

COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2010-AH-88

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v.

EMERGENCY ORDER TO CEASE AND DESIST

SPIRITUAL EMPOWERMENT EQUALS
ECONOMIC DEVELOPMENT, LLC

RESPONDENT

* * * * *

Comes now, the Commonwealth of Kentucky, by and through the Commissioner of the Department of Financial Institutions (“DFI”), and hereby enters this **Order** directing Spiritual Empowerment Equals Economic Development, LLC (“S.E.E.E.D.” or “Respondent”) to immediately **Cease and Desist** from engaging in the mortgage loan process in Kentucky.

FINDINGS OF FACT

1. DFI is responsible for regulating and licensing mortgage loan brokers in accordance with the provisions of KRS 286.8. It is unlawful for a person to transact business in Kentucky as a mortgage loan company, unless that person is registered with DFI and complies with all the applicable requirements of KRS 286.8. *See* KRS 286.8-030.

2. As the result of a consumer inquiry, DFI began investigating Home Ownership Possibilities for Everyone, LLC (“H.O.P.E.”) DFI learned that H.O.P.E.’s website lists a corporate address of 9900 Corporate Campus Drive, Suite 3000, Louisville, Kentucky 40223. In addition, the website explains that H.O.P.E. offers residential mortgage based loans for

purchasing or refinancing. H.O.P.E. is not licensed as mortgage loan broker or registered as an exempt company with DFI.

3. On May 25, 2010, an investigator with DFI visited the H.O.P.E.'s corporate office. David "Jay" Godwin ("Mr. Godwin") represented himself as the owner of H.O.P.E. H.O.P.E. registered with the Kentucky Secretary of State as a limited liability corporation.

4. Mr. Godwin described the H.O.P.E. program as a home loan program that allows borrowers to refinance or purchase homes with no closing costs and a no interest rate loan. A flat fee finance charge is added to the total loan amount and paid in five year increments, over the term of the loan. As an ostensible agent, H.O.P.E. collects the borrowers' information and sends it to Redemption Funding Group ("Redemption").¹ Redemption then forwards the information on to S.E.E.E.D. for funding.² Of the flat fee, H.O.P.E. receives 4% for its "broker" services.

5. H.O.P.E. touts a nontraditional loan that is not based exclusively on credit. The investigation revealed that potential borrowers submit a registration application to H.O.P.E. that describes the subject property and the outstanding mortgage on the property. Potential borrowers are also required to submit two years of tax returns, two years of W-2s, and their last two pay stubs. If the borrower is approved, S.E.E.E.D. and the borrower enter into a Memorandum of Understanding ("MOU"). The MOU details the amount of the loan, how the flat fee is to be paid, and the potential closing date.

6. As part of this application process with H.O.P.E., borrowers must pay an upfront \$300 membership for S.E.E.E.D. This fee is nonrefundable. S.E.E.E.D. also requires 3%- 3.5 %

¹ Redemption is located in Dalton, Georgia.

² S.E.E.E.D. is incorporated in Nevada.

of the loan amount to be paid up front that is paid to an escrow fund. The membership fees and the upfront 3%- 3 ½ % fees have been deposited in an account owned by S.E.E.E.D.

7. H.O.P.E. supplied DFI with a list of borrowers who have applied for a home loan through H.O.P.E. As of May 28, 2010, H.O.P.E. had 165 loans in the pipeline, of which 40 involved Kentucky properties.

8. Also among this list are four loans on Kentucky properties that purportedly closed on May 21, 2010. However, Mr. Godwin informed the investigator that the loans were not actually funded on the closing date. This is what is known as a “dry closing.”

9. As of June 21, 2010, the dry closed loans had not been funded.

10. On June 1, 2010, the DFI investigator and an investigator from the Indiana office of the Secretary of State met with Mr. Godwin and Brad Bailey (“Mr. Bailey”), the owner of Redemption, and Charles Pierce (“Mr. Pierce”), the managing partner of Redemption. Jemal Lilly (“Mr. Lilly”) telephonically participated in the meeting. Mr. Lilly is the manager of S.E.E.E.D. On this date a loan list was supplied to the DFI investigator containing 230 loans.

