

COMMONWEALTH OF KENTUCKY  
PUBLIC PROTECTION CABINET  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
AGENCY CASE NO. 2011-AH-004

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v.

**FINAL ORDER  
TO CEASE AND DESIST AND  
IMPOSING FINE AND COSTS**

DAVID MILES

RESPONDENT

\* \* \* \* \*

The Commissioner of the Department of Financial Institutions (“DFI”) hereby enters this **Final Order**, pursuant to KRS Chapter 286.8, directing David Miles (“Respondent”) to pay a **Fine** in the amount of one thousand dollars (\$1,000.00); reimburse DFI for the costs and expenses associated with the prosecution of this matter; and to immediately **Cease and Desist** from transacting business in Kentucky as an unregistered mortgage loan originator.

**FINDINGS OF FACT**

1. DFI is responsible for regulating and licensing mortgage loan originators in accordance with the provisions of KRS Chapter 286.8, the Mortgage Licensing and Regulation Act (“the Act”).
2. Respondent is not, and at no relevant time has been, registered or otherwise authorized to act as a mortgage loan originator in or with respect to Kentucky, and does not hold a claim of exemption from the applicable requirements of the Act.

3. As the result of an investigation by DFI, it was discovered that, on or about September 18, 2009, Respondent acted as an mortgage loan originator while and in the course and scope of his employment with Nationstar Mortgage, LLC, a mortgage loan company duly licensed to operate as a mortgage loan company pursuant to the Act.

4. By letter dated December 20, 2010, DFI advised Respondent that he had violated KRS 286.8-030 and KRS 286.8-255, which make it unlawful for any natural person to transact business in Kentucky as a mortgage loan originator or mortgage loan processor unless such person is properly registered or exempt. The letter was sent via first class mail to Respondent's last known address, 7604 Sunburst Trail, Denton, Texas 76210. Said address was provided to DFI by Nationstar Mortgage, LLC on December 16, 2010, in compliance with KRS 286.8-170(7). The letter was not returned to DFI.

5. The letter further notified Respondent that DFI intended to impose upon him a fine for his violations of the Act, and requested that he indicate in writing by January 10, 2011 whether he wished to settle the matter referred to herein. However, Respondent delivered no response to DFI.

6. On January 11, 2011, DFI filed an Administrative Complaint ("Complaint") against Respondent seeking imposition of a fine of one thousand dollars (\$1,000.00) as well as any other appropriate relief to which DFI may be entitled under the Act.

7. The Complaint was mailed via certified mail, return receipt requested, to Respondent's last known address referenced herein, 7604 Sunburst Trail, Denton, Texas 76210.

8. On February 8, 2011, the Complaint was returned to DFI undelivered and marked "Unclaimed."

9. More than twenty (20) days have passed since DFI received notice that the Complaint was returned undelivered and Respondent has failed to respond to the Complaint or request a hearing in this matter.

**STATUTORY AUTHORITY**

1. 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(21).*

2. Pursuant to KRS 286.8-030(1)(c), “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.”

3. 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.”

4. 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.

5. 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.

6. 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.”

7. 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.

8. 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 KRS 286.8-030(1)(c) and 286.8-255(1) by transacting business in Kentucky as a mortgage loan originator without a valid registration or exemption to so do. Therefore, Respondent is subject to a fine of one thousand dollars (\$1,000.00) for this violation.

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 on February 8, 2011, pursuant to KRS 286.8-044(3)(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 David Miles shall pay a civil penalty in the amount of one thousand dollars (\$1,000.00) for his violation of KRS 286.8-030 and 286.8-255. 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 David Miles 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

3. Respondent David Miles shall **CEASE AND DESIST** from transacting business in Kentucky as a mortgage loan originator, 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 3<sup>rd</sup> day of March, 2011.

  
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CHARLES A. VICE  
COMMISSIONER

**NOTICE OF APPEAL RIGHTS**

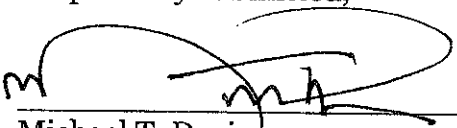
Pursuant to KRS 286.8-210, you are hereby notified that you have the right to appeal this Final Order of the Commissioner. If you chose to appeal, you must file a written Notice of Appeal with the Franklin Circuit Court within sixty (60) days after entry of this Final Order. A copy of any Appeal Petition must also be served on the Commissioner.

**Certificate of Service**

I hereby certify that a copy of the foregoing Administrative Complaint was sent by certified mail, return receipt requested, on this the 4<sup>th</sup> day of March, 2011 to:

David Miles  
7604 Sunburst Trail  
Denton, Texas 76210

Respectfully submitted,

  
\_\_\_\_\_  
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)

