

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

DIV. 1
2009 SEP 21 AM 8:03

IN THE MATTER OF:	:	CASE NO. M2008-750
	:	
JAMES R. CROSBY,	:	LISA M. FINNEGAN
RESPONDENT.	:	HEARING OFFICER
	:	

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued September 18, 2009

I. FINDINGS OF FACT

A. Background

1. This matter came before Lisa M. Finnegan, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Department of Commerce, Division of Financial Institutions ("Division"), to serve as Hearing Officer for this hearing in accordance with the Ohio Administrative Procedure Act, Ohio Revised Code ("R.C.") Chapter 119. The Division held the hearing on July 10, 2009 at 77 South High Street, 23rd Floor, Columbus, Ohio, 43215.

2. The Division held the hearing to consider the allegations in the December 31, 2008 Notice of Intent to Revoke Loan Officer License and Notice of Opportunity for a Hearing ("NOH"). In the NOH, the Division alleged that James R. Crosby ("Respondent"), as operations manager for TransOhio Mortgage and Loan, Inc. ("TransOhio"), failed to maintain the following: an alphabetical index of buyers, copies of disclosures other than settlement statements, buyer files, and a special account. The Division also alleged that Respondent failed to notify the Division of legal actions taken against TransOhio that Respondent failed to disclose in advertisements TransOhio's certificate of registration number, and that Respondent failed to provide any of the disclosures to borrowers required by state and federal law. In addition, the Division alleged that Respondent was involved in fraudulent activity in connection with six loans from a particular borrower.

3. Todd A. Nist, Esq., an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Respondent appeared at the hearing *pro se*. Jacqueline S. Mallett, Esq., Kenneth E. Haynie, and Sheila Zoldak testified on behalf of the Division.

4. The hearing in this matter was held simultaneously with *In the Matter of: TransOhio Mortgage and Loan, Inc.*, Case No. M2008-533; however, the Hearing Officer is issuing a separate Report and Recommendation for each matter.

5. The parties stipulated to State's Exhibits 1-A, 1-B, 2-A, 2-B, 3-A, 3-B, 4, 5, 6-A, 6-B, and 7, and the Hearing Officer admitted them into the record. The Hearing Officer also admitted into the record without objection State's Exhibits 8 and 9 and Respondent's Exhibits C, D, F, G, H, L, M, O, P, R, and T. The Hearing Officer admitted Respondent's Exhibits N and Q into the record over the Division's relevancy objection. The Hearing Officer did not admit Respondent's Exhibit E, which consisted of copies of mortgage loan files that pre-dated the Division's compliance examination, based on the Division's relevancy objection. The Hearing Officer did not admit Respondent's Exhibit S based on the Division's objection that it contained settlement negotiations between Respondent and the Division. *Transcript ("Tr.") at 101, 125*. Respondent did not introduce Respondent's Exhibits A, B, I, J, and K.

6. Based upon an agreement of the parties, the record in this matter remained open until July 17, 2009 to allow the parties an opportunity to submit additional documents into the record. On July 16, 2009, the Division submitted to the Hearing Officer six United States Department of Housing and Urban Development settlement statements ("HUDS"). The Hearing Officer marked the six settlement statements as State's Exhibit 10 and admitted them into the record. The Hearing Officer closed the record at 5:00 p.m. on July 17, 2009.

B. Jurisdiction and Procedural Matters

7. The Division issued the NOH to Respondent on December 31, 2008. In the NOH, the Division indicated that it sought to revoke Respondent's loan officer license. The NOH also notified Respondent that he was entitled to an opportunity for a hearing on the matter. Respondent was required to request a hearing within thirty days of the time of the mailing of the NOH. *State's Exhibit 1-A*.

8. The Division sent the NOH to Respondent via certified mail, return receipt requested, at Respondent's address of record with the Division. The Division obtained service on January 5, 2009. *State's Exhibit 1-A*.

