

**COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2011-AH-0017**

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v.

**FINAL ORDER
IMPOSING FINE, FEES AND COSTS**

APEX LENDING, INC.

RESPONDENT

* * * * *

The Commissioner of the Department of Financial Institutions (“DFI”) hereby enters this **Final Order**, pursuant to KRS Chapter 286.8, directing Respondent Apex Lending, Inc. to pay a **Fine** in the amount of two thousand, five hundred dollars (\$2,500.00); pay examination **Fees** in the amount of six hundred and thirty dollars (\$630.00); and to reimburse DFI for the costs, expenses and attorney’s fees associated with the prosecution of this matter as set forth herein.

FINDINGS OF FACT

1. DFI is responsible for regulating and licensing mortgage loan companies, brokers, originators and processors in accordance with the provisions of KRS Chapter 286.8, the Mortgage Licensing and Regulation Act (“the Act”).

2. The Respondent, Apex Lending, Inc. (“Respondent”), was a mortgage loan broker licensed to do business in Kentucky pursuant to the Act, and has its principal office located at 10300 49th Street North, Clearwater, Florida 33762. Respondent’s registered agent for service of process is Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 421 West Main Street, Frankfort, Kentucky

40601. Respondent's License number was MC19219. Respondent's physical address and correspondence address on file with DFI for purposes of the Act is 801 West Bay Drive, Suite 300, Largo, Florida 33770.

3. At all times relevant herein, Steven Hays was the President, Director and majority owner of Respondent.

4. On January 20, 2010, DFI conducted an examination of Respondent pursuant to the Act.

5. DFI expended fifteen (15) working hours in order to conduct this examination.

6. DFI's examination fee pursuant to the Act was six hundred and thirty dollars (\$630.00).

7. On February 5, 2010, DFI sent to Respondent its fee bill of \$630.00, along with a copy of the examination report, via first class mail to Respondent's physical and correspondence address. Respondent failed to pay the examination fee within thirty (30) days of the date it was sent to Respondent.

8. On July 23, 2010, DFI sent to Respondent a written notice, via first class mail to Respondent's physical and correspondence address, of Respondent's failure to pay the examination fee, which notice also demanded payment thereof. Respondent failed to pay the examination fee within thirty (30) days from the date that the written notice of nonpayment and demand for payment was sent to Respondent.

9. On October 26, 2010, DFI sent to Respondent a written Final Notice to Respondent via first class mail to Respondent's physical and correspondence address. This Final Notice yet again demanded payment of the examination fee, and warned that

failure to do so would result in administrative collection actions. Respondent failed to pay the examination fee or otherwise respond in any way.

10. By letter dated January 19, 2011, DFI notified Respondent of its violation of 808 KAR 12:022, and that Respondent would be subject to additional fines and penalties under the Act if it failed to pay the examination fee within fifteen (15) days thereof. The letter was sent by certified mail to both Respondent's principal office and its physical and correspondence addresses. On January 31, 2011, the letter sent to Respondent's principal office was returned to DFI marked "Not Deliverable As Addressed." However, on January 27, 2011, the letter sent to Respondent's physical and correspondence address was delivered to and accepted by Steven Hayes, who signed the return receipt thereof on behalf of Respondent. However, Respondent again failed to pay the examination fee or otherwise respond in any way.

11. On February 9, 2011, DFI filed an Administrative Complaint ("Complaint") against Respondent seeking an order awarding its examination fees of six hundred and thirty dollars (\$630.00), imposition of a fine of two thousand, five hundred dollars (\$2,500.00) as well as any other appropriate relief to which DFI may be entitled under the Act, including its cost, expenses, and attorney's fees for the prosecution of the matter.

12. The Complaint was mailed via certified mail, return receipt requested, to both Respondent's principal office and its physical and correspondence addresses, as well as to its registered agent for service of process.

13. On February 14, 2011, DFI received a return receipt confirming that the Complaint mailed to Respondent's registered agent was received by that agent on February 10, 2011.

14. On February 22, 2011, the Complaint mailed to Respondent's principal office was returned to DFI marked "Not Deliverable As Addressed."

15. On March 4, 2011, DFI received a return receipt confirming that the Complaint mailed to Respondent's physical and correspondence address was delivered to and signed by Steven Hays on behalf of Respondent on or about February 25, 2011.

16. More than twenty (20) days have passed since DFI received notice that the Complaint was delivered to Respondent's registered agent, notice that the Complaint was returned undelivered from Respondent's principal address, and notice that the Complaint was delivered to Steven Hays on behalf of Respondent at its physical and correspondence address.

STATUTORY AUTHORITY

1. Pursuant to 808 KAR 12:022(2)(1), a mortgage loan company or mortgage loan broker shall pay the Department's examination and/or investigation fees "within thirty (30) days of the date of the fee bill sent following the examination or investigation." Pursuant to 808 KAR 12:022(3), a mortgage loan company or mortgage loan broker that fails to pay the fee within thirty (30) days from the date of demand for immediate payment shall, in addition to remaining liable for all owed fees, be subject to administrative action and the penalties established in KRS 286.8-090 and 286.8-046.

