

COMMONWEALTH OF KENTUCKY  
PUBLIC PROTECTION CABINET  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
AGENCY CASE NO. 2016-AH-00086

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COMMISSIONERS OFFICE

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

V.

GENE A. WILSON

RESPONDENT

**COMMISSIONER'S FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND FINAL ORDER**

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An Administrative Hearing was held in this matter on May 25, 2017, at the Department of Financial Institutions, 1025 Capital Center Drive, Frankfort, Kentucky. The Complainant, Department of Financial Institutions ("DFI" or "Department"), was represented by Gary A. Stephens, Staff Attorney, and former DFI General Counsel Tiffany Ge. Marni Rock Gibson, Director of the Division of Depository Institutions, was the Department's representative. The Respondent, Gene A. Wilson, was represented by Stephen B. Pence, Attorney at Law. Tim Cocanougher, Hearing Officer, Public Protection Cabinet, presided.

The subject of the hearing was DFI's Amended Notice charging that Wilson had violated KRS 286.3-470 on five different occasions by revealing confidential information contained in reports of examination. On September 27, 2017, the Hearing Officer, having reviewed the record, including all exhibits and written submissions by the parties, issued a Recommended Findings of Fact, Conclusions of Law, and Recommended Order ("Recommended Order"). After careful consideration of the record, including the Recommended Order and the duly filed exceptions, for the reasons set forth herein, the Commissioner hereby enters this Findings of Fact, Conclusions of

Law, and Final Order adopting, in part, and modifying, in part, the hearing Officer's Recommended Order.

## FINDINGS OF FACT

### A. Background and Confidentiality of CAMELS ratings.

As accurately observed in the Recommended Order, reports of bank examinations issued by DFI pursuant to KRS 286.3-470 contain numerical "CAMELS" rankings in accordance with the Uniform Financial Institutions Ratings System ("UFIRS"). See Uniform Financial Institutions Rating System, 61 FR 67021-02. Under the UFIRS, each bank is assigned a rating based on an evaluation of six components of an institution's financial condition and operations. Id. The components, Capital adequacy, Asset quality, Management, Earnings, Liquidity, and Sensitivity to market risk, establish a bank's composite CAMELS rating. (Hearing Transcript, p. 12). The ratings are on a numerical scale from one to five, with one being the best and five being the worst. (Recommended Order at 1).

CAMELS ratings are confidential under Kentucky law because they reflect regulatory information regarding a bank's overall financial condition which, if made publicly available, could adversely impact the stability of both the bank and the financial services market in the bank's community. During the May 25, 2017 administrative hearing, Marni Gibson, DFI's Director of the Division of Depository Institutions, confirmed that "confidentiality is of utmost importance" in bank examinations. (Hearing Transcript, p. 11). She explained that the need for confidentiality can be traced to the Great Depression, and is necessary to protect the integrity of the banking system. Specifically, in order to protect against a run on banks, CAMELS ratings are not disclosed to anyone other than the subject bank's officers or directors, employees of DFI, or employees of other state or federal regulatory authorities. Id.

**B. Regulatory Examinations of the Bank of Louisa.**

On July 6, 2015, DFI and the Federal Deposit Insurance Corporation (“FDIC”) conducted a joint examination of the Louisa Community Bank (hereinafter, “Bank of Louisa” or “Bank”). The 2015 final joint report of examination (“2015 Bank Exam Report”) was issued to the Bank’s board of directors, which included Wilson. The 2015 Bank Exam Report contains confidential CAMELS ratings for the Bank for the year 2015, and also includes a written outline of the CAMELS categorical ratings previously issued in the 2012 and 2014 Exam Reports. (See Hearing Transcript, pp. 14-15, 57, and Complainant’s Hearing Exhibits 1-2).

As a director of the Bank of Louisa, Wilson received copies of these examinations and was repeatedly directed, both verbally and in writing, not to release or disclose, to non-officers or non-directors of the Bank, the information from the examination reports, including the CAMELS ratings. (Hearing Transcript, p. 13). With respect to such written notifications, the Reports of Examination contain express language that their contents were not to be released or disclosed. In particular, the cover to the 2015 Bank Exam Report states:

The ratings, the contents of the Report, and this letter are subject to the confidentiality restrictions of Kentucky Revised Statute 286.3-470 . . . which restrict the disclosure of report contents by the bank, its directors, officers, or employees.

