

COMMONWEALTH OF KENTUCKY  
PUBLIC PROTECTION CABINET  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
AGENCY CASE NO. 2011-AH-0021

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v.

**FINAL ORDER**

MICHAEL DAVID GORDON

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 Michael David Gordon (“Respondent”) to pay a **Fine** in the amount of \$3,000, pursuant to KRS Chapter 286.8.

**FINDINGS OF FACTS**

1. DFI is responsible for regulating and licensing mortgage loan originators 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).

2. As the result of an investigation, it was discovered that the Respondent acted as an unregistered mortgage loan originator.

3. By letter dated July 27, 2010, DFI notified the Respondent of the alleged violation of KRS 286.8-030 and KRS 286.8-255. The letter was sent certified mail, return receipt

requested to the Respondent's last known address. The letter was signed for by the Respondent on July 31, 2010.

4. The letter asked the Respondent to respond in writing by August 17, 2010. The Respondent emailed a written response on August 17, 2010, to which the DFI responded via email on November 17, 2010. The Respondent did not reply to this email.

5. A follow-up email was sent to the Respondent on January 19, 2011. That email asked the Respondent to reply in writing by January 31, 2011. The Respondent did not file a written response to the January 19, 2011 email.

6. On March 1, 2011, DFI filed an Administrative Complaint. The Administrative Complaint was sent via certified mail, return receipt requested to 1195 Corsham Circle, Akron, OH 44312 (Respondent's last known address on file with DFI) and 6150 Oak Tree Blvd., Ste. 300, Independence, OH 44131 (the address Respondent listed in his most recent email correspondence with DFI). 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.

7. Based on the investigation, DFI asserts the following violations of KRS Chapter 286.8 by the Respondent:

<u>Unregistered Activity</u>	<u>Statute Violated</u>	<u>Description</u>
Unregistered loan originator	KRS 286.8-030(1)(c) and KRS 286.8-255(1)	Respondent acted as a loan originator for mortgage loans that closed February, 3, 2009, March 13, 2009,

		and April 9, 2009.
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8. The Administrative Complaint sent to the Akron, Ohio address was signed for and the return receipt received by DFI on March 7, 2011. The Administrative Complaint sent to the Independence, Ohio address was signed for and the return receipt received by DFI on March 23, 2011.

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

#### **STATUTORY AUTHORITY<sup>1</sup>**

10. A "mortgage loan originator" is someone who for compensation or gain or the expectation of compensation or gain:

- (a) Provides services to one (1) and not more than one (1) mortgage loan company or mortgage loan broker;
- (b) Is subject to the supervision and control of that mortgage loan company or mortgage loan broker; and
- (c) In exchange for compensation by that mortgage loan company or mortgage loan broker, performs any one (1) or more of the following acts in the mortgage lending process:
  1. Solicits, places, negotiates, originates, or offers to make a mortgage loan for a mortgage loan company or mortgage loan broker;
  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, or quotes rates, terms, and conditions of a mortgage loan with a borrower or prospective borrower, whether or not the borrower or prospective borrower

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<sup>1</sup> The statutory references are the provisions of KRS Chapter 286.8 enacted at the time of the alleged violation.

makes or completes an application; or

5. Explains any term or aspect of any disclosure or agreement given at or after the time a mortgage loan application is received.

*See* KRS 286.8-010(9).

11. Pursuant to KRS 286.8-255(1), “No mortgage loan originator or mortgage loan processor shall originate or process mortgage loans on residential real property in Kentucky unless such mortgage loan originator or mortgage loan processor is registered with the office and has been issued a certificate of registration by the office. The office shall maintain a database of all mortgage loan originators and mortgage loan processors originating or processing mortgage loans on residential real property in Kentucky. The office shall issue a certificate of registration to all registered mortgage loan originators and mortgage loan processors.”

12. KRS 286.8-030(1)(c) makes it unlawful for a mortgage loan originator to conduct business in Kentucky if the mortgage loan originator is not registered pursuant to KRS 286.8-255.

13. Pursuant to KRS 286.090(1)(a) and (v), 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 has violated a provision of KRS Chapter 286.8.

14. KRS 286.8-046 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.

### CONCLUSIONS OF LAW

15. The Respondent has violated KRS 286.8-030(1)(c) and KRS 286.8-255(1) by acting as an unregistered loan originator. Respondent is subject to a fine of three thousand dollars (\$3,000).

16. 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).

17. The Administrative Complaint sent to the Akron, Ohio address was signed and the return receipt received by DFI on March 7, 2011. The Administrative Complaint sent to the Independence, Ohio address was signed and the return receipt received by DFI on March 23, 2011. Therefore, pursuant to KRS 286.8-044(3) service was complete, at the very least, on March 23, 2011 and the Respondent had until April 13, 2011 to appeal.

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

### ORDER

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

Michael David Gordon shall pay a civil penalty in the amount of three thousand dollars (\$3,000.00) for violation of KRS 286.8-030(1)(c) and KRS 286.8-255(1). The check 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: Shaun T. Orme, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 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.

**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 14<sup>th</sup> day of April, 2011.

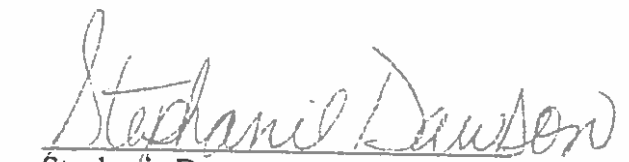
  
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CHARLES A. VICE  
COMMISSIONER

**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 14<sup>th</sup> day of April, 2011 to:

Michael David Gordon  
1195 Corsham Circle  
Akron, OH 44312

Michael David Gordon  
6150 Oak Tree Blvd., Ste. 300  
Independence, OH 44131

  
Stephanie Dawson  
Department of Financial Institutions  
1025 Capital Center Drive, Ste. 200  
Frankfort, KY 40601  
(502) 573-3390, ext. 282  
(502) 573-2183 (fax)