

COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2015-AH-00104
ADMINISTRATIVE ACTION NO. 15-PPC-0197



DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v.

ROGER WILLIAM HOLLOWAY III, and
HOLLOWAY MORTGAGE GROUP, LLC

RESPONDENTS

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

* * * * *

This matter is before the Commissioner of the Department of Financial Institutions ("DFI"), pursuant to KRS 13B.120, KRS 286.8-044(2), and KRS 286.8-090. For the reasons set forth herein, the Commissioner hereby enters his **Findings of Fact, Conclusions of Law, and Final Order** adopting, as modified herein, the Findings of Fact, Conclusions of Law, and Recommended Order; Notice of Exception and Appeal Rights issued by the Hearing Officer, and making additional Findings of Fact.

FINDINGS OF FACTS

1. This Administrative Proceeding was initiated on July 2, 2015, when the Division of Nondepository Institutions of the Department of Financial Institutions filed an Administrative Complaint against Respondents seeking fines, costs, and an order revoking the mortgage loan originator registration of Roger William Holloway III (NMLS #51065) and the mortgage loan broker license of Holloway Mortgage Group, LLC (License #1022996). See Pleadings, Item #1.

2. Respondents thereafter filed an answer to the Department's complaint. See Pleadings, Item #10.

3. Concurrent with the filing of the Administrative Complaint, the undersigned entered an Emergency Order of Suspension, which suspended the mortgage loan originator registration of Roger William Holloway III (NMLS #51065) and the mortgage loan broker license of Holloway Mortgage Group, LLC (License #1022996), during the pendency of these proceedings. See Pleadings, Item #2.

4. On August 19, 2015, the Administrative Hearings Branch of the Office of the Attorney General assigned Hearing Officer, Susan Durant, to hear the case. See Pleadings, Item #11. The parties thereafter prepared the case for hearing before the hearing officer.

5. By order entered on August 28, 2015, the Complainant was permitted to amend its Complaint on or before September 4, 2015. See Pleadings, Item #15. Pursuant to this order, a response was due on or before September 11, 2015.

6. On September 2, 2015, Complainant filed an Amended Administrative Complaint. See Pleadings, Item #16. Respondents thereafter filed an Answer to the Amended Complaint. Id., Item #20.

7. This matter came before the hearing officer for a final administrative hearing on October 22, 2015. See Pleadings, Item #15 and Transcript, October 22, 2015, Hearing.

8. On November 20, 2015, the hearing officer issued her Findings of Fact, Conclusions of Law, and Recommended Order; Notice of Exception and Appeal Rights. See Pleadings, Item #27.

9. Pursuant to KRS 13B.110(4), the deadline for filing exceptions was December 7, 2015. Complainant filed exceptions to the hearing officer's Findings of Fact, Conclusions of Law,

and Recommended Order; Notice of Exception and Appeal Rights on December 4, 2015. See Pleadings, Item #28. Respondents did not make a timely filing of exceptions. See Pleadings, Item #29.

10. Having considered the entire record in this matter, consisting of two hearing transcripts, with attached exhibits, the exceptions timely filed pursuant to KRS 13B.110(4), and the pleadings of both parties, I hereby adopt as my own and incorporate herein the Findings of Fact in their entirety issued by the Hearing Officer.

CONCLUSIONS OF LAW

11. Except as provided in subsections twelve (12) and thirteen (13) of these conclusions, I further adopt as my own and incorporate herein the Conclusions of Law and Recommended Order in their entirety issued by the Hearing Officer.

12. Upon consideration of the exceptions filed in this matter and pursuant to KRS 13B.120(2), I hereby exercise my authority to modify Conclusion of Law #32 and the Recommended Order issued by the Hearing Officer to comply with KRS 286.8-090, which does not provide for a term of years for a revocation, nor does it provide for the entry of a *nunc pro tunc* order. Rather, once entered, a revocation is indefinite, and pursuant to KRS 286.8-090(6), shall operate to bar the revoked person or entity from reapplying for a license, registration, or claim of exemption under KRS Ch. 286.8 for a period of three (3) years from the date of revocation.

13. Conclusion of Law #32 of the Hearing Officer's Recommended Order is therefore modified and shall read in its entirety as follows: Because of the overwhelming proof that Holloway and Holloway Mortgage Group LLC committed the acts as alleged in the complaint, it is concluded that Respondents' licenses should be revoked. The licenses can be reapplied for at

the end of the three year period following the date of revocation, which shall begin on the **EFFECTIVE DATE** of the Final Order entered by the commissioner.

