

STATE OF FLORIDA
FLORIDA REAL ESTATE APPRAISAL BOARD

DEPARTMENT OF BUSINESS
AND PROFESSIONAL REGULATION,

Petitioner,

vs.

ANTHONY ELGIN,

Respondent.

Final Order No. BPR-2006-03458 Date: 5-23-06
FILED

Department of Business and Professional Regulation
AGENCY CLERK

Sarah Wachman, Agency Clerk

By: *Brandon M. Nichol*

DBPR Case Nos.: 2003-084537

DOAH Case Nos.: 05-1222PL

License No.: RZ 1589

2006 MAY 24 P 12:55
DIVISION OF
ADMINISTRATIVE
HEARINGS

FILED

FINAL ORDER

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 considering Administrative Law Judge (ALJ) Daniel Manry'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. Petitioner was represented by DBPR Senior Attorney Stacy N. Robinson Pierce. Respondent nor his Counsel John Parvin, Esq., were present. The Board was represented by Assistant Attorney General Brian J. Stabley.

As a preliminary matter, Respondent's Counsel filed a Motion for a Continuance of this proceeding on or about March 24, 2006. Respondent's Counsel requested the continuance because he had a pre-existing commitment and also due to a lack of time to prepare a response to Petitioner's exceptions. The Board DENIED Respondent's Motion for a Continuance.

Upon review of 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.

EXCEPTIONS

1. Petitioner timely filed several exceptions to the Recommended Order on February 20, 2006.

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

3. Petitioner withdrew Exceptions 3, 4, 9, and 12.

4. Petitioner's Exceptions 1, 2, 5, 6, 7, 8, 10, and 11 are GRANTED by the Board and are incorporated by reference.

5. Petitioner's Exception 1 to the findings of fact in paragraph 10 of the Recommended Order is GRANTED by the Board. The Board struck the second sentence of paragraph 10 of the Recommended Order including the quoted section of USPAP in paragraph 10 of the Recommended Order and replaced the stricken language with the following language: In relevant part, the comment to Standards Rule 2-3 states that "[a]n appraiser who signs a real property appraisal report prepared by another in any capacity accepts full responsibility for the appraisal and the contents of the appraisal report." After reviewing the entire record, the Board does not find competent, substantial evidence to support the stricken portions of paragraph 10 of the Recommended Order based upon the following citations in the record: TR p. 25 through Line 2 of p. 26; TR p. 76, Lines 13-16; P. Exh. 3, pp. 1, 3-4, and 13. Additionally, after reviewing the entire record, the Board does not find competent, substantial evidence to

support the stricken portions of paragraph 10 of the Recommended Order because paragraph 10 of the Recommended Order conflicts with paragraph 11 of the Recommended Order.

6. Petitioner's Exception 2 to the findings of fact in paragraph 11 of the Recommended Order is GRANTED. The Board struck the first sentence of paragraph 11 of the Recommended Order. After reviewing the entire record, the Board does not find competent, substantial evidence to support the stricken portion of paragraph 11 of the Recommended Order based upon the following citations in the record: P. Exh. 3, pp. 1, 3-4, and 13; TR p. 76, Lines 13-16.

7. Petitioner's Exception 5 to the findings of fact in paragraph 22 of the Recommended Order is GRANTED. The Board struck paragraph 22 of the Recommended Order in its entirety. After reviewing the entire record, the Board does not find competent, substantial evidence to support stricken paragraph 22 of the Recommended Order based upon the following citations in the record: P. Exh. 3, pp. 1, 3-4, and 13; TR p. 76, Lines 13-16; and TR pp. 79, 80-86, 88, 170, 172, 173 and 184.

8. Petitioner's Exception 6 to the findings of fact in paragraph 31 of the Recommended Order is GRANTED. The Board struck paragraph 31 of the Recommended Order in its entirety and replaced the stricken language of paragraph 31 of the Recommended Order with the following language: Petitioner interprets the quoted terms and similar terms elsewhere in the statutes, rules, and appraisal standards to mean that Respondent certifies to Petitioner that Ms. Hall performed the appraisal correctly and that Respondent is responsible to Petitioner for her errors. After

reviewing the entire record, the Board does not find competent, substantial evidence to support stricken paragraph 31 of the Recommended Order based upon the following citations in the record: P. Exh. 3, p. 13 and Sections 475.611(1)(a) and (q) of the Florida Statutes.

