

STATE OF FLORIDA
FLORIDA REAL ESTATE APPRAISAL BOARD
Department of Business and Professional Regulation
AGENCY CLERK

DEPARTMENT OF BUSINESS
AND PROFESSIONAL REGULATION,

By: Sarah Wachman, Agency Clerk
Brandon M. Nichols

Petitioner,

vs.

DBPR Case Nos.: 2001-500837
2001-500227
2001-500416

DOAH Case Nos.: 2004-1148 PL
2004-1680 PL

ELSA G. CARTAYA,

License No.: RD 2343

Respondent.

FILED
06 MAY 23 PM 1:22
DIVISION OF
ADMINISTRATIVE
HEARINGS

**AMENDED FINAL ORDER UPON REMAND FROM
THE THIRD DISTRICT COURT OF APPEAL**

THIS CAUSE came before FLORIDA REAL ESTATE APPRAISAL BOARD (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on April 4, 2006, in Orlando, Florida, for the purpose of re-considering Administrative Law Judge (ALJ) John G. Van Laningham's Recommended Order, a copy of which is attached hereto as Exhibit A, in the above-styled cause and Petitioner's Exceptions to the Recommended Order, a copy of which is attached hereto as Exhibit B, as ORDERED by the Third District Court of Appeal of the State of Florida. Petitioner was represented by DBPR Real Estate Division Chief Attorney Bennett M. Miller and DBPR Senior Attorney Racquel A. White. Respondent was represented by John O. Sutton, Esquire. The Board was represented by Assistant Attorney General Brian J. Stabley.

Upon review of the Third District Court of Appeal's Order rendered in case number 3D05-812, the ALJ's Recommended Order, the Petitioner's Exceptions to the Recommended Order, the argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

1. The Board VACATED its previous Final Order rendered in this case.

EXCEPTIONS

2. Petitioner timely filed several exceptions to the Recommended Order on November 24, 2004.

3. Respondent did not file a response to Petitioner's exceptions.

4. Petitioner's Exceptions 1 through 5 are GRANTED by the Board and are incorporated by reference.

5. Petitioner's Exception 1 to the conclusion of law in paragraph 61 of the Recommended Order is GRANTED by the Board. The Board struck paragraph 61 of the Recommended Order in its entirety and replaced it with the following sentence: The more reasonable legal conclusion is that Section 475.624(14) of the Florida Statutes, makes it a disciplinary offense to violate any standard prescribed in USPAP, and the statute clearly establishes that "intent" is not an element that needs to be proven. In striking the conclusion of law in paragraph 61 of the Recommended Order and replacing the stricken language as previously stated in this paragraph, the Board finds, from a review of the entire record, that its substituted conclusion of law is as or more reasonable than that which was rejected or modified.

6. Petitioner's Exception 2 to the conclusion of law in paragraph 66 of the Recommended Order is GRANTED. The Board struck all of paragraph 66 of the Recommended Order except for the first sentence of paragraph 66 and replaced the stricken language with the following: Pursuant to P Exh. 19 admitted as substantive evidence, the Respondent admitted that she considered market information dated 8/7/00, in the appraisal report for the Hialeah Property. Therefore, the effective date and the date of the Appraisal Report was not July 27, 2000, but August 7, 2000. As a matter of law, the Department did clearly establish that Respondent committed a violation of Standard Rule 2-2(b)(vi). In striking all but the first sentence of paragraph 66 of the Recommended Order and replacing the stricken language as previously stated in this paragraph, the Board finds, from a review of the entire

record, that its substituted conclusion of law is as or more reasonable than that which was rejected or modified.

