envoy Mortgage LTD, 5100 Westheimer Road, Suite 320, Houston, Texas 77056; and

WHEREAS, on June 29, 2010, the Division sent via certified mail a Notice of Intent to Refuse Issuance of Loan Originator License and Notice of Opportunity for a Hearing ("Notice"); and

WHEREAS, the Notice contained allegations and findings that:

- A. The Division is authorized by R.C. 1322.10(A)(1)(a) to refuse to issue a loan originator license if the Division finds that the applicant has violated or failed to comply with any provisions 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 or license.
- B. Prior to January 1, 2010, R.C. 1322.052 required every licensed loan officer to complete at least six (6) hours of approved continuing education ("CE") every calendar year (by December 31st).
- C. Respondent held loan officer license LO.010850 during the 2009 calendar year.
- D. Respondent failed to complete the required 6 hours of CE credit for the 2009 calendar year as required by R.C. 1322.052.
- E. R.C. 1322.041(A) provides that a loan originator license shall be issued if the applicant meets the conditions of R.C. 1322.041(A)(1) to (8).

- F. R.C. 1322.041(A)(2) provides that a loan originator license shall be issued if the applicant is in compliance with Chapter 1322.
- G. R.C. 1322.041(A)(6) provides that a loan originator license shall be issued if the applicant's financial responsibility, character and general fitness 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 sections 1322.01 to 1322.12 of the revised code.
- H. The Division is required by Ohio Admin. Code 1301:8-7-21(H) to consider an applicant's "failure to fully satisfy any judgment or award issued by any court of competent jurisdiction" in order to determine an applicant's character and general fitness.
- I. In or about February 2009, Certificate of Judgment for Lien upon Lands and Tenements Nos. 2009 CJ 0301 and 2009 CJ 0406 were certified by the Greene County Common Pleas Court for judgments or decrees rendered against the Respondent in the favor of the State of Ohio Department of Taxation in the amount of \$996.27.
- J. R.C. 1322.07(A) prohibits an applicant from obtaining a "license through any false or fraudulent representation of a material fact or any omission of a material fact required by state law, or make any substantial misrepresentation in any registration or license application."
- K. On or about December 3, 2009, in Case No. M2009-889, the Division issued an Order denying Respondent's 2009 loan officer license renewal application for failure to complete an FBI background check.
- L. On or about March 26, 2010, Respondent submitted an application for a loan originator license pursuant to R.C. Chapter 1322.
- M. Question I of the application asked "Has any State or federal regulatory agency or foreign financial regulatory authority ever: (6) denied or suspended your registration or license, disciplined you, or otherwise by order, prevented you from associating with a financial services-related business or restricted your activities?" Respondent answered "No," failing to disclose the December 3, 2009 denial of his loan officer license renewal application.

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

- 1. Respondent failed to complete six hours of CE in calendar year 2009 in violation of R.C. 1322.052, as effective prior to January 1, 2010, and therefore fails to meet the requirement for licensure set forth in R.C. 1322.041(A)(2).

2. Because Respondent violated R.C. 1322.052 (as effective prior to January 1, 2010), the Division is authorized under R.C. 1322.10(A)(1)(a) to refuse to issue a loan originator license.
3. Respondent's actions, as listed above, show 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 as required for issuance of a loan officer license pursuant to R.C. 1322.041(A)(6).
4. Respondent failed to disclose the denial of his 2009 loan officer license renewal application on his 2010 loan officer license application in violation of R.C. 1322.07(A).
5. Because Respondent violated with R.C. 1322.07(A), the Division has the authority to refuse to issue Respondent a loan officer license pursuant to R.C. Sections 1322.041(A)(2) and 1322.10(A)(1)(a).