FINAL ORDER

THEREFORE, based upon the foregoing findings of fact and conclusions of law and pursuant to KRS 286.8-090 and KRS 13B.120, IT IS HEREBY **ORDERED AS FOLLOWS**:

1. Except as modified herein, the Findings of Fact, Conclusions of Law, and Recommended Order; Notice of Exception and Appeal Rights issued by the Hearing Officer on November 20, 2015, and attached hereto, are adopted in full and incorporated by reference into this Final Order;

2. Pursuant to KRS 286.8-090, the mortgage loan originator registration of Roger William Holloway III (NMLS #51065) and the mortgage loan broker license of Holloway Mortgage Group, LLC (License #1022996) are hereby **REVOKED**.

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.

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NOTICE OF APPEAL RIGHTS

Pursuant to KRS 286.8-210, you are hereby notified that any person aggrieved by this Final Order of the Commissioner may obtain a review of the Order by the Franklin Circuit Court. 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 the petition must be served upon the Commissioner.

SO ORDERED this 17th day of December, 2015.



CHARLES A. VICE
COMMISSIONER

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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 18th day of December, 2015, to:

Hon. Michael B. Hayes
Attorney at Law
4423 Sycamore Forest Place
Louisville, KY 40245
Counsel of Record for Respondents

Mr. Roger W. Holloway, III
Holloway Mortgage Group, LLC
202 Mclean Avenue
Hopkinsville, KY 42240

And by hand-delivery to:

Hon. Gary Stephens
Department of Financial Institutions
1025 Capital Center Drive, Suite 200
Frankfort, KY 40601
Counsel for Complainant

And by messenger mail to:

Hon. Susan Durant
Division of Administrative Hearings
Office of Attorney General
1024 Capital Center Drive
Frankfort, KY 40601



Kelly Childers
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COMMISSIONERS OFFICE

COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2015-AH-00104
ADMINISTRATIVE ACTION NO. 15-PPC-0197

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v. FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND RECOMMENDED ORDER
NOTICE OF EXCEPTION AND APPEAL RIGHTS

ROGER WILLIAM HOLLOWAY III
HOLLOWAY MORTGAGE GROUP, LLC

RESPONDENTS

* * * * *

An Administrative Hearing was held in this matter on October 22, 2015, at the Department of Financial Institutions, 1025 Capital Center Drive, Frankfort, Kentucky. The Complainant, Department of Financial Institutions (DFI), was represented by Gary A. Stephens, Staff Attorney. Tammy Scruggs, Director of the Division of Non-Depository Institutions, was the departmental representative. The Respondents, Roger William Holloway III, and Holloway Mortgage Group, LLC, were represented by Michael B. Hayes, Attorney at Law. Susan S. Durant, Hearing Officer, Office of the Attorney General, presided.

The subject of the hearing was the Department's complaint that there were grounds under KRS 286.8-090, related to four different fact patterns, to suspend or revoke Holloway's license as a mortgage loan originator and as well as the license of Holloway Mortgage Group, LLC, as a mortgage loan broker. It is concluded that the Department of Financial Institutions should revoke Mortgage Loan Originator license NMLS #51065 of Roger William Holloway III and the Mortgage Loan Broker license #1022996 of Holloway Mortgage Group LLC for a period of three years. Out-of-pocket costs may be taxed against Holloway at the discretion of the Commissioner.

FINDINGS OF FACT

1. The Respondent, Roger William Holloway III, has been in financial related services with eleven different employers since 2001. Exhibit 3 to the hearing. (Hereinafter cited as Ex. __.) He testified that he has been licensed with the Department of Financial Institutions (DFI) since the beginning of the Nationwide Multi-Licensing System (NMLS). Transcript of the hearing at page 22. (Hereinafter cited as Tr. at __.)

2. Holloway's difficulties that led to this hearing appears to have begun when he was a loan officer with American Nationwide Mortgage Company from April, 2012, to March, 2013. Ex. 3. While working for American Nationwide, Holloway organized his own company, Holloway Mortgage Group LLC, on January 4, 2013. Ex. 2. Later when Holloway moved into working entirely for his own company, his former employer alleged that Holloway still owed American Nationwide some monies from his employment with it. As a result of that dispute, American Nationwide threatened to bring criminal charges against Holloway. Holloway averred that in April, 2013, he called DFI and spoke to someone who said that unless Holloway was indicted, the threat would not affect his license. Tr. at 39. Later in August, 2013, the threat became a reality and Holloway was charged with theft by deception in Jefferson District Court. The criminal action was placed on the "rocket docket" in an attempt to quickly move the matter toward a resolution. Case DI 13-F-009298 was described as "theft by deception include [sic] cold checks \$10,000 or more." However, despite frequent court appearances, the case languished in District Court for almost two years. On May 18, 2015, the criminal case was dismissed for direct indictment. Ex. 13. And, in July/August, 2015, the parties finally came to an agreement. Ex. 14. Holloway testified that he ultimately paid about \$6,000 to his former employer. Tr. at 47.

