

UNITED STATES BANKRUPTCY COURT MIDDLE DISTRICT OF FLORIDA JACKSONVILLE DIVISION		PROOF OF CLAIM	
In re: TAYLOR, BEAN & WHITAKER MORTGAGE CORP.		Case Number: 3:09-bk-07047-JAF	
<small>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</small>		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.	
Name of Creditor and Address: the person or other entity to whom the debtor owes money or property <small>If necessary, please cross out pre-printed address and write in change of address.</small>			
21840310026186 PUBLIC PROTECTION CABINET DEPARTMENT OF FINANCIAL INSTITUTIONS SHAUN ORME, OFFICE OF LEGAL COUNSEL 1025 CAPITAL CENTER DRIVE, SUITE 200 FRANKFURT, KY 40601		<div style="font-size: 2em; font-weight: bold; opacity: 0.5;">CLAIM FILED</div> <div style="font-size: 1.5em; font-weight: bold;">NOV 02 2010</div> CLERK, U.S. BANKRUPTCY COURT MIDDLE DISTRICT OF FLORIDA	
Creditor Telephone Number <u>(502) 573-3390</u>		<input checked="" type="checkbox"/> Check box if address is the same as the address where payment should be sent.	
Name and address where payment should be sent (if different from above):		<input type="checkbox"/> Check this box if you are the debtor or trustee in this case. <input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Claim Number (if known): _____ Filed on: _____	
Payment Telephone Number () _____		THIS SPACE IS FOR COURT USE ONLY	
1. AMOUNT OF CLAIM AS OF DATE CASE FILED \$ <u>221,434.72</u> <small>If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.</small> <small>If all or part of your claim is entitled to priority, complete item 5.</small> <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.			
2. BASIS FOR CLAIM: <u>State government regulatory action</u>		<small>(See instructions #2 and #3a on reverse side.)</small> 3. LAST FOUR DIGITS OF ANY NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR: 3a. Debtor may have scheduled account as: _____	
4. SECURED CLAIM <small>(See instruction #4 on reverse side.)</small> Check the appropriate box if your claim is secured by a lien on property or a right of set off and provide the requested information Nature of property or right of setoff: Describe: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Property: \$ _____ Annual Interest Rate: _____ % if any: \$ _____ Basis for Perfection: _____ Secured Claim Amount: \$ _____ DO NOT include the priority portion of your claim here. Unsecured Claim Amount: \$ _____ Amount of arrearage and other charges as of time case filed included in secured claim, _____			
5. PRIORITY CLAIM <input type="checkbox"/> Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. You MUST specify the priority of the claim: <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5). Unsecured Priority Claim Amount: \$ _____ Include ONLY the priority portion of your unsecured claim here. <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a) (_____). <small>* Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>			
6. CREDITS: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.			
7. SUPPORTING DOCUMENTS: <u>Attach redacted copies of supporting documents</u> , such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of evidence of perfection of a security interest. (See definition of "redacted" on reverse side.) If the documents are not available, please explain. DATE-STAMPED COPY To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim: DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.			
The original of this completed proof of claim form must be sent by mail, hand, courier or overnight delivery (facsimile, telecopy or other electronic means NOT accepted), so that it is actually received on or before 5:00 p.m. prevailing Eastern Time on November 3, 2010, the Bar Date (as defined in the Bar Date Notice). By Regular Mail to: BMC Group, Inc. Attn: Taylor, Bean & Whitaker Mortgage Corp. Claim Processing PO Box 3020 Chanhassen, MN 55317-3020		THIS SPACE FOR COURT USE ONLY T, B & W Mortgage Corp. 03316	
DATE <u>11/1/2010</u>		SIGNATURE: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. <u>Shaun T. Orme, Assistant General Counsel</u>	

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.

ITEMS TO BE COMPLETED IN PROOF OF CLAIM FORM (IF NOT ALREADY PROPERLY FILLED IN)

Court, Name of Debtor, and Case Number: Use this proof of claim form only if you are asserting a claim against the Debtor, Taylor, Bean & Whitaker Mortgage Corp. If you received a notice of the case from the Claims Agent, BMC Group, some or all of this information may have been already completed.			<p>State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.</p> <p>5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a). If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.</p> <p>6. Credits: An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.</p> <p>7. Supporting Documents: Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary if documentation is voluminous or an explanation if documentation is not available. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). Do not send original documents, as attachments may be destroyed after scanning.</p> <p>Date and Signature: The person filing this proof of claim <u>must</u> sign and date it. FRBP 9011. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.</p> <p>Date-Stamped Copy: Return claim form and attachments. If you wish to receive an acknowledgement of your claim, please enclose a self-addressed stamped envelope and a second copy of the proof of claim form with any attachments to the Claims Agent, BMC Group, at the address on the front of this form.</p> <p><i>Please read – important information: upon completion of this claim form, you are certifying that the statements herein are true.</i></p> <p>Be sure all items are answered on the claim form. If not applicable, insert "Not Applicable."</p>				
<table border="1"><thead><tr><th>DEBTOR</th><th>CASE NO</th><th>PETITION DATE</th></tr></thead><tbody><tr><td>Taylor, Bean & Whitaker Mortgage Corp.</td><td>3:09-bk-07047-JAF</td><td>8/24/2009</td></tr></tbody></table>	DEBTOR	CASE NO		PETITION DATE	Taylor, Bean & Whitaker Mortgage Corp.	3:09-bk-07047-JAF	8/24/2009
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Taylor, Bean & Whitaker Mortgage Corp.	3:09-bk-07047-JAF	8/24/2009					

<p>1. Amount of Claim as of Date Case Filed: State the total amount (in lawful US currency) owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete item 4. Check the box if interest or other charges are included in the claim.</p> <p>2. Basis for Claim: State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card.</p> <p>3. Last Four Digits of Any Number by Which Creditor Identifies Debtor: State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.</p> <p>3a. Debtor May Have Scheduled Account As: Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.</p> <p>4. Secured Claim: Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.)</p>	
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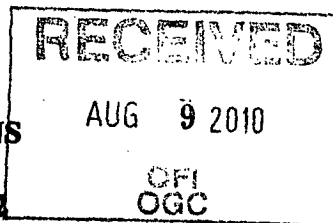
DEFINITIONS

INFORMATION

<p>DEBTOR A debtor is the person, corporation, or other entity that has filed a bankruptcy case.</p> <p>CREDITOR A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.</p> <p>CLAIM A claim is the creditor's right to receive payment on a debt that was owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.</p> <p>PROOF OF CLAIM A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the court-appointed Claims Agent, BMC Group, at the address listed on the reverse side of this page.</p> <p>SECURED CLAIM Under 11 U.S.C. §506(a) A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors.</p>	<p>The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.</p> <p>A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).</p> <p>UNSECURED NONPRIORITY CLAIM If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.</p> <p>UNSECURED PRIORITY CLAIM Under 11 U.S.C. §507(a) Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.</p> <p>Evidence of Perfection Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other</p>	<p>document showing that the lien has been filed or recorded.</p> <p>Redacted A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax-identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.</p> <p>Offers to Purchase a Claim Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 et seq.), and any applicable orders of the bankruptcy court.</p>
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ONCE YOUR CLAIM IS FILED YOU CAN OBTAIN OR VERIFY YOUR CLAIM NUMBER BY VISITING www.bmcgroup.com/tbwmmortgage

**COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2009-AH-053
ADMINISTRATIVE ACTION NO. 10-PPC-0082**



DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

vs.

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

TAYLOR, BEAN & WHITAKER MORTGAGE CORPORATION

RESPONDENT

* * * * *

On March 25, 2010, a hearing was held in this case and two companion cases at the offices of Office of the Attorney General, 1024 Capital Center Dr., Frankfort, KY. Shaun T. Orme and Christine Lewis appeared as counsel for the Petitioner, the Department of Financial Institutions("DFI"). Ashley Taylor, Jr., and Thomas Walker appeared as counsel for the Respondent, Taylor, Bean & Whitaker Mortgage Corporation ("TBW"). 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.

Including the present case, the Department of Financial Institutions has initiated three administrative proceedings against the Respondent:

- A Notice of Administrative Hearing dated August 17, 2009, in *Taylor, Bean & Whitaker Mortgage Corporation v. Department of Financial Institutions*, Agency Case No. 2009-AH-053, Administrative Action No. 09-PPC-0222 (this is an emergency hearing case concerning the Order to Cease and Desist and the Supplemental Order to Cease and Desist, issued against TBW on August 17, 2009, and September 8, 2009, respectively, both of which underlie this complaint proceeding);

- A Notice of Administrative Hearing dated September 11, 2009, in *Department of Financial Institutions v. Taylor, Bean & Whitaker Mortgage Corporation*, Agency Case No. 2009-AH-054, Administrative Action No. 09-PPC-0216 (this case concerns charges against TBW for using unlicensed entities and unregistered loan originators, for which DFI imposes fines that it seeks to be paid from TBW's surety bond); and
- An Administrative Complaint and Notice dated March 11, 2010, in *Department of Financial Institutions v. Taylor, Bean & Whitaker Mortgage Corporation*, Agency Case No. 2009-AH-053, Administrative Action No. 10-PPC-0082 (the present case at bar is the companion complaint case to the emergency hearing case in *Taylor, Bean & Whitaker Mortgage Corporation v. Department of Financial Institutions*, Agency Case No. 2009-AH-053, Administrative Action No. 09-PPC-0222).

