

**FILED**  
Department of Business and Professional Regulation  
Deputy Agency Clerk  
CLERK Brandon Nichols  
Date **9/3/2009**  
File # **2009-07315**

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
FLORIDA REAL ESTATE APPRAISAL BOARD

**FILED**  
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DIVISION OF REAL ESTATE  
ADMINISTRATIVE SERVICES

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION,  
DIVISION OF REAL ESTATE,

Petitioner,  
vs.

DBPR CASE NO.: 2007046700  
DOAH CASE NO.: 08-2721PL  
LICENSE NO.: RD 3236

KATHLEEN GREEN,  
Respondent.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION,  
DIVISION OF REAL ESTATE,

Petitioner,  
vs.

DBPR CASE NO.: 2007046698  
DOAH CASE NO.: 08-2722PL  
LICENSE NO.: RI 16667

LEE ANN MOODY,  
Respondent.

FINAL ORDER

THIS CAUSE came before the FLORIDA REAL ESTATE APPRAISAL BOARD (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on August 3, 2009, in Orlando, Florida, for the purpose of considering the Administrative Law Judge's

Recommended Order, Petitioners' Exceptions to the Recommended Order, Respondent's Response to Petitioner's Exceptions to DOAH's Recommended Order, Respondents' Joint Exceptions to DOAH's Recommended Order, Petitioner's Response to Respondents Kathleen Green's and Lee Ann Moody's Exceptions to the Recommended Order (copies of which are attached hereto as Exhibits A, B, C, D, and E, respectively) and pending motions in the above-styled cause. Petitioner was represented by Robert Minarcin, Senior Attorney. Respondents were not present or represented by counsel at the hearing.

The procedural history of this case is that a Final Order previously entered in this case was vacated on the basis that the Board had not had a quorum at the time it considered the case. At the time the case was previously heard, the Board believed that there were only five appointed members of the Board. Subsequently, it was discovered that a now-former Board member had not resigned, as had been believed. With six members rather than five, four were necessary for a quorum. Between the previous meeting and this meeting, that now-former Board member did submit his resignation, and the case was scheduled to be re-heard at this August meeting.

Upon review of the Recommended Order, the Exceptions, the Responses to Exceptions, the pending motions, the argument of the Petitioner, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

## RULINGS ON MOTIONS

1. Respondents' Second Joint Motion To Dismiss for Lack of Florida Real Estate Appraisal Board (FREAB) Quorum is DENIED. The three duly qualified members of the Board do constitute a quorum and are authorized to take action. Section 455.207(3), Florida Statutes, provides, in pertinent part, that, unless otherwise provided by law, a quorum is 51 per cent or more of the "appointed members of the board." [emphasis added] While the Board has seven slots for members, there are two vacancies and only five appointed members. Respondents' contention that Rule 61J1-1.003, Florida Administrative Code, trumps the statutory provision is not well-taken. A rule cannot enlarge or contravene a statute. Section 120.52(8), Florida Statutes. As for the contention that the definition in the Board's rule is tantamount to something that is "Otherwise provided by law. . . ," that contention fails because a rule is not a law. It is noted that if there were not a quorum, then Respondents' Motion could not be ruled upon because the members present would not be authorized to take official action. The remedy for lack of a quorum is not dismissal, but delay until a quorum is present.

2. Respondents' Motion To Dismiss for Failure To Issue a Written Final Order Within the 90 Day Limit Imposed by Florida Statute 120.569(2)(1)(2) [sic] is DENIED for the reasons stated on the record by Petitioner. While it is true that the statute states that the Final Order must be rendered within 90 days after the issuance of a Recommended Order, the statute does not state any consequences of a failure to timely enter the Final Order. The statute is directory, not mandatory. The Board reviewed the

recitation of prejudice set forth in Paragraph 13 of the Motion and determined that the matters stated do not demonstrate prejudice caused by delay in the issuance of the Final Order.