(Complainant’s Hearing Ex. 2 (emphasis added)). Similarly, the cover to the 2012 Bank Exam Report states:

This copy of the report . . . is furnished to the bank examined for its confidential use. Under no circumstances shall the registrant, or any of its directors, officers, or employees disclose or make public in any manner the report or any portion thereof.

(Complainant’s Hearing Ex. 1 (emphasis added)).

In addition to those written directions setting forth the restrictions embodied in KRS 286.3-470, Wilson was also warned verbally about the confidential nature of this information and the

protections against its dissemination. As established by Ms. Gibson during the hearing, the officers and directors of banks are instructed not to reveal the contents of the examination reports, including the CAMELS ratings, in a number of ways, including warnings from examiners each time they have a formal meeting with bank management or its board. (Hearing Transcript, p. 12). Ms. Gibson also testified that it is general industry knowledge not to reveal CAMELS ratings. (Hearing Transcript, p. 14). Accordingly, as determined by the Hearing Officer in the Recommended Order, the evidence in this case established that the necessity to keep these ratings confidential “is widely known in the banking industry, is regularly emphasized to bank officers and directors by regulators, and is clearly stated on every report.” (Recommended Order at 2).

**C. Wilson’s Communications of the Bank’s CAMELS Ratings.**

**1. January 5, 2016 Letter (Count 1).**

The Recommended Order indicates that Wilson sent a letter dated January 5, 2016, to Everett Hannah, a Bank of Louisa shareholder. (Recommended Order at 2). The Hearing Officer noted that Hannah was neither a director nor an officer of the Bank at the time the letter was written, but that Hannah was contemplating purchasing additional shares, and Wilson wanted to “make sure Mr. Hannah was familiar with the current condition of the bank.” (Recommended Order at 2) (Hearing Transcript, p. 68).

The Hearing Officer also noted that Wilson referred to CAMELS ratings twice in the January 5, 2016 letter. The first ratings mentioned in the letter referred to a former bank president, who left in 2009, and led the Bank “to a [XX] camel rating...” (Recommended Order at 2).<sup>1</sup> Wilson also stated in the letter that, after Wilson returned to management of the Bank, the Bank

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<sup>1</sup> While the actual CAMELS rating was set forth in Wilson’s letter, due to confidentiality concerns, neither this rating nor any of the other CAMELS ratings disclosed by Wilson in this matter will be published in this Order.

had a management rating of “[XX]” by 2012. (Id.)<sup>2</sup> The Hearing Officer noted that Everett Hannah had been on the original board in 2006, but the record was not clear as to when Everett Hannah left the board, or whether he was a member in 2009 or 2012, when the ratings mentioned in the January 5, 2016 letter were issued. (Recommended Order at 2-3).

**2. January 27, 2016 Letter (Count 2).**

The Recommended Order correctly finds that the January 27, 2016 letter, which was the basis for Count 2, contained no new CAMELS disclosures. Rather, as observed by the Hearing Officer, this letter was sent from Wilson to DFI Commissioner Charles A. Vice and included, as an attachment, the aforementioned January 5, 2016 letter to Everett Hannah which was the subject of Count 1. The charge in Count 2 is based on Wilson sending Hannah another copy of the same January 5, 2016 he previously sent approximately three weeks earlier. No new or additional information was disclosed. (Recommended Order at 3).

**3. September 7, 2016 Letter (Count 3).**

The charge in Count 3 is based upon Wilson’s September 7, 2016 letter, which was addressed and sent to DFI Commissioner Vice, and also copied and transmitted to David Harper, an attorney hired by Wilson and another Bank of Louisa director and shareholder, Kathy Reid, to re-constitute the Bank’s board of directors. Addressing the context of this letter, the Recommended Order explained that Wilson, Reid, and other shareholders attempted to elect a new Bank board on August 12, 2016; DFI initiated an administrative action on August 29<sup>th</sup> against the Bank, Wilson and Reid based on these actions; and, on October 6, 2016, the Lawrence Circuit Court issued a Temporary Injunction, ruling that the attempted removal of the former Bank directors had been unlawful. (Recommended Order at 3-4).