9. On January 28, 2009, Respondent submitted his request for a hearing to the Division. *State's Exhibit 2-A*.

10. On January 30, 2009, the Division sent to Respondent a notice of hearing letter scheduling the hearing on the matter for February 9, 2009, and within the same notice, the Division continued the hearing on its own motion to March 11, 2009. *State's Exhibit 3-A*.

11. On March 11, 2009, Respondent requested and received a continuance for the purpose of obtaining counsel. *March 11, 2009 Tr. at 4*. On March 12, 2009, the

Division sent to Respondent a notice of hearing letter and the Order Continuing Hearing to April 24, 2009. *State's Exhibit 3-A*.

12. On April 24, 2009, Respondent requested and received a second continuance for medical reasons. On May 1, 2009, the Division sent to Respondent a notice of hearing letter and the Order Continuing Hearing to July 10, 2009. *State's Exhibit 6-B*.

13. The Division held the hearing on the date, time, and location specified in the Division's May 1, 2009 notice of hearing letter. At the commencement of the hearing on July 10, 2009, the Hearing Officer advised Respondent of his right to counsel and Respondent elected to proceed without counsel. *Testimony of Respondent, Tr. at 9*.

C. The Division's Compliance Examination of TransOhio

14. Respondent is an individual who holds loan officer license no. 002229.000 issued by the Division to originate residential mortgage loans pursuant to R.C. Chapter 1322. The Division issued Respondent's loan officer license on November 16, 2006. Respondent's loan officer license was set to expire on April 30, 2009. Respondent has not submitted a renewal application. *State's Exhibit 1-A; State's Exhibit 9; Testimony of Jacqueline S. Mallett, Tr. at 127-128*.

15. Respondent is the operations manager and 100% owner of the stock in TransOhio, a mortgage broker company. *State's Exhibit 1-A*.

16. On February 4 and 5, 2008, the Division's consumer finance examiner Kenneth E. Haynie conducted a compliance examination of TransOhio. *Testimony of Kenneth E. Haynie, Tr. at 15, 33*.

17. The compliance examination covered the time-period from January 2007 until the compliance examination on February 5, 2008. *Testimony of Kenneth E. Haynie, Tr. at 22-23, 39*.

18. TransOhio brokered only six transactions in 2007. Three transactions were residential and three were commercial. The Division examined only the three residential transactions during the compliance examination. *Testimony of Respondent, Tr. at 100; State's Exhibit 10*.

19. Most of the problems noted by Mr. Haynie at the February 4 and 5, 2008 compliance examination were record-keeping errors. *Testimony of Kenneth E. Haynie, Tr. at 39*.

Alphabetical Index of Buyers

20. During 2007, TransOhio did not maintain an alphabetical index of buyers for whom it obtained mortgage loans, as required by Ohio Adm.Code 1301:8-7-06(H)(1). *Testimony of Kenneth E. Haynie, Tr. at 16-18, 51. State's Exhibit 4, pgs. 1 & 8*.

21. Respondent had an opportunity to prepare and present an alphabetical index of buyers from his computer program on the day of the compliance examination, but did not do so. *Testimony of Kenneth E. Haynie, Tr. at 36-37.*

Buyer Files

22. Mortgage brokers are required to keep a separate file for each buyer for a period of four years. Each file must contain copies of documents such as the buyer's original application, credit reports, and Mortgage Loan Origination Disclosure Statements ("MLODS"). *Testimony of Kenneth E. Haynie, Tr. at 20-22, 54-55; State's Exhibit 4, pgs. 1 & 8.*

23. During 2007, TransOhio did not maintain any buyer files. The documents were shredded. *Testimony of Kenneth E. Haynie, Tr. at 20-22, 54-55; State's Exhibit 4, pgs. 1 & 8.*