The parties agreed that proof introduced at the hearing identified above would apply to all three cases. In prehearing conferences before the hearing, the parties also agreed that no emergency hearing would be held in Administrative Action No. 09-PPC-0222; and that the emergency orders in that case would continue until extinguished by final order.

The parties also agreed that neither the stay in TBW's bankruptcy case nor the federal criminal charges brought against officers of TBW prevent the Hearing Officer from issuing a recommended order or prevent the DFI from issuing a final order in this case.

In this case, the DFI charged TBW with various mortgage loan violations, including: failing to provide proper accounting to borrowers; failing to provide refunds of interest earned on borrowers' escrow accounts; failing to provide a proper accounting of customers' escrow funds; and failing to pay taxes and insurance on residential real property with escrow funds held by TBW for that purpose. TBW does not deny the charges. The parties seek monetary relief for consumers under a surety bond.

The DFI called three witnesses to testify: Kathy R. Stewart, Director of Financial Institutions, DFI; Norman C. Thompson, Compliance Branch Manager, DFI; and Zachary Rudd, Financial Institutions Examiner, DFI. The Respondent called no witnesses on its behalf. The parties jointly offered 33 exhibits, all of which were introduced into the record and considered by the Hearing Officer in making his decision in this case.¹

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 directing the Respondent, Taylor, Bean & Whitaker Mortgage Corporation to pay consumers named in the administrative complaint restitution in the amounts listed in Hearing Exhibit 11.

FINDINGS OF FACT

1. The charges in this case arose from an inspection of Taylor, Bean & Whitaker Mortgage Corporation by the Department of Financial Institutions. The results of that inspection and DFI's subsequent investigation underlie the decision in this case.

License and Surety

2. On February 1, 2007, the DFI issued TBW a mortgage company license with which TBW could then engage in the mortgage company business in the Commonwealth of Kentucky. TBW's principal place of business was 315 N. E. 14th St., Ocala, FL, 34470. Hearing Exhibit 24 ("HE 24").

3. As required by KRS 286.8-060, TBW caused Fidelity and Deposit Company of Maryland to issue a surety bond in the amount of \$250,000 ("the Surety Bond"), effective

¹ By Order of the Hearing Officer, the entire record in this case has been placed under seal.

January 1, 2007, for the benefit of the Commissioner of the Kentucky Department of Financial Institutions² and Kentucky consumers. HE 13.

January 12, 2009 DFI Inspection

4. Pursuant to the Act, DFI conducted an examination of TBW on January 12, 2009, to determine whether the activities of TBW were in compliance with applicable laws and regulations; whether the practices and policies of TBW had a potentially adverse impact on prospective borrowers; and whether the business was being operated efficiently, fairly, and in the public interest. HE 23.

5. During the examination, DFI discovered several violations of the Act which occurred during the 2008 calendar year, including the use of several unlicensed entities and the use of several unregistered loan originators to originate loans on Kentucky properties. A copy of the examination report was provided to TBW on April 20, 2009. *Id.*

6. On June 3, 2009, TBW sent DFI a written response indicating that corrective action had been or would be taken to cure the violations outlined in the January 12, 2009, examination and to ensure future compliance. HE 28. TBW did not deny the violations alleged in the January 12, 2009, examination. *Id.*

7. Notably, during a 2008 routine examination by DFI, TBW had been cited by DFI for violating the same statutes that are cited in *Department of Financial Institutions v. Taylor, Dean & Whitaker Mortgage Corporation*, Agency Case No. 2009-AH-054, Administrative Action No. 09-PPC-0216. HE 19-22 and 25. Although DFI and TBW ultimately entered into an

² The Office of Financial Institutions referred to in KRS Chapter 286 in 2008 was reorganized as the Department of Financial Institutions in the Public Protection Cabinet. The duties of the Executive Director referred to in KRS Chapter 286 are performed by the Commissioner of the Department of Financial Institutions or his delegates.

Agreed Order resolving those earlier violations, the Agreed Order was not signed by all parties until August 11, 2008, and TBW continued to operate in violation of the Act while negotiating the resolution of those violations. HE 26 and 27.

Other Federal Actions Against TBW

8. On August 4, 2009, the Mortgagee Review Board of the U.S. Department of Housing and Urban Development ("HUD") suspended the "HUD/FHA origination and underwriting approval" of TBW effective immediately. The suspension was based upon evidence of violations of HUD requirements under 24 CFR Section 25.6 by: failing to timely submit the required annual audit report of its financial condition; submitting a false certification and/or misleading information to Ginnie Mae; failing to report irregularities in connection with its FY 2008 Audit; failing to report irregularities in connection with its loan origination practices; failing to comply with HUD's approval requirements; and submitting false certifications to HUD on TBW's Yearly Verification Report ("YVR"). HE 1 and 2.

9. On August 4, 2009, the Government National Mortgage Association ("Ginnie Mae") provided a "Notice of Default" to TBW regarding certain mortgage-backed securities pools established under Guarantee Agreements between Ginnie Mae and TBW. The default was based on the following: suspension of TBW's FHA approval; TBW's failure to file annual audited financial statements; and TBW making false statements to Ginnie Mae. HE 1 and 2.

10. On August 4, 2009, the Federal Home Loan Mortgage Corporation ("Freddie Mac") terminated TBW's seller and servicer eligibility, with cause, effective immediately, based upon the following determinations: TBW experienced a significant weakness or notable change in its financial or organizational status that could adversely affect Freddie Mac; TBW failed to

meet Freddie Mac eligibility requirements as a Seller or Servicer; TBW had been placed on probation or had its activities restricted by a state or federal government agency; TBW had a judgment, order, finding or regulatory action which could affect its ability to comply with conditions of the Purchase Documents between it and Freddie Mac; TBW's warranty obligations were disproportionate to its capital or assets; and TBW failed to comply or observed terms or provisions of the Purchase Documents between it and Freddie Mac. HE 1 and 2.

11. On August 4, 2009, HUD issued a Notice of Proposed Debarment to TBW officers based upon false certifications provided to HUD in TBW's March 31, 2009, YVR, including but not limited to the fact that the YVR failed to disclose enforcement action taken by the DFI in 2008, as well as TBW being the subject of a multi-state examination. HE 2.

12. Ultimately, TBW was the subject of more than forty state's regulatory actions. TBW is the subject of at least 10 administrative cease and desist orders in various jurisdictions. HE 4-7.

Colonial Bank Closure

13. On or about August 5, 2009, a hold was placed on TBW's accounts at Colonial Bank, including those used by TBW in its mortgage servicing operations.

14. On August 5, 2009, TBW issued a press release indicating that "[a]s a result of the [federal administrative] actions, TBW must cease all origination operations effective immediately. Regrettably, TBW will not be able to close or fund any mortgage loans currently pending in its pipeline." HE 8.

15. In addition, TBW advised the DFI that all its depository and servicing bank accounts at Colonial Bank, N.A. ("Colonial"), had been frozen indefinitely as of August 5, 2009,

and Colonial was subsequently closed and placed under Federal Deposit Insurance Corporation ("FDIC") receivership. Previously, the daily sweep and transfer of these custodial funds would occur to the Platinum Escrow Disbursement Clearing Account ("Platinum EDC Account"). Because of this administrative hold, no monies were transferred to TBW's Platinum EDC Account, and checks written from this account were not backed by sufficient funds and could not be honored.

16. Pursuant to an order of the Alabama State Banking Department dated August 14, 2009, Colonial Bank was closed and the FDIC was appointed as its receiver. As a result, the FDIC, as receiver, succeeded to all rights, titles, powers, and privileges of Colonial Bank and of any stockholder, member, account holder, depositor, officer, or director of Colonial Bank with respect to the institution and the assets of the institution pursuant to 12 USC Section 1821(d)(2)(A)(i).

DFI Cease and Desist Orders Against TBW

17. On August 17, 2009, the DFI issued an emergency Order to Cease and Desist against TBW, and on September 8, 2009, it issued an emergency Supplemental Order to Cease and Desist against the Respondent. The emergency orders asserted an immediate danger to the public health, safety, and welfare, and ordered TBW to immediately cease and desist engaging in all mortgage loan activities as defined by the Act, and ordered TBW to perform actions to protect consumers and their assets. HE 9 and 10.

18. The emergency orders charged the following: TBW did not have sufficient warehouse funds available to fund, or any other available sources of funds for loans relating to approximately 800 Kentucky residential properties or borrowers; TBW is the subject of at least

10 administrative cease and desist orders; TBW has no ability to access its depository or servicing accounts at its banking institution because those accounts are frozen, preventing TBW from transacting business effectively for the benefit of Kentucky consumers; and TBW failed to notify the Commissioner for the Department of Financial Institutions in writing, within 10 days of closing its operations. HE 9 and 10.

19. On September 4, 2009, TBW filed a timely request for an emergency hearing, which, by agreement of the parties, was not held.

Consumer-Related Charges Against TBW

20. In 2009 DFI also received complaints regarding the failure of TBW to meet its obligations under the terms of agreements with consumers who owned residential real estate in Kentucky.

