

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DIVISION OF BUSINESS AND)
PROFESSIONAL REGULATION,)
DIVISION OF REAL ESTATE,)
)
Petitioner,)
)
vs.) Case No. 05-1235PL
)
WILLIAM RUTAN,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on June 23, 2005, by video teleconference, with the parties appearing in Miami, Florida, before Patricia M. Hart, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, who presided in Tallahassee, Florida.

APPEARANCES

For Petitioner: Alfonso Santana, Esquire
Department of Business and
Professional Regulation,
Division of Real Estate
400 W. Robinson Street, Suite 801
Orlando, Florida 32801

For Respondent: Steven W. Johnson, Esquire
100 South Bumby Avenue, Suite B
Orlando, Florida 32803

STATEMENT OF THE ISSUE

Whether the Respondent committed the violations alleged in the Administrative Complaint dated March 3, 2004, and, if so, the penalty that should be imposed.

PRELIMINARY STATEMENT

In an Administrative Complaint dated March 3, 2004, the Department of Business and Professional Regulation, Division of Real Estate ("Division") charged William Rutan with six statutory violations arising out of his conduct in June 1999 as the supervising appraiser on a parcel of property known as 9690 Northwest 35th Street, Coral Springs, Florida. In Counts I through IV, the Division charged that Mr. Rutan violated Section 475.624(14), Florida Statutes (1999),¹ on the grounds that he "violated a standard for the development or communication of a real estate appraisal or other provision of the Uniform Standards of Professional Appraisal Practice," specifically Rules 1-1(a), (b), (c); 1-5(a), (b)(i), and (c); and 2-2(b)(xii) of the Uniform Standards of Professional Appraisal Practice ("USPAP"). In Count V of the Administrative Complaint, the Division charged that Mr. Rutan failed to exercise reasonable diligence in developing an appraisal report, in violation of Section 475.624(15), Florida Statutes. In Count VI of the Administrative Complaint, the Division charged that Mr. Rutan should be disciplined pursuant to Section 475.624(10),

Florida Statutes, for being found guilty for a second time of misconduct that warrants disciplinary action. Mr. Rutan timely filed a request for a formal hearing, and the Division transmitted the matter to the Division of Administrative Hearings for assignment of an administrative law judge. Pursuant to notice, the final hearing was held on June 23, 2005.

At the hearing, the Division presented the testimony of Dennis Thresher, Larry Federman, and Michael Cibene; Petitioner's Exhibits 1, 4, 8 through 11, 14, 15, 17, 19, and 22 through 25 were offered and received into evidence. Mr. Rutan testified in his own behalf and presented the testimony of Manuel Villate and Henry Cusido; Respondent's Exhibits 1 and 2 were offered and received into evidence. At the Division's request, official recognition was taken of Chapters 475 and 542, Florida Statutes; Rule 61J1, Florida Administrative Code; and the 1999 edition of the USPAP promulgated by the Appraisal Standards Board of the Appraisal Foundation.

The one-volume transcript of the proceeding was filed with the Division of Administrative Hearings on July 15, 2005. The parties filed a Joint Motion to Request an Extension of Time to File the Proposed Recommended Order, and the time for filing the proposed recommended orders was extended to August 1, 2005, in an Order entered July 22, 2005. The Petitioner timely filed its Proposed Recommended Order; the Respondent filed his Proposed

Recommended Order on August 4, 2005. Both submittals have been considered in preparing this Recommended Order.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. The Division is the state agency responsible for investigating complaints filed against registered, licensed, or certified real estate appraisers and for prosecuting disciplinary actions against such persons. § 455.225, Fla. Stat. (2005). The Florida Real Estate Appraisal Board ("Board") is the state agency charged with regulating, licensing, and disciplining real estate appraisers registered, licensed, or certified in Florida. § 475.613(2), Fla. Stat. (2005).

2. At the times material to this proceeding, Mr. Rutan was a certified residential real estate appraiser in Florida, having been issued a license numbered RD 2791. Mr. Rutan had been a certified residential real estate appraiser in Florida for approximately 10 years. At the time of the events giving rise to this action, Mr. Rutan was employed by Excel Appraisal.

