

**COMMONWEALTH OF KENTUCKY  
PUBLIC PROTECTION CABINET  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
AGENCY CASE NO. 2009-AH-83  
ADMINISTRATIVE ACTION NO. 09-PPC-0292**

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v.

STUART ATWOOD

RESPONDENT

**FINAL ORDER DENYING APPLICATION FOR  
MORTGAGE LOAN ORIGINATOR REGISTRATION**

\* \* \* \* \*

This matter is before the Commissioner of the Department of Financial Institutions (“DFI”), pursuant to KRS 13B.120. The Commissioner hereby enters this **Final Order Denying Application for Mortgage Loan Originator Registration** of Stuart Atwood (“Respondent”).

Having considered the record in this matter, the Findings of Fact, Conclusions of Law, and Recommended Order, to which no exceptions were filed, and being sufficiently advised, I hereby adopt as my own the Findings of Fact, Conclusions of Law, and Recommended Order issued by the Hearing Officer on April 22, 2010. Specifically, the Respondent does not meet the criteria of KRS 286.8-255(9)(c) and has violated KRS 286.8-090(1)(d), (k), (l), and (n).

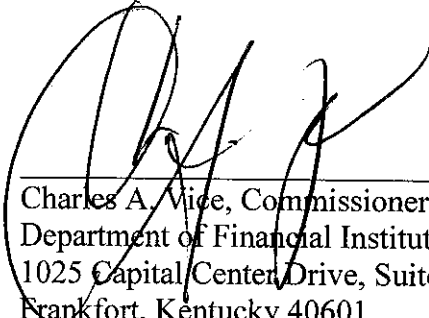
**FINAL ORDER**

THEREFORE, it is hereby **ORDERED** that:

1. The Findings of Fact, Conclusions of Law, and Recommended Order issued by the Hearing Officer on April 22, 2010 and attached hereto are hereby adopted and incorporated by reference in this Final Order: and

2. The application of Respondent Stuart Atwood for a certificate of registration as a mortgage loan originator is **DENIED**.

Executed on the 28<sup>th</sup> day of May, 2010.



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

**NOTICE OF RESPONDENT'S APPEAL RIGHTS**

This is a final and appealable order. 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 completion of service of this Final Order. A copy of any Appeal Petition must be served on the Commissioner.

**Certificate of Service**

I hereby certify that a copy of the foregoing **Final Order Denying Application for Mortgage Loan Originator Registration** was served as follows on this the 15<sup>th</sup> day of June, 2010:

by messenger mail on:

Hon. Michael Head  
Hearing Officer  
Division of Administrative Hearings  
Office of the Attorney General  
1024 Capital Center Drive  
Frankfort, KY 40601

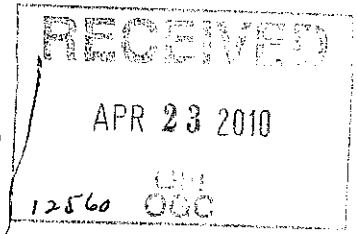
by certified mail, postage prepaid, on:

Richard Whitaker, Esq.  
Bowles, Rice, McDavid, Graff & Love, LLP  
333 W. Vine St., Ste. 1700  
Lexington, KY 40507-1639



Shaun T. Orme  
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**COMMONWEALTH OF KENTUCKY  
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AGENCY CASE NO. 2009-AH-83  
ADMINISTRATIVE ACTION NO. 09-PPC-0292**



DEPARTMENT OF FINANCIAL INSTITUTIONS

PETITIONER

vs.

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER**

STUART ATWOOD

RESPONDENT

\* \* \* \* \*

On March 4, 2010, the Department of Financial Institutions ("the Department") held a final hearing in this action at the offices of the Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky. Shaun Orme appeared as counsel for the Petitioner, the Department. Richard A. Whitaker appeared as counsel for the Respondent, Stuart Atwood. Hearing Officer Michael Head, Assistant Attorney General, Administrative Hearings Branch, Office of the Attorney General, conducted the hearing. The hearing was recorded by court reporter.

The Department denied Mr. Atwood's application for mortgage loan originator registration because he had pleaded guilty to misapplication of entrusted property, a Class A misdemeanor, and also because the mortgage loan brokering license of a Kentucky corporation was revoked for three violations of law all while Mr. Atwood was president of the corporation. Mr. Atwood argues he did not keep, but merely failed to keep secure, cash entrusted to him when he worked in a car dealership, and that the mortgage loan brokering license violations were either committed by people who work for him, or were the result of neglect on his part when he closed

out the corporation' is business. The issue is whether Mr. Atwood's application should be approved.

The Respondent offered only his own testimony on his behalf. The Department offered the testimony of only one witness: Norman C. Thompson, Compliance Branch Manager for the Department. The parties offered seven exhibits, all of which were introduced into the record and considered by the Hearing Officer in making his decision.