21. Specifically, consumers alleged that TBW issued checks from consumer escrow accounts that were returned as having insufficient funds and/or TBW failed to cause appropriate checks to be issued from escrow accounts to pay various insurance and tax premiums as required by law.

22. On March 11, 2010, the DFI filed the Administrative Complaint in this case against TBW, which seeks restitution on behalf of TBW consumers for monies entrusted to TBW that were not properly applied or accounted for. HE 15. A chart outlining TBW's customers' complaints along with supporting documentation was presented at the hearing. HE 11 and 12. To date, the total monies claimed by consumers are \$20,694.27. HE 11. The related interest and fees accrued by borrowers currently is approximately \$740.45 and continues to accrue. *Id.*

23. TBW had no ability to access its depository or servicing accounts at its banking institution because those accounts are frozen; therefore, TBW was unable to transact business effectively for the benefit of Kentucky consumers.

24. TBW failed to provide a proper accounting to borrowers regarding funds paid by borrowers to TBW for the payment of taxes and insurance.

25. TBW failed to provide borrowers with a refund of any interest earned on borrowers' escrow accounts held by TBW.

26. TBW failed to provide a proper accounting to the Commissioner of DFI of the funds of borrowers paid to TBW in escrow for the payment of taxes and insurance.

27. TBW failed to properly credit escrow funds of borrowers to the respective accounts, and also failed to timely pay the taxes and insurance and other items due on the residential real property of borrowers despite the fact that these borrowers had paid the funds to TBW for that purpose.

28. The parties agreed that TBW's request for a hearing in the emergency case would serve as a request for a hearing in this case. *See* HE 16.

29. TBW did not dispute the violations charged or the amount of restitution sought by the Department.

Claim Against Surety Bond

30. To collect amounts owed to consumers, on December 28, 2009, the DFI filed a Claim Notice on the Surety Bond. HE 14. Although TBW did not contest the factual basis of the claim, it asked that an administrative final order adjudge TBW's liability.

CONCLUSIONS OF LAW

1. The Department of Financial Institutions is responsible for regulating and licensing mortgage loan companies and mortgage loan brokers doing business in Kentucky in accordance with the provisions of KRS Chapter 286.8, the Mortgage Loan Company and Mortgage Loan Broker Act ("the Act").
2. The administrative complaint and penalties sought, as well as the hearing conducted herein, are authorized by KRS 286.8-012, 286.8-044, 286.8-046, 286.8-090, and 286.8-990.
3. Taylor, Bean & Whitaker is a mortgage loan company subject to regulation by the Department of Financial Institutions. KRS 286.8-010(20) and 286.1-011(2).
4. The Department of Financial Institutions has the burden to prove, by a preponderance of the evidence, the propriety of the charges and penalties it seeks. KRS 13B.090(7). The Department has met its burden.

Violations of Consumers' Escrow Rights

5. Pursuant to KRS 286.8-130(1), all monies paid to a mortgage loan company for payment of taxes or insurance premiums on property which secures any loan made or serviced by the mortgage loan company shall be deposited in an account which is insured by the Federal Deposit Insurance Corporation or any other account acceptable to the Federal National Mortgage

Association or the United States Department of Housing and Urban Development or the Government National Mortgage Association or the United States Veterans Administration, and shall be kept separate, distinct, and apart from funds belonging to the mortgage loan company. The funds, when deposited, shall be designated as an "escrow account" or under some other appropriate name indicating the funds are not the funds of the mortgage loan company.

6. Based on the findings, TBW violated 286.8-130(1) by failing to deposit into a properly insured escrow account all monies it received from customers for payment of taxes or insurance premiums on property which secured by loans made or serviced by TBW.

7. Pursuant to KRS 286.8-130(2), any interest earned on funds deposited into an escrow account under subsection (1) shall belong to the borrower and shall be applied to the expenses to be paid from the account.

8. Based on the findings, TBW violated KRS 286.8-130(2) by failing to account for or properly apply interest earned on monies it received from customers for payment of taxes or insurance premiums on property which secured by loans made or serviced by TBW.

9. Pursuant to KRS 286.8-130(3), the mortgage loan company shall, upon reasonable notice, account to any debtor whose property secures a loan made by the mortgage company for any funds which that person has placed in escrow with the mortgage loan company for the payment of taxes or insurance premiums on the property in question.

10. Based on the findings, TBW violated KRS 286.8-130(3) by failing to account to customers whose property secured a loan made by TBW for monies placed in escrow by those customers with TBW for the payment of taxes or insurance premiums on the properties in question.

11. Pursuant to KRS 286.8-130(4), the mortgage loan company shall, upon reasonable notice, account to the Executive Director for all funds in the company's escrow account.

12. Based on the findings, TBW violated KRS 286.8-130(4) by failing to account to the Commissioner of DFI for all funds that were required to be deposited in TBW's escrow account.

DFI's Right to Collect on Surety Bond

13. Pursuant to KRS 286.8-046(2), the executive director is authorized to order restitution, refund, recovery of expenses, or direct such other affirmative action as the executive director deems necessary against any person who violates any provision under subtitle 8 of KRS Chapter 286, or any administrative regulation promulgated under that subtitle.

14. Pursuant to KRS 286.8-060, subsection (1), each mortgage loan company must post or be covered by a surety bond for the entire licensure or registration period in an amount prescribed by the executive director, but in no event shall the bond be less than two hundred fifty thousand dollars (\$250,000) for mortgage loan companies.

15. Under subsection (2) of KRS 286.8-060, every surety bond must provide for suit on the bond by any person with a cause of action under subtitle 8 of KRS Chapter 286, and the total liability of the surety, to all persons, cumulative or otherwise, cannot exceed the amount specified in the bond.

16. Furthermore, under subsection (4) of KRS 286.8-060, every surety bond must be available for the recovery of expenses, fines, restitution, and fees levied by the executive director under subtitle 8 of KRS Chapter 286, and for losses or damages that have been incurred by any

borrower or consumer as a result of the licensee's failure to comply with the requirements of this subtitle.

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 as follows:

1. Either individually or through its statutorily-required surety bond, the Respondent, Taylor, Bean & Whitaker, shall pay restitution to the customers and in the amounts listed in HE 11, the total amount of which is \$20,694.27, plus accrued fees and costs in the amount of \$740.45, plus additional fees and costs that accrue through the date the Respondent makes payment.
2. The Respondent, Taylor, Bean & Whitaker, shall restore customer credit ratings with the appropriate credit bureaus and/or perform any and all necessary actions to restore its customers to the position they were in before the Respondent ceased doing business on August 4, 2009.
3. The Respondent, Taylor, Bean & Whitaker, shall continue servicing the remaining loans under its custody, possession, and control until said loans have been transferred to an authorized lender.
4. By agreement between the parties, the final order in this case shall not bar the Department of Financial Institutions from filing separate administrative complaints for restitution based on violations of the Act that give rise to claims by other Taylor, Bean & Whitaker customers who are not named in HE 11. In such circumstances, the Respondent may appeal such administrative complaints filed by the Department. If an appeal is filed, however, the final order

in this case shall be dispositive and operate as res judicata and collateral estoppel concerning the Respondent's liability and only the amount or legitimacy of the claim shall be at issue.

5. The Respondent, Taylor, Bean & Whitaker, shall immediately cease and desist engaging in all mortgage loan activities as defined by the Act, unless and only to the extent expressly permitted by this order.

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 3 day of August, 2010.



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

CERTIFICATE OF SERVICE

I hereby certify that the original of this RECOMMENDED ORDER was mailed this 6th day of August, 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:

ASHLEY L TAYLOR JR
THOMAS C WALKER JR
TROUTMAN SANDERS LLP
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1001 HAXALL POINT
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JESSE MARTIN
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401 9TH ST NW STE 1000
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and, by messenger mail, to:

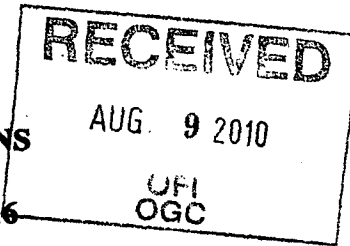
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DOCKET COORDINATOR

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**COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2009-AH-054
ADMINISTRATIVE ACTION NO. 09-PPC-0216**



DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

vs.

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

TAYLOR, BEAN & WHITAKER MORTGAGE CORPORATION

RESPONDENT

* * * * *

On March 25, 2010, a hearing was held in this case and two companion cases at the offices of Office of the Attorney General, 1024 Capital Center Dr., Frankfort, KY. Shaun T. Orme and Christine Lewis appeared as counsel for the Petitioner, the Department of Financial Institutions("DFI"). Ashley Taylor, Jr., and Thomas Walker appeared as counsel for the Respondent, Taylor, Bean & Whitaker Mortgage Corporation("TBW"). 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.

