

COMMONWEALTH OF KENTUCKY  
PUBLIC PROTECTION CABINET  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
AGENCY CASE NO. 2009-AH-93

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v.

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

MIDWEST ONE MORTGAGE SERVICES, INC.

RESPONDENT

\* \* \* \* \*

The Commissioner of the Department of Financial Institutions (“DFI”) hereby enters this **Final Order** directing Midwest One Mortgage Services, Inc. (“Respondent”) to pay a **Fine** in the amount of \$2,500; reimburse DFI for the costs and expenses associated with the prosecution of this matter; and to immediately **Cease and Desist** from transacting business with unregistered loan originators in Kentucky.

**STATEMENT OF FACTS**

1. DFI is responsible for regulating and licensing mortgage loan brokers, mortgage loan companies, mortgage loan originators, and mortgage loan processors in accordance with the provisions set forth in KRS Chapter 286.8, the Mortgage Loan Company and Mortgage Loan Broker Act (the “Act”).

2. Respondent was authorized to do business in Kentucky as a HUD exempt mortgage broker pursuant to the Act, with its principal office located at 2809 Lincoln Avenue # 100, Evansville, IN 47714. The license number was ME16083.

3. During an examination of Taylor, Bean & Whitaker, DFI discovered that Respondent, in transacting mortgage loan business, utilized an unregistered loan originator to originate mortgage loans during the 2008 calendar year in violation of KRS 286.8-030.

4. By letter dated September 25, 2009, DFI notified Respondent of the violation of KRS 286.8-030. The letter was sent certified mail, return receipt requested, to 2809 Lincoln Avenue # 100, Evansville, IN 47714. The letter was returned to DFI as undeliverable because the Respondent had moved. The new address given for the Respondent was 741 S Hebron Avenue, Evansville, IN 47714-4073.

5. On October 21, 2009, DFI sent a letter to the Respondent at 741 South Hebron Avenue, Evansville, IN 47714-4073. The letter was sent certified mail, return receipt requested. The letter was returned to DFI as unclaimed by the Respondent.

6. On November 30, 2009, DFI filed an Administrative Complaint ("Complaint") against Respondent seeking imposition of \$2,500 fine against Respondent; reimbursement for any and all costs and expenses associated with the examination, investigation, and prosecution of this matter; and that Respondent be ordered to cease and desist from transacting business in Kentucky with unregistered mortgage loan originators, until such time as any unregistered mortgage loan originator is properly registered pursuant to KRS Chapter 286.8.

7. The Complaint was sent to Respondent via certified mail, return receipt requested at 741 South Hebron Avenue, Evansville, IN 47714-4073. In addition, the Complaint was mailed via certified mail, return receipt requested, to National Registered Agents, Inc., 400 West Market Street, Louisville, Kentucky 40202. National Registered Agents, Inc. is listed as the Respondent's registered agent with the Kentucky Secretary of State.

8. The Complaint sent to the Respondent was returned in the mail as unclaimed. National Registered Agents, Inc. claimed the Complaint and the signed return receipt was received by DFI on December 7, 2009.

9. More than twenty (20) days has passed and the Respondent has failed to respond to the Complaint or request a hearing in this matter.

10. The costs and expenses associated with the prosecution of this matter are set forth in Exhibit A, attached to this Final Order and hereby incorporated by reference.

### STATUTORY AUTHORITY

11. A "mortgage loan originator" is someone who:
- (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 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).<sup>1</sup>

12. 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.”

13. KRS 286.8-030(1)(d) makes it unlawful for any mortgage loan company or mortgage loan broker to use an unregistered mortgage loan originator.

14. 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, and/or the person has violated any provision of KRS Chapter 286.8.

15. 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. In addition, the Commissioner may order reimbursement of the costs and expenses for the examination, investigation, and prosecution of this matter, including reasonable attorney’s fees and court costs.

16. KRS 286.8-032(8)(b) requires a mortgage loan company or mortgage loan broker to notify the Commissioner of a change in the location or name of its business in writing at ten (10) days prior to the change.

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<sup>1</sup> The statutory authority cited is the statutory authority in effect on the date of the violation.

17. KRS 286.8-044(2) states in pertinent part, "The executive director (now the Commissioner) 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." *Emphasis added.*

18. Finally, 808 KAR 12:030 Section 2 states:

(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

19. Respondent violated KRS 286.8-030 by employing or using an unregistered loan originator to originate mortgage loans. Respondent is subject to a fine of two thousand five hundred dollars (\$2,500) for this violation.

20. The Respondent was properly served the Complaint pursuant to KRS 286.8-044(2) and 808 KAR 12:030 by serving the Respondent by certified mail to the last known address of the

Respondent. DFI took the additional step of serving the Respondent by sending the Administrative Complaint to the Respondent's registered agent.

21. Respondent failed to respond to the Complaint or request a hearing within twenty (20) days of service. Thus, the Respondent's 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. Midwest One Mortgage Services, Inc. shall pay a civil penalty in the amount of two thousand and five hundred dollars (\$2,500.00) for violation of KRS 286.8-030. 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;

2. Midwest One Mortgage Services, Inc. shall reimburse DFI \$437.50, the costs and expenses associated with the prosecution of this matter as set forth in Exhibit A ; and

3. Midwest One Mortgage Services, Inc. **CEASE AND DESIST** from transacting business in Kentucky with unregistered mortgage loan originators, until such time as any unregistered mortgage loan originator is properly registered pursuant to 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.

**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 9<sup>th</sup> day of February, 2010.

  
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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 16<sup>th</sup> day of February, 2010 to:

Keith White  
Midwest One Mortgage Services, Inc.  
741 South Hebron Ave.  
Evansville, IN 47714-4073

National Registered Agents, Inc.  
400 West Market Street  
Louisville, KY 40202



Shaun T. Orme  
Assistant General Counsel  
Department of Financial Institutions  
1025 Capital Center Drive, Ste. 200  
Frankfort, KY 40601  
(502) 573-3390, ext. 282