



## Ohio Department of Commerce

Division of Financial Institutions  
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Ted Strickland  
Governor

Kimberly A. Zurz  
Director

In the matter of:

**MARK A. MCELWAIN**  
3405 Chadwick Drive  
Uniontown, OH 44685

)  
)  
) Case No. M2009-519  
)  
) **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 ("OMBA"), codified in Ohio Revised Code ("R.C.") Chapter 1322; and

WHEREAS, Mark A. McElwain ("Respondent") holds a loan officer license issued pursuant to the OMBA. Respondent's address of record is 3495 Chadwick Drive, Uniontown, Ohio 44685; and

WHEREAS, on May 8, 2009, the Division issued Respondent a Notice of Intent to Suspend Loan Officer License and Notice of Opportunity for a Hearing; and

WHEREAS, the Notice contained the following allegations and findings:

- A. In accordance with R.C. 1322.10(A)(1)(a), the superintendent of the Division may suspend a loan officer license if the superintendent finds that a loan officer has committed a "violation of or failure to comply with any provision of sections 1322.01 to 1322.12 of the Revised Code[.]"
- B. Respondent was the 100% shareholder and president of Senate Banc, Inc., which had its 2008 renewal denied and was fined seven thousand dollars (\$7,000.00) in Division Case No. M2008-485 for violating R.C. 1322.07(C) and OAC 1301:8-7-22(A)(3) as a result of its continued use of the unregistered name "AAA Banc Group, Inc."
- C. The \$7,000 fine imposed against Senate Banc, Inc. in Case No. M2008-485 remains unpaid.
- D. As a result of the findings listed above, the Division has determined that Respondent's actions, as 100% owner and president of a registrant that failed to pay a fine imposed by the Division, constitutes improper dealings in violation of R.C. 1322.07(C) and suspension of Respondent's loan officer license through April 30, 2010 is necessary and appropriate pursuant to R.C. 1322.10(A)(1)(a).

Mark A. McElwain  
Settlement and Consent Order  
p. 2 of 4

WHEREAS, Respondent admits the allegations of the Division's May 8, 2009 Notice.

WHEREAS, on July 2, 2009, Respondent filed a Voluntary Petition for Chapter 13 Bankruptcy in the United States Bankruptcy Court for the Northern District of Ohio in case number 09-52955; on February 10, 2010, Respondent filed an Amended Chapter 13 Plan with the Court that lists the debt owed the Division in case M2008-485 as an unsecured priority claim with a claim amount of \$7,799.84, which, pursuant to the Division's September 4, 2009 Proof of Claim was the amount due on the date the case was filed with the Court; pursuant to the Proof of Claim, pro rata monthly payments will be sent by the Bankruptcy Trustee to Ohio Department of Commerce, Attn: Anthony D. Siciliano, Division of Financial Institutions, 77 South High Street, 21<sup>st</sup> Floor, Columbus, OH 43215; on March 1, 2010, the Bankruptcy Court issued an Order Confirming Plan;

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 Division's allegations and findings listed above.
- 2) Respondent acknowledges lawful service and receipt of the Notice, and stipulates to the jurisdiction of the Division in this matter.
- 3) 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.
- 4) In lieu of proceeding with an administrative hearing on this matter, Respondent agrees, pursuant to the Order Confirming Plan described above, to pay a fine for the violation of law described herein in the amount of seven thousand seven hundred ninety-nine dollars and eighty four cents (\$7,799.84).
- 5) The Division agrees that its receipt of the full amount of the fine described above will satisfy the fine imposed against former OMBA registrant Senate Banc, Inc. in Case No. M2008-485.
- 6) Respondent hereby agrees to forego his administrative remedies, and waive any and all rights to an administrative hearing, as well as any right to appeal this matter or order.

Mark A. McElwain  
Settlement and Consent Order  
p. 3 of 4

- 7) The Division hereby terminates the Notice of Intent to Suspend Respondent's Loan Officer License and Notice of Opportunity for Hearing issued May 8, 2009.
- 8) 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.
- 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.
- 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) 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.
- 14) Respondent must submit this Settlement and Consent Order completed per the terms dictated herein, no later than March 26, 2010..

