

COMMONWEALTH OF KENTUCKY  
PUBLIC PROTECTION CABINET  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
AGENCY CASE NO. 2010-AH-087

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

VS.

**FINAL ORDER**

LINCOLN MORTGAGE FINANCIAL SERVICES, INC.,  
LESTER SMITH, individually, and  
BARBARA SMITH, individually

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 Lincoln Mortgage Financial Services, Inc., Lester Smith, and Barbara Smith (“Respondents”) to pay a **Fine** in the amount of fifteen thousand dollars (\$15,000), pay Josie Spradlin three hundred and fifty dollars (\$350), and pay Leonard and Kimberly Sallee four thousand six hundred thirty four dollars (\$4,634). In addition Respondents must cease and desist from transacting mortgage business in Kentucky.

**FINDINGS OF FACTS**

1. DFI is responsible for regulating and licensing mortgage loan originators and mortgage loan companies, mortgage loan brokers, and mortgage loan processors, in accordance with the provisions of KRS Chapter 286.8. No mortgage loan broker shall employ or use a mortgage loan originator, unless the loan originator is registered with DFI and complies with all the applicable requirements of KRS Chapter 286.8. *See* KRS 286.8-030(1)(d).

2. Lincoln applied for and was issued a mortgage broker license (MB 12903) by DFI for the purpose of engaging in the mortgage broker business in the Commonwealth of Kentucky at an office located at 729 Knox Boulevard, Radcliff, Kentucky 40160.

3. Mr. Smith was president of Lincoln and registered as a loan originator in Kentucky. Ms. Smith was vice-president of Lincoln and registered as a loan originator in Kentucky. Lincoln was a Kentucky corporation.

4. DFI received a notice from CNA Surety on September 12, 2008, indicating that the surety bond for Respondent had been cancelled. Since that time, DFI has not received proof of bond from Respondent.

5. DFI attempted to contact Respondent by letter dated September 12, 2008, but received no reply from Respondent. When DFI staff attempted to call Respondent, all telephone numbers were either busy or disconnected.

6. On January 7, 2009, the DFI issued an Emergency Order suspending Lincoln's mortgage broker license. It has not been renewed or reinstated by the DFI.

7. Following the suspension of Lincoln's mortgage broker license, the DFI learned that Lincoln refinanced a loan for Leonard and Kimberly Sallee six months after refinancing another mortgage loan for them. The refinance resulted in \$8,562.56 in settlement charges of which \$4,634.00 went to Lincoln with no apparent benefit to the borrowers.

8. Sometime in 2008, Lincoln entered into an arrangement with its employee, Donald Barbour, whereby the assets of Lincoln were sold to Mr. Barbour who formed a company called Lincoln Mortgage of Radcliffe which operated under the license of Lincoln at

the same licensed location for Lincoln. The transaction was undertaken without the prior approval for change of control from the DFI.

9. Lincoln Mortgage is reflected as the lender on the HUD-1 for a loan to Michael Wayne Adkins which closed on January 2, 2008. A yield spread premium is shown being paid from Lincoln Mortgage to Lincoln Mortgage even though Lincoln Mortgage is not a lender and did not hold a mortgage company license.

10. On April 21, 2008 Josie Spradlin, an applicant for a mortgage loan with Lincoln, paid Lester Smith, one of the Respondents and the president of Lincoln, a check in the amount of three hundred and fifty dollars (\$350) for an appraisal. Mr. Smith cashed the check but never ordered an appraisal on Ms. Spradlin's property.

11. The Respondent, Mr. Smith and Ms. Smith have demonstrated a lack of financial responsibility to operate a mortgage loan broker company and to act as mortgage loan originators and in the operation of Lincoln, violated provisions of KRS Chapter 286.8.

12. On December 22, 2011, DFI, by counsel, filed an Administrative Complaint alleging the above-cited facts. The Administrative Complaint was sent via certified mail, return receipt requested, to Respondents' counsel of record, to Lester Smith at 683 Demory Rd., LaFollette, TN 37766 his last known address, and to Barbara Smith at 704 Dogwood Dr., Elizabethtown, KY 42701, her last known address.

13. The Administrative Complaint sent to Respondents' counsel was signed for on January 4, 2012. The Administrative Complaint sent to Mr. Smith was signed for on January 12, 2012. The Administrative Complaint sent to Ms. Smith was returned to DFI on January 18, 2012.

14. More than twenty (20) days has passed and Respondents have failed to timely file a response to the Administrative Complaint and request a hearing.

### **STATUTORY AUTHORITY**

15. Pursuant to KRS 286.8-060, a mortgage loan broker is required to post and maintain a surety bond in the amount of not less than fifty thousand dollars (\$50,000).

