

**COMMONWEALTH OF KENTUCKY  
PUBLIC PROTECTION CABINET  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
AGENCY CASE NO. 2011-AH-0184**

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v.

TRI-CORP. FINANCIAL, INC.

RESPONDENT

**FINAL ORDER  
IMPOSING FINES AND COSTS**

\* \* \* \* \*

The Commissioner of the Department of Financial Institutions (“DFI”) hereby enters this Final Order, pursuant to KRS Chapter 286.8, directing Tri-Corp. Financial, Inc. (“Respondent”) to pay a Fine in the amount of two thousand, five hundred dollars (\$2,500.00) and directing Respondent to reimburse the DFI for its examination fees as well as the costs, expenses and attorney’s fees associated with the prosecution of this matter:

**FINDINGS OF FACT**

1. The DFI is responsible for regulating and licensing mortgage loan companies, originators and brokers in accordance with the provisions of KRS Chapter 286.8, the Mortgage Licensing and Regulation Act (the “Act”). No person shall transact business in Kentucky, either directly or indirectly, as a mortgage loan company unless the mortgage loan company is licensed in accordance with KRS Chapter 286.8 or is exempted therefrom. *See* KRS 286.8-030(1)(a).

2. Respondent was a mortgage loan broker previously authorized to do business in Kentucky pursuant to the Act, with a principal office and last known address located at 8199 Dream Street, Florence, Kentucky 41042. Respondent’s registered agent

for service of process is Anthony W. Smith, at Respondent's principal office and last known address. Respondent's license number was MB8589.

3. At all times relevant herein, Anthony W. Smith was the owner and President of Respondent.

4. On February 11, 2010, the DFI conducted an examination of Respondent pursuant to the Act. The DFI expended seventeen (17) working hours in order to conduct this examination.

5. Pursuant to 808 KAR 12:022, "[t]he fee for each examination and investigation conducted by the department shall be forty-two (42) dollars per hour for each examiner conducting the examination or investigation, plus all additional reasonable costs incurred." Accordingly, the DFI's examination fee pursuant to the Act was seven hundred and fourteen dollars (\$714.00).

6. On March 23, 2010, the DFI sent to Respondent its fee bill of \$714.00, along with a copy of the examination report, via first class mail to Respondent's principal office and last known address. Respondent failed to pay the examination fee within thirty (30) days of the date it was sent to Respondent.

7. On July 23, 2010, the DFI sent to Respondent a written notice, via first class mail to Respondent's principal office and last known address, of Respondent's failure to pay the examination fee, which notice also demanded payment thereof. Respondent failed to pay the examination fee within thirty (30) days from the date that the written notice of nonpayment and demand for payment was sent to Respondent. However, Respondent again failed to pay the examination fee.

8. Based on the foregoing, the DFI asserts that Respondent has violated 808 KAR 12:022 and is liable for the outstanding fee, as well as subject to fines, costs and expenses, including attorney's fees.

9. On October 28, 2011, the DFI filed an Administrative Complaint ("Complaint") against Respondent seeking imposition of a fine of not less than one thousand dollars (\$1,000.00), the recovery of its examination fees, and any other appropriate relief to which the DFI may be entitled under the Act.

10. The Complaint was mailed via certified mail, return receipt requested, to Respondent's last known address referenced herein.

11. On November 21, 2011, the Complaint was returned to the DFI undelivered.

12. More than twenty (20) days have passed since the DFI received notice that the Complaint was returned undelivered and Respondent has failed to respond to the Complaint or request a hearing in this matter.

#### **STATUTORY AUTHORITY**

13. Pursuant to 808 KAR 12:022(2)(1), a mortgage loan company or mortgage loan broker shall pay the Department's examination and/or investigation fees "within thirty (30) days of the date of the fee bill sent following the examination or investigation." Pursuant to 808 KAR 12:022(3), a mortgage loan company or mortgage loan broker that fails to pay the fee within thirty (30) days from the date of demand for immediate payment shall, in addition to remaining liable for all owed fees, be subject to administrative action and the penalties established in KRS 286.8-090 and 286.8-046.

14. Pursuant to KRS 286.090(1)(a) and (c), 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 does not conduct his business in accordance with the law.

15. KRS 286.8-046(1) 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, plus the state's costs and expenses for the examination, investigation, and prosecution of the matter, including reasonable attorney's fees and court costs.