3. Mr. Rutan interviewed and hired Frank Delgado, Juan Carlos Suarez, and Ricardo Tundador to work at Excel Appraisal as state-registered assistant real estate appraisers. At all

times material to this proceeding, Mr. Rutan was Mr. Suarez's supervisor and was responsible for Mr. Suarez's appraisals.

4. On or about June 16, 1999, Mr. Suarez prepared an appraisal for property located at 9690 Northwest 35th Street, Coral Springs, Florida, in which he valued the property at \$325,000. The property is a multi-family, four-plex property.

5. Mr. Rutan signed Mr. Suarez's appraisal as the supervisory appraiser and certified on the appraisal that he had inspected the property by placing an "X" in the "Inspect Property" box. The appraisal form signed by Mr. Rutan contains a "Supervisory Appraiser's Certification" that provides:

If a supervisory appraiser signed the appraisal report, her or she certifies and agrees that: I directly supervise the appraiser who prepared the appraisal report, have reviewed the appraisal report, agree with the statements and conclusions of the appraiser, agree to be bound by the appraiser's certifications numbered 4 through 7 above, and am taking full responsibility for the appraisal and the appraisal report.

6. It is the custom in the industry that a supervisory appraiser who certifies that he or she has inspected the property in question must inspect the property inside as well as outside before he or she can sign the appraisal. Mr. Rutan inspected the property the day after he signed the appraisal and only inspected the property from the outside.

7. The appraisal report on the property at issue herein listed a prior sale of the property from Rodney Way to Doyle Aaron for \$325,000 on April 28, 1999. The appraisal failed to list the sale of the property on the same day from Julius Ohren to Rodney Way for \$230,000. Mr. Rutan did not investigate the relevant sales history of the property and was unaware, therefore, that the property had been "flipped" and was considerably overvalued in the appraisal report.² Mr. Rutan admitted that he did not investigate prior sales and that the property was substantially overvalued.

8. Mr. Suarez listed in the appraisal report three "comparable sales," that is, sales of properties similar in type and location to the property being appraised, to support the valuation of \$350,000. The first comparable property used in the appraisal was property located at 4102 Riverside Drive, Coral Springs, which was listed in the appraisal report as being previously sold for \$315,000. Earlier on the day that the Riverside Drive property was sold for \$315,000, however, it had been sold for \$185,000. Mr. Rutan failed to research and review the sales of the comparable properties that were included in Mr. Suarez's appraisal report, and the "comparable sale" of property on Riverside Drive was not properly used to value the property that was the subject of the appraisal report at issue herein.

9. Mr. Suarez failed to make the proper adjustments in value on the Riverside Drive property based on the features of that property that were superior to the features of the subject property. The Riverside Drive property was located on a canal and should have had a negative adjustment with respect to the subject property, which was not on a canal. Mr. Suarez included a positive adjustment in the comparable sales data for the Riverside Drive property. Mr. Rutan failed to review the comparable property adjustments submitted by Juan Carlos Suarez for the appraisal of the subject property.

10. Mr. Suarez overstated the rental income of the subject property in his appraisal report. Mr. Rutan failed to research and review the rental figures Mr. Suarez submitted.

11. When Mr. Rutan was notified by Brokers Funding, a company that purchased the loans on the subject property, that there were problems with the appraisal done by Mr. Suarez, Mr. Rutan checked additional comparable sales and interviewed the tenants in the building. He also hired another appraiser to conduct an appraisal of the subject property. Based on his investigation and Mr. Salimino's appraisal, Mr. Rutan discovered the problems in Mr. Suarez's appraisal and report of the subject property. Mr. Salimino's appraisal for the subject property was \$290,000, but Mr. Rutan estimated that his appraisal would have been approximately \$250,000.

12. Mr. Rutan fired Mr. Suarez, as well as Frank Delgado, and Ricardo Tundador, all three of whom were subsequently indicted on federal charges relating to real-estate-appraisal scams.