3. Respondents' Motion for Reconsideration/Rehearing of Final Order rendered May 12, 2009, is moot.

3. Respondent's Motions To Dismiss the Administrative Complaints for Failure To State a Cause of Action are DENIED. While Section 455.225, Florida Statutes, does provide statutory requirements and procedures for the handling of complaints against licensees, it does not require that the Administrative Complaint recite that the requirements of Section 455.225 have been met.

### RULING ON EXCEPTIONS

#### PETITIONER'S EXCEPTIONS

The Board reviewed and considered the Petitioner's Exceptions to the Recommended Order and Respondents' Responses and ruled as follows:

1. The Board GRANTED Petitioner's first Exception, which was to the entirety of Paragraph 27 of the Conclusions of Law in the Recommended Order, based on the reasons stated in Petitioner's written analysis. The substituted conclusion of law is as reasonable as or more reasonable than the conclusion rejected. Count II of the

Administrative Complaint is not dismissed, but is proven based on application of the law as interpreted herein to the facts as found in the Recommended Order.

2. Petitioner's second Exception was withdrawn on the record at the hearing.

3. The Board GRANTED Petitioner's third Exception, which was to Paragraph 38, lines 7-12, of the Conclusions of Law, based on the reasons stated in Petitioner's written analysis. The substituted conclusion of law is as reasonable as or more reasonable than the conclusion rejected. The scrivener's error in the identification of the count was corrected. Paragraph 38 addressed Count VII, not Count VI. Count VII is not dismissed, but is proven based on application of the law as interpreted herein to the facts as found in the Recommended Order.

4. The Board GRANTED Petitioner's fourth Exception, which was to the entirety of Paragraph 40 of the Conclusions of Law in the Recommended Order, based on the reasons stated in Petitioner's written analysis. The substituted conclusion of law is as reasonable or more reasonable than the conclusion rejected. Count VIII is not dismissed, but is proven based on application of the law as interpreted herein to the facts as found in the Recommended Order.

#### RESPONDENTS' EXCEPTIONS

\_\_\_\_\_The Board reviewed and considered the Respondents' Exceptions to the Recommended Order and Petitioner's Responses and ruled as follows:

5. The Board DENIED Respondents' Exception I on the basis that it is not a proper exception. Section 120.57(1)(k), Florida Statutes, provides that agency does not

need to rule on an exception that "does not clearly identify the disputed portion of the recommended order by page number or paragraph. . . ."

6. The Board DENIED Respondents' Exception II on the basis that it is not a proper exception. Section 120.57(1)(k), Florida Statutes, provides that agency does not need to rule on an exception that "does not clearly identify the disputed portion of the recommended order by page number or paragraph. . . ."

7. The Board DENIED Respondents' Exception III, which takes exception to the recitation of the specific factual allegations in Paragraph 20 of the Recommended Order which were found to have been proven, based on the Board's finding that there is competent substantial evidence in the record to support the Administrative Law Judge's findings of fact.

8. The Board DENIED Respondents' Exception IV to Paragraph 13 of the Recommended Order for the reasons stated in Petitioner's written response to Respondent's Exceptions. There is competent substantial evidence in the record to support the Administrative Law Judge's findings of fact.

9. The Board DENIED Respondents' Exception V to Paragraphs 34 and 35 of the Recommended Order for the reasons stated in Petitioner's written response to Respondent's Exceptions. There is competent substantial evidence in the record to support the Administrative Law Judge's findings of fact.

10. The Board DENIED Respondents' Exception VI to expert witnesses' testimony on the basis that it is not a proper exception. Section 120.57(1)(k), Florida

Statutes, provides that agency does not need to rule on an exception that "does not clearly identify the disputed portion of the recommended order by page number or paragraph. . . ."

11. The Board DENIED Respondents' Exception VII on the basis that it is not a proper exception. Section 120.57(1)(k), Florida Statutes, provides that agency does not need to rule on an exception that "does not clearly identify the disputed portion of the recommended order by page number or paragraph. . . ."

#### FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

2. There is competent substantial evidence to support the findings of fact found by the Board.

#### CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 475, Florida Statutes.

2. The conclusions of law set forth in the Recommended Order, as amended by the Board's rulings on the Exceptions, are approved and adopted and incorporated herein by reference. Specifically, the Board finds that the charges on Counts II, V, VII, and VIII were proven by clear and convincing evidence.

