STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, DIVISION REAL STATE,	)	
Petitioner,	)	
vs.	)	Case No. 99-0856
DAVID B. COMBS,	)	
Respondent.	)	

RECOMMENDED ORDER

This cause came on for formal hearing as noticed before P. Michael Ruff, duly designated Administrative Law Judge of the Division of Administrative Hearings. The hearing was conducted on May 7, 1999, in Shalimar, Florida.

APPEARANCES

For Petitioner: Laura McCarthy, Esquire
Department of Business and Professional Regulation
Division of Real Estate
Suite N-308
Hurston Building, North Tower
400 West Robinson Street
Orlando, Florida 32801-1772

For Respondent: David Combs, pro se
2567 Oleander Lane
Navarre, Florida 32566

STATEMENT OF THE ISSUE

The issue to be resolved in this proceeding concerns whether the Respondent's Florida Real Estate Appraiser's License should be subjected to sanctions, based upon the charges of culpable

negligence or breach of trust in a business transaction, in violation of Section 475.624(2), Florida Statutes; alleged failure to exercise reasonable diligence in developing an appraisal report, in violation of Section 475.624(15), Florida Statutes; and violation of various of the Uniform Standards of Professional Appraisal Practice, in consequent violation of Section 475.624(14), Florida Statutes (1995).

PRELIMINARY STATEMENT

This cause arose upon the filing of an Administrative Complaint by the Petitioner agency against the Respondent on January 6, 1999. The complaint alleges that the Respondent violated the above-referenced legal authority concerning the preparation of two appraisal reports; one with an effective date of November 27, 1995, and the other with an effective date of February 5, 1996. The Respondent disputed the allegations and requested a formal proceeding in accordance with Section 120.57(1), Florida Statutes.

The cause was ultimately assigned to the undersigned Administrative Law Judge of the Division of Administrative Hearings. A formal hearing ensued and was held pursuant to appropriate notice on May 7, 1999. The Petitioner called three witnesses at the hearing and offered Petitioner's Exhibits one through eleven into evidence. Petitioner's Exhibit one, as well as Petitioner's Exhibits three through eleven were received into evidence. The Respondent's Exhibit one was received into

evidence; however, the Respondent offered no witnesses to testify. Official recognition was taken of Chapters 455, 475 and 120, Florida Statutes, as well as Rule 61J-1, Florida Administrative Code.

Upon concluding the proceeding, the parties ordered a transcript thereof and elected to seek an extended briefing schedule which was granted. Additionally by the Petitioner's motion, the parties were granted an additional extension on submitting Proposed Recommended Orders. Those Proposed Recommended Orders have been considered in the rendition of this Recommended Order.

FINDINGS OF FACT

1. The Petitioner is an agency of the State of Florida charged with regulating and enforcing the licensure and practice statutory provisions pertaining to licensed real estate appraisers, particularly the provisions of Chapter 475, Florida Statutes and Rules promulgated thereunder.

2. The Respondent is a state-certified real estate appraiser having been issued License Number RD0001619 pursuant to Part II of Chapter 475, Florida Statutes. The license was issued for the address of 2567 Oleander Lane, Navarre, Florida 32566. There is no evidence that the Respondent's licensure has previously been the subject of a disciplinary action. The Respondent's sole means of livelihood is his work as a professional appraiser with this license.

3. There has been no proof of harm to a consumer or the public. Jill Endico was a client of the Respondent who retained the Respondent to appraise certain property located at 2120 Windtrace Road. Ms. Endico had purchased the subject property through a "contract for deed" and retained the Respondent to appraise it for purposes of obtaining re-financing on the property. The property consisted of what is known as a "four-plex" or four one-bedroom, one-bath rental units.

4. The Respondent prepared an appraisal report dated November 27, 1995, and then a second appraisal report on the same property dated February 5, 1996.

5. Thereafter, Executive Funding Corporation of Miami retained a state-certified real estate appraiser, Daniel Ryland, to review the November 1995 report. Ryland has been an appraiser since 1986 and has performed approximately four to five review appraisals per month for the last five years. He reviewed the November 1995 appraisal report and his review is dated March 8, 1996. Mr. Ryland was thereafter engaged by CLT Appraisal Services/Commonwealth Land Title Insurance Company to review the Respondent's February 1996 appraisal report.