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<sup>2</sup> See FN 1, supra.

Wilson's September 7, 2016 letter referred to DFI's aforementioned administrative action and included a mention of the "[XX]" CAMELS rating for management received by the Bank during its most recent examination. (*Id.* at 4).<sup>3</sup> As correctly noted by the Hearing Officer, this "letter does reference a recent CAMELS rating." Specifically, the relevant report was issued "14 months before Mr. Wilson's September 6, [*sic*] 2016 letter, and was the latest Report of Examination introduced in the record." (*Id.*) Notably, the undisputed record is clear and that, even if Harper received this information as the Bank's attorney, he never made a "written request" to receive the Bank's confidential information. (Hearing Transcript, pp. 98-101). Nor did the Bank's directors or executive committee give "prior approval" regarding Wilson's transmission of this confidential bank information to Harper. (*Id.* at 99-101).

#### **4. September 26, 2016 Letter (Count 4).**

Count 4 involves Wilson's September 26, 2016 letter, which was addressed to DFI's Commissioner Vice and also transmitted to (a) Attorney David Harper, who was representing the Bank and its "new" directors, and (b) Ballard Cassady, President of the Kentucky Bankers Association. As the Recommended Order correctly states, Cassady "had no relationship with Louisa Community Bank." (Recommended Order at 5). Instead, Wilson sent Cassady a copy of the letter because Wilson "had read and liked an article" by Cassady "in a KBA magazine about bank regulators." (*Id.*) The Hearing Officer described the letter as summarizing the history of the Bank from Wilson's perspective. (*Id.*) There is no dispute that this correspondence expressly disclosed one of the Bank's prior CAMELS rating.

While not expressly stated in the proposed Findings of Fact relating to Wilson's letter of September 26, it is clear that, similar to the circumstances of the September 7 correspondence,

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<sup>3</sup> See FN 1, *supra*.

Harper once again never made a “written request” to receive the Bank’s confidential information prior to receiving the September 26, 2016 correspondence. (Hearing Transcript at 98-101). Nor did the Bank’s directors or executive committee give “prior approval” regarding Wilson’s transmission of confidential bank information to Harper. (Id. at 99-101).

**5. Wilson’s Oral Statements during the December 2, 2016 Meeting of the Bank of Louisa’s Board of Directors (Count 5).**

Count 5 involves Wilson’s verbal disclosure of confidential 2015 CAMELS information to Lonnie Hannah, a former -- but not current -- board member, at a December 2, 2016 board meeting of the Bank. In particular, Wilson made the comment “we got a [XX] in management” to Lonnie Hannah, who told Wilson that he was not entitled to that information.<sup>4</sup> Addressing this claim and the context of the statement in the Recommended Order, the Hearing Officer explained that “Mr. Hannah was on the board when the 2015 rating was received” and he therefore “would have been well aware of it as of the date of the information.” (Recommended Order at 12) (emphasis added); see also id. at 6 (again noting that “Lonnie Hannah had been a board member in July of 2015, when the [XX] rating was issued”).<sup>5</sup> However, because this factual determination is contradicted by the evidence of record, it is rejected and modified as set forth herein.

Contrary to the Hearing Officer’s recommended Finding of Fact on this point, the hearing exhibits conclusively establish that Lonnie Hannah was not, in fact, on the board when the 2015 ratings were received. In particular, the 2015 Report of Examination, which was entered into the record as DFI’s Hearing Exhibit 2, was issued to the Bank on December 15, 2015. It identifies the Bank’s directors on page 55, including Lonnie Hannah as the chairman, but explicitly states that “Mr. Hannah resigned from the Board effective May 22, 2015.” (DFI’s Hearing Exhibit 2, p. 55)

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<sup>4</sup> See FN 1, supra.

<sup>5</sup> See FN 1, supra.

