COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2011-AH-0055

DEPARTMENT OF FINANCIAL INSTITUTIONS COMPLAINANT

v.

DONALD R. YERKES RESPONDENT

FINAL ORDER SUSPENDING
MORTGAGE LOAN ORGINATOR REGISTRATION

* * * * * * * * *

Comes now the Commonwealth of Kentucky, by and through the Commissioner of the Department of Financial Institutions ("DFI"), and hereby enters this **Final Order**, pursuant to KRS Chapter 286.8, suspending the mortgage loan originator registration of the Respondent, Donald R. Yerkes ("Respondent"):

FINDINGS OF FACT

1. DFI is responsible for regulating and licensing mortgage loan originators, brokers, originators and processors in accordance with the provisions of KRS Chapter 286.8, the Mortgage Licensing and Regulation Act ("the Act").

2. Respondent is currently registered as a mortgage loan originator pursuant to the Act. Respondent's last known address is 7930 Bay Pointe Drive, #A5, Tampa, Florida 33615. Respondent's registration number is MC72215, and his Nationwide Mortgage Licensing System and Registry number is 42329.

3. During the course of reviewing Respondent's credit report, DFI determined that Respondent does not demonstrate sufficient financial responsibility to

ensure compliance with the registration requirements of KRS 286.8-255(9)(c) and 808 KAR 12:021(5).

4. On January 27, 2011, DFI mailed a letter to Respondent's last known address requesting that he provide additional information about and an explanation of his financial responsibility within ten (10) days thereafter, and warning that failure to respond will result in the revocation of his registration. However, the letter was returned to sender shortly thereafter marked "Unclaimed."

5. On March 18, 2011, DFI mailed a second letter to Respondent's last known address. This letter advised Respondent that his financial information reflected grounds for revocation of his registration and offered Respondent twenty (20) days within which to respond and surrender his registration, or else DFI would commence revocation proceedings. This letter further advised Respondent that his prior failure to respond also constitutes grounds for revocation.

6. DFI also sent an electronic copy of its March 18, 2011 letter to Respondent via electronic mail ("e-mail") on March 18, 2011 to his last known e-mail address on file with DFI, don.yerkes@lendingtree.com.

7. DFI received no response from Respondent to any of its correspondence.

8. On April 13, 2011, DFI filed an Administrative Complaint ("Complaint") against Respondent seeking revocation of Respondent's mortgage loan originator registration and an order directing that Respondent cease and desist from transacting any business in Kentucky in the mortgage loan process.

9. The Complaint was mailed via certified mail, return receipt requested, to Respondent's last known address referenced herein.

10. On May 11, 2011, the Complaint was returned to DFI undelivered.

11. More than twenty (20) days have passed since DFI received notice that the Complaint was returned undelivered, and Respondent has failed to respond to the Complaint or request a hearing in this matter.

STATUTORY AUTHORITY

1. Pursuant to KRS 286.8-255(9)(c), "No mortgage loan originator or mortgage loan processor shall be granted or shall be entitled to maintain a certificate of registration unless he or she satisfies the following minimum standards for registration: ...The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the loan originator or loan processor will operate honestly, fairly, lawfully, and efficiently within the purposes of the subtitle."

2. Pursuant to 808 KAR 12:021(5), "An applicant seeking registration or renewal under KRS 286.8-255 shall demonstrate the financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the applicant will operate honestly, fairly, lawfully, and efficiently within the purposes of the subtitle."

3. Pursuant to KRS 286.8-030(1)(c), "It is unlawful for any natural person to transact business in Kentucky, either directly or indirectly, as a mortgage loan originator...unless otherwise exempted, if the mortgage loan originator...is not registered in accordance with KRS 286.8-255 or otherwise exempted."