16. Pursuant to KRS 286.8-044(2), "The executive director may file an administrative complaint against any person if it appears on grounds satisfactory to the executive director that a potential or actual violation of this subtitle has been committed and when the person may be subject to the penalties of KRS 286.8-046, 286.8-090, and 286.8-990. The executive director 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. If timely requested, an administrative hearing shall be held in accordance with the provisions of KRS Chapter 13B. If a written answer and request for hearing are not made within twenty (20) days of service or delivery of the complaint, the executive director shall enter a final order granting the relief requested in the complaint."

17. Pursuant to KRS 286.8-044(3), service by certified mail shall be 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**

1. Respondent violated 808 KAR 12:022 by failing to pay the DFI's examination fee bill and by failing to timely respond to the DFI's demands for same.

2. Therefore, Respondent Wilson is subject to a fine of two thousand, five hundred dollars (\$2,500.00) for these violations.

3. The Complaint was properly served upon Respondent certified mail to its last known address in accordance with KRS 286.8-044(2) and 808 KAR 12:030.

4. Service of the Complaint upon Respondent was complete on November 21, 2011, pursuant to KRS 286.8-044(3)(c).

5. Respondent failed to respond to the Complaint by filing a written answer or requesting a hearing within twenty (20) days of service. Thus, Respondent's right to a hearing has been waived in this matter.

### **ORDER**

THEREFORE, based upon the foregoing findings of fact, statutory authority, and conclusions, the Commissioner **HEREBY ORDERS** that:

1. Respondent Tri-Corp. Financial, Inc. shall pay a civil penalty in the amount of two thousand, five hundred dollars (\$2,500.00) for its violations of KRS Chapter 286.8 described herein. The payment 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: Michael T. Davis, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601;

2. Respondent Tri-Corp. Financial, Inc. shall pay the DFI's examination fee bill in the amount of seven hundred and fourteen dollars (\$714.00). The payment 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: Michael T. Davis, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601;

3. Respondent Tri-Corp. Financial, Inc. shall pay to and reimburse the DFI the additional sum of five hundred, ninety-three dollars and seventy-five cents (\$593.75), its costs, expenses, and/or attorney's fees associated with the prosecution of this matter as set forth in Exhibit A to this Order; and

4. Respondent Tri-Corp. Financial, Inc. shall **CEASE AND DESIST** from transacting mortgage loan business in Kentucky, unless and until Respondent complies with all applicable provisions of KRS Chapter 286.8 and is authorized by the DFI to do so.

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.

**IT IS SO ORDERED** on this the 3<sup>rd</sup> day of January, 2012.

  
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CHARLES A. VICE  
COMMISSIONER

**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.

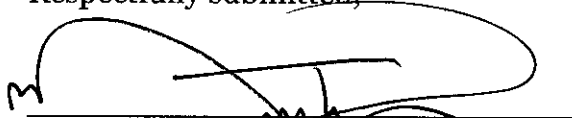
**Certificate of Service**

I hereby certify that a copy of the foregoing Final Order was sent by certified mail, return receipt requested, on this the 3<sup>rd</sup> day of January, 2012 to:

Tri Corp. Financial, Inc.  
Attn: Anthony W. Smith  
8199 Dream Street  
Florence, Kentucky 41042

Tri Corp. Financial, Inc.  
Attn: Anthony W. Smith  
1709 Stewart Drive  
Florence, Kentucky 41042

Respectfully submitted,



Michael T. Davis  
Department of Financial Institutions  
1025 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601  
(502) 573-3390 Ext. 240  
(502) 573-2183 (facsimile)  
*Counsel for Complainant*

**TIME SHEET**

**(COSTS ASSOCIATED WITH ADMINISTRATIVE ACTION)**

**NAME/TITLE:** Michael T. Davis, Counsel

**DATE:** 12/28/2011

<u>Time/Hours (in .25 increments)</u>	<u>Rate/Hour \$125</u>	<u>Description of Work Completed</u>
1.00 hours		Review enforcement file, research alleged violations, compose demand letter.
0.50 hours		Monitor status of file, check service upon Respondent.
1.25 hours		Draft Administrative Complaint.
0.50 hours		Monitor status of file, verify service of Complaint upon Respondent.
1.50 hours		Draft Final Order.
<b>TOTAL: 4.75 hours @ \$125</b>	<b>TOTAL \$593.75</b>	

By signing below, I hereby certify that the information contained herein is true and accurate record of the time expended by me on this matter.