6. After reviewing the reports, Ryland submitted a complaint to the Petitioner regarding the Respondent's appraisals. The nature of the complaint submitted was that the appraisals prepared by the Respondent contained "extreme misstatements" and numerous rule violations. Mr. Ryland

submitted the complaint because he felt that the Respondent had produced misleading appraisal reports.

7. The complaint matter was duly assigned to the agency investigator Benjamin F. Clanton, who conducted an investigation. He advised the Respondent of the complaint filed against him by a letter to the Respondent (Petitioner's Exhibit three in evidence).

8. In his testimony concerning the November 1995 appraisal, Mr. Ryland noted that the property would not have been an easy task to appraise for any appraiser because there were not many similar properties available for comparable studies. Ryland believes that it was understandable that the Respondent therefore used comparable properties outside of the immediate area of the subject property. Ryland did, however, consider that all three comparable sales properties used by the Respondent, in his November 1995 report, exceeded the Federal National Mortgage Association's (FNMA),(Fannie Mae) net and gross adjustment guidelines by an excessive amount. Two of the comparables contained gross adjustments of two-hundred sixty percent and one contained adjustments of two-hundred fifty nine percent.

9. The Respondent, in his November 1995 report, indicated that he followed the June 1993 FNMA guidelines. Fannie Mae guidelines are parameters set up by the mortgage industry and when those guidelines are violated it is an indication of weakness in the appraisal report. Pursuant to the Fannie Mae

guidelines, if a comparable property requires adjustments in excess of twenty-five percent, then it is not truly comparable. It is clear that the Respondent did not follow Fannie Mae guidelines, as he used comparables with adjustments as much as ten times higher than those recommended guidelines. Mr. Ryland located a more appropriate property to use as a comparable through the "Metro Market Trends" database. The sale on that property had closed at the time the Respondent completed his November 1995 report and therefore he should have been able to locate that sale and use it as a comparable. The sale of the property had been recorded in the Official Records of Santa Rosa County at that time.

10. Mr. Ryland stated that he would have limited his comparables to either triplexes or quadriplexes and would not have limited his search to the Fort Walton Beach area. He also stated that after performing a paired sales analysis, the market did not seem to recognize a difference between leasehold and fee-simples as far as their sales prices are concerned. Therefore there was no need to limit comparables to one type or the other.

11. Investigator Clanton also reviewed the November 1995 report. It contained inconsistencies with the comparable properties used. These included: (a) the gross rent multipliers were out of range for the neighborhood (see Petitioner's Exhibit seven in evidence); (b) the Respondent made "extreme" adjustments

to the comparable properties (Petitioner's Exhibit seven in evidence); and (c) the rental data included in the report was not properly verified (Petitioner's Exhibit seven).

12. Adjustments to comparable sales are made based upon "market extraction." When large adjustments over $15,000.00, are made to a comparable, it is industry practice to fully explain them, so that the user of the appraisal will understand why the adjustment was made.

13. Mr. Ryland noted in his review report (Petitioner's Exhibit five in evidence) that Comparable No. one in the Respondent's November 1995 report was a single unit and had amenities which the subject property did not. That property should not have been used to compare to the subject property. Ryland considered Comparable No. two in the November 1995 report to be a good comparable, but did not agree with the adjustments. There was no evidence to support the location, quality of construction, age or condition adjustments. Concerning the location adjustment, Ryland stated that the subject property was located in close proximity to a mobile home community. There was thus no demonstrated basis for a positive adjustment from the land sales in the area in which Comparable No. two was located.

14. The Respondent failed to mention in his report that the subject property was in a neighborhood that included a mobile home community. With regard to the condition adjustment, the Respondent did not indicate (nor could Ryland locate in the MLS

data base), any reason to believe that Comparable No. two was in need of repair. In Ryland's opinion the Respondent did not use his sales approach correctly and thus the November 1995 report was not credible.

15. The process of dividing the market rent by the comparable sales price develops a gross rent multiplier. The selection of comparable properties is directly related to and affects the resultant gross rent multiplier. Selection of in-appropriate comparables may exaggerate or deflate the gross rent multiplier. Mr. Ryland, like Mr. Clanton, felt that the gross rent multiplier reported by the Respondent in the November 1995 report was not reasonable.

