COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2011-AH-0048

DEPARTMENT OF FINANCIAL INSTITUTIONS COMPLAINANT

v. **FINAL ORDER IMPOSING FINE**

MARK GROLL 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** imposing a one thousand dollar fine ($1,000) and a cease and desist order on Mark Groll ("Respondent"), pursuant to KRS Chapter 286.8.

FINDINGS OF FACTS

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).

2. As the result of an investigation, it was discovered that the Respondent acted as an unregistered mortgage loan originator for Tri-Corp Financial, Inc.

3. On April 4, 2011 DFI, by counsel, filed an Administrative Complaint to impose a one thousand dollar ($1,000) fine and ordering the Respondent to cease and desist from acting as unregistered loan originator. The Administrative Complaint was sent via certified mail, return receipt requested to 7260 South Mingo, Cincinnati, OH 45243.

4. 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.

5. The Administrative Complaint was returned to DFI on May 2, 2011 with a new address for Respondent, as the forwarding time had expired. The new address listed was 8259 Wicklow Ave., Cincinnati, OH 45236-1613.

6. On May 3, 2011, the Administrative Complaint was re-sent to the 8259 Wicklow Ave., Cincinnati, OH 45236-1613 address. The Administrative Complaint was returned to DFI on May 18, 2011.

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

8. After having considered all the relevant facts and circumstances and the available remedies, the Respondent is subject to the $1,000 fine and cease and desist order.

STATUTORY AUTHORITY

9. A "mortgage loan originator" is someone who for compensation or gain or the expectation of compensation or gain:

> (a) Performs any one (1) or more of the following acts in the mortgage lending process:
>
> 1. Solicits, places, negotiates, or offers to make a mortgage loan;
> 2. Obtains personal and financial information from a borrower or prospective borrower;
> 3. Assists a borrower or prospective borrower with the preparation of a mortgage loan or related documents;
> 4. Explains, recommends, discusses, negotiates, or quotes rates, terms, and conditions of a mortgage loan with a borrower or

> prospective borrower, whether or not the borrower or prospective borrower makes or completes an application;
> 5. Explains any term or aspect of any disclosure or agreement given at or after the time a mortgage loan application is received; or
> 6. Takes a residential mortgage loan application; or
>
> (b) Is an independent contractor engaging in the mortgage lending process as a mortgage loan processor;

See KRS 286.8-010(21).

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 office and has been issued a current certificate of registration by the office, complies with all applicable requirements of this subtitle, and maintains a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry."

11. Pursuant to KRS 286.090(1)(a) and (c), the Commissioner may suspend, revoke, place on probation, or issue a cease and desist order if the commissioner finds that a person has failed to comply with the requirements of KRS Chapter 286.8 or the person does not conduct his business in accordance with the law.

12. KRS 286.8-046(1) gives the commissioner the ability to levy a civil penalty against any person who violates provisions of KRS Chapter 286.8. The civil penalty shall not be less than one thousand dollars ($1,000) nor more than twenty five thousand dollars ($25,000) per violation.

13. KRS 286.8-044(2) states in pertinent part, "The 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."

14. 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

15. Respondent has violated KRS 286.8-255 and KRS 286.8-030(1)(c) by acting as an unregistered loan originator for Tri-Corp Financial, Inc.

16. Pursuant to KRS 286.8-090 and KRS 286.8-046, the Respondent is subject to a $1,000 fine and a cease and desist order for his violations.

17. 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).

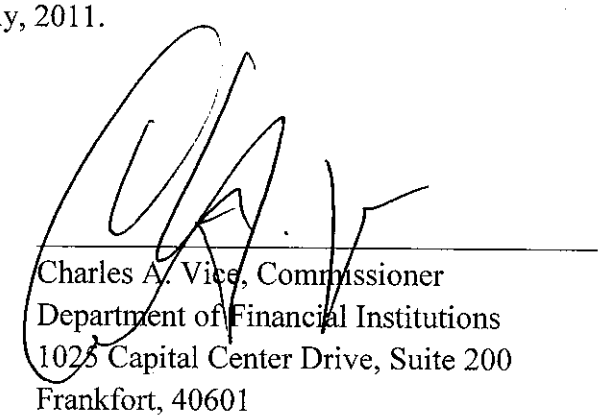
18. Respondent failed to timely respond to the Administrative Complaint or request a hearing within twenty (20) days of service. Thus, the Respondent has not perfected his appeal and his right to a hearing is waived in this matter.

ORDER

Based on the Findings of Fact, Statutory Authority, and Conclusions of Law set forth above, the Commissioner **ORDERS** that:

1. Mark Groll shall pay a civil penalty in the amount of one thousand dollars ($1,000); and
2. Mark Groll shall **CEASE AND DESIST** from acting as an unregistered mortgage loan originator in Kentucky.

Executed on the 15th day of July, 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 18th day of July, 2011 to:

Mark Groll
7260 South Mingo
Cincinnati, OH 45243

Mark Groll
8259 Wicklow Ave.
Cincinnati, OH 45236-1613

Stephanie Dawson
Department of Financial Institutions