2. Pursuant to 808 KAR 12:022, "[t]he fee for each examination and investigation conducted by the department shall be forty-two (42) dollars per hour for each examiner conducting the examination or investigation, plus all additional reasonable costs incurred."

3. 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.

4. 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, plus the state's costs and expenses for the examination, investigation, and prosecution of the matter, including reasonable attorney's fees and court costs.

5. Pursuant to KRS 286.8-044(2), "The executive director may file an administrative complaint against any person if it appears on grounds satisfactory to the executive director that a potential or actual violation of this subtitle has been committed and when the person may be subject to the penalties of KRS 286.8-046, 286.8-090, and 286.8-990. The executive director 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. If timely requested, an administrative hearing shall be held in accordance with the provisions of KRS Chapter 13B. If a written answer and request for hearing are not made within twenty (20) days of service or delivery of the complaint, the executive director shall enter a final order granting the relief requested in the complaint."

6. Pursuant to KRS 286.8-044(3), service by certified mail shall be 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.
7. Pursuant to 808 KAR 12:030, Section 2:
- (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 808 KAR 12:022 by failing to pay DFI's examination fee bill and failing to timely respond to DFI's demands for same. Therefore, Respondent is subject to a fine of two thousand, five hundred dollars (\$2,500.00) for these violations.
2. The Complaint was properly served upon Respondent via certified mail to his last known address in accordance with KRS 286.8-044(2) and 808 KAR 12:030.
3. Service of the Complaint upon Respondent was complete by no later than February 25, 2011, pursuant to KRS 286.8-044(3)(a-c).

4. Respondent failed to respond to the Complaint by filing a written answer or requesting a hearing within twenty (20) days of service. Thus, Respondent's right to a hearing has been waived in this matter.

ORDER

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

1. Respondent Apex Lending, Inc. shall pay a civil penalty in the amount of two thousand, five hundred dollars (\$2,500.00) for its violations of 808 KAR 12:022. The payment shall be in the form of a certified check or money order made payable to "Kentucky State Treasurer" and mailed to the Department of Financial Institutions, Attn: Michael T. Davis, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601;

2. Respondent Apex Lending, Inc. shall pay DFI's examination fee bill in the amount of six hundred and thirty dollars (\$630.00). The payment shall be in the form of a certified check or money order made payable to "Kentucky State Treasurer" and mailed to the Department of Financial Institutions, Attn: Michael T. Davis, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601;

3. Respondent Apex Lending, Inc. shall pay to and reimburse DFI the additional sum of five hundred, ninety-three dollars and seventy-five cents (\$593.75), its costs, expenses, and/or attorneys fees associated with the prosecution of this matter as set forth in Exhibit A to this Order; and

4. Respondent Apex Lending, Inc. shall **CEASE AND DESIST** from transacting business in Kentucky as a mortgage loan broker, unless and until Respondent complies with all applicable provisions of KRS Chapter 286.8.

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 1st day of April, 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

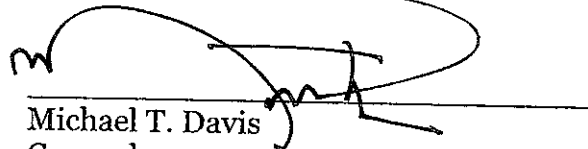
I hereby certify that a copy of the foregoing Final Order was sent by certified mail, return receipt requested, on this the 4th day of April, 2011 to:

Steven Hays
Apex Lending, Inc.
10300 49th Street North
Clearwater, Florida 33762

Steven Hays
Apex Lending, Inc.
801 West Bay Drive, Suite 300
Largo, Florida 33770

Corporation Service Company
d/b/a CSC- Lawyers Incorporating Service Company
421 West Main Street
Frankfort, Kentucky 40601

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Michael T. Davis', is written over a horizontal line. The signature is stylized and includes a large loop at the end.

Michael T. Davis
Counsel
Department of Financial Institutions
1025 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601
(502) 573-3390 Ext. 240
(502) 573-2183 (facsimile)

TIME SHEET

(COSTS ASSOCIATED WITH ADMINISTRATIVE ACTION)

NAME/TITLE: Michael T. Davis, Counsel

DATE: 3/10/2011

<u>Time/Hours (in .25 increments)</u>	<u>Rate/Hour \$125</u>	<u>Description of Work Completed</u>
1.00 hours		Review enforcement file, research alleged violations, compose demand letter.
0.50 hours		Monitor status of file, check service upon Respondent.
1.25 hours		Draft Administrative Complaint.
0.50 hours		Monitor status of file, verify service of Complaint upon Respondent.
1.50 hours		Draft Final Order.
TOTAL: 4.75 hours @ \$125	TOTAL \$593.75	

By signing below, I hereby certify that the information contained herein is true and accurate record of the time expended by me on this matter.