16. Investigator Clanton interviewed the Respondent on May 27, 1998. The Respondent was unable to produce evidence from the market to support the value adjustments to the comparable properties in the November 1995 report. Instead, he relied on his prior experience and historical data as a basis for the adjustments. The Respondent could provide no justification from the market upon which to base the adjustments. The Respondent told Mr. Clanton that he had indicated in both reports that there were sales contracts attached because he was using a report he had previously prepared and had failed to delete that reference to sales contracts.

17. The Respondent's November 1995 appraisal report indicated that he had verified the comparable sales data through

a realtor. When Clanton asked him for the name of the realtor the Respondent explained that he used a form that he had previously prepared and in fact had not consulted a realtor.

18. By letter of June 9, 1998, the Respondent told Mr. Clanton that he used the Multiple Listing Service (MLS) and Metro Market Trends (MMT) to verify the comparable sales data. MLS and MMT data are appropriate sources from which to obtain comparable properties for an appraisal report, so long as the data is independently verified. Data obtained through MLS and MMT may be verified with a individual involved in the sale, deeds recorded in the official records or other recognized sources. The Uniform Standards of Professional Appraisal Practice (USPAP) require verification from at least two other sources.

19. When Mr. Clanton interviewed the Respondent the Respondent told Mr. Clanton that he verified the comparable data by cross-matching between the MLS and the MMT. Mr. Clanton opined that the Respondent had used the MLS and MMT to increase the level of data and not to cross-reference it.

20. Mr. Ryland also reviewed the February 1996 report on April 21, 1996. The Respondent represented Comparable No. two as one triplex, when in fact it was two triplexes. That rendered the report misleading as to value because it appeared that one triplex sold for $169,000.00, when actually two triplexes were sold for that total price. Additionally, MLS indicated that Comparable No. one was 3,592 square feet, but the Respondent

represented it in the report as 2,596 square feet. Comparable No. three in the February 1996 report was actually a ten-unit apartment complex. The Respondent represented it as one quadriplex, despite the MLS data which clearly indicated that the building consisted of ten units.

21. Mr. Clanton reviewed the February 1996 report as well and found that Comparable No. two, in that report, was listed as one building when in fact it was two buildings on one property.

CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. Section 120.57(1), Florida Statutes.

23. The Uniform Standards of Professional Appraisal Practice (USPAP) are national standards accepted in the appraisal industry for use when preparing appraisal reports. The Florida Legislature, through the enactment of the provisions of Chapter 475, Florida Statutes, has required that appraisers adhere to the USPAP in preparing appraisal reports. Specifically Section 475.620, Florida Statutes (1995), provides that the Florida Real Estate Appraisal Board may:

> . . . deny an application for registration, licensure, or certification; investigate the actions of any appraiser registered, licensed, or certified under this section; and may reprimand, fine, revoke, or suspend, for a period not to exceed 10 years, the registration, license, or certification of any such appraiser, or place any such appraiser on probation if it finds that the registrant, licensee, or certificate holder:

> (14) Has violated any standard for the development or communication of a real estate appraisal or other provision of the uniform Standards of Professional Appraisal Practice.

24. The Preamble to USPAP 1994 which the Respondent used in his November 1995 report, states in part that:

> It is essential that a professional appraiser arrive at and communicate his or her analyses, opinions, and advice in a manner that will be meaningful to the client and will not be misleading in the marketplace.

The above Findings of Fact show that the appraisal reports did not conform to this basic standard. USPAP 1994 defines "client" as any party for whom an appraiser performs a service. Clearly Jill Endico was the Respondent's client concerning both the subject appraisal reports. "Real Property" is defined in the USPAP standard at issue as the interests, benefits and rights inherent in the ownership of real estate. It defines "real estate" as an identified parcel or tract of land, including improvements, if any. The subject property fits this description and definition.

25. USPAP 1994 standard rule 1-1(a), states that in developing a real property appraisal, an appraiser must be aware of, understand, and correctly apply those recognized methods and techniques that are necessary to produce a credible appraisal. The November 1995 report violates that rule because the comparable properties used in the sales approach analysis required adjustments of two-hundred fifty-nine to two-hundred and

sixty percent, over ten times that allowable under Fannie Mae Standards. Either the Respondent was not aware of or did not understand the sales approach. He did not apply it correctly and adjustments of that magnitude render the appraisal incredible.

