

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

In the matter of:)	Case No. M2007-10
)	
HOMEOWNERS MORTGAGE BANC, LLC)	Notice of Intent to Deny Mortgage Broker
700 Taylor Road)	Certificate of Registration Renewal Application
Gahanna, Ohio 43230)	&
)	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.

RESPONDENT

HOMEOWNERS MORTGAGE BANC, LLC ("Respondent") is a limited liability company that held an Ohio mortgage broker certificate of registration issued pursuant to R.C. Chapter 1322. Respondent's certificate of registration expired on April 30, 2006, and Respondent filed an application to renew its certificate of registration and that renewal application remains pending. Respondent's principal business address is 700 Taylor Road, Gahanna, Ohio 43230.

NOTICE OF PROPOSED ACTION

In accordance with R.C. 1322.10 and R.C. Chapter 119, the Division intends to DENY Respondent's Ohio mortgage broker certificate of registration renewal application.

STATEMENT OF FACTS

The Division received Respondent's application for a mortgage broker certificate of registration on September 15, 2004. The Division issued Respondent a mortgage broker certificate of registration on November 4, 2004. At the time Respondent's mortgage broker certificate of registration was issued, the Division understood that the membership of Respondent consisted of Brian Compton and Roy E. Johnson, III who respectively owned 51% and 49% of Respondent. The Division based its understanding of the Respondent's ownership on representations made by Brian Compton and Roy E. Johnson, III in its application for a mortgage broker certificate of registration.

Prior to the submission of Respondent's application for a mortgage broker certificate of registration, Brian Compton and Roy E. Johnson, III formed Homeowners Financial Group, Inc. ("HFG") on August 31, 2004. The formation of HFG occurred approximately two weeks prior to the submission of Respondent's application for a mortgage broker certificate of registration. Brian Compton and Roy E. Johnson, III formed HFG to be the managing member for Respondent and to hold and maintain their ownership interests of Respondent. Brian Compton owns 50.98% of HFG while Roy E. Johnson, III owns 49.02%. Respondent never included HFG as one of its members on its application for a mortgage broker certificate of registration.

As early as September 20, 2004, five days after the submission of Respondent's mortgage broker certificate of registration application, Respondent held HFG out as its managing member controlling 51%

of the membership interests. Respondent never informed the Division that HFG controlled 51% of its membership interests while its application was pending. Without the Division's knowledge, as early as September 20, 2004, Respondent entered into agreements with real estate agents/brokers outlining the details of their fractional ownership in Respondent.

HFG controls 51% of the membership interests of Respondent. Real estate agents/brokers partially own the remaining 49%. Respondent offered real estate agents/brokers the opportunity to invest in Respondent based on the amount of volume of loans they could commit, or generate, for Respondent. In return, Respondent distributes any net operating profits to the members based on their ownership percentage. If a member fails to produce its requisite closed loan volume, the member may be expelled from the membership of Respondent. The maximum amount of money that each real estate agent/broker invested in Respondent was \$1000 per 4.9% interest sold. By Respondent's operating agreement, the maximum loss that can be incurred by the real estate agents/brokers is the money they paid for their membership interest (\$1000 maximum per 4.9% interest). HFG is Respondent's managing member. HFG alone constitutes a quorum for all membership meetings and also constitutes a majority of the voting interests.

The real estate agent/broker members have little financial risk in and little control over Respondent. Respondent conditions real estate agents/brokers membership in Respondent based on the amount of business they can generate for Respondent. In return, Respondent pays real agent/broker members a portion of any net operating profits based on each member's ownership percentage. As Respondent conditioned the sale of ownership interests to real estate agents/brokers on their ability to generate business and the fact that the real estate agent/broker members may be ejected from Respondent's membership group for failure to do so, the Division finds any "net operating profits" Respondent pays to real estate agent/broker members are nothing more than kickbacks or referral fees. The Respondent's sole purpose for having real estate agents/brokers in its ownership group was/is for the purpose of filtering kickbacks and referral fees from a mortgage broker to real estate agents/brokers.

BASIS FOR PROPOSED ACTION

The Division has conducted an investigation of Respondent pursuant to R.C. 1322.10(B) and based on investigation information contained in the Statement of Facts above has found the following:

1. Respondent's membership group is set up to violate R.C. 1322.071(B)(3) which prohibits a registrant from "pay[ing] or receiv[ing], directly or indirectly, a referral fee or kickback of any kind to or from a bona fide third party or other party with a related interest in the transaction, such as a home improvement builder, real estate developer, or real estate broker or agent, for the referral of business."
2. Respondent, as a result of the finding listed above in paragraph 1, violated R.C. 1322.07(C) which prohibits Respondent from "engag[ing] in conduct that constitutes improper, fraudulent, or dishonest dealings."
3. As a result of the above findings and facts, the Division finds that Respondent no longer meets the criteria for issuance/maintaining a certificate of registration under R.C. 1322.04. Specifically, the Division does not find that Respondent's "...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 of 1322.01 to 1322.12." See R.C. 1322.04(A)(10).

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 mortgage broker certificate of registration renewal application.

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: Mark L. Rhea, Consumer Finance Licensing Attorney, 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. Note: a limited liability company must be represented by a person who is legally authorized to appear 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 mortgage broker certificate of registration renewal application.

Signed and sealed this 5th day of January 2007.

ROBERT M. GRIESER

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