Including the present case, the Department of Financial Institutions has initiated three administrative proceedings against the Respondent:

- A Notice of Administrative Hearing dated August 17, 2009, in *Taylor, Bean & Whitaker Mortgage Corporation v. Department of Financial Institutions*, Agency Case No. 2009-AH-053, Administrative Action No. 09-PPC-0222 (this is an emergency hearing case concerning the Order to Cease and Desist and the Supplemental Order to Cease and Desist, issued against TBW on August 17, 2009, and September 8, 2009, respectively, both of which underlie this complaint proceeding);

- A Notice of Administrative Hearing dated September 11, 2009, in *Department of Financial Institutions v. Taylor, Bean & Whitaker Mortgage Corporation*, Agency Case No. 2009-AH-054, Administrative Action No. 09-PPC-0216 (the present case concerns charges against TBW for using unlicensed entities and unregistered loan originators, for which DFI imposes fines that it seeks to be paid from TBW's surety bond); and
- An Administrative Complaint and Notice dated March 11, 2010, in *Department of Financial Institutions v. Taylor, Bean & Whitaker Mortgage Corporation*, Agency Case No. 2009-AH-053, Administrative Action No. 10-PPC-0082 (this case is the companion complaint case to the emergency hearing case in *Taylor, Bean & Whitaker Mortgage Corporation v. Department of Financial Institutions*, Agency Case No. 2009-AH-053, Administrative Action No. 09-PPC-0222).

The parties agreed that proof introduced at the hearing identified above would apply to all three cases. In this case, the DFI charged TBW with violations of KRS Chapter 286, namely, using unregistered mortgage loan originators and unlicensed third-party entities. TBW does not deny the charges. The Department seeks a fine and seeks to collect that fine from a surety bond obtained by the Respondent as required by statute.

The parties also agreed that neither the stay in TBW's bankruptcy case nor the federal criminal charges brought against officers of TBW prevent the Hearing Officer from issuing a recommended order or prevent the DFI from issuing a final order in this case.

The DFI called three witnesses to testify: Kathy R. Stewart, Director of Financial Institutions, DFI; Norman C. Thompson, Compliance Branch Manager, DFI; and Zachary Rudd, Financial Institutions Examiner, DFI. The Respondent called no witnesses on its behalf. The parties jointly offered 33 exhibits, all of which were introduced into the record and considered by the Hearing Officer in making his decision in this case.¹

¹ By Order of the Hearing Officer, the entire record in this case has been placed under seal.

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 directing the Respondent, Taylor, Bean & Whitaker Mortgage Corporation to pay a fine in the amount of \$200,000.

FINDINGS OF FACT

1. The charges in this case arose from an inspection of Taylor, Bean & Whitaker Mortgage Corporation by the Department of Financial Institutions. The results of that inspection and DFI's subsequent investigation underlie the decision in this case.

License and Surety

2. On February 1, 2007, the DFI issued Taylor, Bean & Whitaker Mortgage Corporation ("TBW") a mortgage company license with which TBW could then engage in the mortgage company business in the Commonwealth of Kentucky. TBW's principal place of business was 315 N. E. 14th St., Ocala, FL, 34470. Hearing Exhibit 24 ("HE 24").

3. As required by KRS 286.8-060, TBW caused Fidelity and Deposit Company of Maryland to issue a surety bond in the amount of \$250,000 ("the Surety Bond"), effective January 1, 2007, for the benefit of the Executive Director of the Kentucky Office of Financial Institutions² and Kentucky consumers. HE 13.

January 12, 2009 DFI Inspection

4. Pursuant to the Act, DFI conducted an examination of TBW on January 12, 2009, to determine whether the activities of TBW were in compliance with applicable laws and

² In 2008 the Office of Financial Institutions referred to in KRS Chapter 286 was reorganized as the Department of Financial Institutions in the Public Protection Cabinet. The duties of the Executive Director referred to in KRS Chapter 286 are performed by the Commissioner of the Department of Financial Institutions or his delegates.

regulations; whether the practices and policies of TBW had a potentially adverse impact on prospective borrowers; and whether the business was being operated efficiently, fairly, and in the public interest. HE 23.

5. During the examination, DFI discovered several violations of the Act which occurred during the 2008 calendar year, including the use of several unlicensed entities and the use of several unregistered loan originators to originate loans on Kentucky properties. A copy of the examination report was provided to TBW on April 20, 2009. *Id.*

6. On June 3, 2009, TBW sent DFI a written response indicating that corrective action had been or would be taken to cure the violations outlined in the January 12, 2009, examination and to ensure future compliance. HE 28. TBW did not deny the violations alleged in the January 12, 2009, examination. *Id.*

7. Notably, during a 2008 routine examination by DFI, TBW had been cited by DFI for violating the same statutes that are cited in this case. HE 19-22 and 25. Although DFI and TBW ultimately entered into an Agreed Order resolving those earlier violations, the Agreed Order was not signed by all parties until August 11, 2008, and TBW continued to operate in violation of the Act while negotiating the resolution of those violations. HE 26 and 27.

Charges of Using Unregistered Loan Originators and Unlicensed Third-Party Entities

8. On August 21, 2009, DFI issued an Administrative Complaint against TBW alleging the TBW had violated the Act by using unregistered loan originators and unlicensed third-party entities. HE 17.

9. The Administrative Complaint alleges 82 instances of TBW using unregistered loan originators to originate loans, and 23 instances of third-party entities unlicensed in Kentucky illegally brokering a loan to TBW. *Id.* and HE 23.

10. TBW does not deny DFI's charges. In other words, TBW does not assert that its loan originators were exempt from registration in Kentucky. It also does not assert that the loans illegally brokered by unlicensed third-party entities were exempt.

Claim Against Surety Bond

11. To collect amounts owed to consumers, on December 28, 2009, the DFI filed a Claim Notice on the Surety Bond. HE 14. Although TBW did not contest the factual basis of the claim, it asked that an administrative final order adjudge TBW's liability.

CONCLUSIONS OF LAW

1. The Department of Financial Institutions is responsible for regulating and licensing mortgage loan companies and mortgage loan brokers doing business in Kentucky in accordance with the provisions of KRS Chapter 286.8, the Mortgage Loan Company and Mortgage Loan Broker Act ("the Act").³

2. The administrative complaint and penalties sought, as well as the hearing conducted herein, are authorized by KRS 286.8-012, 286.8-044, 286.8-046, 286.8-090, and 286.8-990.

3. Taylor, Bean & Whitaker is a mortgage loan company subject to regulation by the Department of Financial Institutions. KRS 286.8-010(20) and 286.1-011(2).

³ See footnote 2, above.

4. The Department of Financial Institutions has the burden to prove, by a preponderance of the evidence, the propriety of the charges and penalties it seeks. KRS 13B.090(7). The Department has met its burden.

Use of Unregistered Loan Originators

5. Pursuant to KRS 286.8-030(1)(c), it is unlawful for any loan originator, unless otherwise exempted, to originate mortgage loans in Kentucky if the loan originator is not registered as required by KRS 286.8-255.

6. Based on the findings of fact, on 82 occasions, TBW employees originated mortgage loans in Kentucky without being registered as required by KRS 286.8-255. No exemption permitted these employees to originate mortgage loans without being registered.

7. Pursuant to KRS 286.030(1)(d), it is unlawful for any mortgage loan company or mortgage loan broker, unless otherwise exempted, to use a mortgage loan originator if the mortgage loan originator is not registered as required by KRS 286.8-255.

8. Based on the findings of fact, on 82 occasions, TBW used mortgage loan originators who were not registered in accordance with KRS 286.8-255. No exemption permitted the use of these unregistered mortgage loan originators.

Unlicensed Third-Party Entities Illegally Brokering Loans to TBW

9. Pursuant to KRS 286.8-030(1)(e), it is unlawful for any mortgage loan company to employ or use, with or without compensation, a mortgage loan broker that is not licensed in accordance with the requirements of KRS Chapter 286, Subtitle 8, unless otherwise exempted.

10. Based on the findings of fact, on 23 occasions, a third-party mortgage loan broker that was not licensed in Kentucky brokered a mortgage loan to TBW.

Fines

11. Pursuant to KRS 286.030 (4), each solicited, attempted, or closed loan shall constitute a separate violation of this section.
12. Pursuant to KRS 286.8-046 (1), the Executive Director may assess a fine of not less than \$1,000 nor more than \$25,000 per violation, plus the state's costs and expenses for the examination, investigation, and prosecution of a case, including reasonable attorneys fees and court costs, against any mortgage loan company or mortgage loan broker that violates any provision of the Act.
13. It is appropriate to assess a fine against TBW in the amount of \$200,000 for its violations of the Act.

DFI's Right to Collect on Surety Bond

14. Pursuant to KRS 286.8-046(2), the executive director is authorized to order restitution, refund, recovery of expenses, or direct such other affirmative action as the executive director deems necessary against any person who violates any provision under subtitle 8 of KRS Chapter 286, or any administrative regulation promulgated under that subtitle.
15. Pursuant to KRS 286.8-060, subsection (1), each mortgage loan company must post or be covered by a surety bond for the entire licensure or registration period in an amount prescribed by the executive director, but in no event shall the bond be less than two hundred fifty thousand dollars (\$250,000) for mortgage loan companies. Under subsection (2), every surety bond must provide for suit on the bond by any person with a cause of action under subtitle 8 of KRS Chapter 286, and the total liability of the surety, to all persons, cumulative or otherwise, cannot exceed the amount specified in the bond. Furthermore, under subsection (4), every surety

bond must be available for the recovery of expenses, fines, restitution, and fees levied by the executive director under subtitle 8 of KRS Chapter 286, and for losses or damages that have been incurred by any borrower or consumer as a result of the licensee's failure to comply with the requirements of this subtitle.