26. The February 1996 report does not comply with the above-cited rule either. The gross rent multiplier the Respondent asserted is inconsistent with the rental data he himself gathered. The property used in comparable sale no. one was represented in the February 1996 report to consist of 2,596 square feet, when it was actually 3,592 square feet. Comparable sale no. two was represented as a triplex when it was in fact two triplexes. The Respondent represented comparable sale no. three as a four-plex, when in fact, it was a ten-unit apartment-ocmplex. His failure to apply the correct method resulted in an incorrect gross rent multiplier. His misrepresentation of the size of comparable sales resulted in an inaccurate evaluation using the sales approach.

27. USPAP 1994, standard rule 1-1(c) requires that the appraiser "not render an appraisal service in a careless or negligent manner, such as a series of errors that, considered individually, may not significantly affect the results of an appraisal, but which, when considered in aggregate, would be misleading." The November 1995 report violates this standard for a number of reasons. The comparables used in the sales approach needed adjustments to the point where they were not truly

comparable The Respondent had no basis for the adjustments. He omitted the proximity of the subject property to a mobile home park as a consideration. His gross rent multipliers were out of range for the subject property's neighborhood. He indicated in his November 1995 report that there was a sales contract pending and attached, and then admitted to the investigator that he had made a mistake in putting that reference in the report. The Respondent stated in the November 1995 report that he verified comparable sales data through a realtor and then admitted to the investigator Mr. Clanton that there was no realtor. The Respondent does not appear to have verified his comparable data with two independent sources. These errors and omissions taken together render the November 1995 report misleading.

28. The February 1996 report violates USPAP 1994 standard rule 1-1(c). It was obviously rendered in a negligent and careless manner as none of the comparable sales are properly identified or presented accurately. The errors as well as the problems with the gross rent multiplier, prevent the 1996 report from being a credible appraisal.

29. USPAP 1994 standard rule 1-2(a) states that:

> In developing a real property appraisal, an appraiser must observe the following specific appraisal guidelines: (a) adequately identify the real estate, identify the real property interest, consider the purpose and intended use of the appraisal, consider the extent of the data collection process, identify any special limiting conditions, and identify the effective date of the appraisal.

Ms. Endico testified that the purpose of the appraisal was to re-finance her property. The Respondent approached the report as though it were based on a contract for sale and purchase. Although it is true that the bank would not technically treat a contact for deed as a re-finance, it is clear that the November 1995 report did not consider the purpose and intended use of the appraisal. It also failed to consider the extent of the data collection process, as observed by Mr. Ryland, when he stated that he would not have limited himself to the Fort Walton Beach area in choosing comparable data. The Respondent also failed to collect independent data to verify the data he put in the November 1995 report. Therefore the November 1995 report violated USPAP 1994 standard rule 1-2(a).

30. USPAP 1994 standard rule 1-4(b), states that:

> In developing a real property appraisal, an appraiser must observe the following specific appraisal guidelines, when applicable:
>
> (b)(iii) - such comparable sales data, adequately identified and described, as are available to indicate a value conclusion;
>
> (b)(iv) - such comparable rental data as are available to estimate the market rental of the property being appraised.

The findings of fact are clear that the Respondent did not gather the appropriate sales data, nor did he gather appropriate rental data for either report. Both sets of data resulted in misleading evaluations of the subject property. Therefore, the November

1995 report and the February 1996 report violated 1994 USPAP standard rule 1-4(b)(iii) and (iv).

31. The Petitioner has thus established by clear and convincing evidence that the Respondent's November 1995 report violated USPAP 1994 standard rules 1-1(a)(c), 1-2(a), 1-4(b)(iii) and (iv). Therefore these inadequacies are a derivative violation of Section 475.624(14), Florida Statutes, (1995).