PENALTY

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Administrative Law Judge be REJECTED based primarily on the Board's determination that the Conclusions of Law in the Recommended Order contained significant errors which led to the erroneous conclusion that Counts II, VII, and VIII had not been proven. Because of the changes, the penalties to be imposed on the Respondents are not just for a records violation, as found by the Administrative Law Judge, but also for more substantive violations of the Practice Act.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

AS TO RESPONDENT KATHLEEN GREEN:

1. Respondent shall be placed on probation for a period of one (1) year, which probation may NOT be terminated early. While on probation, Respondent shall not supervise any trainee appraisers.

2. Respondent shall pay an administrative fine in the amount of \$2000.00. Respondent shall pay the fine by check payable to Florida Department of Business and Professional Regulation, Division of Real Estate, Real Estate Appraisal Board at 400 West Robinson Street, Suite 801N, Orlando, Florida 32801-1757, within the term of probation.

3. While on probation, Respondent must attend two (2) complete two (2) day Florida Real Estate Appraisal Board meetings from the commencement of the meetings



until 5:00 p.m. on both meeting days. Attendance at these meetings shall not count towards Respondent's continuing education or licensure renewal requirements.

4. In addition, while on probation, Respondent shall also provide original evidence of satisfactory completion of 30 hours of continuing education appraisal courses, 15 hours of which shall be the USPAP course. The education required herein is in addition to any requirement for Respondent to maintain her real estate appraisal license.

AS TO RESPONDENT LEE ANN MOODY

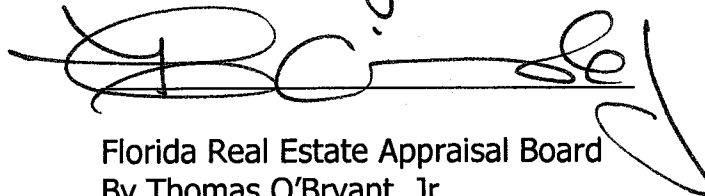
2. Respondent shall be placed on probation for a period of one (1) year, which probation may NOT be terminated early. While on probation, Respondent shall not supervise any trainee appraisers.

2. Respondent shall pay an administrative fine in the amount of \$1000.00. Respondent shall pay the fine by check payable to Florida Department of Business and Professional Regulation, Division of Real Estate, Real Estate Appraisal Board at 400 West Robinson Street, Suite 801N, Orlando, Florida 32801-1757, within the term of probation.

3. While on probation, Respondent must attend two (2) complete two (2) day Florida Real Estate Appraisal Board meetings from the commencement of the meetings until 5:00 p.m. on both meeting days. Attendance at these meetings shall not count towards Respondent's continuing education or licensure renewal requirements.

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

DONE AND ORDERED this 26 day of August, 2009.



Florida Real Estate Appraisal Board  
By Thomas O'Bryant, Jr.  
Director, Division of Real Estate

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 has been furnished by U.S. Mail to: **Kathleen Green**, 2680 Brook Forest Way, Jay, FL 32565, to **Lee Ann Moody**, 1077 Yellowstone Pass, Cantonment, FL 32533, to **Thomas M. Brady, Esquire**, 3150 Navy Blvd., Suite 204, Post Office Box 12584, Pensacola, FL 32591-2584; and to **Harry L. Hooper, Administrative Law Judge**, Division of

Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, FL 32399-3060; and by interoffice mail to **James Harwood, Chief Attorney**, Division of Real Estate, 400 West Robinson Street, Suite 801N, Orlando, Florida 32801, and to **Mary Ellen Clark**, Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; this 3<sup>rd</sup> day of September, 2009.

Brandon M. Nichols

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(Endo) Kathleen Green  
(Rest) 2680 Brook Forest Way  
(Endo) Jay, Florida 32565  
Total

Sent FO 8/3/9 RM  
Street, Apt. No., or PO Box No.  
City, State, ZIP+4  
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(E) Lee Ann Moody  
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(Rest) P. O. Box 12584  
(Endo) Pensacola, FL 32591-2584  
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