

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)	
PROFESSIONAL REGULATION,)	
DIVISION OF REAL ESTATE,)	
)	
Petitioner,)	
)	
vs.)	Case No. 06-3389PL
)	
FRED R. CATCHPOLE,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER

Notice was provided and on March 20, 2007, a formal hearing was held in this case. The authority for conducting the hearing is set forth in Sections 120.569 and 120.57(1), Florida Statutes (2006). The hearing was conducted by video-teleconference between sites in Pensacola, Florida, and Tallahassee, Florida. The hearing was held by Charles C. Adams, Administrative Law Judge.

APPEARANCES

For Petitioner: Racquel White, Esquire
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For Respondent: Martin A. Pedata, Esquire
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STATEMENT OF THE ISSUE

Should the Florida Real Estate Appraisal Board (the Board) take action against Respondent, a licensed real estate appraiser (appraiser), for violations set forth in Chapter 475, Part II, Florida Statutes (1995)?

PRELIMINARY STATEMENT

On August 6, 2003, the Board in Florida Department of Business and Professional Regulation, Division of Real Estate, Petitioner, vs. Fred R. Catchpole, Respondent, FDBPR Case No. 200180523, charged Respondent with violations of Chapter 475, Part II, Florida Statutes (1995), in his capacity as an appraiser. The Administrative Complaint dealt with an appraisal report allegedly developed and communicated on January 9, 1997, for property known as 693 Broad Street, Pensacola, Florida. The exact details of the Allegations of Material Fact are discussed in the Conclusions of Law. Based upon the alleged facts, the Board in three separate counts accuses Respondent of violating Chapter 475, Part II, Florida Statutes (1995), and Standards Rules with the Uniform Standards of Professional Appraisal Practice (1997), commonly known as USPAP. Those counts to the Administrative Complaint are explained in the Conclusions of Law.

Respondent was provided a form referred to as an "Election of Rights." It allowed Respondent to decide upon options in addressing the Administrative Complaint. He chose to dispute the

allegations of fact contained in the Administrative Complaint. By that choice, he was perceived as petitioning for a formal hearing pursuant to Section 120.57(1), Florida Statutes, by signing his election under oath on October 28, 2003. He attached a further explanation of his position in writing. That correspondence was dated October 17, 2003.

On September 11, 2006, the Division of Administrative Hearings (DOAH) in the person of Robert Cohen, Director and Chief Judge, received the request for formal hearing, together with a copy of the Administrative Complaint and Election of Rights Form with supporting correspondence. The case was assigned to the present administrative law judge as DOAH Case No. 06-3389PL.

On October 2, 2006, Respondent filed a Motion to Dismiss the Administrative Complaint With Prejudice. On October 5, 2006, Petitioner filed a Motion to Clarify and Motion to Exclude. On October 13, 2006, an order was entered declining to rule on the Motion to Dismiss, in that it had been filed by Respondent, pro se, at a time he was represented by counsel.

On November 2, 2006, Respondent filed a Motion to Dismiss the Administrative Complaint With Prejudice for failure to perfect service. On that same day, Petitioner filed a Motion to Strike Respondent's Second Motion to Dismiss. On November 3, 2006, having clarified that the more recent Motion to Dismiss had been filed by counsel for Respondent, an order was entered

allowing Petitioner to address the merits of the second motion. On November 9, 2006, Petitioner filed a Response to Respondent's Motion to Dismiss.

On November 13, 2006, the parties filed a Joint Motion to Continue.

On November 14, 2006, an order was entered denying the more recent motion to dismiss. On that date, the cases was reset for hearing on January 29, 2007.

On December 1, 2006, Respondent filed his motion to reconsider his last motion to dismiss and a new motion to dismiss. On that date, Respondent filed a request for subpoena to provide discovery.

On December 5, 2006, an order was entered establishing the manner in which Respondent could request the issuance of subpoenas to be completed and served by Respondent.

On December 8, 2006, Petitioner filed a response to the more recent Respondent's renewed motion to dismiss.

On December 12, 2006, an order was entered denying the motion for reconsideration of the November 14, 2006, order, denying the more recent motion to dismiss on its grounds and establishing a means for Respondent to address the consequences of delay in the prosecution in accordance with Carter v. Department of Professional Regulation, 633 So. 2d 3 (Fla. 1994)

prior to hearing, as had been pled in the December 1, 2006, motion to dismiss.