32. The Petitioner has established by clear and convincing evidence that the February 1996 report violated USPAP 1994 standard rules 1-1(a)(c) and 1-4(b)(iii) and (iv). These also constitute a violation of Section 475.624(14), Florida Statutes, (1995). Section 475.624, Florida Statutes (1995), states that the Florida Real Estate Appraisal Board may:

> . . . deny an application for registration, licensure, or certification; investigate the actions of any appraiser registered, licensed, or certified under this section; and may reprimand, fine, revoke, or suspend, for a period not to exceed 10 years, the registration, license or certification of any such appraiser, or place any such appraiser on probation if it finds that the registrant, licensee, or certificate holder;
>
> (2). Has been guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest conduct, culpable negligence, or breach of trust in any business transaction in this state or any other state, nation, or territory; . . .

33. The Petitioner has established by clear and convincing evidence that culpable negligence was committed by the Respondent in the preparation of both appraisal reports at issue. The use

of comparables was inappropriate enough that it caused the lender involved to reject the first report. The Petitioner proved by clear and convincing evidence as well that the Respondent breached his trust with client Endico by preparing both reports which lacked credibility.

34. Section 475.624, Florida Statutes (1995), provides at paragraph (15), that the penalties referenced and quoted above with regard to that statutory section may be imposed for any licensee, registrant or certificate holder who:

> . . . Has failed or refused to exercise reasonable diligence in developing an appraisal or preparing an appraisal report.

35. The clear and convincing evidence of record and the above findings of fact show that the Respondent failed to exercise reasonable diligence in developing and preparing the November 1995 and February 1996 appraisal reports. The errors, omissions, and misstatements were substantial enough and numerous enough that it is clear that the Respondent made no reasonable effort to prepare a credible, usable report for his client. Rule 61J1-8.002, Florida Administrative Code, contains disciplinary guidelines for appraisers. Rule 61J1-8.002(3), Florida Administrative Code, states:

> Except as otherwise noticed below, the minimum penalty for all below listed sections is a reprimand and/or a fine of up to $1,000.00 per count. The maximum penalties are as listed:

(d). 475.624(2), Guilty of fraud, misrepresentation, concealment, false promises, false pretences, dishonest dealing by trick scheme or device, culpable negligence or breach of trust: RECOMMENDED RANGE OF PENALTY: Revocation.

(o). 475.624(14), Has violated any standard for the development or communication of a real estate appraisal or other provision of the Uniform Standards of Professional Appraisal practice. RECOMMENDED RANGE OF PENALTY: Up to 5 years suspension or revocation.

(p). 475.624(15), Has Failed or refused to exercise reasonable diligence in developing or preparing an appraisal report. RECOMMENDED RANGE OF PENALTY: Up to 5 years suspension or revocation.

The Petitioner has established clear and convincing evidence that the Respondent is guilty of culpable negligence, violation of the above-mentioned Uniform Standards of Professional Appraisal Practice, and, in the particulars referenced found and concluded above, failed to exercise reasonable diligence in developing or preparing the appraisal reports. In light of Rule 61J1-8.002(4), Florida Administrative Code, mitigatory factors established by the evidence and considered as to the penalty issue include the fact that the Respondent has never before been the subject of investigation and discipline; that practice as an appraiser is his sole means of earning a livelihood and severe financial hardship would result from a suspension or a maximum fine and that there was no showing of harm to the consumer or public.

RECOMMENDATION

Accordingly, in consideration of the foregoing Findings of Fact, Conclusions of Law, the evidence of record, the candor and demeanor of the witnesses and the pleadings and arguments of the parties, it is,

RECOMMENDED:

That the Department of Business and Professional Regulation, Division of Real Estate find the Respondent guilty of Counts I through VI of the Administrative Complaint and impose a penalty of a reprimand, a one-year probation with relevant continuing education requirements and a fine of $300.00 per count.

DONE AND ENTERED this 30th day of September, 1999, in Tallahassee, Leon County, Florida.

P. MICHAEL RUFF
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of September, 1999.

COPIES FURNISHED:

Laura McCarthy, Esquire
Department of Business and
Professional Regulation
Division of Real Estate
Suite N-308
Hurston Building, North Tower
400 West Robinson Street
Orlando, Florida 32801-1772

David Combs
2567 Oleander Lane
Navarre, Florida 32566

Barbara D. Auger, General Counsel
Department of Business and
Professional Regulation
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-0795

Herbert S. Fecker, Division Director
Division of Real Estate
Department of Business and
Professional Regulation
400 West Robinson Street
Orlando, Florida 32802-1900

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.