

COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2012-AH-0281

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v.

ANTHONY LEONARD SMIGIEL

RESPONDENT

FINAL ORDER SUSPENDING MORTGAGE LOAN ORIGINATOR REGISTRATION

* * * * *

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 Anthony Leonard Smigiel’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 of 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 mortgage loan originator in Kentucky pursuant to KRS 286.8.

3. A mortgage loan originator cannot maintain a certificate of registration unless the loan originator demonstrates that he or she is covered by a surety bond that satisfies the requirements of KRS Chapter 286.8. *See* KRS 286.8-255(9).

4. DFI received notification from the Nationwide Mortgage Licensing System (“NMLS”) that the sponsorship is removed from Respondent’s loan officer registration. Without a sponsorship, Respondent is no longer covered under his employer’s surety bond.

5. On November 19, DFI, by counsel, filed an Administrative Complaint to suspend Respondent’s loan originator registration. The Administrative Complaint was sent via certified mail, return receipt requested, to Respondent’s last known address, 22436 Daniels, St. Clair Shores, MI 48081.

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 U.S. Post Office served the Complaint upon Respondent, and the DFI received notice of service on November 28, 2012.

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

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

STATUTORY AUTHORITY

1. 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 processor is registered with the DFI and has been issued a current certificate of registration by DFI, complies with all applicable requirements of KRS Chapter 286.8, and maintains a valid identifier issued by the NMLS Registry. The DFI maintains a database of all mortgage loan originators and processors originating or processing mortgage loans on residential real property in Kentucky. The DFI issues certificates of registration to all registered mortgage loan originators and processors in accordance with the provisions of KRS 286.8-255(1).

2. Pursuant to 808 KAR 12:021 “in addition to the requirements set forth in this administrative regulation, an applicant applying for registration, renewal, or reinstatement as a mortgage loan originator shall provide proof that the mortgage loan originator holds or is covered by a bond furnished by a surety company authorized to conduct business in Kentucky. If the mortgage loan originator is procuring his or her own bond, the bond shall be submitted on the Surety Bond for Individual Mortgage Loan Originators Form and in an amount to be determined by annual loan origination as follows:

(a) if the annual loan volume of the applicant is less than ten million dollars (\$10,000,000), the surety bond shall be in amount not less than fifteen thousand dollars (\$15,000,000), or

(b) if the annual loan volume of the applicant is more than ten million dollars (\$10,000,000), then the surety bond shall be in an amount not less than twenty thousand dollars (\$20,000).

3. KRS 286.8-090(1)(j) gives the DFI the authority to suspend the registration of a mortgage loan originator if the registrant has refused to permit an examination or investigation by the commissioner 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 commissioner under the provisions of this subtitle.”

4. KRS 286.8-090(1)(a) gives the DFI the authority to suspend the registration of a mortgage loan originator if the registrant “does not meet, no longer meets, or has failed to comply with the requirements of this subtitle.”

5. Pursuant to KRS 286.8-044(2), the DFI can file an administrative complaint against any person if it appears that person is in violation of KRS 286.8-090.

6. KRS 286.8-042 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 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.”

7. 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


1. Respondent has not demonstrated that he is covered by a surety bond that satisfied the requirements of KRS Chapter 286.8.
2. In addition, the Respondent does not meet the requirements of KRS Chapter 286.8, See KRS 286.8-090(1)(a).
3. Finally Respondent has failed to furnish, within a reasonable time, information required under KRS Chapter 286.8.

4. Therefore, her registration as a mortgage loan originator in Kentucky must be suspended.
5. The Respondent was properly served with a copy of the Administrative Complaint by certified mail/return receipt requested pursuant to KRS 286.8-044(2) and service was complete on August 23, 2012.
6. The Respondent has failed to respond to the Complaint or request a hearing within twenty (20) days of service. Thus, the Respondent has not perfected her appeal, and her right to a hearing is waived in this matter.

ORDER

THEREFORE, based upon the Findings of Fact, Statutory Authority, and Conclusions of Law set forth above, the Commissioner **ORDERS** that the mortgage loan originator registration of Respondent Anthony Leonard Smigiel is **SUSPENDED**.

Executed of the 28th day of December, 2012.



CHARLES A. VICE, COMMISSIONER
Department of Financial Institutions
1025 Capital Center Drive, Suite 200
Frankfort, KY 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 the Commissioner or modified by an order of a court of competent jurisdiction.


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 4th day of January, 2018 to:

Anthony Leonard Smiegel 22436 Daniels St. Clair Shores, MI 48081	



William Owsley
Counsel