(emphasis added). This Report further indicates that the Bank examination was conducted approximately 6 weeks later on July 6, 2015, and that a meeting to discuss the examination findings was held between the regulators and the Bank directors approximately 6 weeks after that on August 21, 2015. (*Id.* at 13). Thus, the factual record indisputably demonstrates that Lonnie Hannah resigned from the board well before the examination even occurred, and almost 3 months before any ratings were disclosed to anyone at the Bank. Accordingly, contrary to the Hearing Officer's finding, the record establishes that Hannah, in fact, had no knowledge of the Bank's CAMELS management rating until Wilson informed him of it on December 2, 2016. In fact, Wilson himself testified that Lonnie Hannah knew all the ratings "all up until these last . . . ones." (Hearing Transcript, p. 92) (emphasis added).

### **CONCLUSIONS OF LAW**

#### **A. KRS 286.3-470 Governs the Release of Confidential Information from Examination Reports.**

As set forth in the Recommended Order, KRS 286.3-470, titled, "Information obtained by examination to be confidential; exceptions; reports as evidence," provides:

- (1) Reports of examination, and correspondence that relates to the report of examination, of a bank or trust company shall be considered confidential information. No officer or director of a bank or trust company, employee of the department, or employee of a state or federal regulatory authority shall release any information contained in the examination, except when:
  - (a) Required in a proper legal proceeding in which a subpoena and protective order insuring confidentiality has been issued by a court of competent jurisdiction; or
  - (b) The information is referred to an appropriate prosecuting attorney for possible criminal proceedings, to outside persons providing professional services to the bank, or to outside persons for the purpose of evaluating the bank for possible acquisition. Reports of examination released to outside persons providing professional services to the bank or for the purpose of evaluating the bank for possible acquisition, shall require a written request from such outside persons and prior approval by the board of directors or an executive committee of the bank.



- (2) The department may furnish to and exchange information and reports with officials and examiners of other properly authorized state or federal regulatory authorities, including the Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Office of the Comptroller of the Currency.

(Recommended Order at 6-7). Accordingly, pursuant to KRS 286.3-470, “[r]eports of examination, and correspondence that relates to the report of examination, of a bank or trust company shall be considered confidential information. No officer or director of a bank or trust company...shall release any information contained in the examination...” KRS 286.3-470(1).

The statute contains a limited number of express exceptions to its strict confidentiality provisions. In particular, the statute permits release of the information to individuals who are not bank officers or directors when (a) it is required in a legal proceeding in which a subpoena has been issued and a protective order has been issued by a court of competent jurisdiction;<sup>6</sup> or (b) when the information is referred to a prosecuting attorney for possible criminal proceedings.<sup>7</sup> More relevant here, the statute also allows dissemination to outside persons providing professional services to the bank, or to outside persons for the purpose of evaluating the bank for possible acquisition.<sup>8</sup> Notably, however, both of these circumstances “shall require a written request from such outside persons and prior approval by the board of directors or an executive committee of the bank.”<sup>9</sup>

Thus, as a director of the Bank of Louisa, Wilson had a statutory duty not to disclose the CAMELS ratings from the examination reports to non-officers and non-directors of the Bank, or individuals not falling within the narrow, circumscribed exceptions of the statute. However, as set

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<sup>6</sup> KRS 286.3-470(1)(a).

<sup>7</sup> KRS 286.3-470(1)(b).

<sup>8</sup> KRS 286.3-470(1)(b).

<sup>9</sup> KRS 286.3-470(1)(b) (emphasis added).

forth herein, on several occasions, Wilson did in fact share protected, confidential information with unauthorized recipients in violation of KRS 286.3-470.

**B. Legal Conclusions on General Statutory Issues.**

**1. Adoption of Portions of Recommended Conclusions of Law.**

In the Recommended Order, the Hearing Officer observed that Wilson had asserted “essentially five arguments: 1) that KRS 286.3-470 only prohibits the release of ‘Reports of Examination,’ meaning the entire reports, and that disclosing individual pieces of information in not prohibited; 2) that when the statute prohibits the ‘release’ of confidential information, it means a wide release to the public, not isolated disclosures to individuals; 3) that since the purpose of the statute is to prevent a run on a bank, the disclosure of positive information, not inclined to produce that result, is not prohibited; 4) that the statute covers only current information, not that from past years; and 5) that Mr. Wilson should not be found to be in violation of KRS 286.3-470 because he never intended to harm the bank or violate the statute -- he did not ‘knowingly’ do so because he thought his actions were legal.” (Recommended Order at 7-8).

