

COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2010-AH-1126

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v.

1st CONTINENTAL MORTGAGE, INC.

RESPONDENT

FINAL ORDER

* * * * *

The Commissioner of the Department of Financial Institutions (“DFI”) hereby enters this **Final Order** directing 1st Continental Mortgage, Inc. (“Respondent” or “1st Continental”) to pay a fine of two thousand five hundred dollars (\$2,500.00), plus costs, and to cease and desist from transacting business in Kentucky with unregistered mortgage loan originators and processors, pursuant to KRS Chapter 286.8.

STATEMENT OF FACTS

1. The DFI is responsible for regulating and licensing mortgage loan originators doing business in Kentucky in accordance with the provisions of KRS Chapter 286.8, the Mortgage Loan Company and Mortgage Loan Broker Act (the “Act”).

2. 1st Continental was authorized to do business in Kentucky as a mortgage loan broker (NMLS # 41150) pursuant to the Act, with its principal office located at 2691 East Oakland Park Blvd., Suite 203, Fort Lauderdale, FL 33306.

3. The DFI discovered, in the course of an examination of Peoples Home Equity, Inc. (“PHE”), that PHE utilized Respondent’s services as a mortgage loan broker which was employing an unregistered loan officer (namely, Jason Coppersmith) relating to a residential mortgage loan in the Commonwealth of Kentucky in violation of KRS §286.8-030.

4. It is unlawful to utilize mortgage loan originators who have not been properly registered with the DFI.

5. On November 19, 2010, DFI filed an Administrative Complaint (“Complaint”) against Respondent seeking an order to cease and desist, payment of a fine or civil penalty, and costs pursuant to KRS Chapter 286.8.

6. The Complaint was sent to Respondent via certified mail, return receipt requested to 2691 East Oakland Park Blvd., Suite 203, Fort Lauderdale, Florida 33306, the address listed on file with the DFI as Respondent’s last known mailing address. The Complaint was returned with the Postal Notation “Return to Sender—Attempted—Not Known—Unable to Forward.”

7. More than twenty (20) days has passed and the Respondent has failed to respond to the Complaint or request a hearing in this matter.

STATUTORY AUTHORITY

8. Pursuant to KRS 286.8-010(12), the “mortgage lending process” means:
- the process through which a person seeks or obtains a mortgage loan, including the solicitation, application, origination, negotiation of terms, underwriting, signing, closing, and funding of a mortgage loan and the services provided incident to a mortgage loan, including the appraisal of the residential real property. Documents involved in the mortgage lending process include but are not limited to:
- (a) Uniform residential loan applications or other loan applications;
 - (b) Appraisal reports;
 - (c) Settlement statement;
 - (d) Supporting personal documentation for loan applications, including:
 - 1. Form W-2 or other earnings or income statements;
 - 2. Verifications of rent, income, and employment;
 - 3. Bank statements;
 - 4. Tax returns; and
 - 5. Payroll stubs;
 - (e) Any required mortgage-related disclosures; and
 - (f) Any other document required as a part of, or necessary to, the mortgage lending process;
9. A “mortgage loan originator” is someone who:
- (a) Provides services to one (1) and not more than one (1) mortgage loan company or mortgage loan broker;
 - (b) Is subject to the supervision and control of that mortgage loan company or mortgage loan broker; and
 - (c) In exchange for compensation by that mortgage loan company

or mortgage loan broker, performs any one (1) or more of the following acts in the mortgage lending process:

1. Solicits, places, negotiates, originates, or offers to make a mortgage loan for a mortgage loan company or mortgage loan broker;
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, 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; or
5. Explains any term or aspect of any disclosure or agreement given at or after the time a mortgage loan application is received.

See KRS 286.8-010(9).

10. Pursuant to KRS 286.8-255(1), "No mortgage loan originator or mortgage loan processor shall originate or process mortgage loans on residential real property in Kentucky unless such mortgage loan originator or mortgage loan processor is registered with the office and has been issued a certificate of registration by the office. The office 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 office shall issue a certificate of registration to all registered mortgage loan originators and mortgage loan processors."