11. Mr. Bailey confirmed that Redemption immediately remits the membership fees and the upfront 3%-3 ½ % fess to S.E.E.E.D. Redemption retains no monetary funds and Redemption receives 5% of the flat fee for its “referral” services.

12. In conversations with the DFI investigator, Mr. Lilly confirmed that S.E.E.E.D. was supposed to provide the funding for the loans involving the Kentucky properties. He also confirmed that the funding was never provided. Mr. Lilly admitted that he made repeated promises to provide the funding for the loans.

13. Mr. Lilly corroborated Mr. Godwin's description of the loan program through S.E.E.E.D. He also stated that there are no written criteria for determining who qualifies for the program, but that he had turned down applicants.

14. As part of the program once an individual's loan is approved, the borrower and S.E.E.E.D. execute a document entitled, "Memorandum of Understanding Between (borrower's name) and SEEED Consortium, LLC for New Financing of Residential Property." This Memorandum of Understanding states that the borrower wishes to obtain alternative financing for their residential property and that S.E.E.E.D. agrees to provide this financing in exchange for the repayment of the principle loan amount, plus a flat fee that is specified within the Memorandum of Understanding. The Memorandum of Understanding is signed by Jemal Lilly, Manager, on behalf of S.E.E.E.D.

15. Mr. Godwin has had numerous conversations with Mr. Lilly with regards to S.E.E.E.D. funding these loans. Mr. Lilly has assured Mr. Godwin that the loans will be funded through S.E.E.E.D.

16. S.E.E.E.D's website makes it clear that S.E.E.E.D. is holding itself out as being able to offer mortgage loans.

17. On June 11, 2010, the Department issued a Cease and Desist Order against HOPE, which requires HOPE to, among other things, immediately cease engaging in the mortgage business in Kentucky.

18. S.E.E.E.D. is acting as a mortgage company in Kentucky without holding a license or a claim of exemption. Moreover, with regards to the potential borrowers, S.E.E.E.D. has made misrepresentations of false statements; and/or concealed essential material facts during

the mortgage lending process; and/or engaged in a course of business that has worked or tended to work a fraud or deceit.

19. S.E.E.D. has engaged in unsafe, unsound, and illegal practices that impose an imminent threat to the public interest.

STATUTORY AUTHORITY

20. Pursuant to KRS 286.8-010(17), the mortgage loan process means:

...the process through which a person seeks or obtains a mortgage loan, including the solicitation, application, origination, negotiation of terms, processing, underwriting, signing, closing, and funding of a mortgage loan and the services provided incident to a mortgage loan, including the appraisal of the residential real property. Documents involved in the mortgage lending process include but are not limited to:

(a) Uniform residential loan applications or other loan applications;

(b) Appraisal reports;

(c) Settlement statements;

(d) Supporting personal documentation for loan applications, including:

1. Form W-2 or other earnings or income statements;

2. Verifications of rent, income, and employment;

3. Bank statements;

4. Tax returns; and

5. Payroll stubs;

(e) Any required mortgage-related disclosures; and

(f) Any other document required as a part of, or necessary to, the mortgage lending process;

21. A mortgage loan company is:

any person who directly or indirectly:

(a) Makes, purchases, or sells mortgage loans, or holds oneself out as being able to do so; or

(b) Services mortgage loans, or holds oneself out as being able to do so;

See KRS 286.8-010(20).

22. KRS 286.8-190 grants DFI the power to investigate by complaint or otherwise when it appears that any person is conducting business in an unsafe and injurious manner or is in violation of KRS Chapter 286.8.

23. KRS 286.8-030(1)(a) makes it unlawful for, "...any person to transact business in Kentucky, either directly or indirectly, as a mortgage loan company or mortgage loan broker if the mortgage loan company or mortgage loan broker is not licensed in accordance with the requirements of this subtitle, unless that person is exempt under KRS 286.8-020 and, if required by KRS 286.8-020(3) has timely filed a completed application for a claim of exemption, and the filed application for a claim of exemption has been approved by the executive director.."

