

COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2014-AH-0151



DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v. **FINAL ORDER TO CEASE AND DESIST**

FYH FINANCIAL
FYH MORTGAGE BROKER
FELICIA HAYES

RESPONDENTS

* * * * *

This matter is before the Commissioner of the Department of Financial Institutions (“DFI”), pursuant to KRS 286.8-044 and 286.8-090. The Commissioner hereby enters this **Final Order to Cease and Desist** against FYH Financial, FYH Mortgage Broker, and Felicia Hayes (“Respondents”), pursuant to KRS Chapter 286.8.

FINDINGS OF FACT

1. DFI is responsible for regulating and licensing mortgage loan brokers and mortgage loan companies in accordance with the provisions of KRS 286.8. It is unlawful for a person to transact business in Kentucky as a mortgage loan company or mortgage loan broker, unless that person is registered with DFI and complies with all the applicable requirements of KRS Chapter 286.8 or is exempt from licensure.

2. As the result of an inquiry to DFI by Ms. Felicia Hayes, the purported owner of FYH Financial and/or FYH Mortgage Broker, concerning what banks would buy mortgage loans from her company, DFI began investigating the Respondents.

3. Ms. Hayes stated that she was in the process of hiring loan officers to make loans. Furthermore, she stated that her company had been in business since 2008; when asked by DFI personnel exactly what sort of business FYH Financial has been engaged in over this time period, she would not respond.

4. The website for the Kentucky Secretary of State indicates that neither FYH Mortgage nor FYH Financial has ever been registered with the Kentucky Secretary of State.

5. Neither FYH Financial nor FYH Mortgage are licensed with DFI.

6. The Address for FYH Financial is listed on the internet as 3631 River Park, Louisville, KY 40210. According to the website for the US postal service, the correct address for this street location is 3631 River Park, Louisville, KY 40211. This address appears to be a residential neighborhood.

7. The address for FYH Mortgage Broker is listed on the internet as 461 South 41 Street, Louisville, Kentucky 40212. This address appears to be a residential neighborhood.

8. During the investigation, DFI discovered a posting for FYH Financial on Mantra, a small business networking site, by Ms. Hayes.

9. FYH Financial represents that they can make mortgage loans, "If you want to buy a house and you have fair credit call FYH Financial." It then lists phone numbers, an e-mail address and business hours.

10. An internet advertisement states, "FYH Financial is a unique way to go when you want to buy a home. FYH Financial does foreclosures and second time mortgages [...]."

11. Respondents have also posted an advertisement on the internet for a loan officer that, “evaluates, and authorizes or recommends approval of customer applications for lines of credit, commercial loans, real estate loans, consumer credit loans...responsible for working on behalf of the mortgage lender and borrowing individual by assembling and verifying all closing documents required...”.

12. On December 4, 2014, DFI entered an Order to Cease and Desist against the Respondents. The Order was sent via certified mail, return receipt requested to Respondents last known addresses, 3631 River Park Louisville, KY 40210 and 461 South 41 Street, Louisville, KY 40212.

13. The Cease and Desist Order explained that the Respondents must file an answer to the Order, including a request for a hearing, within twenty (20) days of service. The Order also explained that if a request for a hearing was not received within 20 days, the Order from the Commissioner would be made Final.

14. The envelope for the 461 South 41 Street mailing was returned to DFI marked “Return to Sender- Attempted- Not Known unable to Forward” on January 5, 2015.

15. The envelope for 3631 River Park mailing was returned to DFI marked “Return to Sender- Attempted- Not Known unable to Forward” on January 8, 2015.

16. On March 12, 2015, telephonic contact was made with Ms. Hayes and she informed counsel for DFI that her new address was 101 Springview Court, Apt 6, Louisville, KY 40243.

17. On March 20, 2015, telephonic contact was made with Ms. Hayes and she informed counsel for DFI that her new correct address was 101 Spring Creek Court, Apt 6, Louisville, KY 40218.

18. On March 23, 2015, the December 4, 2014 Order to Cease and Desist was sent via certified mail, return receipt requested, to Respondents at both 101 Springview Court, Apt 6, Louisville, KY 40243 and 101 Spring Creek Court, Apt 6, Louisville, KY 40218.

19. The return receipt for 101 Spring Creek Court, Apt 6, Louisville, KY 40218 shows it being delivered on March 25, 2015.

20. The Cease and Desist Order explained that the Respondents must file an answer to the Order, including a request for a hearing, within twenty (20) days of service. The Order also explained that if a request for a hearing was not received within 20 days, the Order from the Commissioner would be made Final.