WHEREAS, Respondent admits to the allegations and findings set forth above, but to avoid the cost and uncertainty of litigation 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) Respondent acknowledges lawful service and receipt of the Notice, and stipulates to the jurisdiction of the Division in this matter.
- 3) 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.
- 4) Respondent voluntarily enters into this Settlement Agreement and Consent Order with the assistance of counsel, Amanda Baird, 21 West Broad Street, Suite 710, Columbus, Ohio 43215.
- 5) Respondent contends that he did not understand the nature of the December 3, 2009 Order. He maintains that because he had been employed in a position that did not require him to hold an active loan officer license, he had decided in 2009 not to complete the renewal application and therefore, believed he had "given up" or "relinquished" his license.
- 6) Respondent admits that he did not follow the procedures established under Chapter 1322 and the rule adopted thereunder to withdraw his 2009 renewal application.

- 7) In lieu of refusing Respondent's loan originator license application, the parties agree that Respondent shall pay the Division Five Hundred Dollars (\$500.00) as a fine as set forth in this Settlement and Consent Order. This fine amount shall resolve the allegations related to non-disclosure of the denial of his 2009 renewal application. The allegations related to Respondent's alleged 2009 continuing education deficiency shall be resolved through a separate agreement that shall be submitted as set forth in the Settlement and Consent Order and incorporated herein.
- 8) In addition, Applicant shall present proof of payment arrangement(s) and/or proof of payment of the tax liens placed by the State of Ohio Department of Taxation in Greene County, Ohio. Proof of payment of payment plan shall be submitted with this Settlement Agreement and Consent Order.
- 9) The Division shall terminate its Notice of Intent to Refuse Issuance of Loan Originator License and Notice of Opportunity of Hearing issued June 29, 2010, and agrees that it shall not, as long as Respondent is in compliance with this Settlement and Consent Order, pursue the matters set forth the Notice through its administrative process. The Division agrees that it will not initiate or pursue criminal or additional civil liability in any venue as a result of the conduct of Respondent as cited in the allegations and findings. Nothing, however, in this Order shall be deemed to prevent the Division from taking action to enforce any breach of this Order.
- 10) Should the Division discover that Respondent has provided any false, fraudulent, misleading, or incomplete information or statement(s) pertaining to his involvement in the allegations contained in the Notice and this Settlement and Consent Order, Respondent agrees that such evidence will firmly establish that Respondent's character and general fitness do not command the confidence of the public and warrant the belief that he will conduct business honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.
- 11) The parties agree that the terms of this Settlement and Consent Order bind the parties hereto, and their successors in interest.
- 12) 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.
- 13) 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.
- 14) 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 provided that Respondent also submits the separate agreement that resolves the alleged continuing education deficiency and proof of a payment plan for or payment of his tax liens.

- 15) 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.
- 16) 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.
- 17) This Settlement and Consent Order and incorporated continuing education settlement contains the entire agreement between the parties as to the matters set forth and resolved herein and no promises, conditions or obligations, either expressed or implied, other than those set forth herein, shall be binding on either party.
- 18) This Settlement and Consent Order shall be effective on the date it is signed by the Superintendent of the Division of Financial Institutions or his designee and on such date it will become a final order.


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. Respondent shall submit the settlement agreement that resolves his 2009 continuing education deficiency on or before **August 30, 2010**.
- C. Respondent shall pay a Five Hundred Dollar (\$500.00) fine. Payment shall be made by cashier's check(s) or money order(s) made payable to the "Treasurer of State" and delivered to the Division's counsel along with this Settlement and Consent Order no later than 10:00 a.m. on **September 8, 2010**.
- D. The Notice of Intent to Refuse Issuance of Loan Originator License and Notice of Opportunity of Hearing issued June 29, 2010 to the Respondent is hereby terminated. Nothing shall prevent the Division, in the future, from taking any administrative or other action against Respondent for matters not addressed in this Order.

Approved and Agreed:


GARY M. TACKETT
Respondent

August 13, 2010
Date


LEIGH A. WILLIS
Deputy Superintendent for Consumer Finance

8/17/10
Date