

**COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2012-AH-0027**

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v.

FINAL ORDER

DAVID C. "JAY" GODWIN

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 David C. "Jay" Godwin ("Respondent") to pay a **Fine** in the amount of \$45,000, refund all fees collected on 49 loan applications, and to cease and desist from transacting business in the mortgage lending process in Kentucky, pursuant to KRS Chapter 286.8.

FINDINGS OF FACTS

1. DFI is responsible for regulating and licensing mortgage companies, mortgage brokers, mortgage loan originators, and mortgage loan processors 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). In addition, no person shall operate as a mortgage broker unless licensed as such or exempt from licensure. *See* KRS 286.8-030(1)(a).

2. As the result of a consumer inquiry, DFI began investigating Home Ownership Possibilities for Everyone, LLC ("HOPE"). DFI learned that HOPE's website listed a corporate

address of 9900 Corporate Campus Drive, Suite 3000, Louisville, Kentucky 40223. In addition, the website explained that HOPE offered residential mortgage based loans for purchasing or refinancing. HOPE is not licensed as a mortgage loan broker or registered as an exempt company with DFI.

3. On April 12, 2010, Respondent, as the organizer of HOPE, filed Articles of Organization with the Kentucky Secretary of State to register HOPE as a limited liability corporation. The principle place of business was given as 15005 Forest Oaks Drive, Louisville, Kentucky 40245 and the registered agent was listed as David C. Godwin, 15005 Forest Oaks Drive, Louisville, Kentucky 40245.

4. On May 25, 2010, an investigator with DFI visited HOPE's office at 9900 Corporate Campus Drive, Suite 3000, Louisville, Kentucky 40223. Respondent represented himself as the owner of HOPE.

5. Mr. Godwin described HOPE as a home loan program that allowed borrowers to refinance or purchase homes with no closing costs and a no interest rate loan. A flat fee finance charge was added to the total loan amount and paid in five year increments, over the term of the loan. Respondent as part of this process, entered into an employment agreement with Redemption. Funding Group ("Redemption"). As an ostensible agent, HOPE collected the borrowers' information and sent it to Redemption.¹ Redemption would then forward the information on to Spiritual Empowerment Equals Economic Development (S.E.E.E.D.) Consortium, LLC for funding.² Of the flat fee, HOPE received 4% for its "broker" services and Redemption received 5% of the flat fee for its "referral" services. S.E.E.E.D. got the remaining 91% of the flat fee.

¹ Redemption is located in Dalton, Georgia.

² S.E.E.E.D. is incorporated in Nevada.

6. HOPE touted a nontraditional loan that was not based exclusively on credit. The investigation revealed that potential borrowers submitted a registration application to HOPE that describes the subject property and the outstanding mortgage on the property. Potential borrowers were also required to submit two years of tax returns, two years of W-2s, and their last two pay stubs. If the borrower was approved, S.E.E.E.D. and the borrower entered into a Memorandum of Understanding (“MOU”). The MOU detailed the amount of the loan, how the flat fee was to be paid, and the potential closing date.

7. As part of the application process with HOPE, borrowers had to pay an upfront \$300 membership for S.E.E.E.D. This fee was nonrefundable. S.E.E.E.D. also required 3%- 3.5 % of the loan amount to be paid up front that was paid to an escrow fund. The membership fees and the upfront 3%- 3 ½ % fees were deposited in an account owned by S.E.E.E.D.

8. Respondent supplied DFI with a list of borrowers who applied for a home loan through HOPE. As of May 28, 2010, HOPE had 165 loans in the pipeline, of which 40 involved Kentucky properties.

9. Among the list supplied by HOPE were four loans on Kentucky properties that purportedly closed on May 21, 2010. However, Mr. Godwin informed the investigator that the loans were not actually funded on the closing date. This is what is known as a “dry closing.”