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 directing Taylor, Bean & Whitaker Mortgage Corporation, either individually or through its statutorily-required surety bond, to pay a fine in the amount of \$200,000 for violations of the Act.

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):

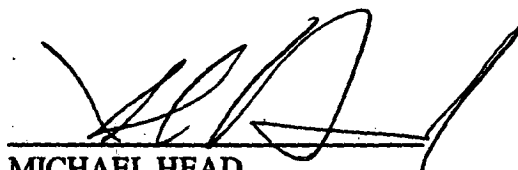
the agency head shall render a final order in an administrative hearing within ninety (90) days after the hearing officer submits a recommended order to the agency head, unless the matter is remanded to the hearing officer for further proceedings.

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 3 day of August, 2010.



MICHAEL HEAD
HEARING OFFICER
ADMINISTRATIVE HEARINGS BRANCH
OFFICE OF THE ATTORNEY GENERAL
1024 CAPITAL CENTER DRIVE, SUITE 200
FRANKFORT, KY 40601-8204
(502) 696-5442
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CERTIFICATE OF SERVICE

I hereby certify that the original of this ORDER was mailed this 6th day of August, 2009, 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:

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THOMAS C WALKER JR
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1001 HAXALL POINT
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RICHMOND VA 23219

JESSE MARTIN
TROUTMAN SANDERS LLP
401 9TH ST NW STE 1000
WASHINGTON DC 20004
202/ 274-2934

and, by messenger mail, to:

CHRISTINE LEWIS
SHAUN ORME
OFFICE OF GENERAL COUNSEL
DEPT OF FINANCIAL INSTITUTIONS
1025 CAPITAL CENTER DR STE 200
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DOCKET COORDINATOR

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**COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
ADMINISTRATIVE AGENCY ACTION NO. 2009-AH-53**

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

vs.

ORDER TO CEASE AND DESIST

TAYLOR BEAN & WHITAKER MORTGAGE
CORPORATION

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 Taylor Bean & Whitaker Mortgage Corporation ("TBW") to immediately **CEASE AND DESIST** from engaging in all mortgage loan activities in Kentucky except as specifically set forth herein.

STATEMENT OF FACTS

1. The DFI is responsible for regulating and licensing mortgage loan companies and mortgage loan brokers doing business in Kentucky in accordance with the provisions of Kentucky Revised Statutes (KRS) Chapter 286.8, the Mortgage Loan Company and Mortgage Loan Broker Act (the "Act").

2. On February 1, 2007, TBW was issued a mortgage company license by DFI for the purpose of engaging in the mortgage company business in the Commonwealth of Kentucky with its principal place of business located at 315 N.E. 14th Street, Ocala, Florida, 34470.

3. On August 4, 2009, the Mortgagee Review Board of the U.S. Department of Housing and Urban Development ("HUD") suspended the "HUD/FHA origination and underwriting approval" of TBW effective immediately. The suspension was based upon evidence of violations of HUD requirements under 24 C.F.R. §25.6 by: "(1) failing to timely submit the required annual audit report of its financial condition; (2) submitting a false certification and/or misleading information to Ginnie Mae; (3) failing to report irregularities in connection with its FY 2008 Audit; (4) failing to report irregularities in connection with its loan origination practices; (5) failing to comply with HUD's approval requirements; and (6) submitting false certifications to HUD on TBW's Yearly Verification Report ("YVR")."

4. On August 4, 2009, the Government National Mortgage Association ("Ginnie Mae") provided a "Notice of Default" to TBW regarding certain mortgage-backed securities pools established under Guaranty Agreements between Ginnie Mae and TBW. The default was based upon the following: (1) suspension of TBW FHA approval; (2) TBW's failure to file annual audited financial statements; and (3) TBW making false statements to Ginnie Mae.

5. On August 4, 2009, the Federal Home Loan Mortgage Corporation ("Freddie Mac") terminated TBW's seller and servicer eligibility, with cause, effective immediately, based upon the following determinations: (1) TBW experienced a significant weakness or notable change in its financial or organizational status that could adversely affect Freddie Mac; (2) TBW failed to meet Freddie Mac eligibility requirements as a Seller or Servicer; (3) TBW had been placed on probation or had its activities restricted by a state or federal government agency; (4) TBW had a judgment,

order, finding or regulatory action which could affect its ability to comply with conditions of the Purchase Documents between it and Freddie Mac; (5) TBW's warranty obligations were disproportionate to its capital or assets; and (6) TBW failed to comply or observe terms or provision of the Purchase Documents between it and Freddie Mac.

6. On August 4, 2009, HUD issued a Notice of Proposed Debarment to TBW officers based upon false certifications provided to HUD in TBW's March 31, 2009 YVR, including but not limited to the fact that the YVR failed to disclose enforcement action taken by the DFI in 2008, as well as TBW being the subject of a multi-state examination.

7. On August 5, 2009, TBW issued a press release indicating that "[a]s a result of the [federal administrative] actions, TBW must cease all origination operations effective immediately. Regrettably, TBW will not be able to close or fund any mortgage loans currently pending in its pipeline."

8. TBW has approximately 800 loans unfunded and outstanding relative to Kentucky borrowers or residential properties.

9. Between August 5, 2009 and the date of this Order, several states have issued administrative Cease and Desist Orders against TBW based on the foregoing. Those states include, but are not limited to: Michigan, Tennessee, Maryland, Connecticut, North Carolina, New Jersey, Pennsylvania, Massachusetts, Washington, and Mississippi.

10. In a conference call between TBW and a number of state regulatory agencies, including DFI, TBW advised that all its depository and servicing bank accounts had been frozen indefinitely.

11. As of the issuance of this Order, TBW has not notified DFI specifically of the aforementioned events.

STATUTORY AUTHORITY

1. Pursuant to KRS 286.8-036(5), every licensed mortgage loan company "shall notify the executive director, in writing, within ten (10) days of the closing of any licensed office or registered Kentucky branch."

2. Pursuant to KRS 286.8-090(1)(a), the Commissioner may issue a cease and desist order upon a finding that the licensee "has failed to comply with the requirements of this subtitle."

3. Pursuant to KRS 286.8-090(1)(b), the Commissioner may issue a cease and desist order upon a finding that the licensee "is unfit through lack of financial responsibility or experience to conduct the business of a mortgage loan company...."

4. Pursuant to KRS 286.8-090(1)(e), the Commissioner may issue a cease and desist order upon a finding that the licensee "is in such a financial condition that he cannot continue in business with safety to his customers."

5. Pursuant to KRS 286.8-090(1)(f), the Commissioner may issue a cease and desist order upon a finding that the licensee "is the subject of an administrative cease and desist order or similar order."

6. Pursuant to KRS 286.8-090(7), the cease and desist order is in addition to any other penalties or remedies which may be available under the Act, including fines, restitution, revocation, or suspension.

CONCLUSIONS

Based upon the foregoing, the Commissioner has determined as follows:

1. TBW did not have sufficient warehouse funds available to fund, or any other available source of funds for loans relating to approximately 800 Kentucky residential properties or borrowers.

2. TBW is the subject of at least ten (10) administrative cease and desist orders.

3. TBW has no ability to access its depository or servicing accounts at its banking institution because those accounts are frozen; therefore, TBW is unable to transact business effectively for the benefit of Kentucky consumers.

4. TBW failed to notify the Commissioner, in writing, within ten (10) days of closing its operations.

5. Because of the foregoing, and except as specifically provided herein, the Commissioner has determined that it is necessary to order TBW to immediately cease and desist from engaging in mortgage loan activity as defined by the Act.

ORDER

Based upon the foregoing Statement of Facts, Statutory Authority and Conclusions, the Commissioner hereby **ORDERS** as follows:

1. Except as otherwise provided herein, TBW and any and all officers, directors, managers, employees, independent contractors, or agents operating on its behalf, as well as any successors or assigns, shall immediately **CEASE AND DESIST** engaging in all mortgage loan activities as defined by the Act, which limitation shall include the solicitation, advertisement, or accepting of such activities, either directly or indirectly;

2. TBW shall immediately place any fees previously collected from Kentucky consumers relative to any pending mortgage loan applications in a separate escrow account maintained at a federally insured bank. TBW shall transfer to any new lender all

fees paid by Kentucky consumers whose loans are placed with other lenders. TBW shall return all fees paid by Kentucky consumers whose loans are not placed with other lenders. Within five (5) days of the issuance of this Order, TBW shall provide proof of same to Kathy Stewart, Director of Financial Institutions at kathy.stewart@ky.gov. TBW shall remain under an ongoing obligation to provide updated information to Director Stewart on a weekly basis until all loans relative to Kentucky consumers and residential property have been funded, transferred to a new lender or broker, or withdrawn by the applicant;

3. TBW shall immediately provide a pipeline report for the following categories of loans:

- a. loans that have closed, but have not yet funded;
- b. loans that have been approved but that have not closed;
- c. applications that have been received, but no decision has been made on approving the applications;
- d. applications that are in the initial stages of review and document gathering; and

The pipeline report shall include the following information:

- a. the name, address and telephone number of the applicant consumer;
- b. the loan number;
- c. the rate-lock and expiration date of rate-lock;
- d. the amount of all prepaid loan fees submitted by the applicant consumer;

- e. the amount of each loan;
- f. the status of the loan;
- g. the purpose of the loan (i.e. purchase or refinance);
- h. contact information for the broker who referred the loan to TBW

(if applicable);

- i. status of what is being done with the loan (funded by TBW, referred to another broker/lender, returned to broker, withdrawn by the applicant); and
- j. contact information for the broker/lender where the loan is placed, should TBW not fund the loan itself.