On December 19, 2006, Respondent filed a Notice of Change of Representation Notice of Probable Request for Continuance. On that same date, Petitioner responded to that notice.

On December 20, 2006, Respondent filed a Motion for Order to Compel Discovery. On that date Respondent filed a Response to Petitioner's Response to Respondent's Notice of Change of Representation Notice of Probable Request for Continuance. On that date, Respondent filed a Withdrawal of Counsel Motion by Respondent Request for Telephonic Hearing.

On December 28, 2006, Respondent filed a Motion for the Court to Determine Prejudice under Carter v. Department of Professional Responsibility [sic].

On January 9, 2007, an order was entered denying the Respondent's Request for Withdrawal of Counsel, a motion pro se, due to lack of service on his attorney.

On January 11, 2007, a Motion for Substitution of Attorneys was filed by Respondent's present attorney.

On January 12, 2007, an order was entered granting that motion relieving prior counsel and accepting the substitution of present counsel.

On January 18, 2007, Respondent filed an Emergency Motion for Continuance. On that same, date Respondent filed a Motion for Court to Consider All Previous pro se Motions Filed by the Respondent.

On January 22, 2007, Petitioner filed a Response to Respondent's Emergency Motion to Continue and Motion for Consideration of Respondent's pro se motions.

On January 25, 2007, an order was entered refusing to accept and rule upon prior pro se motions by Respondent.

On January 29, 2007, an order was entered continuing the case and rescheduling it to be heard on March 20, 2007.

On March 8, 2007, Respondent filed another motion to dismiss alluding to the consequences of delay in the prosecution and in the effort to establish a defense. At hearing, it was determined to address the motion to dismiss in the Recommended Order for reasons explained in the hearing transcript.

At hearing, Petitioner called Fred Clanton and Daniel Ryland as its witnesses. The latter witness who is a licensed appraiser was not allowed to testify as an expert for reasons that are explained in the hearing transcript. Petitioner's Exhibits numbered 3 through 7 were admitted into evidence. Respondent testified in his own behalf and adopted the testimony of Victor Harrison, Respondent in DOAH Case No. 06-3387PL. The Respondent's Exhibit numbered 2, taken from Petitioner's Exhibit

numbered 2, the Investigative Report, pages 98 through 142; Respondent's Exhibit numbered 25; Respondent's Exhibits numbered 1 through 56 taken from the Harrison pre-hearing exhibits were offered, excluding 3 through 8, 30, 31, 34, 46, 50 and 51, which were not offered. Respondent's Exhibit numbered 25 upon which ruling was reserved is denied admission. Respondent's Exhibits numbered 32 and 33, initially denied admission, are admitted. All other exhibits offered by Respondent were admitted at hearing.

Respondent's Exhibit numbered 56 is Petitioner's responses to Respondent Harrison's first interrogatories in DOAH Case No. 06-3387PL.

In compliance with a prehearing order, the parties entered into a stipulation of undisputed facts. Those undisputed facts are set forth in the findings of fact to the Recommended Order.

On April 13, 2007, a hearing transcript was filed. It only refers to DOAH Case No. 06-3389PL. It is also in association with DOAH Case No. 06-3387PL. On April 23, 2007, the parties filed proposed recommended orders and other argument. All written submissions by the parties have been considered in preparing the Recommended Order.

Respondent Catchpole's Motion to Dismiss calling for disposition based upon alleged prejudice occasioned by delay in the prosecution is denied.^{1/}

FINDINGS OF FACT

Stipulated Facts:

1. Respondent is a state-licensed appraiser.
2. On or about January 9, 1997, Victor Harrison, Respondent and Rhonda Guy developed and communicated an appraisal report for property commonly known as 693 Broad Street, Pensacola, Florida 32819.
3. In developing the subject property appraisal report, the Cost Approach and the Sales Comparison Approach were utilized.