After considering the record as a whole, and based on a preponderance of the evidence, the Hearing Officer RECOMMENDS that the Department of Financial Institutions issue a final order denying Stuart Atwood's application for mortgage loan originator registration. In support of this decision, the Hearing Officer issues the following findings of fact, conclusions of law, and recommended order.

#### **FINDINGS OF FACT**

1. The Respondent, Stuart Atwood, applied to the Department of Financial Institutions for a certificate of registration as a loan originator pursuant to KRS 286.8-255.
2. The Department denied Mr. Atwood's application by order dated November 8, 2009. Hearing Exhibit 7 ("HE 7"). Mr. Atwood filed a timely request for hearing on November 13, 2009.
3. The Department's denial was based on two grounds: first, Mr. Atwood pleaded guilty to a criminal charge, misapplication of entrusted property, a Class A misdemeanor; and, second, while he was president of Lincoln Mortgage Corp., a mortgage loan company licensed to do business in Kentucky, the license of Lincoln was revoked for brokering a loan at a rate of

interest exceeding the amount permitted by law, for failing to pay an examination fee bill, and for failure to maintain a surety bond.

### **Revocation of Mortgage Loan License**

1. In 1996, the Department granted a mortgage broker's license to Lincoln Mortgage Corporation, a corporation Mr. Atwood formed and of which he was president.

2. Lincoln's loan officers, of which there were up to five at one time, initially made seven to ten loans per month. Lincoln did not set the interest rates for the mortgage loans it negotiated. Its loan officers merely solicited loans from different lenders on behalf of homebuyers.

3. When asked at the hearing for information concerning the loan that violated Kentucky's usurious rate law, Mr. Atwood did not recall anything about the loan, the lender, the borrower, or who the loan officer was.

4. Mr. Atwood admitted that Lincoln did not have a procedure in place to insure that interest rates for mortgage loans it brokered complied with Kentucky's usury laws. He said only that Lincoln used the truth in lending notices provided by lenders.

5. Mr. Atwood admitted that Lincoln did not maintain the surety bond required by law to be a licensed mortgage broker.

6. Mr. Atwood also admitted that Lincoln did not pay the Department's fee for conducting the examination of Lincoln's mortgage business that resulted in the license revocation.

7. Mr. Atwood testified that he did not contest the Department's revocation of Lincoln's license because in 2001, he went to work for U.S. Bank as a sales manager for central

and eastern Kentucky. Although he negotiated mortgage loans while working at the bank, Mr. Atwood did not need a mortgage broker's license because, at that time, bank employees were exempt from mortgage broker license requirements.

8. The Department revoked Lincoln's mortgage broker license by final order dated February 8, 2001. HE 6.

#### **Misapplication of Entrusted Property Misdemeanor**

9. From October 2007 until January 2009, Mr. Atwood was the finance manager at Bob Allen Chevrolet in Danville, Kentucky. He was the only employee in the finance department at Bob Allen Chevrolet. He personally processed all of the vehicle loans, oversaw all accounts receivable, and sold customers vehicle protection products at the dealership. He handled between 80 and 100 finance transactions per month, and he received cash from customers on a daily basis. He gave all the cash he received from customers to a clerk at Bob Allen Chevrolet. The clerk gave Mr. Atwood a receipt and put the money in a safe. Sometimes the clerk would not give Mr. Atwood a receipt at the time he gave her the money, but at a later time, she would put a receipt in his mailbox.

10. Mr. Atwood says he was fired from Bob Allen Chevrolet because his employer found that he was looking for another job. *See* HE 3. On his last day at Bob Allen Chevrolet, Mr. Atwood received approximately \$7,250 in cash from three customers. At the end of this day, Mr. Atwood placed the \$7,250 in cash on the clerk's desk even though the clerk was not present at the time. The owner of the dealership did not discover that the money was missing until two weeks later.

11. Although the police investigated, only Mr. Atwood was charged with theft. *See* HE 3. On May 6, 2009, Mr. Atwood pleaded guilty to the amended charge of misapplication of entrusted funds. HE 2. He says he entered the plea to avoid having to go through the criminal process. His brother paid the restitution of \$7,250, and Mr. Atwood is paying his brother back over time.

### CONCLUSIONS OF LAW

1. This case and the hearing that was held are authorized by KRS Chapter 286.8-044(1) and KRS Chapter 13B.
2. Because Mr. Atwood seeks a benefit that he does not currently possess, namely, a loan originator certificate of registration, pursuant to KRS 13B.090(7), Mr. Atwood has the burden to show that he is entitled to that benefit.
3. Based on the findings of fact, and for the reasons that follow, the Department should not grant Mr. Atwood a loan originator certificate of registration.
4. Pursuant to KRS 286.8-255(9)(c), a certificate of registration shall not be granted to a loan originator who has not demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the loan originator will operate honestly, fairly, lawfully, and efficiently within the purposes of KRS Chapter 286.8.
5. Pursuant to KRS 286.090(1), the Department may deny a certificate of registration if the applicant, (d) collects interest at a usurious rate; (k) has been convicted of any misdemeanor of which an essential element is fraud, breach of trust, or dishonesty; (l) has had a license or registration related to the financial services industry revoked under the laws of the



state; or (n) has demonstrated incompetence or untrustworthiness to act as a licensee or registrant under KRS Chapter 286.8.