Signed Copies of Disclosures to Buyers

24. TransOhio was required to keep copies of the MLODS signed by buyers. As the operations manager for TransOhio, Respondent did not keep copies of the MLODS signed by buyers in 2007. The only documents signed by buyers that Respondent retained were the HUDS. *Testimony of Kenneth E. Haynie, Tr. at 18-20; State's Exhibit 4, pgs. 1 & 8.*

25. As the operations manager for TransOhio, Respondent kept unsigned copies of the MLODS and other buyers' disclosures on his computer software program "Encompass." *Testimony of Kenneth E. Haynie, Tr. at 19-20, 36, 50.*

26. Respondent maintained that he also kept electronic copies of the disclosures that had been signed by the buyers, but admitted that his computer files were not accessible during the compliance examination. *Testimony of Respondent, Tr. at 111-112.*

Special Account

27. A mortgage broker is required to maintain a bank account at all times to process fees collected on behalf of third parties, such as appraiser fees and credit report fees.

28. During the compliance examination, Mr. Haynie found that TransOhio did not keep a special account open at all times in 2007. Respondent advised Mr. Haynie that TransOhio's bank closed the special account in July 2007 due to inactivity. *Testimony of Kenneth E. Haynie, Tr. at 23-25, 51-52. State's Exhibit 4, pgs. 2 & 8.*

29. Respondent denied that TransOhio's special account was closed at any time. Respondent's Exhibits G and F, are copies of statements from TransOhio's National City Bank account from 2005 and from 2009, to show that the account numbers on both documents were the same. Respondent argued that TransOhio's special account could not have been closed and then re-opened with the same account number because banks do not re-open accounts with previously closed account numbers. *Testimony of Respondent, Tr. at 81-84, 108-109.* Respondent did not provide any evidence of National City Bank's account practices.

30. The record remained open for seven days after the hearing on the instant matter for Respondent to submit copies of bank statements showing that TransOhio's special account was not closed in 2007. *Tr. at 131-133.* Respondent did not submit any evidence to show that TransOhio maintained a special account at all times in 2007.

31. TransOhio's special account was closed in July 2007. TransOhio did not maintain a special account at all times in 2007. *Testimony of Kenneth E. Haynie, Tr. at 23-25, 51-52. State's Exhibit 4, pgs. 1 & 8.*

Disclosure of Legal Actions

32. The Division alleged in the NOH that Respondent had failed to notify the Division of legal actions taken against it as required by R.C. § 1322.05(B). *State's Exhibit 1-A, paragraph L.* The Division withdrew this allegation at the hearing. *Tr. at 105-107.*

Disclosure of Registration Number in Advertisements

33. During the compliance examination, Mr. Haynie found that TransOhio failed to disclose in advertisements TransOhio's certificate of registration number as required by R.C. § 1322.09. *Testimony of Kenneth E. Haynie, Tr. at 27-30; State's Exhibit 7.*

34. In March 2006, the Division implemented a new computer system that changed all mortgage brokers' certificates of registration numbers. When mortgage brokers renewed their certificates of registration in April 2006, the Division printed the new registration numbers on the certificates and sent the certificates to the mortgage brokers. *Testimony of Sheila Zoldak, Tr. at 67-68, 72-73.*

35. Prior to March 2006, Trans Ohio's certificate of registration number was MB 3510. *State's Exhibit M.*

36. After March 2006, TransOhio's certificate of registration number was MB.802467.000. *State's Exhibit 8.*

37. Respondent did not realize that the Division had changed TransOhio's certificate of registration number. *Testimony of Respondent, Tr. at 92-93.*

38. Respondent used TransOhio's old certificate of registration number, MB 3510, instead of its new certificate of registration number, MB.802467.000, in an advertisement that appeared in the CityNews newspaper dated June 7 – 13, 2007. *Respondent's Exhibit L.*

Required Disclosures to Borrowers

39. In the NOH, the Division alleged that Respondent “* * * failed to provide any of the disclosures required under state and federal law to the borrower as required by R.C. 1345.02(F)(1).” *State's Exhibit 1-A.*

40. At the hearing, Mr. Haynie explained that examples of required disclosures would be the addendum to the Good Faith Estimate, the tax escrow disclosure, and “insurance forms.” *Testimony of Kenneth E. Haynie, Tr. at 30-33, 60; State's Exhibit 4, pgs. 3 and 9.*

41. Respondent admitted to Mr. Haynie during the compliance examination that he was unaware of some of the required disclosures that he was required to provide to buyers during a loan transaction. *Testimony of Kenneth E. Haynie, Tr. at 31.* There was no evidence that Respondent knowingly failed to provide disclosures to borrowers.