10. On June 9, 2010, DFI issued an Order to Cease and Desist. Pursuant to the Cease and Desist, HOPE was ordered to: 1) immediately cease and desist from engaging in the mortgage loan process in Kentucky; 2) to continue to secure the necessary funding for the four loans that were “dry closed;” 3) to immediately place any fees previously collected from Kentucky consumers relative to any pending mortgage loan applications in a separate escrow account maintained at a federally insured bank until proper restitution can be ordered. Within

five (5) days of the issuance of the Order, HOPE was to provide proof of same to Nicole Biddle, then Director of Non-Depository Financial Institutions; and 4) to provide updated information to Director Biddle on a weekly basis on all loans relative to Kentucky consumers.

11. The Order to Cease and Desist was not appealed by HOPE and remains in effect.

12. After the issuance of the Cease and Desist, DFI continued to investigate the actions of HOPE. DFI subsequently discovered that HOPE actually processed 252 loans on real property under the program, of which forty-nine (49) were mortgage loans on Kentucky properties.

13. In regards to the Kentucky properties, Bryan Veech ("Mr. Veech") and Mr. Godwin acted as mortgage loan originators for the loans. Neither Mr. Veech nor Mr. Godwin was registered with DFI as mortgage loan originators.

14. To date, none of the purported loans processed by HOPE and listed in Exhibit 1 of the Administrative Complaint have been funded.

15. On June 20, 2012 DFI, by counsel, filed an Administrative Complaint against Respondent. The Administrative Complaint alleged that Respondent violated KRS 286.8-030(1)(a), (c) & (d), KRS 286.8-090(1)(a), (c), (g), & (v), KRS 286.8-120(6), and KRS 286.8-220(2)(a), (b), & (i).

16. The Administrative Complaint asked for the following relief: 1) Respondent be fined \$45,000; 2) Respondent refund all fees collected by HOPE from the 49 applications taken on the Kentucky properties; and 3) Respondent cease and desist from transacting business in Kentucky pursuant to KRS Chapter 286.8.

17. The Administrative Complaint was sent via certified mail, return receipt requested to Respondent's last known address, 15005 Forest Oak Drive, Louisville, KY 40245. 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.

18. The Administrative Complaint was returned to DFI on July 13, 2012 unclaimed.

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

20. After having considered all the relevant facts and circumstances and the available remedies, the relief requested in the Administrative Complaint should be granted.

CONCLUSIONS OF LAW

21. A mortgage loan broker is, "...any person who for compensation or gain, or in the expectation of compensation or other gain, received directly or indirectly, serves as an agent for any borrower in an attempt to obtain a mortgage loan, or holds oneself out as being able to do so." *See* KRS 286.8-010(19).

22. KRS 286.8-010(21) defines mortgage loan originator as a natural person who, in exchange for compensation or gain or in 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;

23. KRS 286.8-030(1)(a) makes it 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.."

24. Pursuant to KRS 286.8-030(1)(c), it is unlawful for a person to transact business in Kentucky as a mortgage loan originator unless that person is registered or exempt from registration.

25. It is unlawful for a mortgage broker to use or employ an unregistered mortgage loan originator. *See* KRS 286.8-030(1)(d).

26. KRS 286.8-120(6) states, "No person shall receive any fee or other compensation of any kind in connection with procuring any loan, except for services actually rendered as above provided, and in no event shall a mortgage loan company or mortgage loan broker require the payment of a fee greater than one hundred dollars (\$100) as a condition to submitting a loan application unless the executive director shall otherwise prescribe by rule."

27. The Commissioner may issue a cease and desist order against any person who: has failed to comply with any provision of KRS Chapter 286.8; does not conduct his business in accordance with the law; has made misrepresentations to any person in the mortgage lending process or has engaged in a course of business that operated as a fraud upon any person; and/or has violated any statutory provision of KRS Chapter 286.8 or any administrative regulation promulgated thereunder. *See* KRS 286.8-090(1)(a), (c), (g), and (v).

28. Pursuant to KRS 286.8-046, the Commissioner, for violations of KRS Chapter 286.8, may impose a penalty of not less than \$1,000 nor more than \$25,000 per violation and he may also order restitutions and/or refunds.

29. Certain acts are prohibited in transactions involving the mortgage loan process. It is unlawful for any person, in connection with a transaction in the mortgage lending process to: a) employ a device, scheme, or artifice to defraud; b) to engage in any act, practice, or course of business that operates or would operate as a fraud or deceit; c) to fail to comply with state or federal laws that are applicable to transacting business in Kentucky. *See* KRS 286.8-220(2)(a), (b), and (i).

