

STATE OF FLORIDA
FLORIDA REAL ESTATE APPRAISAL BOARD

Final Order No. BPR-2005-07095 Date: 12-21-05
DIVISION OF
ADMINISTRATIVE
HEARINGS
FILED
Department of Business and Professional Regulation
AGENCY CLERK

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DEPARTMENT OF BUSINESS
AND PROFESSIONAL REGULATION,

Petitioner,

vs.

WILLIAM RUTAN,

Respondent.

By: Brandi M. Nichol
Sarah Wachman, Agency Clerk
DBPR Case No: 2001500562
DOAH Case No: 05-1235
License No.: RD 2791
pmH
closed

FINAL ORDER

THIS CAUSE came before FLORIDA REAL ESTATE APPRAISAL BOARD (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on October 4, 2005, in Orlando, Florida, for the purpose of considering Administrative Law Judge Patricia M. Hart's Recommended Order, a copy of which is attached hereto as Exhibit A, in the above styled cause and Respondent's Exceptions to the Recommended Order, a copy of which is attached hereto as Exhibit B. Petitioner was represented by Assistant General Counsel Alfonso Santana. Respondent was represented by Steven W. Johnson, Esquire. The Board was represented by Assistant Attorney General Brian J. Stabley.

After a review of the complete record in this matter, including consideration of the Administrative Law Judge's Recommended Order, Respondent's Exceptions, and the arguments of each party, the Board makes the following findings and conclusions:

RULINGS ON EXCEPTIONS

1. Respondent timely filed several exceptions to the ALJ's Recommended Order on September 15, 2005.
2. Petitioner did not file a response to Respondent's exceptions.

3. The Board rejected all of Respondent's Exceptions to the Administrative Law Judge's Recommended Order.

4. Exception A was withdrawn by Respondent as Respondent found support in the record for the Administrative Law Judge's findings.

5. Exception B is rejected. Respondent did not assert that any testimony or finding of fact in paragraph 7 of the Recommended Order was not supported by competent, substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law as required by Section 120.57(1)(l) of the Florida Statutes. It is the responsibility of the Administrative Law Judge (ALJ) to determine which facts are credible and pertinent to the findings of fact.

6. Exception C is rejected. Respondent did not assert that any testimony or finding of fact in paragraph 9 of the Recommended Order was not supported by competent, substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law as required by Section 120.57(1)(l) of the Florida Statutes. It is the responsibility of the Administrative Law Judge (ALJ) to determine which facts are credible and pertinent to the findings of fact.

7. Exception D is rejected. Respondent did not assert that any testimony or finding of fact in paragraph 10 of the Recommended Order was not supported by competent, substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law as required by Section 120.57(1)(l) of the Florida Statutes. It is the responsibility of the Administrative Law Judge (ALJ) to determine which facts are credible and pertinent to the findings of fact.

8. Exception E is rejected. Respondent did not assert that any testimony or finding of fact in paragraph 15 of the Recommended Order was not supported by competent, substantial evidence or that the proceedings on which the findings were based did not comply with the

essential requirements of law as required by Section 120.57(1)(l) of the Florida Statutes. It is the responsibility of the Administrative Law Judge (ALJ) to determine which facts are credible and pertinent to the findings of fact.

9. Exception F is rejected. Respondent's Exception F states that the Administrative Law Judge correctly cited Rule 2-5 of USPAP in paragraph 22, but misapplied it in this case. Paragraph 22 of the Administrative Law Judge's Recommended Order only cited Standards Rule 2-5 of USPAP and did not apply Standards Rule 2-5 of USPAP to any facts; therefore, Respondent's Exception F is rejected.

10. Exception G is rejected. Respondent's Exception to the Administrative Law Judge's Recommended Penalty are based upon the Board granting Exceptions B-F. Since the Board did not grant Respondent's Exceptions B-F, the Board declined to modify the Administrative Law Judge's recommended penalty.

FINDINGS OF FACT

11. The Administrative Law Judge's findings of fact as set forth in the Recommended Order are approved, adopted, and incorporated herein by reference.

12. There is competent, substantial evidence to support the Administrative Law Judge's findings of fact as adopted by the Board.

CONCLUSIONS OF LAW

13. The Board has jurisdiction of this matter pursuant to Sections 120.569 and 120.57(1), Florida Statutes, Chapter 475, Part II, Florida Statutes, and Chapter 61J1 of the Florida Administrative Code.

14. The Administrative Law Judge's conclusions of law are approved, adopted, and incorporated herein by reference.

15. There is competent, substantial evidence to support the Administrative Law Judge's conclusions of law as adopted by the Board.

RECOMMENDED PENALTY

16. The Administrative Law Judge's recommended penalty is approved and adopted by the Board in its entirety.

PENALTY


WHEREFORE, IT IS HEREBY **ORDERED AND ADJUDGED** that:

Respondent's Certified Residential Real Estate Appraiser license is **REVOKED**.

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

DONE AND ORDERED this 15 day of December, 2005.

FLORIDA REAL ESTATE
APPRAISAL BOARD

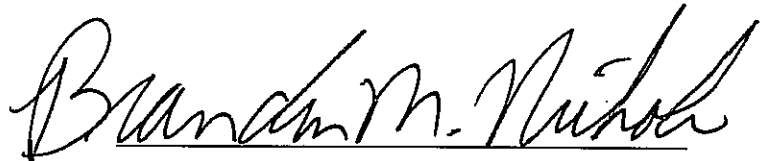

By: Michael E. Murphy, Acting Director
Division of Real Estate on behalf of the
Florida Real Estate Appraisal Board

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 HEALTH 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 William Rutan, 17503 SW 85th Ave., Miami, Florida 33157; Respondent's Counsel Steven W. Johnson, Esq., 100 South Bumby Avenue, Suite B, Orlando, Florida 32803; Patricia M. Hart, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; Alfonso Santana, 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 21st day of December, 2005.


Brandon M. Nichol