

**COMMONWEALTH OF KENTUCKY  
PUBLIC PROTECTION CABINET  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
AGENCY CASE NO. 2010-AH-050**

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v.

**FINAL ORDER**

BRETT HOWARD

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** directing Brett Howard ("Respondent") to pay a **Fine** in the amount of \$1,000, 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); *See Also* KRS 286.8-030(1)(c).

2. As the result of an investigation, it was discovered that the Respondent acted as an unregistered mortgage loan originator for Homequest Mortgage Network, LLC.

3. By letter dated February 17, 2010, DFI notified the Respondent of the alleged violation of KRS 286.8-030 and KRS 286.8-255. The letter was sent certified mail, return receipt requested to the Respondent's last known address, 1011 Equestrian Way, Sellersburg, IN

47172. This was the address provided by the Respondent as his address during the licensing process. The letter signed for by the Respondent.

4. A second letter was sent via first class mail on April 5, 2010. That letter asked the Respondent to notify DFI in writing by April 19, 2010 if he wished to settle this matter in lieu of an administrative proceeding. The Respondent did not respond to the April 5, 2010 letter.

5. Based on the investigation, DFI asserts the following violations of KRS Chapter 286.8 by Respondent:

<u>Unregistered Activity</u>	<u>Statute Violated</u>	<u>Description</u>
Unregistered loan originator	KRS 286.8-030(1)(c) and KRS 286.8-255(1)	In June, 2009 Respondent acted as a loan originator for Homequest Mortgage Network, LLC.

6. On May 19, 2010 DFI filed an Administrative Complaint seeking imposition of a \$1,000 fine against Respondent. The Administrative Complaint was sent via certified mail, return receipt requested to 1011 Equestrian Way, Sellersburg, IN 47172. 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 Administrative Complaint was signed for by the Respondent and the return receipt received by DFI on May 28, 2010.

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

## 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(22).

10. KRS 286.8-030(1)(c) states, “It is unlawful for any natural person to transact business in Kentucky, either directly or indirectly, as a mortgage loan originator or mortgage loan processor, unless otherwise exempted, if the mortgage loan originator or mortgage loan processor is not registered in accordance with KRS 286.8-255.”

11. 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.”

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 executive director (now 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.” *Emphasis added.*

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. The Respondent has violated KRS 286.8-030(1)(c) and KRS 286.8-255(1) by acting as an unregistered loan originator. Respondent is subject to a fine of one thousand dollars (\$1,000).

16. 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).

17. The Administrative Complaint sent to 1011 Equestrian Way, Sellersburg, IN 47172 was signed for by the Respondent and the return receipt received by DFI on May 28, 2010. Therefore, pursuant to KRS 286.8-044(3) service was complete, at the very least, on May 28, 2010 and the Respondent had until June 17, 2010 to appeal.

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

#### **ORDER**

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

Brett Howard shall pay a civil penalty in the amount of one thousand dollars (\$1,000.00) for violation of KRS 286.8-030(1)(c) and KRS 286.8-255(1). The check 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: Shaun T. Orme, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601.

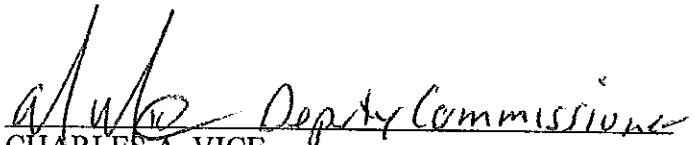
This is a **FINAL AND APPEALABLE ORDER**. This Final Order shall become effective upon completion of service as set forth in KRS 286.8-044.

#### **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.

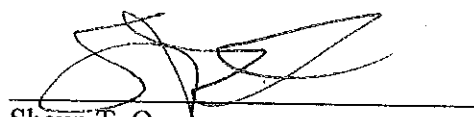
**IT IS SO ORDERED** on this the 7<sup>th</sup> day of July, 2010.

*for*  *Deputy Commissioner*  
CHARLES A. VICE  
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 2<sup>nd</sup> day of July, 2010 to:

Brett Howard  
1011 Equestrian Way  
Sellersburg, IN 47172



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