13. In a Final Order entered on April 22, 2002, Mr. Rutan was found guilty by the Board of violating Sections 475.624(14) and 475.624(15), Florida Statutes, and was ordered to pay an administrative fine of \$1,000.

14. Mr. Rutan trusted Mr. Suarez to do an honest and competent appraisal and was rushed by Mr. Suarez to approve the appraisal on the subject property.

15. The evidence presented by the Division is sufficient to establish with the requisite degree of certainty that Mr. Rutan failed to carry out his responsibilities as Mr. Suarez's supervisory appraiser, failed to review Juan Carlos Suarez's appraisal for accuracy, and failed to inspect the inside of the subject property, which caused or contributed to the substantially over-stated valuation of the subject property.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2005).

17. In the Administrative Complaint, the Division seeks, among other penalties, the revocation of Mr. Rutan's real estate appraisal certification. Therefore, the Division has the burden of proving the allegations in the Administrative Complaint by clear and convincing evidence. See Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); and McKinney v. Castor, 667 So. 2d 387 (Fla. 1st DCA 1995).

18. Clear and convincing evidence has been defined as evidence which:

"[r]equires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established."

Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

19. Section 475.624, Florida Statutes, is a penal statute and, as such, must be strictly construed in favor of Mr. Rutan. See Munch v. Department of Professional Regulation, Division of Real Estate, 592 So. 2d 1136, 1138 (Fla. 1st DCA 1992.)

20. Section 475.624, Florida Statutes, provides that the Board may, among other things, revoke or suspend the

certification of a real estate appraiser or reprimand, fine, or put a certified appraiser on probation if the appraiser has committed any one of several acts enumerated in the statute.

21. Section 475.628, Florida Statutes, provides:

Each appraiser registered, licensed, or certified under this part shall comply with the Uniform Standards of Professional Appraisal Practice. Statements on appraisal standards which may be issued for the purpose of clarification, interpretation, explanation or elaboration through the Appraisal Foundation shall also be binding on any appraiser registered, licensed, or certified under this part.

22. Standards Rule 2-5 of the USPAP provides 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."

23. The Division alleged in Counts I through IV of the Administrative Complaint that Mr. Rutan violated Section 475.624(14), Florida Statutes, which provides that disciplinary action may be taken against an appraiser who "[h]as 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. In Count I, the Division alleged that Mr. Rutan violated Section 475.624(14) by violating the standards set

forth in the USPAP Standards Rules 1-1(a),(b), and (c). USPAP Rule 1-1 provides:

"In developing a real property appraisal, an appraiser must:

(a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal.

* * *

(b) not commit a substantial error of omission or commission that significantly affects an appraisal.

* * *

(c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affect the credibility of those results.

Based on the findings of fact herein, the Division has met its burden of proving by clear and convincing evidence that Mr. Rutan, through his lack of oversight as Mr. Suarez's supervising appraiser, violated the USPAP Standards Rule 1-1(a), (b), and (c) and, therefore, violated Section 475.624(14), Florida Statutes. Mr. Rutan, as Mr. Suarez's supervising appraiser, did not employ the recognized methods and techniques as established in the USPAP, he committed a substantial error of omission or commission that significantly affected the appraisal, and he committed careless errors that affected the

credibility of the appraisal report by signing an appraisal report with an inflated value of \$325,000 without having conducted an inspection of the property and without having independently reviewed the sales history of the property, the history of the comparable sales included in the appraisal, or the rental income on the property.

25. In Count II of the Administrative Complaint, the Division alleged that Mr. Rutan violated the USPAP Standards Rules 1-5(a),(b)(i), and (c). The USPAP Standards Rule 1-5 provides in pertinent part:

In developing a real property appraisal, an appraiser must:

(a) analyze any current Agreement of Sale, option, or listing of the property, if such information is available to the appraiser in the normal course of business.

(b) analyze any prior sales of the property that occurred within the following minimum time periods:

(i) one year for one-to-four-family residential property

* * *

(c) reconcile the quality and quantity of data available and analyzed within the approaches used and the applicability or suitability of the approaches used.