Additional Facts:

4. Eventually the circumstances concerning the Uniform Residential Appraisal Report (the Report) at the 693 Broad Street, Pensacola, Florida, property (the Property) came to Petitioner's attention upon a complaint. On February 13, 2001, the complaint was made. The complaint was made by Daniel Alvin Ryland, a Florida-licensed appraiser, who has provided appraisal services in Escambia and Santa Rosa counties in Florida. The investigation of the complaint covered the period February 20, 2001, through December 26, 2001.
5. Benjamin F. Clanton was the principal investigator. At present, he is an investigator supervisor for Petitioner. He has held that position since 2002.

6. Mr. Clanton started investigating appraisal cases in 1995, when he retired from the Birmingham Police Department in Birmingham, Alabama. In that year, he was employed by the Alabama Real Estate Appraisal Board. While there, he took three courses: the Appraisal of Real Estate, a 45-hour course; the Basic How to Appraise, a 25-hour course; and Uniform Standards of Professional Appraisal Practices (USPAP), a 16-hour course. He took an update in USPAP in 1997, a four-hour course. Mr. Clanton continued with Appraisal Institute courses or courses involving appraisal principles and procedures, basic income capitalization, residential case studies and a national USPAP course and other updates.

7. As part of the investigation Mr. Clanton interviewed Respondent Victor Harrison, DOAH Case No. 06-3387PL. Mr. Clanton sought documentation from that Respondent in the interest of the recreation of the Cost Approach in the Report. Mr. Clanton asked for the work files supporting the Report. That Respondent provided work files. Discrete information concerning recreation of the Cost Approach was not received by Mr. Clanton.

8. From his observations related to the Cost Approach within the Report, Mr. Clanton describes problems with the calculations of the Cost Approach where the stated effective age in the comments on the Cost Approach was 25 years. That calculated to be significantly different, in his understanding,

than the number used in the depreciation in the Cost Approach. The Report reflected a remaining economic life of 35 years and a total life expectancy of 60 years. He refers to the Report's statement of the effective age of the Property as 15 years. In his testimony, Mr. Clanton describes the age life depreciation method leading to establishment of the effective age, but he was never qualified as an expert to allow consideration of the testimony on the age life depreciation method or other issues related to the Cost Approach. Therefore no further facts are found on that topic.

9. When interviewed by Mr. Clanton, Respondent acknowledged that there were errors in the Cost Approach formulations attributed to Respondent, Victor Harrison, DOAH Case No. 06-3387PL. The nature of any errors was not explained. Without that explanation they become inconsequential.

10. More particularly, the Property neighborhood is slightly north of Interstate 10 in Pensacola, Florida, west of Pine Forrest Road, to the west side of Highway 29, and south of Alternate 90. The Property is located in what is referred to as the Ensley area. The Property is one of the largest residences in the Ensley area, in particular in Ensley Gardens. Immediately off of Highway 29 are rows of commercial buildings. Behind those rows is a railroad track. The Property is about 200 feet from the railroad track. An Escambia County utilities substation,

pumping station, is located north of the Property. The Escambia County public utilities facility is about 200 feet from the Property. The Property is located north of Broad Street. The Property is on a large lot. Homes across from the Property on Broad Street are located on smaller lots.

11. The property is not in a Planned Unit Development (PUD). The area of the subject property is not homogenous, in that the homes vary widely in quality, design, age and size.

12. By choice of the appraiser, the Sales Comparison Approach was used in determining the appraisal for the Property. There were three comparable sales.

13. At the time the Report was written the Property was 27 years old.

14. Comparable sale one was two years old.

15. Comparable sale two was 12 years old.

16. Comparable sale three was 9 years old.

17. The Property site was 120 feet by 260 feet according to the Report. This was larger than the comparable sales sites.

18. Respondent Victor Harrison, DOAH Case No. 06-3387PL, in providing information from the work file related to the Report, included information from a Multiple Listing Service (MLS) for January 1997 from the Pensacola Association of Realtors. In reference to comparable sale one, the MLS refers to the location as Creekside Oaks Subdivision, a luxury home under construction

and a Parade Home entry. It refers to a sprinkler system, pantry, cathedral ceilings, security alarm, two+ closets in the master bedroom, separate shower in the master bedroom, an open patio, laundry/utility room, on a golf course, with a two-car garage. It has a whirlpool for the master bedroom bath. It has double pane glass.