Fraudulent Activity

42. In the NOH, the Division alleged that it suspected Respondent of fraudulent activity in connection with a buyer named Keith Spikes, in violation of R.C. § 1322.07(E). *State's Exhibit 1-A.*

43. The Division did not present any evidence that Respondent was involved with fraudulent activity in connection with a buyer named Keith Spikes.

D. Respondent's Background

44. Respondent is a high-profile entrepreneur in Cleveland, Ohio. He owns and operates TransOhio and is the founder and publisher of CityNews, a newspaper with over 280,000 weekly readers in Cleveland, Akron, and Columbus. *Testimony of Respondent, Tr. at 99; Respondent's Exhibit N.* Respondent is a former television producer and talk show host of “Work and Money,” a daily half hour talk show that aired for over eight years. Respondent also has been involved in the community as a district director for the Small Business Administration as a board of trustee for the Cleveland Area Development Finance Corporation under the Greater Cleveland Growth Association, and as a director of the Cleveland Minority Business Development Center. Respondent was appointed by Governors Voinovich and Taft to

the Ohio Minority Finance Commission. *Testimony of Respondent, Tr. at 98-99, 101-102; Respondents Exhibits R and T.*

45. Respondent opened TransOhio with the objective of running a small business for profit. When the housing market declined in 2005, Respondent's goal was to cease all loan activity, keep his loan officer license current with a bond in place, and wait until the housing market turned around. Respondent believes that he ran TransOhio in an honest and straightforward manner and noted that he has never had a problem in prior Division compliance examinations. Respondent maintained that TransOhio's errors were primarily record-keeping errors involving only three files. Respondent maintained that Division personnel did not give Respondent an exit interview after the February 5, 2008 compliance examination. Respondent asserted that the Division's investigators did not inform Respondent about problem areas and allow Respondent a chance to correct the problems as the Division had at past compliance examinations. *Testimony of Respondent, Tr. at 12-13, 134-135.*

46. Respondent seeks to return his license to the Division without revocation and without any limitation to re-entering the business in the future. *Testimony of Respondent, Tr. at 100.*

II. CONCLUSIONS OF LAW

A. Jurisdiction

47. The Division has procedurally complied with R.C. Chapter 119 and has established jurisdiction over this matter.

B. Proposed Revocation of Respondent's Loan Officer License

48. The Division is the state agency responsible for the licensing and regulation of loan officers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322, and the rules promulgated thereunder.

49. An operations manager is the individual responsible for the everyday operations, compliance requirements, and management of a mortgage broker business. *R.C. § 1322.01(H).*

50. O.A.C. Rule 1301:8-7-02(L) provides that no registrant, through its operations manager or otherwise, shall fail to reasonably supervise a loan officer or other persons associated with the registrant or to establish reasonable procedures designed to avoid violations of R.C. Chapter 1322., or of O.A.C. Chapter 1301:8-7.

51. As the operations manager of TransOhio, Respondent was responsible for TransOhio's compliance with R.C. Chapter 1322.

C. Alphabetical Index of Buyers

52. Ohio Adm.Code 1301:8-7-06(H)(1) requires every registrant to make, maintain, keep current and preserve the following books and records in a legible and readily accessible format:

(1) An alphabetical index of all buyers for whom the registrant has obtained mortgage loans, which lists the dates of the loan obtained for the buyers, the amounts of the loans, the individual responsible for originating the loan, and the identity of the lenders that funded or purchased the loan;

53. As operations manager for TransOhio, Respondent failed to maintain an alphabetical index of buyers for whom it obtained mortgage loans in 2007, in violation of Ohio Adm.Code 1301:8-7-06(H)(1).