3. Then in January, 2014, while the criminal matter was still on-going, Holloway

Mortgage was reviewed in a routine examination by DFI. The exam resulted in a "grade" of below average, but it was not low enough to cause the Department to think that the company should be shut down. As a result of the examination, Holloway was to pay \$716 to the DFI. Although the evidence was somewhat confusing, the cost of the examination was not paid, so the DFI filed an action against Holloway to which Holloway did not respond. Holloway testified that he never saw the papers that initiated the action. Because the DFI received no Response from Holloway, it issued a Default Judgment against him. Holloway then appealed the Judgment in Franklin Circuit Court and paid the \$716 by having a cashier's check delivered to DFI by UPS. The default action, however, resulted in Holloway's license being suspended from October 3, 2014, until Franklin Circuit Court Judge Thomas Wingate reinstated Holloway's license on December 28, 2014.

4. Then in 2014, while Holloway was dealing with American Nationwide and the criminal charges, and while Holloway had not satisfied his debt to DFI, a foreclosure action was begun on Holloway's home on June 26, 2014. The house was sold on October 21, 2014, and the Commissioner's Deed was recorded on December 22, 2014. Ex. 1. Holloway testified that he did not vacate the house until February, 2015. Holloway continued to challenge perceived irregularities in the foreclosure action to the extent that he was able.

5. Holloway's lack of a license for the last quarter of 2014, meant that he had no regularized means of accruing funds to challenge the criminal charges and the foreclosure action.

6. By the beginning of 2015, Holloway's license was restored and he was thus able to continue his business. Then on January 7, 2015, Great American Alliance Insurance Company sent Holloway a notice that his bond was to be canceled within 30 days. Ex. 8. The DFI also received a notice that Holloway's bond was about to be canceled. Thus, on January 13, 2015,

Pam Fitzgerald, Non-Depository Licensing Branch Manager, sent Holloway a reminder that he must reinstate his current bond or obtain another bond on or before February 13, 2015. Ex. 10. Fitzgerald's letter was sent to 159 St. Matthews Avenue, Louisville, Kentucky, which was the address on the bond and was Holloway's Ky DFI address. The letter was returned as "attempted-not known unable to forward." Ex. 10. As Holloway explained, when his finances became more strained, he had to cut expenses, so he moved his business from his St. Matthews office to his home address at 3749 Southern Parkway, Louisville, Kentucky.

7. On February 2, 2015, Fitzgerald finally reached Holloway via email. She reminded him that he must have a new bond in place by February 13. Also, Fitzgerald pointed out that his local planning and zoning board must grant approval for an in-home business. Holloway later that same day received a Change of Address Rider and Verification Certificate from his bonding company which he forwarded to DFI. On February 24 and again on March 16, Fitzgerald reminded Holloway that she still needed the required information from his planning and zoning commission. Ex. 11.

8. Holloway had his new bond in place by February 21, 2015.

9. However, the bond issue had caused two more problems to emerge. One was that Holloway never provided a valid address for his business. Even as he was writing Fitzgerald about providing the zoning information, he was talking about an address that he had only a tenuous claim to. His home had been sold about 3½ months previously. Thus, by the time of his first email exchange with Fitzgerald, he was on his way out the door if not already gone from Southern Parkway. When Holloway responded to Fitzgerald's March 16, 2015, email query, he no longer had any legitimate claim to 3749 Southern Parkway as his business address. Holloway worked out of his girlfriend's parents' guest room and then he moved to Hopkinsville to be with

his ailing parents. As late as July 7, 2015, though, Southern Parkway was still listed as Holloway Mortgage Group LLC's business address. Ex. 2.

10. Another problem arose out of Holloway's lack of a valid address. In April, 2015, Gary Davis, Mortgage Examination Branch Manager, requested that an examiner schedule another examination to follow up after the February, 2014, report. Because it was difficult to locate Holloway and it was thought there might be a foreclosure sale associated with the Southern Parkway address, Davis emailed concerned individuals within DFI. Gary W. Adkins, who was Assistant General Counsel at DFI at the time, got on CourtNet to try to see if there had been a foreclosure. What he found was the criminal action in Jefferson District Court. Adkins followed up the lead because the case appeared to involve theft by deception of over \$30,000 from a mortgage company. Tr. at 73-75.