19. In relation to comparable sale two, the MLS refers to soaring cathedral ceilings with a fireplace in living room and screen porch, a hot tub and gorgeous yard with pool. The pool is described as an in-ground pool. There is a reference to a unique atrium, an inside laundry, walk-in closets, sprinkler systems, laundry/utility room and security alarm.

20. The MLS pertaining to comparable sale three refers to the Kings Road Subdivision in Cantonment, whereas the Report refers to the location as Pensacola. In relation to comparable sale three on Kings Road in Cantonment, that neighborhood has deed restrictions limiting the type of homes and the size of homes. It has a public sewer. It has underground utilities. It has a concrete curb and gutter. The house is described as having a fireplace, sprinkler system, screen porch, high ceilings, security alarm, two-car garage, with a garden tub in the master bath. It refers to a laundry inside. There is a pool.

21. The Report in the section under the Comparable Sales Approach, under the sales comparison analysis that refers to

design and appeal described the Property and the comparables as ranch/average.

22. The Property and the comparable sales properties were all described as suburban-average as to location. The sites were described as average for the Property and inferior for the comparables with a \$3000 positive adjustment in each comparable sale to compensate for the difference.

23. The Property did not have a pool. Two of the comparable sales had pools.

24. Mr. Clanton asked the Respondent, Victor Harrison, DOAH Case No. 06-3387PL, to provide him with a second appraisal report on the Property. Respondent agreed to provide it and mailed it to Mr. Clanton. A second appraisal report was not received by Mr. Clanton. Nothing more is known about a second appraisal report.

25. In the appraiser certification signed by Respondent Victor Harrison, DOAH Case No. 06-3387PL, as appraiser, and signed by Respondent, as supervisory appraiser, under item 8 it was stated: "I have personally inspected the interior and exterior areas of the subject property" Within item 8 to the appraisers certification, it went on to say that there was a personal inspection of " . . . the exterior of all properties listed as comparables in the appraisal report. . . . "

26. Respondent, Victor Harrison, DOAH Case No. 06-3387PL, did not inspect the interior of the Property as part of the appraisal, by contrast to an awareness of the exterior. Respondent served as the supervisory appraiser and as such did not inspect the Property in any respect. Respondent reviewed comparable property data in relation to the sales comparison analysis but was not involved in the selection process in choosing comparable sales.

27. The form used in preparing the Report is referred to variously as Freddie Mac Form 70 6/93 and Fannie Mae Form 1004 6/93. In the Report in the section involving subject matter, Fred and Juanita Hicks were listed as borrowers and the current owners of the Property. The property rights being appraised were under the heading "fee simple." There was a reference to a lender/client as Home Star Mortgage Lending.

28. The results of the Report did not lead to any direct harm to a consumer, in particular, the listed borrowers, Fred and Juanita Hicks.

CONCLUSIONS OF LAW

29. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding in accordance with Sections 120.569, 120.57(1), and 455.225, Florida Statutes (2006).

30. In this case the Board has disciplinary authority in accordance with Section 475.624, Florida Statutes (1995), which states:

Discipline.-The board . . . 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

That provision goes on to describe specific grounds for discipline, some of which are implicated in this action.

31. Respondent is a "certified real estate appraiser," who holds certificate number RH-69 issued by the Department of Business and Professional Regulation on November 18, 1996. § 475.612, Fla. Stat. (2006).

32. In relation to this case the following definitions pertain. § 475.611, Florida Statutes (1995):

(1) As used in this part, the term:

(a) 'Appraisal' or 'appraisal services' means the services provided by certified, licensed, or registered appraisers, and includes:

1. 'Appraisal assignment' denotes an engagement for which a person is employed or retained to act, or could be perceived by third parties or the public as acting, as an agent or a disinterested third party in rendering, an unbiased analysis, opinion, review, or conclusion relating to the nature, quality, value, or utility of specified interests, or aspects of, identified real property.

2. 'Analysis assignment' denotes appraisal services that relate to the employer's or client's individual needs or investment objectives and includes specialized marketing, financing, and feasibility studies as well as analyses, opinions, and conclusions given in connection with activities such as real estate brokerage, mortgage banking, or real estate counseling.

* * *

(c) 'Appraisal report' means any written or oral analysis, opinion, or conclusion issued by an appraiser relating to the nature, quality, value, or utility of a specified interest in, or aspect of, identified real property, and includes a report communicating an appraisal analysis, opinion, or conclusion of value, regardless of title. However, in order to be recognized in a federally related transaction, an appraisal report must be written.

