

COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2011-AH-0015

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v.

FINAL ORDER IMPOSING FINE

TRI-CORP FINANCIAL, INC.

RESPONDENT

* * * * *

The Commissioner of the Department of Financial Institutions (“DFI”) hereby enters this **Final Order** directing Tri-Corp Financial, Inc. (“Respondent”) to pay a **Fine** in the amount of \$3,500, pursuant to KRS Chapter 286.8.

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 a HUD exempt mortgage broker whose exemption was first approved on May 21, 2004 (license #ME8589).

3. On February 11, 2010 DFI conducted a routine compliance exam on Respondent.

4. During the examination of Respondent, it was discovered that the Respondent used an unregistered mortgage loan originator, Mark Groll, and unregistered mortgage loan processor, Lori Hendricks for mortgage loans in Kentucky.

5. On April 1, 2011, DFI filed an Administrative Complaint (“Complaint”) against Respondent seeking imposition of a \$3,500 fine against Respondent.

6. Specifically, DFI asserted the following violations of KRS Chapter 286.8:

<u>Violation Date</u>	<u>Statute Violated</u>	<u>Description</u>
12/3/2009	Unregistered loan originator KRS 286.8-030(1)(d)	Mark Groll acted as a loan originator regarding a mortgage application for a loan that closed 12/3/09.
11/24/09	Unregistered loan processor KRS 286.8-030(1)(d)	Lori Hendricks acted a loan processor for a mortgage loan application by requesting a credit report.
10/13/09	Unregistered loan processor KRS 286.8-030(1)(d)	Lori Hendricks acted a loan processor for a mortgage loan that closed 10/13/09

7. The Complaint was sent via certified mail, return receipt requested to 8199 Dream Street, Florence, Kentucky 41042, Respondent’s last known address. The Complaint sent to this address was returned to DFI on April 8, 2011 unclaimed.

8. In addition, the Complaint was mailed via certified mail, return receipt requested, to Phillip R. Combs (“Mr. Combs”), 6601 Dixie Highway, Florence, Kentucky 41042-2164. Mr. Combs is Respondent’s representative and initially contacted DFI with Respondent’s reply to the exam report. The Complaint sent to this address was signed for and returned to DFI on April 6, 2011.

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.

STATUTORY AUTHORITY

10. A “mortgage loan originator” is someone who for compensation or gain or the expectation of compensation or gain:

(a) Performs any one (1) or more of the following acts in the mortgage lending process:

1. Solicits, places, negotiates, or offers to make a mortgage loan;
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, negotiates, 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;
5. Explains any term or aspect of any disclosure or agreement given at or after the time a mortgage loan application is received; or
6. Takes a residential mortgage loan application; or

(b) Is an independent contractor engaging in the mortgage lending process as a mortgage loan processor;

See KRS 286.8-010(21).

11. Pursuant to KRS 286.8-255(1), “No natural person shall transact business in Kentucky, either directly or indirectly, as a mortgage loan originator or mortgage loan processor unless such mortgage loan originator or mortgage loan processor is registered with the office and has been issued a current certificate of registration by the office, complies with all applicable requirements of this subtitle, and maintains a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.”

12. 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 or an unregistered mortgage loan processor.

13. 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.

14. 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.

15. 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.*

16. In addition, KRS 286.8-044(3) states that service by certified mail is complete on the earlier of: 1) the date the person receives the mail; 2) the date on which the agency receives the return receipt; or 3) the date on which the agency receives notice that the mail has been returned undelivered.

17. 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

18. Respondent violated KRS 286.8-030 by employing or using an unregistered loan originator to originate mortgage loans and an unregistered loan processor to process loans. Respondent is subject to a fine of three thousand five hundred dollars (\$3,500) for this violation.

19. 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 at 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 representative, Mr. Combs.

20. Service of the Administrative Complaint is complete pursuant to KRS 286.8-044(3).

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. Tri-Corp Financial, Inc. shall pay a civil penalty in the amount of three thousand and five hundred dollars (\$3,500.00) 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;

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 29th day of April, 2011.



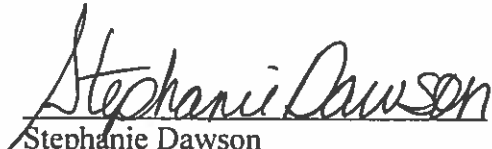
CHARLES A. VICE
COMMISSIONER

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 27th day of April, 2011 to:

Anthony W. Smith
8199 Dream St.
Florence, KY 41042

Phillip R. Combs
6601 Dixie Highway
Florence, KY 41042-2164


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