

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
DIVISION OF REAL ESTATE,)
)
Petitioner,)
)
vs.) Case No. 07-1051PL
)
ASHLEY LYNN SEIBERT,)
)
Respondent.)
_____)

RECOMMENDED ORDER

The Administrative Law Judge (ALJ) assigned to this case by the Division of Administrative Hearings (DOAH) conducted the formal hearing on July 16, 2007, in Fort Myers, Florida.

APPEARANCES

For Petitioner: Racquel A. White, Esquire
Department of Business and
Professional Regulation,
400 West Robinson Street, Suite 801, North
Orlando, Florida 32801-1757

For Respondent: (No Appearance)

STATEMENT OF THE ISSUES

The issues are whether Respondent committed the acts alleged in the Administrative Complaint; whether those acts violate Subsections 475.6221(1) and (2) and 475.624(2), (4),

and (14), Florida Statutes (2004),¹ and Florida Administrative Code Rule 61J1-4.010(6)²; and, if so, what penalty, if any, should be imposed against Respondent's license.

PRELIMINARY STATEMENT

On August 9, 2006, Petitioner filed a seven-count Administrative Complaint against Respondent. Respondent timely requested an administrative hearing, and Petitioner referred the matter to DOAH to conduct the hearing.

At the hearing, Petitioner presented the testimony of two witnesses and submitted 12 exhibits for admission into evidence. Respondent did not appear at the hearing and did not otherwise submit any evidence. The identity of the witnesses and exhibits and any attendant rulings are reported in the Transcript of the hearing filed with DOAH on August 27, 2007.

Petitioner filed its Proposed Recommended Order (PRO) on August 10, 2007. Respondent did not file a PRO.

FINDINGS OF FACT

1. Petitioner is the state agency responsible for regulating persons licensed in Florida as real estate appraisers. Respondent is licensed in Florida as a residential real estate appraiser pursuant to license number 5451. Petitioner issued the current license to Respondent at 6775 Overlook Drive, Fort Myers, Florida 33919.

2. On June 5, 2005, Respondent was a trainee appraiser in the state pursuant to registration RI 0005451. Respondent developed, signed, and communicated an appraisal report (the report) for property without the knowledge or supervision of a licensed appraiser (her supervisor). The property is located at 2248 Ephraim Avenue, Fort Myers, Florida (the property).

3. Respondent affixed the digital signature of her supervisor to the report without his knowledge or consent and checked the certification box on the report indicating that her supervisor personally inspected the property. Respondent's supervisor never inspected the property.

4. Respondent's supervisor did not assign the appraisal to Respondent. Respondent accepted payment for the report from someone other than her supervisor, specifically the appraisal client. Respondent did not enter into the experience training log, which is reviewed by her supervisor and others, the name, address, type of property appraised, and the signature and license number of her supervisor.

5. The previous findings show that Respondent misrepresented herself as a licensed appraiser while Respondent was still a trainee. In addition, Respondent started her own appraisal company while she was a trainee. The name of the company is Hot Appraisals LLC.

CONCLUSIONS OF LAW

6. DOAH has jurisdiction over the parties and the subject matter of this proceeding pursuant to Section 120.57(1), Florida Statutes (2007). The parties received adequate notice of the administrative hearing.

7. The burden of proof is on Petitioner. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Heath and Rehabilitation Services, 348 So. 2d 349 (Fla. 1st DCA 1977). Petitioner must show by clear and convincing evidence that Respondent committed the acts alleged in the Administrative Complaint and the reasonableness of any proposed penalty. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

8. Petitioner satisfied its burden of proof. The evidence is clear and convincing that Respondent committed the acts and violations alleged in the Administrative Complaint.

9. The evidence is clear and convincing that Respondent misrepresented herself as a licensed appraiser, concealed her status as a trainee, and is guilty of false pretenses, dishonest conduct, and breach of trust in a business relationship within the meaning of Subsection 475.624(2). The same acts violated Subsection 475.624(4).

10. Respondent performed appraisal services without the direct supervision of her supervisor in violation of Subsection

475.6221(1). Respondent's acceptance of fees directly from the client violated Subsection 475.6221((2)). The failure of Respondent to maintain a work-file for her appraisals violates the Uniform Standards of Professional Appraisal Practice (USPAP) and Subsection 475.624(14).

11. Section 475.624 authorizes a range of disciplinary action against Respondent's license. Rule 61J1-8.002(3), as adopted in 2004, recommends a range of penalties for the violations committed by Respondent. The rule contains no recommended penalty for the violations of Subsections 475.6221(1) and (2), but recommends: license revocation for a violation of Subsection 475.624(2); any penalty up to revocation and a fine up to \$5,000 for the violation of Subsection 475.624(4); and a penalty ranging from a five-year license suspension to revocation and \$1,000 fine for the violation of Subsection 475.624(14). Fla. Admin. Code R. 61J1-8.002(3)(e), (g), and (q).

12. Rule 61J1-8.002(4) authorizes deviation from the recommended range of penalties based on express mitigating or aggravating factors. Only one mitigating factor is present. Respondent has no disciplinary history. Fla. Admin. Code R 61J1-8.002(4)(b)3.

13. Several aggravating factors are present. Respondent caused financial harm to the consumer by charging the consumer

for an appraisal that was not developed and certified by a licensed appraiser. The Administrative Complaint contains numerous counts against Respondent. Respondent was not licensed as an appraiser when she misrepresented that she was licensed as an appraiser. Fla. Admin. Code R. 61J1-8.002(4)(b)1, 2, and 4.

14. Subsection 455.227(3)(a) authorizes the recovery of investigative and administrative costs. Petitioner incurred such costs in the amount of \$3,492.10.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that Petitioner enter a final order finding Respondent guilty of the charges alleged in the Administrative Complaint, ordering Respondent to pay \$3,492.10 in investigative and administrative costs, and revoking Respondent's residential appraiser license.

DONE AND ENTERED this 14th day of September, 2007, in
Tallahassee, Leon County, Florida.



DANIEL MANRY
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of September, 2007.

ENDNOTES

^{1/} All references to subsections, sections, and chapters are to Florida Statutes (2004) unless otherwise stated.

^{2/} All references to rules are to rules promulgated in the Florida Administrative Code in effect in 2004 unless otherwise stated.

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.