

Ted Strickland  
Governor

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

Kimberly A. Zurz  
Director

In the matter of:	)	Case No. M2008-573
	)	
<b>JOHN A. SHALVEY</b>	)	<b><u>DIVISION ORDER</u></b>
7636 Blue Fescue Drive	)	<b>Revocation of Loan Officer License</b>
Westerville, Ohio 43082	)	<b>and Imposition of Fine</b>
	)	<b>&amp;</b>
	)	<b>Notice of Appellate Rights</b>

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On or around October 28, 2008, the Division of Financial Institutions issued notice to John A. Shalvey ("Respondent") that the Division intended to revoke his loan officer license and impose a fine because he failed to properly maintain records, failed to cooperate with a Division examination, and engaged in conduct which constitutes improper, dishonest and fraudulent dealings.

Respondent requested an administrative hearing, which was held on January 6, 2009. Respondent appeared and represented himself *pro se*. A Report and Recommendation ("Report") was filed with the Division on March 9, 2009, recommending that the Division revoke Respondent's loan officer license and impose a fine that is commensurate with his ability to pay. (A copy of the Report is attached hereto). No objections were filed.

In accordance with R.C. 119.09, the Division has considered the record, consisting of the Report, the transcript of testimony and exhibits, as well as all applicable laws. As a result, the Division makes the following findings and conclusions. Any finding and/or conclusion not specifically addressed below is approved, adopted and incorporated herein.

The Division modifies the second sentence of paragraph 68 on page 13 of the Report and Recommendation to read as follows: "Respondent did not comply with the recordkeeping requirements of the Ohio Mortgage Broker Act or cooperate with the Division's examination until after the Division had issued an NOH, which included the imposition of a fine, and not until after the hearing in this matter was held. At that point, Respondent produced eleven loan files of which only seven were from the relevant time period after the 2005 examination." The remainder of the paragraph is accepted.

The Division adopts the hearing officer's recommendation to revoke the loan officer license of John A. Shalvey. The Division modifies the recommendation to impose a fine of \$5,000 against Respondent for violating R.C. Sections 1322.06(B), 1322.07(C), 1322.072(A), O.A.C. Rules 1301:8-7-06(A) and 1301:8-7-13(F).

The superintendent of financial institutions is authorized by R.C. 1322.10(A)(2) to impose a fine of not more than \$1,000 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 \$2,000 for each day the violation is committed, repeated, or continued. In setting the amount of the fine, the superintendent is required to consider five factors.

The first factor the superintendent considers is the seriousness of the violations. In this instance, the superintendent has concluded the violations were serious. Second, the superintendent considers the licensee's good faith efforts to prevent the violations. In this case, the superintendent has concluded that Respondent did not make a good faith effort to prevent the violations. Third, the superintendent considers the Respondent's history regarding violations and compliance with division orders. In this case, the superintendent has concluded that Respondent had not been subject to any Division orders and did not have a history of any major violations noted in the Division's records. Fourth, the superintendent considers the Respondent's financial resources. In this case, Respondent submitted Respondent's Exhibit 1 which consists of (1) an unsigned, unaudited and incomplete copy of his 2007 federal income tax return, (2) the January 29, 2007 Order Confirming Respondent's Chapter 13 Plan filed in the United States Bankruptcy Court for the Southern District of Ohio, (3) an eviction notice showing Respondent was evicted around August 2008 from his residence in Delaware County, Ohio, and (4) a Union Savings Bank account statement for November to December 2008. The superintendent has reviewed these documents and is cognizant of the fact that Respondent has filed bankruptcy. The superintendent understands that collection of this fine is subject to the jurisdiction of the bankruptcy court. This fine, which is being imposed post-petition, is not pecuniary in nature and is not subject to discharge by the bankruptcy court. Instead, this fine is punishment for violating the Ohio Mortgage Broker Act and the rules promulgated thereunder and serves to deter future violations. The superintendent has concluded that a fine of \$1,000 for each statute and rule that was violated, for a total fine of \$5,000, is a sufficient amount to deter future violations. The

superintendent could have imposed the maximum amount of \$2,000 for every day that the Respondent failed to properly maintain the records at his main office location. In this case, the record shows that he failed to maintain the records at the main office location from 2006 to November 2008. Assuming two years of daily violations at \$2,000 per day, the fine could have been \$1,460,000. The fifth factor to be considered is any other matter the superintendent considers appropriate in enforcing the Ohio Mortgage Broker Act. In this case, there were no additional matters considered in the imposition of this fine. The superintendent believes that a fine of \$5,000 is reasonable in light of all the factors to be considered when imposing a fine.

It is so ordered.

### **NOTICE OF RIGHT TO APPEAL**

Respondent is hereby notified that pursuant to R.C. 119.12, this Order may be appealed by filing a notice of appeal with the Ohio Division of Financial Institutions setting forth the order appealed from and the grounds for the appeal. A copy of such notice of appeal must, pursuant to R.C. 119.12, also be filed with the court of common pleas of the county in which the place of business of the Respondent is located, or the county in which the Respondent is a resident. A notice of appeal must be filed within fifteen (15) days after the date of mailing of this Order.

Signed and sealed this 8th day of April 2009.

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**LEIGH A. WILLIS**

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