* * *

(e) 'Appraiser' means any person who is a registered real estate appraiser, licensed real estate appraiser, or a certified real estate appraiser. An appraiser renders a professional service and is a professional within the meaning of s. 95.11(4)(a).

(f) 'Board' means the Florida Real Estate Appraisal Board established under this section.

* * *

(i) 'Department' means the Department of Business and Professional Regulation.

* * *

(k) 'Licensed appraiser' means a person who is licensed by the department as qualified to issue appraisal reports for residential real property of one to four residential units or on such real estate or real property as may be authorized by federal regulation.

(l) 'Registered appraiser' means a person who is registered with the department as qualified to perform appraisal services under the supervision of a licensed or certified appraiser.

(m) 'Uniform Standards of Professional Appraisal Practice' means the most recent standards approved and adopted by the Appraisal Standards Board of the Appraisal Foundation.

33. Petitioner bears the burden of proof in this disciplinary case. Proof sufficient to sustain the allegations in the Administrative Complaint must be by clear and convincing evidence. See § 120.57(1)(j), Fla. Stat. (2006); Department of Banking and Finance Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996) and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). The term clear and convincing evidence is explained in the case In re: Davey, 645 So. 2d 398 (Fla. 1994), quoting with approval from Slomowitz v. Walker, 429 So. 2d 797 (Fla. 4th DCA 1983).

34. Recognizing the disciplinary nature of this case Section 475.624, Florida Statutes (1995), in pertinent part, is strictly construed in determining whether a violation has occurred. See State v. Pattishall, 99 Fla. 296 and 126 So. 147

(Fla. 1930); Munch v. Dept. of Bus. and Prof. Reg., 592 So. 2d 1136 (Fla. 1st DCA 1992); Fleishman v. Dept. of Bus. and Prof. Reg., 441 So. 2d 122 (Fla. 3rd DCA 1983); and Lester v. Department of Professional and Occupational Regulation, State Board of Medical Examiners, 348 So. 2d 923 (Fla. 1st DCA 1977).

35. The allegations of material fact in relation to the Administrative Complaint state:

4. On or about January 9, 1997, Victor Harrison, Respondent, and Rhonda E. Guy developed and communicated an appraisal report (Report) for property commonly known as 693 Broad Street, Pensacola, FL 32819 (Property).

5. The Report estimates the value of the Property as \$167,000.

6. In developing the Report, Respondent utilized a cost approach analysis.

7. The Report states that the remaining economic life is 35 years.

8. The data utilized for the Cost Approach indicates the Property's effective age is 25 years.

9. The Report states that the Property's effective age is 15 years.

10. The Report states that the depreciation value is \$11,100.

11. An \$11,100 depreciation value, when compared to other data used in calculating the cost approach of the Report, indicates that an effective age much smaller than 15 was utilized.

12. In developing the Report, Respondent utilized the sales comparison approach.

13. In developing the sales comparison approach, the Respondent utilized three comparable properties (comparables) separate from the Property.

14. All three comparables utilized were superior to the Property.

15. In developing the sales comparison approach, the Respondent did not make adequate adjustments for all three comparables used.

16. At all times material, the neighborhood surrounding the Property was a depressed area where boarded up residences, condemned residences, commercial properties, and foreclosures are not uncommon.

17. At all times material the Property was in close proximity to the Burlington Northern Railroad tracks.

18. The Burling Northern Railroad tracks are a source of external obsolescence to the Property.

19. At all times material the Property was in close proximity to the Fleetco Truck and Trailer Repair company.

20. The Fleetco Truck and Trailer Repair company is a source of external obsolescence to the Property.

21. At all times material the Property was in close proximity to the Escambia County Utilities Authority.

22. The Escambia County Utilities Authority is a source of external obsolescence to the Property.

23. The Report mentions no external obsolescence.

24. Comparable property one is in a golf course community.

25. Comparable property three is in a golf community.

26. Comparable property two is in an elite subdivision in the Pensacola area.

27. None of the comparables' values are as adversely affected by their surrounding neighborhood as the Property's value is adversely affected by its surrounding neighborhood.

