

**FILED**  
Department of Business and Professional Regulation  
Deputy Agency Clerk  
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Date **5/12/2009**  
File # **2009-03585**

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

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

**FILED**  
09 MAY 13 PM 1:38  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

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 April 24,  
2009, by telephone conference call, 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 (RO), 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 represented by Thomas M. Brady, Esquire.

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

#### RULINGS ON MOTIONS

1. Respondent's Request for Oral Argument Via Telephone Conference Call was GRANTED.

2. 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.

3. Respondents' Joint Motion and Amended Motion To Dismiss for Lack of Florida Real Estate Appraisal Board (FREAB) Quorum are 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. 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.

### RULING ON EXCEPTIONS

#### PETITIONER'S EXCEPTIONS

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

1. The Board GRANTED Petitioner's Exception 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 Exception 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 Exception 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

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. . . ." In addition, on the merits, the Board adopts the reasoning set forth in Petitioner's written response to this exception.

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. . . .” In addition, on the merits, the Board adopts the reasoning set forth in Petitioner’s written response to this exception.

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, as amended by the Board’s rulings on the Exceptions, 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 458, 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. In determining the penalties to be imposed on the respective parties, the Board notes that because of the relative nature of training, experience, and responsibility between a supervisor and a trainee, the penalty to be imposed on the trainee should be less.

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

1. Respondent shall be placed on probation for a period of one (1) year, which probation may NOT be terminated early.

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.

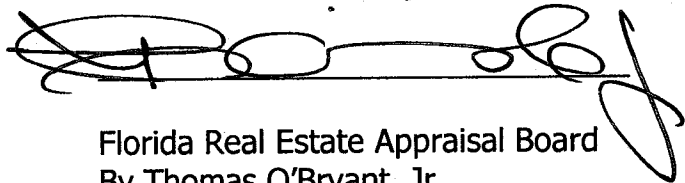


4. In addition, while on probation, Respondent shall also provide original evidence of satisfactory completion of 30 hours of continuing education appraisal courses, 15 hours of which shall be the USPAP course. The education required herein is in addition to any requirement for Respondent to maintain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

5. Should Respondent complete the above-listed requirement(s) before the conclusion of the stated probationary period and provide satisfactory proof thereof, probation shall be terminated at that time.

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

DONE AND ORDERED this 6 day of May, 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 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 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 12<sup>th</sup> day of may, 2009.

Brandon M. Nichols

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