4. Pursuant to KRS 286.8-090(1), "The executive director may suspend; revoke; place on probation; condition; refuse to issue or renew a license, registration or exemption; or accept surrender of a license, registration, or exemption in lieu of

revocation or suspension; or issue a cease and desist order if the executive director finds that the person, applicant, licensee, or registrant:

> (a) Does not meet, no longer meets, or has failed to comply with the requirements of this subtitle; ...[or]
>
> (j) Has refused to permit an examination or investigation by the executive director of his books and affairs or has refused or failed, within a reasonable time, to furnish any information or make any report that may be required by the executive director under the provisions of this subtitle.

5. Pursuant to KRS 286.8-044(2), "The executive director may file an administrative complaint against any person if it appears on grounds satisfactory to the executive director that a potential or actual violation of this subtitle has been committed and when the person may be subject to the penalties of KRS 286.8-046, 286.8-090, and 286.8-990. The executive director shall serve the administrative complaint by certified mail or personal delivery to the last known address of the person named in the complaint. The person named in the administrative complaint shall be entitled to a hearing, but only upon timely receipt of a written answer and request for a hearing within twenty (20) days of the service or hand delivery of the administrative complaint. If timely requested, an administrative hearing shall be held in accordance with the provisions of KRS Chapter 13B. If a written answer and request for hearing are not made within twenty (20) days of service or delivery of the complaint, the executive director shall enter a final order granting the relief requested in the complaint."

6. Pursuant to KRS 286.8-044(3), service by certified mail shall be complete upon the earlier of the following:

> (a) The date on which the person receives the mail;
>
> (b) The date on which the agency receives the return receipt; or

(c) The date on which the agency receives notice that the mail has been returned undelivered.

CONCLUSIONS

1. Respondent has not demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the loan originator or loan processor will operate honestly, fairly, lawfully, and efficiently within the purposes of the Act, pursuant to KRS 286.255(9)(c).

2. Respondent has failed to furnish information requested and required by DFI within a reasonable time, and does not meet the requirements of the Act.

3. The Complaint was properly served upon Respondent via certified mail to his last known address in accordance with KRS 286.8-044(2) and 808 KAR 12:030, and service was complete by no later than May 11, 2011, pursuant to KRS 286.8-044(3).

4. Respondent failed to file a written answer and request for a hearing within twenty (20) days of service of the Complaint. Thus, Respondent's right to a hearing has been waived and DFI is entitled to a final order granting the relief it has requested.

ORDER

Based on the findings of fact, statutory authority, and conclusions set forth above, the Commissioner **ORDERS** that the mortgage loan originator registration of Donald R. Yerkes is hereby **SUSPENDED**. Respondent shall immediately **CEASE AND DESIST** from transacting business in Kentucky as a mortgage loan originator. This Order shall remain in effect until rescinded by subsequent Order.

This is a **FINAL AND APPEALABLE ORDER**. This Final Order shall become effective upon completion of service as set forth in KRS 286.8-044, KRS 13B.120, and KRS 13B.050.

IT IS SO ORDERED on this the 2nd day of June, 2011.

CHARLES A. VICE
COMMISSIONER

NOTICE OF APPEAL RIGHTS

Pursuant to KRS 286.8-210, you are hereby notified that you have the right to appeal this Final Order of the Commissioner. If you chose to appeal, you must file a written Notice of Appeal with the Franklin Circuit Court within sixty (60) days after entry of this Final Order. A copy of any Appeal Petition must also be served on the Commissioner.

Certificate of Service

I hereby certify that a copy of the foregoing Final Order was sent by certified mail, return receipt requested, on this the 3rd day of June, 2011 to:

Donald R. Yerkes
7930 Bay Pointe Drive, #A5
Tampa, Florida 33615

also:
2550 Stag Run Road, Apt. 425
Clearwater, Florida 33765

Respectfully submitted,

Michael T. Davis
Counsel
Department of Financial Institutions
1025 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601
(502) 573-3390 Ext. 240
(502) 573-2183 (facsimile)