11. KRS 286.8-030(1)(d) makes it unlawful for any mortgage loan company or mortgage loan broker to use an unregistered mortgage loan originator.

12. KRS 286.8-036 requires that each license issued shall state the address or addresses at which business is to be conducted. 808 KAR 12.024 further requires that a licensee changing its address, name, or agent for service of process shall notify the Commissioner in writing at least ten days before

the change of address or name and at least five days before the change of the agent for service of process. Additionally, the licensee is required to update this information in the Nationwide Mortgage Licensing System (“NMLS”) within these same time periods.

12. Pursuant to KRS 286.8-090(1)(a), (m) and (v), the Commissioner may 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, the person has employed an unregistered loan officer, or the person has violated any provision of KRS Chapter 286.8.

13. KRS 286.8-046 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. In addition, the commissioner may order reimbursement of the costs and expenses for the examination, investigation, and prosecution of this matter, including reasonable attorney’s fees and court costs.

14. 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.”

15. Finally, 808 KAR 12:030 Section 2 states:

(1) The office attorney may file a written complaint against a person if:

(a) The attorney believes that the person is violating or has violated a provision of KRS Chapter 286.8; and

(b) The executive director has not entered an order against the person based on the same conduct or allegation.

(2) The complaint shall:

- (a) Describe the allegation made against the person;
- (b) Request the executive director to enter an appropriate order;
and
- (c) Comply with the requirements for notice of an administrative hearing established by KRS 13B.050(3)(c) through (h).

CONCLUSIONS

- 1. Respondent violated KRS 286.8-030(1)(d) by using an unregistered mortgage loan originator;
- 2. The Respondent was properly served the Complaint pursuant to KRS 286.8-044(2) and 808 KAR 12:030 by serving the Respondent by certified mail at the last known address of the Respondent.
- 3. Respondent failed to respond to the Complaint or request a hearing within twenty (20) days of service. Thus, the Respondent's right to a hearing was waived in this matter.

ORDER

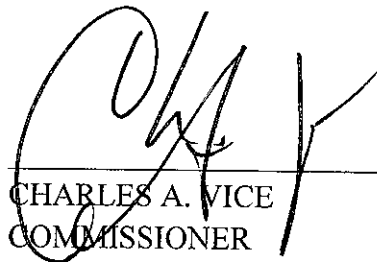
THEREFORE, based upon the foregoing statement of facts, statutory authority, and conclusions, the Commissioner **HEREBY ORDERS** that:

- 1. Respondent, 1st Continental Mortgage, Inc., pay a civil penalty in the amount of two thousand five hundred dollars (\$2,500.00) for violations of the Act;
- 2. Respondent, 1st Continental Mortgage, Inc., reimburse DFI for any and all costs and expenses associated with the examination, investigation, and prosecution of this matter;
- 3. Respondent, 1st Continental Mortgage, Inc., **CEASE AND DESIST** from transacting business in Kentucky with unregistered mortgage loan originators and processors,

until such time as any unregistered mortgage loan originator and processor is properly registered pursuant to Chapter 286.8; and

4. 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 31st day of January, 2011.



CHARLES A. VICE
COMMISSIONER

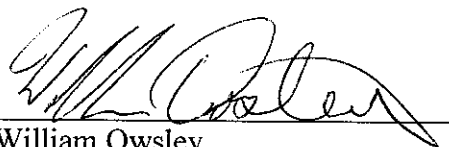
NOTICE OF APPEAL RIGHTS

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 to, return receipt requested, on this the 3rd day of February, 2011 to:

1st Continental Mortgage, Inc.
2691 East Oakland Park Blvd., Suite 203F
Fort Lauderdale, FL. 33306



William Owsley
Legal Counsel
Department of Financial Institution
1025 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601
(502) 573-3390 Ext. 236
(502) 573-2183 (facsimile)