

COMMONWEALTH OF KENTUCKY  
PUBLIC PROTECTION CABINET  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
AGENCY CASE NO. 2011-AH-007

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v.

**FINAL ORDER**

THOMAS STOKES, JR.

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 Thomas Stokes, Jr. (“Respondent”) to pay a **Fine** in the amount of \$1,000, 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. During an examination, DFI discovered that the Respondent acted as an unregistered mortgage loan originator, in violation of KRS 286.8-030, which prohibits an individual from acting as a loan originator who is not registered in accordance with KRS 286.8-255.

3. By letter dated February 17, 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 asked the Respondent to indicate in writing by March 10, 2010 whether he wished to settle this matter. The letter was returned to DFI as unclaimed.

4. A second letter was sent via first class mail on April 5, 2010. That letter asked the Respondent to notify DFI in writing by April 19, 2010 if he wished to settle this matter in lieu of an administrative proceeding. On April 19, 2010, the Respondent answered the April 5, 2010 letter, via email, by requesting that the proposed fine be reduced.

5. On May 24, 2010, DFI sent the Respondent a letter stating that it was unwilling to reduce the fine amount but that the fine could be made in installment payments. The letter asked the Respondent to indicate in writing by June 14, 2010 if the terms of settlement were agreeable.

6. On July 12, 2010, DFI sent a follow-up letter to Respondent reiterating the settlement terms expressed in the May 24, 2010 letter and asking that the Respondent to reply on or before July 26, 2010. The Respondent did not reply.

7. On January 11, 2011, a third follow-up letter was sent to the Respondent asking that he reply by January 21, 2011. No response was received on or before January 21, 2011.

8. Based on the investigation, DFI asserted the following violations of KRS Chapter 286.8 by Respondent in an Administrative Complaint filed January 25, 2011:

<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)	In May, 2009 Respondent acted as a loan originator for Homequest Mortgage Network, LLC at a time when he was not registered

		as a loan originator in Kentucky.
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9. The Administrative Complaint was sent via certified mail, return receipt requested to 960 Timberwood Dr., Radcliff, KY 40160. 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.

10. The Administrative Complaint was signed for and the return receipt received by DFI on January 31, 2011.

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

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

12. 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;

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

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).

13. 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."

14. 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.

15. Pursuant to KRS 286.8-090(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.

16. 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.

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. KRS 286.8-044(3) explains that service by certified mail is complete upon the earlier of the following:

- (a) The date on which the person receives the mail;
- (b) The date on which the agency receives the return receipt; or
- (c) The date on which the agency receives notice that the mail has been returned undelivered.

#### CONCLUSIONS OF LAW

19. 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 one thousand dollars (\$1,000).

20. 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).

21. The Administrative Complaint sent to 960 Timberwood Dr., Radcliff, KY 40160 was signed and the return receipt received by DFI on January 31, 2011. Therefore, pursuant to KRS 286.8-044(3) service was complete, at the very least, on January 31, 2011 and the Respondent had until February 21, 2011 to appeal.

22. 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:

Thomas Stokes, Jr. shall pay a civil penalty in the amount of one thousand dollars (\$1,000.00) 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.

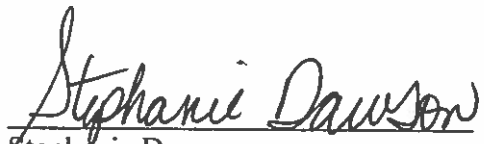
IT IS SO ORDERED on this the 28<sup>th</sup> day of February, 2011.

  
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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 28<sup>th</sup> day of February, 2011 to:

Thomas Stokes, Jr.  
960 Timberwood Dr.  
Radcliff, KY 40160

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