21. More than twenty (20) days have passed and the Respondents did not timely request an Administrative hearing.

STATUTORY AUTHORITY

22. Pursuant to KRS 286.8-010(17), the mortgage loan process means:

...the process through which a person seeks or obtains a [residential] mortgage loan, including the solicitation, application, origination, negotiation of terms, processing, underwriting, signing, closing, and funding of a mortgage loan and the services provided incident to a mortgage loan, including the appraisal of the residential real property. Documents involved in the mortgage lending process include but are not limited to:

(a) Uniform residential loan applications or other loan applications;

(b) Appraisal reports;

(c) Settlement statements;

(d) Supporting personal documentation for loan applications, including:

1. Form W-2 or other earnings or income statements;
2. Verifications of rent, income, and employment;
3. Bank statements;
4. Tax returns; and
5. Payroll stubs;

(e) Any required mortgage-related disclosures; and

(f) Any other document required as a part of, or necessary to, the mortgage lending process;

23. A “mortgage loan broker” means 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 [residential] mortgage loan, or holds oneself out as being able to do so. KRS 286.8-010(19).

24. A “mortgage loan company” means any person who directly or indirectly: (a) makes, purchases, or sells [residential] mortgage loans, or holds oneself out as being able to do so; or (b) services [residential] mortgage loans, or holds oneself out as being able to do so. KRS 286.8-010(20).

25. 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...”

26. Pursuant to KRS 286.8-190(2)(a):

“(1) The commissioner may investigate either upon complaint or otherwise when it appears that any person is conducting business in an unsafe and injurious manner or otherwise is in violation of this subtitle, or any rule or order hereunder, or when it appears that any person is engaging in the mortgage loan business without being licensed or registered, or legally exempted from licensing or registration, under the provisions of this subtitle.

(2) If it appears to the commissioner upon sufficient grounds or evidence satisfactory to the commissioner that any person has engaged in or is about to engage in any practice in violation of this subtitle or any rule or order hereunder, or that person's mortgage loan business affairs are in an unsafe condition, the commissioner may:

(a) Order the person to cease and desist from the acts or practices by a formal written order delivered to the person stating any alleged violation. The order shall specify the effective date thereof, and notice of entry shall be served personally or sent by certified mail to the last known address of the person affected. The person, upon written application, shall be entitled to a hearing; but if a written application for a hearing is not timely received by the commissioner within twenty (20) days after the certified mailing or personal delivery of the order, it shall be made final and shall remain in effect until withdrawn by the commissioner or terminated by a court order.”

27. KRS 286.8-046(2) gives the Commissioner the ability to order restitution, refund, recovery of expenses, or direct such other affirmative action it may deem necessary against any person who violates any provision of KRS Chapter 286.8.

28. KRS 286.8-044(3) states that 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.

CONCLUSIONS OF LAW

29. Respondents are operating as a mortgage loan broker or mortgage loan company as defined in KRS 286.8-010 by holding themselves out as a mortgage loan broker or mortgage loan company.

30. Respondents have unlawfully transacted business in Kentucky by failing to obtain a license as a mortgage loan broker or mortgage loan company, pursuant to KRS 286.8-030(1)(a).

31. Respondents are not exempt from licensure.

32. Respondents were properly served the Order to Cease and Desist pursuant to KRS 286.8-044(2) by serving the Respondents via certified mail at the Respondents' address. Service by mail is complete pursuant to KRS 286.8-044(3).

33. Respondents failed to timely to respond to the Order to Cease and Desist or request a hearing within twenty (20) days of service. Thus, the Respondents have not perfected their appeal and the right to hearing is waived in this matter.

34. Therefore, the Cease and Desist Order against the Respondents must be made a Final Order.

ORDER

Based on the foregoing Findings of Fact, Statutory Authority, and Conclusions of Law, the Commissioner hereby **ORDERS** as follows:

Respondents, FYH Financial, FYH Mortgage Broker, and Felicia Hayes shall immediately **CEASE AND DESIST** from engaging in the mortgage loan process in Kentucky, **CEASE AND DESIST** from acting as a mortgage loan broker or mortgage loan company in Kentucky, and **CEASE AND DESIST** from attempting to hire mortgage loan personnel.

This is a **FINAL AND APPEALABLE ORDER**. The **EFFECTIVE DATE** of this order shall be the date reflected on the certificate of service attached to this order.

So ORDERED this 30th day of April, 2015.



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 petition asking that the order be modified or set aside in whole or in part in the Franklin Circuit Court within sixty (60) days after the date reflected on the certificate of service attached to this Final Order. A copy of any petition must also be served on the Commissioner.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Final Order to Cease and Desist was served by certified mail, return receipt requested, on this the 1 day of May 2015 to:

Felicia Hayes
FYH Financial
FYH Mortgage Broker
101 Spring Creek Court, Apt 6
Louisville, KY 40218

And hand delivered to:

Hon. Gary W. Adkins
Department of Financial Institutions
1025 Capital Center Drive, Ste. 200
Frankfort, KY 40601



Christina Hayden
Department of Financial Institutions