11. By checking back into their records, the DFI discovered that on December 13, 2013; January 1, 2014; December 30, 2014; and twice on December 31, 2014, Holloway had not been truthful when he stated that there were no pending charges against him for a felony. Ex. 3, 4, 5, 6, 7. Holloway strongly insisted that he thought that "pending charges" for a felony meant that he had to have been indicted for a felony. He had never been indicted. The case stayed in a preliminary stage for a couple of years. Tr. at 88. DFI pointed out that in Holloway's emergency hearing in July, 2015, Holloway never mentioned being told by someone at DFI that he did not have to indicate that he had been charged with a felony unless he had been indicted. Tr. at 39. Holloway testified that he thought the charges against him were misdemeanors. Tr. at 45. However, Holloway had also not indicated on the DFI forms that there were any misdemeanor charges against him in regard to financial services or a financial services-related business either. Ex. 3-7.

12. Meanwhile, Examiner Steven Meyer, having discovered that neither Holloway's physical address nor email address was still valid, continued to attempt to contact Holloway for another examination. Finally on April 21, 2015, Meyer got a reliable email address for Holloway and requested that the loan originator send him the documents he needed for the examination. Tr. at 111. Holloway asked for a month's extension of time. Meyer granted it. Tr. at 113. At the end of the extension period, Holloway had still not provided Meyer with the required documents for an examination. Tr. at 115.

13. While Meyer was attempting to contact Holloway about the second DFI examination, Hudson Insurance Company notified Holloway that the bond he had bought to replace his previous bond was also to be cancelled as of May 18, 2015. This bond also had 3749 Southern Parkway address as the address of Holloway Mortgage Group LLC. Ex. 9.

14. Holloway did not replace that surety bond and thus Holloway Mortgage Group LLC operated unbonded. On June 17, 2015, approximately one month after the cancellation, Holloway closed a mortgage. Ex. 17. Holloway received no funds from the closure.

15. On July 2, 2015, Holloway was notified that his license as a loan originator and Holloway Mortgage's license as a loan broker were suspended because their continued operation represented a threat to the health, safety and welfare of the public. The charges in the Emergency Order of Suspension were essentially the same as were alleged in this full due process hearing. Holloway appeared *pro se* at the emergency hearing. On July 13, 2015, an Amended Final Order of Suspension was issued upholding the July 2 emergency suspension.

CONCLUSIONS OF LAW

16. The Department of Financial Institutions has jurisdiction over this action pursuant to the provisions of KRS 286.8-044 (2) and KRS 286.8-090(1)(a).

17. The administrative hearing was conducted in accordance with the provisions of KRS Chapter 13B. KRS 286.8-012.

18. Under KRS 13B.090(7), DFI had the burden to prove by a preponderance of the evidence that Roger William Holloway III and Holloway Mortgage Group LLC violated the statutes as charged.

19. The Respondents were charged with violating KRS 286.8-220(1) and KRS 286.8-090(1)(g)(h) by failing to disclose pending criminal charges of theft by deception when Holloway renewed his mortgage loan originator license and the mortgage loan broker license of Holloway Mortgage on four separate occasions.

20. The Respondents were charged with violating KRS 286.8-032(8)(a) and (b), KRS 286.8-36(4), KRS 286.8-170(8)(c), and KRS 286.8-090(1)(a) by failing to keep a current and proper address with the DFI.

21. The Respondents were charged with violating KRS 286.8-170(3) and KRS 286.8-090(1)(j) by failing to permit an examination by the Commissioner of their books and affairs.

22. The Respondents were charged with violating KRS 286.8-060(1) by failing to maintain a surety bond.

23. The Respondents were charged with violating KRS 286.8-220(2)(i) and (3) and KRS 286.8-090(1)(v) by closing a mortgage loan without a surety bond.

24. As Mr. Hayes pointed out in his opening statement, there were four major areas of transgression charged against Holloway: failure to disclose the criminal charges, failure to keep a current and proper address, failure to provide the documentation for a second examination, and failure to maintain a surety bond for Holloway Mortgage. In the course of the Hearing in this matter, all of the charges were found to be factually accurate as charged. Thus, the Hearing

revolved around mitigating factors that were offered by Mr. Holloway.

25. The mitigation offered for the failure to disclose the criminal charges was that Holloway thought that he only had to reveal felony charges for which he was indicted. However, Holloway would have still had to reveal misdemeanor charges related to financial services and he did not. Also Holloway admitted that he did owe certain amounts to American Nationwide which were not paid as they should have been.

26. Holloway's failure to maintain a proper and current address with DFI was tied up with Holloway's poor financial state and the foreclosure of his home. However, Holloway's hopes to redeem his home were not sufficient to underpin his insistence on the 3749 Southern Parkway address long past the time that he could realistically claim it as his address. It meant that the DFI, his sureties, and his clients had no sure means of contacting him.

