

**COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2011-AH-0174**

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v.

FINAL ORDER

BRYAN CRAIN

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** ordering Bryan Crain (“Respondent”) pay the remaining one thousand two hundred fifty dollar (\$1,250) fine due on the Agreed Order of Settlement entered Agency Case No. 2010-AH-091, Administrative Action No. 10-PPC-0208, a two thousand five hundred dollar fine (\$2,500), and ordering Respondent to pay the state’s attorney’s fees for the prosecution of this matter, 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 compliance with all the applicable requirements of KRS Chapter 286.8. *See* KRS 286.8-255(1).

2. During an investigation of Overland Mortgage Corporation d/b/a Integrity Home Mortgage (“Overland”), DFI discovered evidence that the Respondent acted as an unregistered mortgage loan originator for Overland, in violation of KRS 286.8-255 and KRS 286.030.

3. An Administrative Complaint was filed on June 28, 2010 against the Respondent for the violations seeking a \$4,000 fine. The Respondent timely filed an Answer to the Administrative Complaint. The style of that case was *Department of Financial Institutions v. Bryan Crain*, Agency Case No. 2010-AH-091, Administrative Action No. 10-PPC-0208.

4. Prior to the convening of an administrative hearing, the parties entered into an Agreed Order of Settlement. The Agreed Order of Settlement was executed by the Commissioner on June 28, 2011.

5. Pursuant to Agreed Order of Settlement, the Respondent was to pay a \$1,500 fine in installments of \$250, the first being due on the date Respondent signed the Agreed Order of Settlement and returned it to DFI. The subsequent installments were due as follows: The second installment was due 30 days from the date the Agreed Order was executed by the Commissioner. The third installment was due 60 days from the date the Commissioner executed the Agreed Order. The fourth installment was due 90 days from the date the Commissioner executed the Agreed Order. The fifth installment was due 120 days from the date the Commissioner executed the Agreed Order. The sixth installment was due 150 days from the date the Commissioner executed the Agreed Order.

6. The Respondent paid the initial \$250 installment. However, Respondent has not made any of the other required installment payments. Additionally, Respondent has not contacted DFI to explain his failure to comply with the Agreed Order of Settlement.

7. Respondent has violated the terms of the Agreed Order of Settlement, which constitutes violations of Chapter KRS 286.8.

8. On October 10, 2011 DFI, by counsel, filed an Administrative Complaint seeking to impose a two thousand five hundred dollars (\$2,500) fine, to order the Respondent to pay the

remaining one thousand two hundred fifty dollars (\$1,250) due from the Agreed Order of Settlement entered in Agency Case No. 2010-AH-091, Administrative Action No. 10-PPC-0208, and order the Respondent to pay the state's costs and expenses for the examination, investigation, and prosecution of this matter, including attorney's fees. The Administrative Complaint was sent via certified mail, return receipt requested to Respondent's last known address, 1614 McGuire Court, LaGrange, KY 40031.

9. 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.

10. The Administrative Complaint was returned to DFI as unclaimed on November 8, 2011.

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

12. After having considered all the relevant facts and circumstances and the available remedies, the Respondent is subject to paying the \$1,250 due on the Agreed Order of Settlement entered in Agency Case No. 2010-AH-091, Administrative Action No. 10-PPC-0208, a \$2,500 fine, and the state's attorney's fees for the prosecution of this matter.

CONCLUSIONS OF LAW

13. KRS 286.8-046(1) states, "The commissioner may levy a civil penalty against any person who violates any provision of or any administrative regulation promulgated under this subtitle or order issued by the commissioner under this subtitle. The civil penalty shall be not 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.”

14. KRS 286.8-046(2) provides that, “The commissioner may order restitution, refund, recovery of expenses, or direct such other affirmative action as the commissioner deems necessary against any person who violates any order issued by the commissioner or any provision of, or administrative regulation promulgated under, this subtitle.”

15. In addition, KRS 286.8-090(1)(v) makes it a violation of KRS Chapter 286.8 when a person fails to comply with an Order of the Commissioner.

16. 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.”

17. 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.

18. Respondent’s failure to comply with Agreed Order of Settlement constitutes violations of KRS 286.8-046(1) and 286.8-090(1)(v). Therefore, he is subject to paying the \$1,250 due on the Agreed Order of Settlement entered in Agency Case No. 2010-AH-091, Administrative Action No. 10-PPC-0208, a \$2,500 fine, and the state’s attorney’s fees for the prosecution of this matter as asked for in the Administrative Complaint.

19. 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).

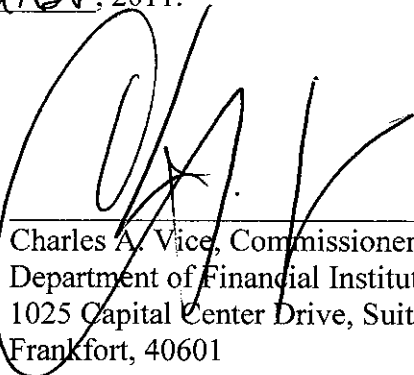
20. Respondent failed to timely respond to the Administrative Complaint or request a hearing within twenty (20) days of service. Thus, the Respondent has not perfected his appeal and his right to a hearing is waived in this matter.

ORDER

Based on the Findings of Fact, Statutory Authority, and Conclusions of Law set forth above, the Commissioner **ORDERS** that:

1. Bryan Crain pay the remaining one thousand two hundred fifty dollars (\$1,250) due on the Agreed Order of Settlement entered in Agency Case No. 2010-AH-091, Administrative Action No. 10-PPC-0208;
2. Bryan Crain pay a civil penalty in the amount of two thousand five hundred dollars (\$2,500.00) for his failure to comply with the Agreed Order of Settlement; and
3. Bryan Crain shall reimburse DFI \$250.00, for the attorney's fees associated with the prosecution of this matter as set forth in Exhibit A

Executed on the 1st day of December, 2011.



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

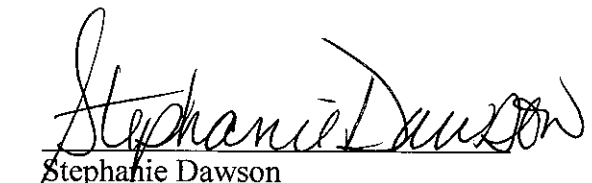
NOTICE OF APPEAL RIGHTS

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 completion of service 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 2nd day of December, 2011 to:

Bryan Crain
1614 McGuire Court
LaGrange, KY40031


Stephanie Dawson
Department of Financial Institutions

TIME SHEET

(COSTS ASSOCIATED WITH ADMINISTRATIVE ACTION)

NAME/TITLE: Shaun T. Orme, Assistant General Counsel

DATE: 12/3/09

<u>Time/Hours (in .25 increments)</u>	<u>Rate/Hour</u> <u>\$125</u>	<u>Description of Work Completed</u>
1.00 hours	\$125	<i>Review enforcement file, review Agreed Order of Settlement , research alleged violations</i>
1.00	\$125	Draft Administrative Complaint.
TOTAL: 2.00 hours@ \$125	TOTAL: \$250	

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.



EXHIBIT

A