**a. KRS 286.3-470 Prohibits the Release of any Information Contained in a Report of Investigation.**

The Recommended Order correctly held that KRS 286.3-470 prohibits the release of “any information” contained in a Report of Examination, and not just the release of “entire reports” as Wilson has asserted. (Recommended Order at 8). As the Hearing Officer stated, based on the title and first line of the statute, and its terms later in section one expressly stating that “[n]o officer or director . . . shall release any information contained in the examination . . . ,’ [c]learly, it is the *information* that is confidential, whatever its form.” (Recommended Order at 8) (emphasis in original).

**b. KRS 286.3-470 Restricts More than Just a “Wide Release to the Public.”**

Rejecting Wilson’s next contention, the Hearing Officer correctly held that KRS 286.3-470 does not just prohibit a wide release to the public, but also precludes isolated disclosures to unauthorized individuals. (Recommended Order at 8).

**c. KRS 286.3-470 does not Limit its Confidentiality Provisions to Negative Information.**

The Recommended Order also correctly ruled that KRS 286.3-470 does not limit its prohibition on releases of confidential material exclusively to negative information. Instead, this statute applies to all confidential information contained in the reports of examination. (*Id.* at 9). Recognizing that, while the purpose of the statute is to prevent a run on bank, the Hearing Officer accurately found that the terms of the statute, do not, on their face limit their “prohibition to information released for that purpose, or to negative information in general.” The Recommended Order therefore correctly held that KRS 286.3-470 “should not be so narrowly read.” (*Id.*)

**d. A Reasonableness Standard, Based on the Overall Context and Surrounding Circumstances, Should be Utilized in Applying the Terms of KRS 286.3-470 to Examination Reports Older than the Most Current.**

Addressing KRS 286.3-470, which is silent on whether its terms apply only to current reports of examination or instead to historical reports from examinations conducted in the past, the Hearing Examiner fairly and logically determined that “taking the statute in its entirety and considering its purpose,” a “reasonableness standard should be applied.” (Recommended Order at 9). Accordingly, the Recommended Order correctly observed that an “incidental disclosure of thirty-year old information should not ordinarily lead to administrative penalties, but information up to several years old might well be protected depending on the circumstances.” (*Id.*)

**e. Neither Wilson’s Motives nor his Intent Relating to the Unauthorized Communications are Relevant under KRS 286.3-470.**

This Final Order also affirms and adopts the Recommended Order’s correct determination that KRS 286.3-470 makes “no provision for considering the motives of the person releasing confidential information.” (Recommended Order at 9). The Hearing Officer also appropriately found no merit in Wilson’s contention that the statute prohibits “only knowing disclosures of confidential information.” (*Id.* at 10). Unlike some criminal statutes, the statute at issue here simply does not require “a guilty *mens rea*, a ‘criminal intent.’” (*Id.*) Moreover, “a false belief that an action is legal is almost never a defense. ‘Ignorance of the law is no excuse.’ Or as the Kentucky Court of Appeals wrote in *Flint v. Executive Branch Ethics Commission*, 981 S.W.2d 132, 134 (Ky. App. 1998), ‘[i]t is well established that all persons are charged with knowledge of the laws pertaining to their conduct.’” (Recommended Order at 10).

**2. Modification of a Portion of Recommended Conclusions of Law.**

**a. Contrary to the Hearing Officer’s Finding, KRS 286.3-470 is not Ambiguous, and Bank Shareholders are not Authorized Recipients of Confidential Information under the Statute.**

Despite its agreement with, and adoption of, the majority of the Hearing Officer’s Recommended Order, this Final Order disagrees with, and hereby modifies, the Hearing Officer’s specific finding that KRS 286.3-470 is ambiguous. Specifically, the Recommended Order found that the statute (a) “does not specify whether or not confidential information may be released to shareholders,” and (b) is “ambiguous” as to the entities to whom confidential information can be disclosed. (Recommended Order at 8). Because this statutory interpretation errs as a matter of law and, if adopted, could create misleading and misguided precedent, it is overruled and modified as set forth herein.

