

COMMONWEALTH OF KENTUCKY  
PUBLIC PROTECTION CABINET  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
AGENCY CASE NO. 2010-AH-94

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v.

**EMERGENCY ORDER TO CEASE AND DESIST**

AFI FINANCIAL, INC.

RESPONDENT

\* \* \* \* \*

Comes now, the Commonwealth of Kentucky, by and through the Commissioner of the Department of Financial Institutions (“DFI”), and hereby enters this **Emergency Order** directing AFI, Financial, Inc. (“Respondent”) to immediately **Cease and Desist** from operating as a mortgage loan broker in Kentucky.

**FINDINGS OF FACT**

1. DFI is responsible for regulating and licensing mortgage loan brokers in accordance with the provisions of KRS Chapter 286.8. No person shall transact business in Kentucky as a mortgage loan broker, unless that person is licensed with DFI and complies with all the applicable requirements of KRS Chapter 286.8 or is exempt from licensing under KRS 286.8-020. *See* KRS 286.8-030(1)(a).

2. Respondent is currently licensed as a mortgage loan broker, license number MB20601. Respondent’s last known address is 20864 Soneta Drive, Boca Raton, FL 33433.

3. On January 27, 2010, DFI received a Notice of Cancellation and/or Termination (“Notice”) from Liberty Mutual. The Notice stated that Respondent’s surety bond as a mortgage broker would be cancelled effective March 15, 2010.

4. By letter dated February 1, 2010, DFI informed the Respondent that it had received the Notice from Liberty Mutual and that the Respondent must show reinstatement of the bond or evidence of issuance of new bond on or before March 15, 2010. DFI followed this letter up with a phone call to Respondent on May 24, 2010.

5. To date, Respondent has not provided evidence of reinstatement of the bond or evidence of issuance of new bond.

#### **STATUTORY AUTHORITY**

6. KRS 286.8-030(1)(a) states, “It is unlawful for any person to transact business in Kentucky, either directly or indirectly, as a mortgage loan company or mortgage loan broker if the mortgage loan company or mortgage loan broker is not licensed in accordance with the requirements of this subtitle, unless that person is exempt under KRS 286.8-020 and, if required by KRS 286.8-020(3) has timely filed a completed application for a claim of exemption, and the filed application for a claim of exemption has been approved by the executive director.”

7. Pursuant to KRS 286.8-060 mortgage brokers are required to maintain a surety bond. KRS 286.8-060(1) provides, “Except as otherwise provided in this section, each mortgage loan company, mortgage loan broker, and mortgage loan originator shall post or be covered by a surety bond for the entire licensure or registration period in an amount prescribed by the executive director, but in no event shall the bond be less than two hundred fifty thousand dollars (\$250,000) for mortgage loan companies and fifty thousand dollars (\$50,000) for mortgage loan

brokers.” The surety bond, among other things, is to ensure that if a mortgage broker harms the public, the funds are available to make a borrower whole. *See* KRS 286.8-060(4).

8. KRS 286.8-048(1) gives DFI the power to issue an emergency order suspending a mortgage broker’s license if “...it appears upon grounds satisfactory to the executive director that the mortgage loan broker, mortgage loan company, mortgage loan originator, or mortgage loan processor has engaged or is engaging in unsafe, unsound, and illegal practices that pose an imminent threat to the public interest.”

9. Pursuant to KRS 286.8-048(2)(g) a sufficient ground for an emergency suspension exists if “...The surety bond required under KRS 286.8-060 has terminated, expired, or no longer remains in effect.”

10. DFI can issue cease and desist orders if a person has engaged in a practice that is in violation of KRS Chapter 286.8. *See* KRS 286.8-190.

11. Finally, KRS 13B.125(1) grants an agency the ability to take emergency action against a person if the agency is duly authorized to take such action by statute.

### **CONCLUSIONS OF LAW**

12. The Respondent has failed to maintain a surety bond, as required by KRS 286.8-060.

13. Without a surety bond, there is no guaranteed ability of Respondent to make a borrower whole for any potential losses the borrower may incur as a result of the Respondent’s actions. Therefore, this failure to maintain a surety bond creates an immediate danger to the public health, safety and welfare. In addition, the lack of surety bond is an unsafe, unsound, and illegal practice that poses an imminent threat to the public interest.

14. The Respondent has violated KRS 286.8-048(2)(g), which provides sufficient grounds for DFI to issue an emergency order of suspension and cease and desist.

**ORDER**

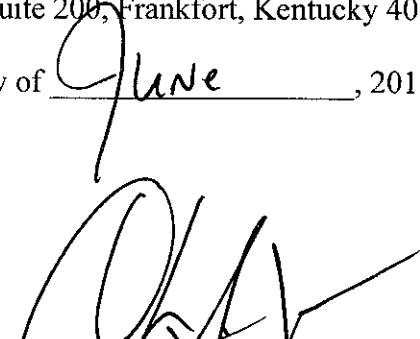
Based on the foregoing Findings of Fact and Conclusions of Law, the Commissioner hereby **ORDERS** as follows:

1. AFI, Financial, Inc.'s mortgage broker license is hereby **SUSPENDED**; and
2. AFI, Financial, Inc. shall immediately **CEASE AND DESIST** from engaging in the mortgage loan process in Kentucky.

**APPEAL RIGHTS**

You are hereby notified that you have the right to request a hearing on this matter, in writing, within twenty (20) days of the entry of this Order. If requested, an administrative hearing shall be held pursuant to the provisions of KRS 13B.125 and KRS 286.8-048. Please submit any appeal to Shaun T. Orme, Assistant General Counsel, Kentucky Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601.

IT IS SO ORDERED on this the 28<sup>th</sup> day of June, 2010



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

**Certificate of Service**

I hereby certify that a copy of the foregoing **Emergency Order to Cease and Desist** was served by certified mail return receipt requested on this the 30<sup>th</sup> day of June, 2010 to:

AFI Financial, Inc.  
20864 Soneto Drive  
Boca Raton, FL 33433



Shaun T. Orme  
Assistant General Counsel  
Department of Financial Institutions  
1025 Capital Center Drive, Ste. 200  
Frankfort, KY 40601  
(502) 573-3390, ext. 282