COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2011-AH-0068

DEPARTMENT OF FINANCIAL INSTITUTIONS COMPLAINANT

v. **FINAL ORDER SUSPENDING MORTGAGE ORIGINATOR REGISTRATION**

HIRAM HERBERT RESPONDENT

* * * * * * * * * *

This matter is before the Commissioner of the Department of Financial Institutions ("DFI"), pursuant to KRS 286.8-044. The Commissioner hereby enters this **Final Order** suspending Hiram Herbert's ("Respondent") mortgage loan originator registration, pursuant to KRS Chapter 286.8.

FINDINGS OF FACT

1. DFI is responsible for regulating and licensing mortgage loan originators in accordance with the provisions of KRS Chapter 286.8. No person shall transact business in Kentucky as a mortgage loan originator, unless that person is registered with DFI and complies with all the applicable requirements of KRS Chapter 286.8. *See* KRS 286.8-255(1); *See Also* KRS 286.8-030(1)(c).

2. Respondent is currently registered as a loan originator in Kentucky, pursuant to KRS Chapter 286.8.

3. A mortgage loan originator cannot maintain a certificate of registration unless the loan originator demonstrates financial responsibility, character and general fitness such as to

command the confidence of the community and to warrant a determination that the loan originator will operate honestly, fairly, lawfully, and efficiently within the purposes of KRS Chapter 286.8. *See* KRS 286.8-255(9).

4. In order to effectuate this mandate, the DFI reviews registrants' credit histories for compliance with 808 KAR 12:021 §5. After conducting such a review on Respondent's credit history, DFI determined that Respondent does not meet the financial responsibility requirements of KRS Chapter 286.8.

5. On May 4, 2011 DFI, by counsel, filed an Administrative Complaint to revoke Respondent's loan originator registration. The Administrative Complaint was sent via certified mail, return receipt requested to Respondent's last known address, 942 Vine Street, Louisville, KY 40204.

6. The Administrative Complaint explained that the Respondent must file an answer to the Complaint, including a request for hearing, within twenty (20) days of service. The Administrative Complaint also explained that if a request for hearing was not received within 20 days, DFI would seek a Final Order from the Commissioner granting the relief requested in the Complaint.

7. The Administrative Complaint was returned to DFI on May 31, 2011 unclaimed.

8. More than twenty (20) days has passed and the Respondent did not timely request an administrative hearing.

9. After having considered all the relevant facts and circumstances and the available remedies, the Respondent's registration should be suspended rather than revoked.

STATUTORY AUTHORITY

10. Pursuant to KRS 286.8-255(1), "No natural person shall transact business in Kentucky, either directly or indirectly, as a mortgage loan originator or mortgage loan processor unless such mortgage loan originator or mortgage loan processor is registered with the department and has been issued a current certificate of registration by the department, complies with all applicable requirements of this subtitle, and maintains a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry. The department shall maintain a database of all mortgage loan originators and mortgage loan processors originating or processing mortgage loans on residential real property in Kentucky. The department shall issue a certificate of registration to all registered mortgage loan originators and mortgage loan processors."

11. In order to maintain a certificate of registration, a mortgage loan originator must demonstrate "...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." *See* KRS 286.8-255(9)(c).

12. Pursuant to 808 KAR 12:021 §5, DFI is authorized to review a loan originator's credit report in order to determine the loan originator's financial responsibility, character, and general fitness such as to command the confidence of the community and that the applicant will operate honestly, fairly, lawfully, and efficiently within the purposes of KRS Chapter 286.8. If the loan originator's credit score is below the 600 threshold, then DFI, in order to make a determination as to financial responsibility, can review the credit report for: (a) Any outstanding judgments, excluding judgments arising solely from medical expenses for the applicant or an

immediate family member; (b) Any outstanding tax liens or other governmental liens; (c) Any foreclosures occurring within five (5) years of the date of application or renewal; (d) Any bankruptcies occurring within five (5) years of the date of application or renewal; and (e) Any delinquent accounts occurring within five (5) years of the date of application or renewal.

13. KRS 286.8-090(1)(a) gives DFI the power to revoke or suspend a mortgage loan originator registration if the registrant, "Does not meet, no longer meets, or has failed to comply with the requirements of this subtitle".

14. KRS 286.8-044(2) states in pertinent part, "The executive director Commissioner 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." *Emphasis added.*

15. KRS 286.8-044(3) explains that service by certified mail is 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 OF LAW

16. 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

he will operate honestly, fairly, lawfully, and efficiently within the purposes of the Act, pursuant to KRS 286.255(9)(c) and 808 KAR 12:021 §5.

17. In addition, the Respondent does not meet the requirements of KRS Chapter 286.8. Therefore, his registration for mortgage loan originator must be suspended. *See* KRS 286.8-090(1)(a).

18. The Respondent was properly served the Complaint pursuant to KRS 286.8-044(2) by serving the Respondent via certified mail at the last known address of the Respondent. Service by certified mail is complete pursuant to KRS 286.8-044(3).

19. Respondent failed to timely respond to the Administrative Complaint or request a hearing within twenty (20) days of service. Thus, the Respondent has not perfected his appeal and his right to a hearing is waived in this matter.

20. KRS 286.8-090(1)(a) grants the Commissioner the authority to suspend or revoke a mortgage loan originator's registration for failure to comply the requirements of KRS Chapter 286.8. The Administrative Complaint, in addition to asking for revocation, also asked for, "Any other relief which may be appropriate and to which DFI is entitled." In this instance the appropriate relief is suspension.

ORDER

Based on the Findings of Fact, Statutory Authority, and Conclusions of Law set forth above, the Commissioner **ORDERS** that the mortgage loan originator registration of Respondent Hiram Herbert is **SUSPENDED**.

Executed on the 21st day of June, 2011.

Charles A. Vice, Commissioner
Department of Financial Institutions
1025 Capital Center Drive, Suite 200
Frankfort, 40601

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. This Order shall remain in effect until withdrawn by further Order of the Commissioner or modified by Court Order.

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 completion of service 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 to, return receipt requested, on this the 21st day of June, 2011 to:

Hiram Herbert
942 Vine Street
Louisville, KY 40204

Stephanie Dawson
Department of Financial Institutions
1025 Capital Center Drive, Ste. 200
Frankfort, KY 40601
(502) 573-3390, ext. 282
(502) 573-2183 (fax)