30. 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.”

31. 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.

32. Respondent operated HOPE as an unlicensed mortgage loan broker, in violation of KRS 286.8-030(1)(a). During the course of this action, Respondent also operated as a unregistered mortgage loan originator, in violation of KRS 286.8-030(1)(c).

33. Respondent, as organizer and owner of HOPE, and as an unregistered mortgage loan originator, has required a fee greater than \$100 as a condition to submitting a loan application, in violation of KRS 286.8-120(6).

34. HOPE took forty-nine mortgage loan applications on Kentucky properties without being properly licensed as a mortgage loan broker. In doing so, HOPE employed or used at least two (2) unregistered loan originators, including Respondent, in taking these mortgage loan applications. Respondent, as organizer and owner of HOPE has violated KRS 286.8-030(1)(d).

35. Respondent, as organizer and owner of HOPE, and as an unregistered mortgage loan originator, by virtue of his actions has: 1) employed a device, scheme, or artifice to defraud; 2) engaged in an act, practice, or course of business that operated as a fraud or deceit; and 3) failed to comply with state or federal laws that are applicable to transacting business in Kentucky. This is evident in the fact that at least four (4) loans have closed on Kentucky properties, in which the loans were not funded. This is known as a "dry closing." The mortgage loan program utilized by HOPE was a device, scheme, or artifice to defraud the applicants and HOPE engaged in a course of business that operated as a fraud and deceit on the applicants. Respondent by virtue of his actions has violated KRS 286.8-220(2)(a), (b), & (i).

36. Respondent, by his actions, has failed to comply with the provision of KRS Chapter 286.8; has not conducted his business in accordance with the law; has made

misrepresentations to persons in the mortgage lending process and has engaged in a course of business that operated as a fraud upon the borrowers under the HOPE program; and has violated statutory provision of KRS Chapter 286.8. Respondent by virtue of his actions has violated KRS 286.8-090(1)(a), (c), (g), & (v).

37. 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).

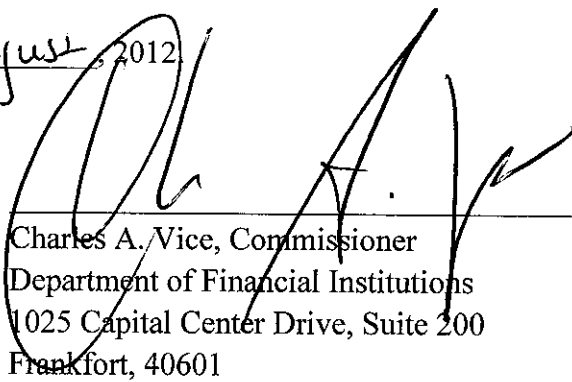
38. Respondent failed to timely respond to the Administrative Complaint or request a hearing within twenty (20) days of service. Thus, the Respondent has not perfected his appeal and his right to a hearing is waived in this matter.

ORDER

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

1. Respondent, David C. "Jay" Godwin pay a civil penalty in the amount of forty-five thousand dollars (\$45,000.00) for the above-cited violations of the Act;
2. Respondent David C. "Jay" Godwin refund all fees collected by HOPE from the forty-nine (49) applicants taken on the Kentucky properties; and
3. Respondent David C. "Jay" Godwin **CEASE AND DESIST** from transacting business in Kentucky pursuant to KRS Chapter 286.8.

Executed on the 29th day of August, 2012


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. This Order shall remain in effect until withdrawn by further Order of the Commissioner or modified by Court Order.

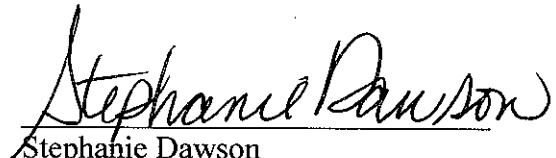
NOTICE OF APPEAL RIGHTS

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 to, return receipt requested, on this the 4th day of September, 2012 to:

David C. "Jay "Godwin"
15005 Forest Oaks Dr.
Louisville, KY 40245


Stephanie Dawson
Department of Financial Institutions