The Recommended Order notes that the statute expressly identifies those persons prohibited from releasing confidential examination information -- (a) an officer of the bank; (b) a director of the bank; (c) an employee of DFI; or (d) an employee of a state or federal regulatory authority -- but “does not specify to whom the information can or cannot be disclosed.” (Recommended Order at 8). The Order further observes that “presumably” a discussion about confidential information among these entities would not be prohibited, and that the “Legislature may have intended that no other persons were entitled to such information.” (Id.) However, because “the statute does not clearly say that,” the Hearing Officer found its terms to be ambiguous. Specifically, he found KRS 286.3-470 to be ambiguous because “it does not say with whom such information can or cannot be shared – whether it can be discussed with a shareholder, for instance, . . . or with bank counsel.” (Id.)

The Legislature certainly could have made the statute clearer by expressly stating, as referenced by the Hearing Officer, that only the persons specifically identified in the statute -- restricted in their dissemination of the confidential information -- are entitled to receive such information. However, the fact that it was not stated as explicitly as it could have been should not result in an abandonment of reasonableness and common sense. It’s clear from the statutory terms that the starting point in restricting a group’s release of certain information is the pre-existing understanding and recognition that the group, in fact, possesses such information. So while the Legislature may have left it unspoken, the inescapable underlying premise must be that the entities the statute restricts in their dissemination of the confidential information, along with the narrowly-circumscribed conditional releases covered in subparts (1)(a) and (1)(b) of the statute, also simultaneously constitute the only authorized recipients of such information.

As noted above, the individuals identified in the statute -- (a) an officer of the bank; (b) a director of the bank; (c) an employee of DFI; or (d) an employee of a state or federal regulatory authority -- would be those who become aware of the examination information, either through the examination itself, or the typical meeting to discuss the examination findings between the regulators and the Bank Directors. Beyond that group, the remaining portions of the statute provide for specific limited circumstances where additional releases may be permitted should the required elements be present and preconditions satisfied (i.e., disclosure in a legal proceeding, see subpart (1)(a); release to a prosecuting attorney, see subpart (1)(b); or release to outside persons providing professional services to the bank or evaluating the bank for possible acquisition, see subpart (1)(b)). Had the Legislature intended to permit information releases to others outside these groups, it surely could have expressly done so.

While the Hearing Officer raises questions relating only to (a) shareholders and (b) bank counsel, the statute does in fact specifically address the circumstances under which confidential information can be shared with the Bank's attorney. See KRS 286.3-470(1)(b). And the only way to interpret the failure of the statute to include bank shareholders in its enumeration of the holders and protectors of the confidential examination information is to find the exclusion to have been intentional. Indeed, it is a primary rule of statutory construction in Kentucky that "the enumeration of particular things excludes the idea of something else not mentioned." Smith v. Wedding, 303 S.W.2d 322, 323 (Ky. 1957); see Schwindel v. Meade County, 113 S.W.3d 159, 168 (Ky. 2003) ("[i]t is a general rule of statutory construction that the enumeration of particular items or categories excludes others not specifically mentioned"); Palmer v. Commonwealth, 3 S.W.3d 763, 764 (Ky. App. 1999) ("[a]s a general rule of statutory construction, *expressio unius est exclusio*

*alterius* provides that an enumeration of a particular thing demonstrates that the omission of another thing is an intentional exclusion”).

The failure of the statute to even mention anyone other than the entities who are restricted in their treatment of the information, and the few exceptions for which specific procedures must be followed, firmly and reasonably establishes that group as the only permitted entities with whom the information may be shared. Any other interpretation would mean the Legislature intentionally left the identity of the permissible recipients unknown, thereby requiring an ad-hoc, case-by-case assessment of permitted recipients, without any guidance or identification of relevant factors to be applied in that assessment. Such an approach is illogical and impractical and, by its very nature, undermines the statutory goals of consistency, uniformity or predictability. Instead, the statute’s terms, and reasonable common sense, compel the conclusion that the Legislature drew an enforceable and predictable bright-line test by identifying, at the same time, (a) the individuals to whom the protected information would be entrusted and (b) the individuals with whom it could be shared. Because no other reasonable interpretation exists, the statute is not ambiguous and its terms do not permit the release of the confidential information to shareholders of the Bank.