28. All comparables sites, despite their smaller size, are superior in value to the Property.

29. The Report states that all comparable sites are inferior to the Property's site.

30. The Report is a summary appraisal.

31. The Report does not state the intended use of the appraisal.

36. Based upon the factual allegations in the Administrative Complaint, Respondent is charged in Counts I through III with statutory violations.

37. Count I states:

. . . Respondent is guilty of having failed to exercise reasonable diligence in developing an appraisal report in violation of Section 475.624(15), Florida Statutes.

38. Section 475.624(15), Florida Statutes (1995), allows discipline if Respondent:

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

39. No competent evidence was presented from a person with sufficient insight into what constitutes reasonable diligence on the part of a certified real estate appraiser when developing an appraisal or in preparing an appraisal report to allow a legal conclusion to be reached. Therefore no violation has been shown concerning Count I.

40. Count II states:

. . . Respondent has violated a standard for the development or communication of a real estate appraisal or other provision of the Uniform Standards of Professional Appraisal Practice in violation of Section 475.624(14), Florida Statutes.

41. Section 475.624(14), Florida Statutes (1995), allows discipline if Respondent:

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.

42. By virtue of the allegations of material fact, where it is alleged, "The report does not state the intended use of the appraisal," as well as the argument set forth in the Petitioner's Proposed Recommended Order, it is determined that the provision of the USPAP alluded to is Standards Rule 1-2 (1997), which states:

In developing a real property appraisal, an appraiser must observe the following specific appraisal guidelines: . . . consider the purpose and intended use of the appraisal . . .

43. Petitioner failed to present a witness that was established as competent to explain the expectations for a real estate appraiser concerning consideration of the purpose and intended use of the appraisal as contemplated in USPAP Standards Rule 1-2. Nothing else presented in the case serves to support Petitioner's case so that clear and convincing evidence may be found that Respondent violated USPAP Standards Rule 1-2. No violation has been proven concerning Count II.

44. Count III states:

Respondent is guilty of misrepresentation, culpable negligence, or breach of trust in any business transaction in violation of Section 475.624(2), Florida Statutes.

45. Section 475.624(2), Florida Statutes (1995), allows discipline if Respondent:

Has been guilty of . . . misrepresentation
. . . culpable negligence or breach of trust
in any business transaction . . .

Respondent has not been proven guilty of any material misrepresentation, or culpable negligence or breach of trust in the business transaction represented through the Report. Therefore, no violation of Section 475.624(2), Florida Statutes (1995), is proven as alleged in Count III.

RECOMMENDATION

Upon consideration of the facts found and the conclusions of law reached, it is

RECOMMENDED:

That a final order be entered dismissing the Administrative Complaint against Respondent.

DONE AND ENTERED this 30th day of May, 2007, in Tallahassee, Leon County, Florida.

S

CHARLES C. ADAMS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of May, 2007.

ENDNOTE

1/ Concerning the factual predicate for the Motion to Dismiss, Respondent through testimony refers to the delay following the Department's receipt of the citizen's complaint leading to the Administrative Complaint. Reference is made to problems with the memory of witnesses; the regrouping of data to support the appraisal report that cannot be located; neighborhood data no longer available because of delay; the death of owners of the subject property; information from lenders that provided mortgages on the subject property not now available and a change in the Pensacola Association of Realtors MLS system that prohibited the retrieval of data.

In accordance with Section 455.225(4), Florida Statutes (2000), "The department shall also refer to the board any investigation or disciplinary proceeding not before the Division of Administrative Hearings pursuant to chapter 120 or otherwise completed by the department within 1 year after the filing of a complaint." Respondent also cites to the authority set forth in Carter, supra, to support his position on the consequences of delay. Recognizing the nature of the Administrative Complaint that forms the basis for this prosecution, the unavailability of the categories of information described is not deemed significant such as to establish prejudice in the defense. This determination is made in recognition that Section 455.225(4), Florida Statutes (2000), in its expectation that the Department shall refer to the Board an investigation or disciplinary proceeding within one year after the complaint was made is not a bar to prosecution. It creates no absolute relief for Respondent when violated. The test in Carter, supra, has been followed as well.

This decision on the Respondent's Motion to Dismiss is reached upon a consideration of the written arguments submitted by the parties post-hearing.

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.