16. Pursuant to KRS 286.8-036, a mortgage loan broker is required to notify DFI of a closing of any licensed office in writing within ten (10) days of the closing.

17. Pursuant to KRS 286.8-160(6) and (7), any person who ceases operating a mortgage loan broker shall, prior to the discontinuance of business, notify the commissioner of the physical location where its records shall be preserved, shall appoint a records custodian, and shall notify the commissioner of the name, physical address, electronic mail address, and telephone number of the custodian.

18. Pursuant to KRS 286.8-090, the commissioner may deny, suspend, or revoke any license or registration when the licensee or registrant does not meet or has failed to comply with the requirements of KRS 286.8, does not conduct his business in accordance with law or the method of business includes or would include activities which are illegal where performed, or has willfully violated any provision of KRS Chapter 286.8 or any regulation thereunder, or has been guilty of fraud in connection with any transaction governed by KRS 286.8.

19. Pursuant to KRS 286.8-030(1) it is unlawful for any person to transact business as a mortgage company or mortgage broker without being licensed as such. Also, KRS 286.8-030(3) states, "any person who willfully transacts business in this state in violation of subsection (1) of this section shall have no right to collect, receive, or retain any interest or charges whatsoever on a loan contract, but the unpaid principal of the loan shall be paid in full."

20. Pursuant to KRS 286.8-090(1)(a), (m) and (v), the Commissioner may 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, the person has employed an unregistered loan officer, or the person has violated any provision of KRS Chapter 286.8.

21. Pursuant to KRS 286.8-046(1), the Commissioner may assess a fine of 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” against any mortgage loan company or mortgage loan broker that violates any provision of the Act or accompanying regulations. In addition, KRS 286.8-046(2) empowers the Commissioner to order restitution for violations of KRS Chapter 286.8.

### **CONCLUSIONS OF LAW**

22. Respondents violated KRS 286.8-030, KRS 286.8-036 KRS 286.8-160, and KRS 286.8-090(a), (m), and (v) for conducting business without being licensed in accordance with KRS Chapter 286.8, failing to notify DFI of a change of control, failing to comply with the requirements of KRS Chapter 286.8, not conducting their business in accordance with the law, and willfully violating KRS Chapter 286.8. Respondents are subject to a fine of up twenty thousand dollars (\$20,000) per violation, subject to a cease and desist order, and subject to an order of restitution.

23. The Respondents were properly served the Complaint pursuant to KRS 286.8-044 and 808 KAR 12:030 by serving the Respondents by certified mail at their last known addresses and by serving Respondents counsel.

24. Respondents failed to respond to the Complaint or request a hearing within twenty (20) days of service. Thus, the Respondents' right to a hearing was waived in this matter.

**ORDER**

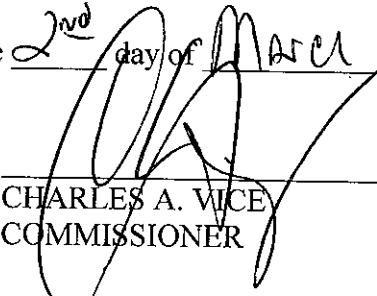
THEREFORE, based upon the foregoing statement of facts, statutory authority, and conclusions, the Commissioner **HEREBY ORDERS** that:

1. The Respondents shall pay a civil penalty in the amount of fifteen thousand dollars (\$15,000.00) for violations of the Act;
2. The Respondents shall pay Josie Spradlin three hundred and fifty dollars (\$350) as reimbursement for an appraisal that was never performed;
3. The Respondents shall pay to Leonard and Kimberly Sallee, four thousand six hundred thirty four dollars (\$4,634) in restitution for the amounts charged without any apparent benefit to them; and
4. The Respondents shall **CEASE AND DESIST** from transacting business in Kentucky pursuant to KRS Chapter 286.8.

**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.

**IT IS SO ORDERED** on this the 2<sup>nd</sup> day of MARCH, 2012.

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

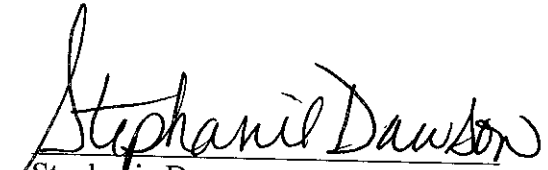
**Certificate of Service**

I hereby certify that a copy of the foregoing **Final Order** was sent by certified mail to, return receipt requested, on this the 5<sup>th</sup> day of March, 2012 to:

Lester Smith  
683 Demory Rd.  
LaFollette, TN 37766

Barbara Smith  
704 Dogwood Dr.  
Elizabethtown, KY 42701

Dodd D. Dixon, Esq.  
Dixon & Juett  
The Dixon Building  
830 Bypass Rd.  
Winchester, KY 40391

  
Stephanie Dawson  
Department of Financial Institutions