This Pipeline Report shall be updated every Monday at 9:00 a.m. EST and shall be sent to Kathy Stewart, Director of Financial Institutions at kathy.stewart@ky.gov. TBW shall continue to update the Pipeline Report until all of the loans have been funded, placed with another broker or lender, or withdrawn by the applicant;

4. TBW shall immediately provide a Servicing Report for all loans serviced by TBW, and the Servicing report shall include the following information:

- a. the name, address and telephone number of the applicant consumer;
- b. the loan number;
- c. the amount of each loan;
- c. the status of the loan; and
- d. any escrow account held by TBW for the benefit of any borrower (e.g., name of financial institutions, account number, balance, and transaction history).

This Servicing Report shall be updated every Monday at 9:00 a.m. EST and shall be sent to Kathy Stewart, Director of Financial Institutions at kathy.stewart@ky.gov. TBW shall continue to update the Servicing Report until all of the loans have been funded, placed with another broker or lender, or withdrawn by the applicant;

5. TBW shall comply fully with all the obligations to each consumer who has a mortgage loan currently pending, approved or closed but not funded, including, but not limited to, making every reasonable effort, at no cost or loss to any such consumer, to cause such loans to be placed with another authorized lender or broker so the transaction may be completed;

6. In the event a loan is placed with another broker or lender, TBW shall ensure that the consumer is in the same position with the new lender or broker as the consumer would have been if the loan had been funded with TBW. This includes customers with a rate-lock. TBW shall be responsible to the consumer for any difference or financial loss suffered by the consumer;

7. TBW shall immediately cease and desist from commencing or proceeding with any foreclosure proceedings relative to any Kentucky real property;

8. TBW shall release any liens filed on any Kentucky real property or filed on property owned by Kentucky consumers as a result of a residential mortgage loan closing with TBW but not being funded. In the event that the loan is subsequently funded, TBW may file a lien against the property at that time;

9. TBW shall maintain all required records at its Corporate Office, and allow the Department free access to examine the records as required under the Act;

10. TBW shall provide contact information for an employee of TBW that the DFI may contact with questions as well as contact information for an employee of TBW that consumers and mortgage brokers may contact with questions. This information shall be provided to Kathy Stewart, Director of Financial Institutions at kathy.stewart@ky.gov;

11. Nothing in this Order shall prevent TBW from selling or assigning residential mortgage loans to another entity, servicing mortgage loans, or engaging in other activity not prohibited by the Act or this Order;

12. Within five (5) days of the issuance of this Order, TBW shall submit to the DFI a balance sheet and year-to-date income statement, prepared as of the date of submission, and attested by a duly authorized officer of TBW. This information shall be provided to Kathy Stewart, Director of Financial Institutions at kathy.stewart@ky.gov;

13. Nothing in this Order shall prevent the DFI or any other authority from taking any further administrative or enforcement action under the Act or any other applicable law; and

14. This **ORDER** shall become effective upon receipt.

NOTICE OF APPEAL RIGHTS

1. You are hereby notified that you have a right to request a hearing in this matter, in writing, within twenty (20) days of the entry date of this Order. If requested, an administrative hearing shall be held pursuant to the provisions of KRS Chapter 13B and 808 KAR 12:030. If a request for a hearing is not filed with DFI within twenty (20) days after the certified mailing of this Order, it shall be made final and shall remain in effect until withdrawn by the Commissioner or terminated by a court order.

2. You are hereby advised that you have a right to legal counsel at all stages of these proceedings, including but not limited to preliminary matters, and including a hearing, if one is requested.

3. You are advised that all parties to these proceedings have a right to examine, at least five (5) days prior to any hearing in this matter, a list of witnesses the parties, including DFI, expect to call at the hearing, any evidence to be used at the hearing, and any exculpatory information in the possession of DFI. The time limits established herein shall accrue from the actual date of the hearing once that date is established. However, no hearing will be set if the parties fail to timely request a hearing.

4. You are advised that any party who fails to attend or participate as required at any stage of the administrative hearing process may be held in default and the proceedings may be determined against the defaulting party.

IT IS SO ORDERED on this the 17th day of August, 2009


Charles A. Vice
Commissioner
Department of Financial Institutions

Certificate of Service

I hereby certify that a copy of the foregoing **Order to Cease and Desist** was sent by certified mail, return receipt requested, on this the 18 day of August, 2009, to the following:

Jeffrey W. Cavender
General Counsel
Taylor Bean & Whitaker Mortgage Corporation
5150 Stilesboro Road
Building 500, Suite 500
Kennesaw, GA 30152



Christine Lewis
Legal Counsel
Department of Financial Institutions
1025 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601
(502) 573-3390 Ext. 240
(502) 573-2183 (facsimile)

**COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
ADMINISTRATIVE AGENCY ACTION NO. 2009-AH-53**

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

vs.

SUPPLEMENTAL ORDER TO CEASE AND DESIST

TAYLOR BEAN & WHITAKER MORTGAGE
CORPORATION

RESPONDENT

Comes now the Commonwealth of Kentucky, by and through the Commissioner of the Department of Financial Institutions ("DFI"), and hereby enters this **Supplemental Order** directing Taylor Bean & Whitaker Mortgage Corporation ("TBW") to **CEASE AND DESIST** from engaging in all servicing activities in Kentucky by September 30, 2009.

Pursuant to Kentucky Revised Statutes (KRS) Chapter 286.8-090, the Commissioner hereby **ORDERS** as follows:

1. **Not later than September 30, 2009**, TBW shall transfer all servicing of any Kentucky consumer mortgage loans which TBW currently services to another qualified mortgage servicer. This transfer should include transferring any and all related funds or documents to the new mortgage servicer in compliance with all applicable state or federal laws.
2. TBW shall provide a daily report to DFI of the status of all Kentucky consumer mortgage loans that it continues to service until said loans are

properly transferred as required by this Supplemental Order. This daily status report shall include, at a minimum, the following information:

- a. the name, address and telephone number of the consumer;
- b. the state in which the consumer resides;
- c. the identity of the account/loan owner;
- d. loan account number;
- e. loan account balance;
- f. escrow account number
- g. escrow balance;
- h. the bank or other institution in which the funds are located; and
- i. demonstration of compliance with any servicing transfer agreements applicable to the loan, including, but not limited to:
 - i. the status of the transfer of the electronic and paper mortgage loan files;
 - ii. the status of the transfer of any funds; and
 - iii. any other provision relating to the safe transfer of the servicing of the mortgage loans.

This daily report shall be provided to Kathy Stewart, Director of Financial Institutions at kathy.stewart@ky.gov.

- 3. TBW shall provide to DFI copies of all servicing transfer agreements entered into between TBW and the new mortgage loan servicer for all Kentucky consumer mortgage loans within **one (1) day** of execution.

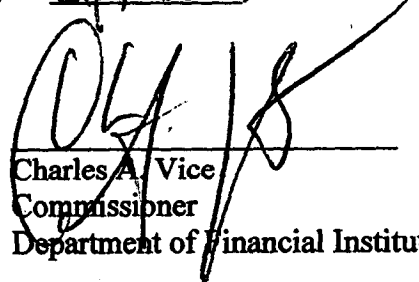
4. TBW shall include in its new servicing agreements with any new mortgage loan servicer, with respect to any loans currently in its servicing portfolio that are not "federally-related mortgage loans" as defined by 12 U.S.C. §2602, a provision that the new mortgage loan servicer not impose late fees and not report late fees to any credit reporting bureau for sixty (60) days commencing on the date the first payment is due at the new mortgage loan servicer's address. Such provision and sixty (60) day period shall be conditioned upon the borrower demonstrating to the new mortgage loan servicer that an attempt to make the required payment has been made.
5. TBW shall make maximum efforts to facilitate the safe, sound and orderly transfer of all Kentucky consumer loans to the new mortgage loan servicer in and ensure compliance with all applicable state and federal laws.
6. TBW shall work with any new mortgage loan servicers to provide notices to all Kentucky consumers advising them of the transfer within ten (10) days of the transfer. The notices shall provide, at a minimum, the following information:
 - a. The name and address of the new servicer;
 - b. The date that TBW will stop accepting payments;
 - c. The date the new servicer will begin accepting payments;
 - d. Toll-free telephone numbers for both TBW and the new servicer that the consumer may use to obtain more information about the transfer;and

- e. A statement that the transfer will not affect any terms or conditions of the consumer's mortgage loan contract, except those directly related to the servicing of the mortgage loan.
7. TBW shall immediately implement revised internal controls for its servicing department, which shall include at a minimum, the following:
- a. Supervisory and compliance procedures reasonably designed to prevent and detect future violations of applicable state and federal laws; and
 - b. Retain an experienced independent contractor to oversee the day-to-day operations of the servicing department.
8. TBW shall immediately place any and all payments collected from Kentucky consumers in an escrow account to be controlled by an independent third party and maintained at a federally-insured bank. Such escrow account shall be separate and apart from any TBW operating account(s). **Not later than five (5) days** after entry of this Order, TBW shall provide proof of that such funds have been appropriately transferred to Kathy Stewart, Director of Financial Institutions at kathy.stewart@ky.gov. Each Monday, by 9:00 a.m., EST, TBW shall provide updated reports regarding such payments and placement in an escrow account in accordance with this Supplemental Order.
9. Nothing in this Supplemental Order shall prevent TBW from selling or assigning the servicing of Kentucky consumer mortgage loans.