9. Petitioner's Exception 7 to the findings of fact in paragraphs 32 and 33 of the Recommended Order is GRANTED. The Board struck paragraphs 32 and 33 of the Recommended Order in their entirety as paragraphs 32 and 33 of the Recommended Order are conclusions of law and not findings of fact. In striking paragraphs 32 and 33 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. However, even if paragraphs 32 and 33 of the Recommended Order were findings of fact, the Board, upon review of the entire record, strikes paragraphs 32 and 33 of the Recommended Order as the Board does not find competent, substantial evidence to support stricken paragraphs 32 and 33 of the Recommended Order based upon the following citations in the record: P. Exh. 3, pp. 1, 3-4, and 13; P. Exh. 4, pp. 54, 55, 62; TR p. 60, Lines 5-19; TR p. 169, Lines 13-19; TR p. 76, Lines 13-16; paragraph 6 of the Recommended Order; and Section 475.624(14) of the Florida Statutes.

10. Petitioner's Exception 8 to the findings of fact in paragraph 37 of the Recommended Order is GRANTED. The Board struck paragraph 37 of the Recommended Order in its entirety. After reviewing the entire record, the Board does not find competent, substantial evidence to support stricken paragraph 37 of the

Recommended Order based upon the following citations in the record: P. Exh. 3, pp. 1, 3-4, and 13; P. Exh. 4, pp. 54, 55, 62; TR p. 60, Lines 5-19; TR p. 169, Lines 13-19; TR p. 76, Lines 13-16; and Section 475.624(14) of the Florida Statutes.

11. Petitioner's Exception 10 to the conclusions of law in paragraphs 45, 46, 47, 48, and 49 of the Recommended Order is GRANTED. The Board struck the words "not" from paragraph 45 of the Recommended Order, the Board struck the last sentence in paragraph 46 of the Recommended Order, the Board struck the last sentence in paragraph 47 of the Recommended Order, and the Board struck paragraphs 48 and 49 in their entirety based upon Transcript pages 187-193. In striking the words "not" from paragraph 45 of the Recommended Order, the last sentence of paragraph 46 of the Recommended Order, the last sentence of paragraph 47 of the Recommended Order, and paragraphs 48 and 49 of the Recommended Order in their entirety, the Board finds, from a review of the entire record, that its substituted conclusions of law are as or more reasonable than that which was rejected or modified.

12. Petitioner's Exception 11 to the conclusions of law in paragraphs 50, 51, 52, and 53 of the Recommended Order is GRANTED. The Board struck paragraphs 50, 51, 52, and 53 in their entirety because they are not relevant to Petitioner's Administrative Complaint. In striking paragraphs 50, 51, 52, and 53 of the Recommended Order in their entirety, the Board finds, from a review of the entire record, that its substituted conclusions of law are as or more reasonable than that which was rejected or modified.

FINDINGS OF FACT

13. The findings of fact set forth in the Recommended Order that have not been rejected or modified by the Board are approved, adopted, and incorporated herein by reference.

14. Petitioner's Exceptions 1, 2, 5, 6, 7, and 8 to the Recommended Order's findings of fact are GRANTED by the Board and incorporated by reference.

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

CONCLUSIONS OF LAW

16. 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.

17. Petitioner's Exceptions 10 and 11 to the Recommended Order's conclusions of law are GRANTED by the Board and incorporated by reference.

18. 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

19. The Board adopts the Recommended Order's recommended penalty and finds Respondent NOT GUILTY of the violations charged in the Administrative Complaint and imposes no penalty against Respondent's license.

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

DONE AND ORDERED this 15th day of May, 2006.

FLORIDA REAL ESTATE
APPRAISAL BOARD

Michael E. Murphy

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 Respondent Anthony Elgin, 1727 Coachman Plaza Drive, Clearwater, Florida 34619; Respondent's Counsel John Parvin, Esq., 630 Chestnut Street, Clearwater, Florida 33756 or P.O. Box 601, Palm Harbor, Florida 34682; Daniel Manry, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; Senior Attorney Stacy N. Robinson Pierce, 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 23rd day of may, 2006.

Sharon Wachman