27. Holloway's lack of a fixed and proper office was probably the root cause of his being unable to provide the documents that DFI requested for the 2015 examination. The documents were requested in April, 2015; they were provided in October, 2015.

28. Finally, Holloway Mortgage had no surety bond after May 18, 2015. The discovery that Holloway had closed one loan after that date apparently arose from the loan originator's honest testimony during the suspension hearing. Holloway testified that the loan was closed, because it was in the best interest of the client. It saved the client a significant amount of money and Holloway received no commission. Tr. at 164.

29. Eventually, after Holloway's license was suspended, obtaining a bond would have been useless, because he could not originate mortgage loans during that period, nor could Holloway Mortgage act as a loan broker. However, a bond will be imperative before Holloway Mortgage can function again.

30. Toward the close of the Hearing, Tammy Scruggs testified as the Division Director for Non-depository Institutions. She emphasized the factors that were relevant in DFI's request that Holloway's license be revoked. All of the fact patterns that were described in the charges were serious enough that the statutes permitted Holloway's licenses to be suspended or revoked for any one offense. Another factor was that Holloway's license had been suspended temporarily in the prior year. In addition, the failure to reveal that there were criminal charges against him—either felony or misdemeanor—was repeated multiple times over a period of approximately a year. And, Holloway failed to provide a correct and permissible office address repeatedly even after he was repeatedly reminded that he needed to correct the situation. The examination that was to have taken place in the spring of 2015 could not be done, because Meyer did not have the information. A topnotch examination result could have been used as an indicator that Holloway had developed better business practices.

31. The evidence set out at the hearing repeatedly indicated that Holloway ignored unpleasant facts. Because he had not been indicted, he seemed to think he could ignore the criminal charges against him on his DFI renewals. He ignored an administrative complaint and its repercussions until it required that it be dealt with in Franklin Circuit Court. He stuck with an invalid address causing himself additional trouble, rather than focusing on finding a solid business address. More money would have helped Holloway, but it would not have solved all of his problems.

32. Because of the overwhelming proof that Holloway and Holloway Mortgage Group LLC committed the acts as alleged in the complaint, it is concluded that Respondents' licenses should be revoked for three years. The revocations should be considered to have begun on July 2, 2015. The licenses can be reapplied for at the end of the three-year set-out period.

33. It is not recommended that a civil penalty be levied against Holloway, because without his licenses, his ability to earn a living will be severely handicapped. There is no reason to reduce him to penury. It is perhaps appropriate to levy the cost of the October 22, 2015, hearing on Holloway, but the other costs such as the investigation leading to the Emergency Hearing was a choice that DFI made for their own reasons. It is assumed that the prosecutor and other witnesses were simply doing their jobs as salaried employees. The hearing officer and the court reporter were out-of-pocket expenses for DFI.

RECOMMENDED ORDER

Based upon the foregoing findings of fact and conclusions of law, it is recommended that the Department of Financial Institutions revoke Mortgage Loan Originator license NMLS #51065 of Roger William Holloway III and the Mortgage Loan Broker license #1022996 of Holloway Mortgage Group LLC for a period of three years. Out-of-pocket costs may be taxed against Holloway at the discretion of the Commissioner.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4) a party has the right to file exceptions to this recommended decision:

A copy of the hearing officer's recommended order shall also be sent to each party in the hearing and each party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the agency head.


In order to preserve a right to review by the circuit court, case law requires that a litigant must file exceptions with the board or agency if there is anything in the recommended order with which a party does not agree and desires to appeal.

6 6
A party also has a right to appeal the Final Order of the agency pursuant to
KRS 13B.140(1) which states:

All final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

Pursuant to KRS 23A.010(4), "Such review [by the circuit court] shall not constitute an appeal but an original action." Some courts have interpreted this language to mean that summons must be served upon filing an appeal in circuit court.

SO ORDERED on November 20, 2015.



SUSAN S. DURANT
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CERTIFICATE OF SERVICE

I hereby certify that the original of this RECOMMENDED ORDER was served this 20th day of November, 2015 by messenger mail, to:

GENERAL COUNSEL
DEPT OF FINANCIAL INSTITUTIONS
1025 CAPITAL CENTER DR STE 200
FRANKFORT KY 40601

for filing; and by first class mail, postage prepaid, to:

MICHAEL B HAYES
ATTORNEY AT LAW
4423 SYCAMORE FOREST PL
LOUISVILLE KY 40245

and by messenger mail, to:

GARY A STEPHENS
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