**C. Legal Analysis of Specific Charges Asserted Against Wilson.**

**1. Count 1 -- January 5, 2016 letter**

The Hearing Officer recommended a finding that Wilson’s January 5, 2016 letter to Everett Hannah did not constitute a violation of KRS 286.3-470. (Recommended Order at 11). In support, the Recommended Order noted that the “letter disclosed historical CAMELS ratings,” one from 2009 (seven years earlier) and another from 2012 (four years earlier). The letter pointed out how the bank’s condition had improved between those dates. Such a disclosure would obviously not be likely to encourage a run on the bank.” (Recommended Order at 10). The Hearing Officer further

emphasized that Mr. Hannah had been a member of the board from 2006 for several years and “may well have been aware of this information, when it was current.” (Id.) He added that “[i]mportantly, while this letter discussed current problems with the bank, it did not mention any current CAMELS ratings.” (Id.) (emphasis added).

Certainly, the absence of any disclosure of current CAMELS ratings is significant in evaluating this charge. And through application of the “reasonableness standard,” adopted herein for evaluations of examination reports older than the most current, the Hearing Officer’s recommended finding is supported under the circumstances. Moreover, the fact that the dated information was provided to a former Board member, who had significant past involvement with the Bank, and who might have actually received the same historical information when he had been a member of the board, further mitigates the nature of the disclosure and supports adoption of the Hearing Officer’s recommendation on this count.<sup>10</sup>

## **2. Count 2 -- January 27, 2016 letter**

For the same reasons the January 5, 2016 letter in Count 1 does not constitute a statutory violation, the information conveyed in the January 27, 2016 letter of Count 2 also does not constitute a violation. Specifically, the January 27, 2016 letter was sent from Wilson to DFI Commissioner Vice and included, as an attachment, the aforementioned January 5, 2016 letter to Everett Hannah which was the subject of Count 1. No new disclosures were included. Accordingly, consistent with the analysis of the previous count, the charges of Count 2 do not establish a violation of KRS 286.3-470.

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<sup>10</sup> It must be noted, however, that unlike the Recommended Order, no portion of this Final Order ruling relies on Everett Hannah’s status as a shareholder of the bank. As addressed in § B, 2, a, supra, it has been established as a conclusion of law herein that KRS 286.3-470 is not ambiguous, and shareholders are not authorized recipients of confidential information under the statute.



### **3. Count 3 -- September 7, 2016 letter**

The record is clear and undisputed that, through his September 7, 2016 letter, Wilson violated KRS 286.3-470(1)(b) by releasing confidential information to Attorney David Harper without following the proper statutory procedure. As set forth in the Recommended Order, “Mr. Harper appears to be precisely the sort of ‘outside person providing professional services,’ who is contemplated by KRS 286.3-470(1)(b). This section requires that such person file a written request for release of this information and obtain board approval of such release, before the information is disclosed to him. That procedure was not followed.” (Recommended Order at 11)(emphasis added).

It is certainly understandable for banks and its officers or directors to have a need to consult an attorney in the performance of their duties. And while confidential information may need to be disclosed in the course of that consultation, such disclosure cannot legally occur outside the framework set forth under the statute. Here, Wilson admitted that Harper never made a “written request” to receive confidential information from the Bank. (Hearing Transcript, p. 99). Nor did the Bank’s directors or executive committee give “prior approval” for the confidential information to be shared with Harper. (Id. at 99-101). Accordingly, Wilson violated 286.3-470(1).

### **4. Count 4 -- September 26, 2016 letter**

Wilson’s September 26, 2016 letter also violated KRS 286.3-470 by releasing confidential information to Attorney David Harper. Similar to the circumstances of the aforementioned September 7<sup>th</sup> correspondence, Harper once again never made a “written request” to receive the Bank’s confidential information prior to receiving the September 26, 2016 correspondence. (Hearing Transcript at 98-101). Nor did the Bank’s directors or executive committee give “prior approval” regarding Wilson’s transmission of confidential information to Harper. (Id. at 99-101).

Moreover, in addition to Harper, this letter also released confidential bank information to “Ballard Cassady, who had no relationship with the Louisa Community Bank.” (Recommended Order at 12). As the Hearing Examiner correctly observed, Mr. Cassady “was in no sense entitled to receive this information.” (*Id.*) The charges in this count clearly constitute a statutory violation.