24. KRS 286.8-120(6) states, "No person shall receive any fee or other compensation of any kind in connection with procuring any loan, except for services actually rendered as above provided, and in no event shall a mortgage loan company or mortgage loan broker require the payment of a fee greater than one hundred dollars (\$100) as a condition to submitting a loan application unless the executive director shall otherwise prescribe by rule."

25. Pursuant to KRS 286.8-048(1), the Commissioner may take emergency action against a mortgage loan broker if it appears that the mortgage loan broker has engaged in unsafe, unsound, and illegal practices that impose an imminent threat to the public interest.

26. KRS 286.8-046(2) gives the Department the ability to order restitution, refund, recovery of expenses, or direct such other affirmative action it may deem necessary against any person who violates any provision of KRS Chapter 286.8.

27. Sufficient grounds exist for an emergency cease and desist if a mortgage loan company has willfully failed to comply with the requirements of KRS Chapter 286.8 or if the mortgage loan company has made misrepresentations of false statements, or concealed an essential material fact during the mortgage lending process; or has engaged in a course of business that has worked or tended to work a fraud or deceit upon any person. *See* KRS 286.8-048(2)(a) and (d).

CONCLUSIONS OF LAW

28. Respondent is operating as a mortgage loan company as defined in KRS 286.8-010(20). Respondent has unlawfully transacted business in Kentucky by failing to obtain a license as a mortgage loan company, pursuant to KRS 286.8-030(1)(a).

29. Respondent has charged illegal upfront fees to potential borrowers in violation of KRS 286.8-120.

30. Respondent has made misrepresentations of false statements, or concealed an essential material fact during the mortgage lending process; or has engaged in a course of business that has worked or tended to work a fraud or deceit upon any person. At least four (4) loans have closed on Kentucky properties, in which the loans were not funded and are unlikely to be funded. This is known as a “dry closing.”

31. Respondent has received an application fee that is greater than that allowed by KRS 286.8-120(6).

32. Respondent has engaged in unsafe, unsound, and illegal practices that poses an imminent threat to the public interest.

ORDER

Based on the foregoing Findings of Fact, Statutory Authority, and Conclusions of Law, the Commissioner **hereby ORDERS** as follows:

1. S.E.E.E.D. shall immediately **CEASE AND DESIST** from engaging in the mortgage loan process in Kentucky;
2. S.E.E.E.D. shall continue to work with H.O.P.E. to secure necessary funding for the four loans that were purportedly close, but were not funded on the initial closing date;
3. S.E.E.E.D. shall return to H.O.P.E. any money remitted to S.E.E.E.D. from H.O.P.E., LLC for mortgage loans on Kentucky properties. Within five (5) days of the issuance of this Order, S.E.E.E.D. shall provide proof of same to Nicole Biddle, Director of Non-Depository Financial Institutions at nicole.biddle@ky.gov; and
4. S.E.E.E.D. shall remain under an ongoing obligation to provide updated information to Director Biddle on a weekly basis on all loans relative to Kentucky consumers.

APPEAL RIGHTS

You are hereby notified that you have the right to request a hearing on this matter, in writing, within twenty (20) days of the entry of this Order. If requested, an administrative hearing shall be held pursuant to the provisions of KRS 13B.125 and KRS 286.8-048. Please submit any appeal to Shaun T. Orme, Assistant General Counsel, Kentucky Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601.

IT IS SO ORDERED on this the 22nd day of June, 2010

Charles A. Vice by MSB

Charles A. Vice
Commissioner
Department of Financial Institutions
1025 Capital Center Drive, Ste. 200
Frankfort, KY 40601

Certificate of Service

I hereby certify that a copy of the foregoing **Order to Cease and Desist** was served by certified mail return receipt requested on this the 22nd day of June, 2010 to:

Jemal Lilly
S.E.E.E.D., LLC
P.O. Box 27740
Las Vegas, NV 89126



Shaun T. Orme
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