6. The Department should deny Mr. Atwood a certificate of registration as a loan originator for his violation of each of these laws.

7. Based on his past actions, Mr. Atwood does not meet the criteria in KRS 286.8-255(9)(c). In the circumstances of both Lincoln's license revocation and Mr. Atwood's criminal charge, Mr. Atwood did not demonstrate financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that he will operate honestly, fairly, lawfully, and efficiently as a loan originator. Regarding Lincoln's license revocation, Mr. Atwood failed to maintain adequate oversight of the loan officers under his supervision to ensure that they complied with Kentucky's usury laws. Even now, he has no memory of the details of the loan or the individuals involved, displaying a cavalier attitude toward a serious violation of law. Also, he apparently intentionally ignored Kentucky law requiring a surety bond, and ignored an order to pay an examination fee, because he thought he could: the job he took at the time did not require him to apply to the Department for an individual loan originator license. Now that he requires Department approval of his application, he would have the Department ignore his past failures. His actions display irresponsibility, inefficiency, and a willingness to ignore the law if he thinks he can avoid the Department's oversight.

8. The circumstances leading to his criminal charge reveal the same attitude. At the very least, Mr. Atwood did not properly handle property entrusted to him, leaving a substantial sum of money on a desk unguarded and in the open as his parting act before leaving an employer who had fired him. One can infer that Mr. Atwood was cavalier in his handling of this money as

an angry response to his termination. He intentionally placed his employer's property in jeopardy, in effect showing his contempt for his employer, obviously ignoring the risk of a criminal charge. Such action does not show financial responsibility or engender confidence that he will operate honestly, fairly, lawfully, and efficiently when acting in a fiduciary relationship toward borrowers.

9. Mr. Atwood also violated the four provisions of KRS 286.090(1) with which he is charged. The mortgage loan company of which he was president brokered a mortgage loan at a usurious rate. He was convicted of a misdemeanor that reflects a breach of trust. The mortgage loan company of which he was president had its mortgage lending license revoked by the Department. And the circumstances of both Lincoln's license revocation and Mr. Atwood's criminal charge demonstrate, at best, incompetence, and, at worst, untrustworthiness to act as a certified mortgage loan originator.

10. The Department should not grant Mr. Atwood's application for a certificate of registration as a mortgage loan originator.

#### **RECOMMENDED ORDER**

Based on the foregoing findings of fact and conclusions of law, the Hearing Officer RECOMMENDS that the Department of Financial Institutions issue a final order denying Stuart Atwood's application for Mortgage Loan Originator Registration.

#### **NOTICE TO PARTIES OF EXCEPTION AND APPEAL RIGHTS**

Pursuant to KRS 13B.110(4):

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.

Pursuant to KRS 13B.120(2):

the agency head may accept this recommended order and adopt it as the agency's final order, or it may reject or modify, in whole or in part, the recommended order, or it may remand the matter, in whole or in part, to the hearing officer for further proceedings as appropriate.

Pursuant to KRS 13B.120(4):

the agency head shall render a final order in an administrative hearing within ninety (90) days after the hearing officer submits a recommended order to the agency head, unless the matter is remanded to the hearing officer for further proceedings.

Pursuant to KRS 13B.140:

All final orders of an agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. 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, in 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 when filing an appeal petition in the Circuit Court.

SO RECOMMENDED this 22 day of April, 2010.

A handwritten signature in black ink, appearing to read 'M. Head', written over a horizontal line.

MICHAEL HEAD  
HEARING OFFICER  
ADMINISTRATIVE HEARINGS BRANCH  
OFFICE OF THE ATTORNEY GENERAL  
1024 CAPITAL CENTER DR., STE. 200  
FRANKFORT, KY 40601-8204  
(502) 696-5442  
(502) 573-1009 - FAX

**CERTIFICATE OF SERVICE**

I hereby certify that the original of this ORDER was mailed this 23<sup>rd</sup> day of

April, 2010, by messenger mail, to

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

for filing; and a true copy was sent by first-class mail, postage prepaid, to:

RICHARD A WHITAKER  
BOWLES RICE MCDAVID GRAFF & LOVE LLP  
333 W VINE ST STE 1700  
LEXINGTON KY 40507-1639

and, by messenger mail, to:

SHAUN T ORME  
OFFICE OF GENERAL COUNSEL  
DEPT OF FINANCIAL INSTITUTIONS  
1025 CAPITAL CENTER DR STE 200  
FRANKFORT KY 40601

  
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DOCKET COORDINATOR

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