10. Nothing in this Order shall prevent the DFI or any other authority from taking any further administrative or enforcement action under the Act or any other applicable law; and

11. This **ORDER** shall become effective upon receipt.

IT IS SO ORDERED on this the 8th day of September, 2009



Charles A. Vice
Commissioner
Department of Financial Institutions

NOTICE OF APPEAL RIGHTS

1. You are hereby notified that you have a right to request a hearing in this matter, in writing, within **twenty (20) days** of the entry date of this Order. If requested, an administrative hearing shall be held pursuant to the provisions of KRS Chapter 13B and 808 KAR 12:030. If a request for a hearing is not filed with DFI within twenty (20) days after the certified mailing of this Order, it shall be made final and shall remain in effect until withdrawn by the Commissioner or terminated by a court order.

2. You are hereby advised that you have a right to legal counsel at all stages of these proceedings, including but not limited to preliminary matters, and including a hearing, if one is requested.

3. You are advised that all parties to these proceedings have a right to examine, at least five (5) days prior to any hearing in this matter, a list of witnesses the parties, including DFI, expect to call at the hearing, any evidence to be used at the hearing, and any exculpatory information in the possession of DFI. The time limits established herein shall accrue from the actual date of the hearing once that date is established. However, no hearing will be set if the parties fail to timely request a hearing.

4. You are advised that any party who fails to attend or participate as required at any stage of the administrative hearing process may be held in default and the proceedings may be determined against the defaulting party.

Certificate of Service

I hereby certify that a copy of the foregoing **Supplemental Order to Cease and Desist** was sent by certified mail, return receipt requested, on this the 8th day of September, 2009, to the following:

Jeffrey W. Cavender
General Counsel
Taylor Bean & Whitaker Mortgage Corporation
5150 Stilesboro Road
Building 500, Suite 500
Kennesaw, GA 30152



Christine Lewis
Legal Counsel
Department of Financial Institutions
1025 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601
(502) 573-3390 Ext. 240
(502) 573-2183 (facsimile)

**COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2009-AH-053
ADMINISTRATIVE ACTION NO. 09-PPC-0222**

**TAYLOR, BEAN & WHITAKER MORTGAGE CORPORATION
(EMERGENCY HEARING)**

PETITIONER

vs.

**FINAL ORDER AFFIRMING
CEASE AND DESIST ORDER**

DEPARTMENT OF FINANCIAL INSTITUTIONS

RESPONDENT

* * * * *

On March 25, 2010, a hearing was held in this case and two companion cases at the offices of Office of the Attorney General, 1024 Capital Center Dr., Frankfort, KY. Shaun T. Orme and Christine Lewis appeared as counsel for the Petitioner, the Department of Financial Institutions ("DFI"). Ashley Taylor, Jr., and Thomas Walker appeared as counsel for the Respondent, Taylor, Bean & Whitaker Mortgage Corporation ("TBW"). 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.

Including the present case, the Department of Financial Institutions has initiated three administrative proceedings against the Respondent:

- A Notice of Administrative Hearing dated August 17, 2009, in *Taylor, Bean & Whitaker Mortgage Corporation v. Department of Financial Institutions*, Agency Case No. 2009-AH-053, Administrative Action No. 09-PPC-0222 (this is the emergency hearing case at bar concerning the Order to Cease and Desist and the Supplemental Order to Cease and Desist, issued against TBW on August 17, 2009, and September 8, 2009, respectively);

- A Notice of Administrative Hearing dated September 11, 2009, in *Department of Financial Institutions v. Taylor, Bean & Whitaker Mortgage Corporation*, Agency Case No. 2009-AH-054, Administrative Action No. 09-PPC-0216 (this case concerns charges against TBW for using unlicensed entities and unregistered loan originators, for which DFI imposes fines that it seeks to be paid from TBW's surety bond); and
- An Administrative Complaint and Notice dated March 11, 2010, in *Department of Financial Institutions v. Taylor, Bean & Whitaker Mortgage Corporation*, Agency Case No. 2009-AH-053, Administrative Action No. 10-PPC-0082 (this case is the companion complaint case to the present emergency hearing case charging consumer violations).

The parties agreed that proof introduced at the hearing identified above would apply to all three cases. In this case, the DFI charged TBW with violations of KRS Chapter 286, namely, using unregistered mortgage loan originators and unlicensed third-party entities, and asserted that the violations were an immediate danger to the public. TBW does not deny the charges.

The parties also agreed that neither the stay in TBW's bankruptcy case nor the federal criminal charges brought against officers of TBW prevent the Hearing Officer from issuing a final order in this case.

The DFI called three witnesses to testify: Kathy R. Stewart, Director of Financial Institutions, DFI; Norman C. Thompson, Compliance Branch Manager, DFI; and Zachary Rudd, Financial Institutions Examiner, DFI. The Respondent called no witnesses on its behalf. The parties jointly offered 33 exhibits, all of which were introduced into the record and considered by the Hearing Officer in making his decision in this case.¹

¹ By Order of the Hearing Officer, the entire record in this case has been placed under seal.

After considering the record as a whole, and based on a preponderance of the evidence, the Hearing Officer ORDERS that the Order to Cease and Desist issued against the Respondent, Taylor, Bean & Whitaker Mortgage Corporation is AFFIRMED with terms more particularly set forth below.

FINDINGS OF FACT

1. The charges in this case arose from an inspection of Taylor, Bean & Whitaker Mortgage Corporation by the Department of Financial Institutions. The results of that inspection and DFI's subsequent investigation underlie the decision in this case.

License

2. On February 1, 2007, the DFI issued Taylor, Bean & Whitaker Mortgage Corporation ("TBW") a mortgage company license with which TBW could then engage in the mortgage company business in the Commonwealth of Kentucky. TBW's principal place of business was 315 N. E. 14th St., Ocala, FL, 34470. Hearing Exhibit 24 ("HE 24").

January 12, 2009 DFI Inspection

3. Pursuant to the Act, DFI conducted an examination of TBW on January 12, 2009, to determine whether the activities of TBW were in compliance with applicable laws and regulations; whether the practices and policies of TBW had a potentially adverse impact on prospective borrowers; and whether the business was being operated efficiently, fairly, and in the public interest. HE 23.

4. During the examination, DFI discovered several violations of the Act which occurred during the 2008 calendar year, including the use of several unlicensed entities and the

use of several unregistered loan originators to originate loans on Kentucky properties. A copy of the examination report was provided to TBW on April 20, 2009. *Id.*

5. On June 3, 2009, TBW sent DFI a written response indicating that corrective action had been or would be taken to cure the violations outlined in the January 12, 2009, examination and to ensure future compliance. HE 28. TBW did not deny the violations alleged in the January 12, 2009, examination. *Id.*

6. Notably, during a 2008 routine examination by DFI, TBW had been cited by DFI for violating the same statutes that are cited in this case. HE 19-22 and 25. Although DFI and TBW ultimately entered into an Agreed Order resolving those earlier violations, the Agreed Order was not signed by all parties until August 11, 2008, and TBW continued to operate in violation of the Act while negotiating the resolution of those violations. HE 26 and 27.

Other Federal Actions Against TBW

7. On August 4, 2009, the Mortgagee Review Board of the U.S. Department of Housing and Urban Development ("HUD") suspended the "HUD/FHA origination and underwriting approval" of TBW effective immediately. The suspension was based upon evidence of violations of HUD requirements under 24 CFR Section 25.6 by: failing to timely submit the required annual audit report of its financial condition; submitting a false certification and/or misleading information to Ginnie Mae; failing to report irregularities in connection with its FY 2008 Audit; failing to report irregularities in connection with its loan origination practices; failing to comply with HUD's approval requirements; and submitting false certifications to HUD on TBW's Yearly Verification Report ("YVR"). HE 1 and 2.

8. On August 4, 2009, the Government National Mortgage Association ("Ginnie Mae") provided a "Notice of Default" to TBW regarding certain mortgage-backed securities pools established under Guarantee Agreements between Ginnie Mae and TBW. The default was based on the following: suspension of TBW's FHA approval; TBW's failure to file annual audited financial statements; and TBW making false statements to Ginnie Mae. HE 1 and 2.

9. On August 4, 2009, the Federal Home Loan Mortgage Corporation ("Freddie Mac") terminated TBW's seller and servicer eligibility, with cause, effective immediately, based upon the following determinations: TBW experienced a significant weakness or notable change in its financial or organizational status that could adversely affect Freddie Mac; TBW failed to meet Freddie Mac eligibility requirements as a Seller or Servicer; TBW had been placed on probation or had its activities restricted by a state or federal government agency; TBW had a judgment, order, finding or regulatory action which could affect its ability to comply with conditions of the Purchase Documents between it and Freddie Mac; TBW's warranty obligations were disproportionate to its capital or assets; and TBW failed to comply or observed terms or provisions of the Purchase Documents between it and Freddie Mac. HE 1 and 2.