7. Petitioner's Exception 3 to the conclusion of law in paragraph 67 of the Recommended Order is GRANTED. The Board struck all of paragraph 67 of the Recommended Order except for the first sentence of paragraph 67 and replaced the stricken language with the following: The Respondent considered market information dated 8/7/00, in the appraisal report for the Hialeah Property, therefore, the effective date and the date of the Appraisal Report was not July 27, 2000, but August 7, 2000. Therefore, the Department did clearly establish that Respondent committed a violation of Standard Rule 1-5(b) and Standard Rule 2-2(b)(ix). In striking all but the first sentence of paragraph 67 of the Recommended Order and replacing the stricken language as previously stated in this paragraph, the Board finds, from a review of the entire record, that its substituted conclusion of law is as or more reasonable than that which was rejected or modified.

8. Petitioner's Exception 4 to the conclusion of law in paragraph 72 of the Recommended Order is GRANTED. The Board struck the second sentence of paragraph 72 of the Recommended Order in its entirety because the Board found that intent is not an element of Section 475.624(14) of the Florida Statutes in granting Petitioner's Exception 1. In striking the second sentence of paragraph 72 of the Recommended Order, the Board finds, from a review of the entire record, that its substituted conclusion of law is as or more reasonable than that which was rejected or modified.

9. Petitioner's Exception 5 to the conclusion of law in Recommendation paragraph 2 of the Recommended Order is GRANTED. The Board struck the words "unintentional" from Recommendation paragraph 2 of the Recommended Order as the Board found that intent is not an element of Section 475.624(14) of the Florida Statutes in granting Petitioner's Exception 1. In striking the words "unintentional" from Recommendation paragraph 2 of the Recommended Order, the Board finds, from a review of the entire record, that its substituted conclusion of law

is as or more reasonable than that which was rejected or modified. Additionally, the Board clarified Recommendation paragraph 3 of the Recommended Order to define the recommended USPAP continuing education course as a 7 hour USPAP course, which is the USPAP continuing education course of shortest duration.

FINDINGS OF FACT

10. The findings of fact set forth in the Recommended Order are approved, adopted, and incorporated herein by reference.

11. There is competent substantial evidence to support the findings of fact.

CONCLUSIONS OF LAW

12. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, Chapter 475, Part II, Florida Statutes, and Chapter 61J1 of the Florida Administrative Code.

13. The Petitioner's Exceptions 1 through 5 are GRANTED by the Board and are incorporated by reference.

14. The Board adopted the Recommended Order's Conclusions of Law except for those Conclusions of Law that were modified or rejected by the Board.

RECOMMENDED PENALTY

15. The Board adopts the Recommended Order's recommended penalty, but clarifies the recommendation that Respondent complete a continuing education course in USPAP to the following: Respondent shall successfully complete a 7 hour USPAP continuing education course. Therefore, Respondent's penalty is as follows: As punishment for the violations established, Cartaya's certificate should be suspended for 30 calendar days, and she should be placed on probation for a period of one year, a condition of such probation being the successful completion of a 7 hour USPAP continuing education course. In addition, Cartaya should be ordered to pay an administrative fine of \$500.

This Final Order shall take effect upon being filed with the Clerk of the Department of Business and Professional Regulation.

DONE AND ORDERED this _____ day of _____, 2006.

FLORIDA REAL ESTATE
APPRAISAL BOARD



Michael E. Murphy, Director
Division of Real Estate on behalf of the
Florida Real Estate Appraisal Board

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to ELSA G. CARTAYA, 2121 S.W. 83 Avenue, Miami, Florida 33155; Respondent's Counsel John O. Sutton, Esq., Jamerson & Sutton, LLP, 2655 LeJeune Road, PH-II, Coral Gables, Florida 33134; John G. Van Laningham, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; Chief Attorney Bennett M. Miller and Senior Attorney Racquel A. White, DBPR, Division of Real Estate, 400 W. Robinson Street, Suite 801N, Orlando, Florida 32801-1757; and Brian J. Stabley, Assistant Attorney General, Office of the Attorney General, Department of Legal Affairs, PL-01, The Capitol, Tallahassee, Florida 32399-1050 this 22nd day of May, 2006.