Because it did not present any evidence with respect to the USPAP Standards Rule 1-5(a), the Division failed to meet its burden of proving by clear and convincing evidence that

Mr. Rutan violated this Standards Rule. Based on the findings of fact herein and for the reasons stated in paragraph 23 above, the Division met its burden of proving by clear and convincing evidence that Mr. Rutan, through his lack of oversight as Mr. Suarez's supervising appraiser, violated the USPAP Standards Rules 1-5(b)(i) and (c) and, therefore, violated Section 475.624(14), Florida Statutes.

26. In Count III of the Administrative Complaint, the Division alleged that Mr. Rutan violated the USPAP Standards Rule 2-2(b)(xii), which provides:

Each written real property appraisal report must be prepared under one of the following three options and prominently state which option is used: Self-Contained Appraisal Report, Summary Appraisal Report, or Restricted Use Appraisal Report.

* * *

(b) the content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:

* * *

(xii) include a signed certification in accordance with Standards Rule 2-3."

The USPAP Standards Rule 2-3 states in pertinent part that "[e]ach written real property appraisal report must contain a signed certification" that includes certain specified provisions. Based on the findings of fact herein, the Division failed to prove that Mr. Rutan violated USPAP Rules 2-2(b)(xii)

and 2-3. The copy of the appraisal report submitted into evidence by the Division was signed by Mr. Rutan, and it includes the certifications required by the USPAP Standards Rules 2-2(b)(xii) and 2-3.

27. In Count V of the Administrative Complaint, the Division alleged that Mr. Rutan violated Section 475.624(15), Florida Statutes, which provides that disciplinary action may be taken against an appraiser who "[h]as failed or refused to exercise reasonable diligence in developing an appraisal or preparing an appraisal report." Based on the findings of fact herein and for the reasons stated in paragraph 23 above, the Division has met its burden of proving by clear and convincing evidence that Mr. Rutan violated Section 475.624(15), Florida Statutes.

28. In Count VI of the Administrative Complaint, the Division alleged that Mr. Rutan violated Section 475.624(10), Florida Statutes, which provides that disciplinary action may be taken against an appraiser who

[h]as been found guilty, for a second time, of any misconduct that warrants disciplinary action, or has been found guilty of a course of conduct or practice which shows that she or he is incompetent, negligent, dishonest, or untruthful to an extent that those with whom she or he may sustain a confidential relationship may not safely do so.

Based on the findings of fact herein, the Division has met its burden of proving by clear and convincing evidence that Mr. Rutan is in violation of Section 475.624(10), Florida Statutes, because he has been previously found guilty of violating Sections 475.624(14) and 475.624(15), Florida Statutes, and a fine of \$1000 was imposed.

29. The penalties that may be imposed for violations of Section 475.624, Florida Statutes, include the revocation or suspension of a real estate appraiser's certification. Florida Administrative Code Rule 61J1-8.002(3)(q), and (r) provides that the usual penalty imposed by the Board for a violation of Section 475.624(14) or (15), Florida Statutes, ranges from suspension of the certification for five years to revocation of the certification, together with an administrative fine of \$1000. Florida Administrative Code Rule 61J1-8.002(3)(m) provides that the usual penalty imposed by the Board for a violation of Section 475.624(10), Florida Statutes, is revocation of the certification.

30. The evidence presented by Mr. Rutan in mitigation of the penalty has been considered and found insufficient to justify deviation from the penalties established in Florida Administrative Code Rule 61J1-8.002(3).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Real Estate Appraisal Board enter a final order finding that William Rutan is guilty of violating Section 475.624(10), (14), and (15), Florida Statutes, as alleged in Counts I through IV of the Administrative Complaint and revoking Mr. Rutan's Florida certification as a real estate appraiser.

DONE AND ENTERED this 31st day of August, 2005, in Tallahassee, Leon County, Florida.



PATRICIA M. HART
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of August, 2005.

ENDNOTES

^{1/} Unless otherwise indicated, all references to the Florida Statutes herein are to the 1999 edition.

^{2/} The practice of buying a property and selling it for a much higher price in an extremely short period of time is commonly referred to as a "flip" sale.

COPIES FURNISHED:

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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.