10. On August 4, 2009, HUD issued a Notice of Proposed Debarment to TBW officers based upon false certifications provided to HUD in TBW's March 31, 2009, YVR, including but not limited to the fact that the YVR failed to disclose enforcement action taken by the DFI in 2008, as well as TBW being the subject of a multi-state examination. HE 2.

11. Ultimately, TBW was the subject of more than forty state's regulatory actions. TBW is the subject of at least 10 administrative cease and desist orders in various jurisdictions. HE 4-7.

Colonial Bank Closure

12. On or about August 5, 2009, a hold was placed on TBW's accounts at Colonial Bank, including those used by TBW in its mortgage servicing operations.
13. On August 5, 2009, TBW issued a press release indicating that "[a]s a result of the [federal administrative] actions, TBW must cease all origination operations effective immediately. Regrettably, TBW will not be able to close or fund any mortgage loans currently pending in its pipeline." HE 8.
14. In addition, TBW advised the DFI that all its depository and servicing bank accounts at Colonial Bank, N.A. ("Colonial"), had been frozen indefinitely as of August 5, 2009, and Colonial was subsequently closed and placed under Federal Deposit Insurance Corporation ("FDIC") receivership. Previously, the daily sweep and transfer of these custodial funds would occur to the Platinum Escrow Disbursement Clearing Account ("Platinum EDC Account"). Because of this administrative hold, no monies were transferred to TBW's Platinum EDC Account, and checks written from this account were not backed by sufficient funds and could not be honored.
15. Pursuant to an order of the Alabama State Banking Department dated August 14, 2009, Colonial Bank was closed and the FDIC was appointed as its receiver. As a result, the FDIC, as receiver, succeeded to all rights, titles, powers, and privileges of Colonial Bank and of any stockholder, member, account holder, depositor, officer, or director of Colonial Bank with respect to the institution and the assets of the institution pursuant to 12 USC Section 1821(d)(2)(A)(i).

DFI Cease and Desist Orders Against TBW

16. On August 17, 2009, the DFI issued an emergency Order to Cease and Desist against TBW, and on September 8, 2009, it issued an emergency Supplemental Order to Cease and Desist against the Respondent. The emergency orders asserted an immediate danger to the public health, safety, and welfare, and ordered TBW to immediately cease and desist engaging in all mortgage loan activities as defined by the Act, and ordered TBW to perform actions to protect consumers and their assets. HE 9 and 10.

17. The emergency orders charged the following: TBW did not have sufficient warehouse funds available to fund, or any other available sources of funds for loans relating to approximately 800 Kentucky residential properties or borrowers; TBW is the subject of at least 10 administrative cease and desist orders; TBW has no ability to access its depository or servicing accounts at its banking institution because those accounts are frozen, preventing TBW from transacting business effectively for the benefit of Kentucky consumers; and TBW failed to notify the Commissioner for the Department of Financial Institutions in writing, within 10 days of closing its operations. HE 9 and 10.

18. On September 4, 2009, TBW filed a timely request for an emergency hearing, which, by agreement of the parties, was not held.

Consumer-Related Charges Against TBW

19. In 2009 DFI also received complaints regarding the failure of TBW to meet its obligations under the terms of agreements with consumers who owned residential real estate in Kentucky.

20. Specifically, consumers alleged that TBW issued checks from consumer escrow accounts that were returned as having insufficient funds and/or TBW failed to cause appropriate checks to be issued from escrow accounts to pay various insurance and tax premiums as required by law.

21. On March 11, 2010, the DFI filed the Administrative Complaint in this case against TBW, which seeks restitution on behalf of TBW consumers for monies entrusted to TBW that were not properly applied or accounted for. HE 15. A chart outlining TBW's customers' complaints along with supporting documentation was presented at the hearing. HE 11 and 12. To date, the total monies claimed by consumers are \$20,694.27. HE 11. The related interest and fees accrued by borrowers currently is approximately \$740.45 and continues to accrue. *Id.*

22. TBW had no ability to access its depository or servicing accounts at its banking institution because those accounts are frozen; therefore, TBW was unable to transact business effectively for the benefit of Kentucky consumers.

23. TBW failed to provide a proper accounting to borrowers regarding funds paid by borrowers to TBW for the payment of taxes and insurance.

24. TBW failed to provide borrowers with a refund of any interest earned on borrowers' escrow accounts held by TBW.

25. TBW failed to provide a proper accounting to the Commissioner of DFI of the funds of borrowers paid to TBW in escrow for the payment of taxes and insurance.

26. TBW failed to properly credit escrow funds of borrowers to the respective accounts, and also failed to timely pay the taxes and insurance and other items due on the

residential real property of borrowers despite the fact that these borrowers had paid the funds to TBW for that purpose.

27. TBW did not dispute the violations charged.

28. TBW did not dispute that the violations constitute an immediate danger to the public health, safety, and welfare.

29. TBW also did not contest the emergency order, and it agreed that the Order to Cease and Desist could continue until extinguished by operation of law when DFI issued its final order in the companion complaint case, *Department of Financial Institutions v. Taylor, Dean & Whitaker Mortgage Corporation*, Agency Case No. 2009-AH-053, Administrative Action No. 10-PPC-0082.

CONCLUSIONS OF LAW

1. The Department of Financial Institutions is responsible for regulating and licensing mortgage loan companies and mortgage loan brokers doing business in Kentucky in accordance with the provisions of KRS Chapter 286.8, the Mortgage Loan Company and Mortgage Loan Broker Act ("the Act").²

2. The administrative complaint and penalties sought, as well as the hearing conducted herein, are authorized by KRS 286.8-012, 286.8-044, 286.8-046, 286.8-090, and 286.8-990.

3. Taylor, Bean & Whitaker is a mortgage loan company subject to regulation by the Department of Financial Institutions. KRS 286.8-010(20) and 286.1-011(2).

² See footnote 2, above.

4. The Department of Financial Institutions must show by substantial evidence that the Petitioner violated the Act, and that the violation constitutes an immediate danger to the public health, safety, or welfare. KRS 13B.125(3). The Department has met its burden.

Use of Unregistered Loan Originators

5. Pursuant to KRS 286.8-030(1)(c), it is unlawful for any loan originator, unless otherwise exempted, to originate mortgage loans in Kentucky if the loan originator is not registered as required by KRS 286.8-255.

6. Based on the findings of fact, on 82 occasions, TBW employees originated mortgage loans in Kentucky without being registered as required by KRS 286.8-255. No exemption permitted these employees to originate mortgage loans without being registered.

7. Pursuant to KRS 286.030(1)(d), it is unlawful for any mortgage loan company or mortgage loan broker, unless otherwise exempted, to use a mortgage loan originator if the mortgage loan originator is not registered as required by KRS 286.8-255.

8. Based on the findings of fact, on 82 occasions, TBW used mortgage loan originators who were not registered in accordance with KRS 286.8-255. No exemption permitted the use of these unregistered mortgage loan originators.

Unlicensed Third-Party Entities Illegally Brokering Loans to TBW

9. Pursuant to KRS 286.8-030(1)(e), it is unlawful for any mortgage loan company to employ or use, with or without compensation, a mortgage loan broker that is not licensed in accordance with the requirements of KRS Chapter 286, Subtitle 8, unless otherwise exempted.

10. Based on the findings of fact, on 23 occasions, a third-party mortgage loan broker that was not licensed in Kentucky brokered a mortgage loan to TBW.

Immediate Danger

11. Based on the findings of fact, and by consent of TBW, the violations with which TBW is charged constitute an immediate danger to the public health, safety, and welfare.

FINAL ORDER

Based on the foregoing findings of fact and conclusions of law, the Hearing Officer ORDERS that the emergency Order to Cease and the Desist dated August 17, 2009, and the emergency Supplemental Order to Cease and Desist dated September 8, 2009, issued by the Respondent, Department of Financial Institutions, against the Petitioner, Taylor, Bean & Whitaker Mortgage Corporation, are AFFIRMED, and they shall continue and remain effective against the Petitioner until extinguished by operation of law when a final order issued in *Department of Financial Institutions v. Taylor, Dean & Whitaker Mortgage Corporation*, Agency Case No. 2009-AH-053, Administrative Action No. 10-PPC-0082 becomes final.

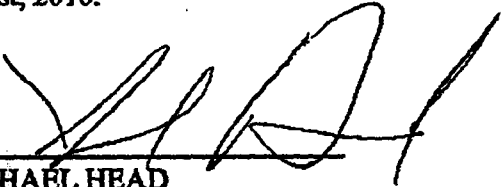
NOTICE TO PARTIES OF APPEAL RIGHTS

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 ORDERED this 3 day of August, 2010.



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 FINAL ORDER was mailed this 6th day of

August, 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 certified mail, return receipt requested, to:

ASHLEY L TAYLOR JR
THOMAS C WALKER JR
TROUTMAN SANDERS LLP
TROUTMAN SANDERS BLDG
1001 HAXALL POINT
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CHRISTINE LEWIS
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1025 CAPITAL CENTER DR STE 200
FRANKFORT KY 40601



DOCKET COORDINATOR

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