#### **5. Count 5 -- Oral Statements at December 2, 2016 Board Meeting**

As set forth in the foregoing Findings of Fact, the recommendation of the Hearing Officer that the charges in this count did not constitute a statutory violation was based solely on a factual predicate contradicted by the record. Accordingly, the Recommended Order’s ruling on this count must be modified to reflect the true state of the factual evidence, and find the occurrence of a KRS 286.3-470 violation.

Recommending a finding that no violation occurred through Wilson’s verbal disclosure of a 2015 CAMELS rating to Lonnie Hannah, the Hearing Officer indicated that “Mr. Hannah was on the board when the 2015 rating was received.” He therefore found it “is hard to see how this could be considered a ‘release’ of confidential information, when the recipient was a board member and would have been well aware of it, as of the date of the information.” (Recommended Order at 12). However, as set forth above, the evidence of record makes it abundantly clear that Hannah, in fact, was not on the board at the time of this disclosure.

In particular, the 2015 Report of Examination, which was issued to the Bank on December 15, 2015, identifies the Bank’s Directors on page 55, including Lonnie Hannah as the Chairman, but explicitly states that “Mr. Hannah resigned from the Board effective May 22, 2015.” (DFI’s Hearing Exhibit 2, p. 55) (emphasis added). This Report further indicates that the Bank examination was conducted approximately 6 weeks later on July 6, 2015, and that a meeting to discuss the examination findings was held between the regulators and the Bank Directors

approximately 6 weeks after that on August 21, 2015. (Id. at 13). Accordingly, contrary to the Hearing Officer's finding, the record establishes that Hannah, in fact, had no knowledge of the Bank's management rating until Wilson informed him of it on December 2, 2016. It is therefore clear that Wilson violated KRS 286.3-470 by verbally disclosing the CAMELS rating to Lonnie Hannah.

### **FINAL ORDER**

THEREFORE, based on the foregoing findings of fact and conclusions of law and pursuant to KRS 286.3-660 and KRS 13B.120, IT IS HEREBY **ORDERED** AS FOLLOWS:


1. Respondent, Gene Wilson, shall **CEASE AND DESIST** from disclosing the CAMELS ratings of the Bank of Louisa to individuals not authorized to receive the ratings pursuant to KRS 286.3-470.

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.

### **NOTICE OF APPEAL RIGHTS**

Pursuant to KRS 286.3-690, you are hereby notified that any person aggrieved by this Final Order of the Commissioner may obtain a review of the Order by the Lawrence Circuit Court. If you choose to appeal, you must file a written petition asking for review within thirty (30) days after the date reflected on the certificate of service attached to this Final Order. A copy of the petition must be served upon the Commissioner.

SO ORDERED this 21<sup>st</sup> day of December, 2017.

  
\_\_\_\_\_  
CHARLES A. VICE  
COMMISSIONER

**Certificate of Service**

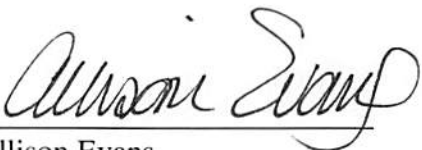
I hereby certify that a true and correct copy of the foregoing **Final Order** was entered by the Commissioner and sent by certified mail, return receipt requested, on this the 21 day of December, 2017, to:

Stephen Pence  
Pence & Whetzel, PLLC  
Hurstbourne Place, Suite 1205  
9300 Shelbyville Road  
Louisville, Kentucky 40222  
Counsel of Record for Respondent

Gene A. Wilson  
24910 U.S. Highway 23  
Catlettsburg, Kentucky 41129

State Government Messenger Mail to:  
Mr. Tim Cocanougher  
Executive Director  
Office of Administrative Hearings  
Department of Housing Buildings and Construction  
Suite 100  
101 Sea Hero Road  
Frankfort, Kentucky 40601

And by hand-delivery to:  
Joseph P. Donohue  
Gary A. Stephens  
Kentucky Department of Financial Institutions  
1025 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601  
Counsel for the Department

  
Allison Evans  
Department of Financial Institutions  
1025 Capital Center Drive, Ste. 200  
Frankfort, KY 40601