D. Signed Copies of Disclosures to Buyers

54. R.C. § 1322.06(B) requires that a registrant shall maintain records pertaining to business transacted pursuant to R.C. §§ 1322.01 to 1322.12, including copies of all MLODS prepared in accordance with R.C. § 1322.062, for four years.

55. As operations manager for TransOhio, Respondent failed to maintain signed copies of the disclosures to buyers in 2007, in violation of R.C. § 1322.06(B)

E. Buyers' Files

56. Ohio Adm.Code 1301:8-7-06(H)(3) requires every registrant to maintain individual buyer files with copies of the loan application, credit information, contracts, the MLODS, all federal disclosures, appraisals, and receipts collected by the registrant from the buyer on behalf of third-party service providers such as appraisers and title companies, among others, and copies of applicable disclosures required by state law.

57. As operations manager for TransOhio, Respondent failed to maintain buyer files in 2007, in violation of Ohio Adm.Code 1301:8-7-06(H)(3).

F. Special Account

58. R.C. § 1322.08(A)(1) requires that no registrant shall fail to maintain a special account. R.C. § 1322.08(D)(2) defines “special account” to mean “a depository account with a financial institution, the deposits of which are insured by the federal deposit insurance corporation, that is separate and distinct from any personal or other account of the registrant, and that is maintained solely for the holding and payment of fees for services performed by bona fide third parties and received by the registrant from buyers that the registrant assists in obtaining mortgages.”

59. As operations manager for TransOhio, Respondent failed to maintain a special account at all times in 2007, in violation of R.C. § 1322.08(A)(1).

G. Disclosure of Legal Actions

60. At the hearing, the Division withdrew its allegation that Respondent failed to notify the Division of legal actions taken against him.

H. Disclosure of Registration Number in Advertisements

61. R.C. § 1322.09 requires that a mortgage broker shall disclose in advertisements the certificate of registration number that is issued to the mortgage broker by the Division.

62. As operations manager for TransOhio, Respondent failed to disclose TransOhio's correct certificate of registration number in a 2007 newspaper advertisement, in violation of R.C. § 1322.09.

I. Fraudulent Activity

63. The Division did not establish that Respondent was involved with fraudulent activity in connection with six loans for a borrower by the name of Keith Spikes, in violation of R.C. § 1322.07(E).

J. Required Disclosures to Borrowers

64. In the NOH, the Division charged Respondent with failing to provide “* * * any of the disclosures required under state and federal law to the borrower as required by R.C. § 1345.02(F)(1).”

65. R.C. § 1345.02(F)(1) states that it is a deceptive practice to knowingly fail to provide disclosures in connection with residential mortgage transactions required under state and federal law.

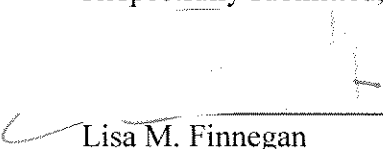
66. The Division did not establish that Respondent knowingly failed to provide disclosures in connection with residential mortgage transactions required under state and federal law. Accordingly, the Division did not meet its burden of proof that Respondent violated R.C. § 1345.02(F)(1).

III. RECOMMENDATION

Based upon the evidence submitted into the record for this case, the Division has established that Respondent violated R.C. §§ 1322.06(B), 1322.08(A) and 1322.09, and Ohio Adm.Code 1301:8-7-06(H)(1) and (H)(3). Because two of the five violations were record-keeping violations involving only three transactions, the

Hearing Officer respectfully recommends that the Division not revoke Respondent's loan officer license.

Respectfully submitted,



Lisa M. Finnegan
Administrative Hearing Officer
September 18, 2009