

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
DIVISION OF REAL ESTATE,)
)
Petitioner,)
)
vs.) Case No. 08-3271PL
)
CATHY C. PFEIFFER,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on December 1, 2008, in Pensacola, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Robert Minarcin, Esquire
Department of Business &
Professional Regulation
400 West Robinson Street, Suite N801
Orlando, Florida 32801-1757

For Respondent: Cathy Pfeiffer, pro se
120 Mount Pilot Street
Cantonment, Florida 32533

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent violated Subsections 475.624(14) and 475.624(15), Florida Statutes (2005),¹ and if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On October 3, 2007, Petitioner, Department of Business and Professional Regulation, Division of Real Estate (Department), filed a ten-count Administrative Complaint against Respondent, Cathy C. Pfeiffer (Ms. Pfeiffer), alleging that she had violated Subsections 475.6221(2), 475.624(4), 475.624(2), 475.624(15), and 475.624(14) and Section 475.6222, Florida Statutes, and various provisions of the Uniform Standards of Professional Appraisal Practice (USPAP) (2006). Ms. Pfeiffer requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings on July 7, 2008, for assignment of an Administrative Law Judge to conduct the final hearing. The case was originally assigned to Administrative Law Judge P. Michael Ruff, but was transferred to Administrative Law Judge Susan B. Harrell to conduct the final hearing.

The final hearing was continued several times. On November 18, 2008, Petitioner filed a Motion to Amend Administrative Complaint, requesting that the references to the USPAP be changed to the 2005² version rather than the 2006 version. At the final hearing, the motion was granted, and the Amended Administrative Complaint was deemed filed as of December 1, 2008.

At the final hearing, counsel for the Department stated that the Department was withdrawing Counts I, II, III, VI, VII,

and VIII. Thus, the remaining counts in the Amended Administrative Complaint at issue are Counts, IV, V, IX, and X.

At the final hearing, the Department called Diana Lynn Wood and Paul Andrew Grimes as its witnesses. Petitioner's Exhibits 1 through 7 were admitted in evidence. Ms. Pfeiffer testified in her own behalf and called Philip Miller and John William Priller, Sr., as her witnesses. Respondent's Exhibits 1 through 6, 8 through 11, 14, and 15 were admitted in evidence.

The one-volume Transcript was filed on January 5, 2009. The parties agreed to file their proposed recommended orders within ten days of the filing of the Transcript. The parties timely filed their Proposed Recommended Orders, which have been considered in the writing of this Recommended Order.

FINDINGS OF FACT

1. At all times material to this proceeding, Ms. Pfeiffer was a certified residential appraiser licensed by the State of Florida, License No. RD3059. She first became licensed in 1998.

2. On June 12, 2006, Ms. Pfeiffer accepted an assignment from Diane Purser to appraise her home located in Gulf Breeze, Florida. Mrs. Purser was in the midst of a divorce proceeding with her husband Mark Purser and wanted to have the appraisal to determine the market value of their home prior to a meeting with her attorney. Mrs. Purser wanted the appraisal to be expedited.

3. Ms. Pfeiffer gave the appraisal assignment to Brian Choron, who, at that time, was a registered trainee real estate appraiser, License No. RI-10526. Ms. Pfeiffer was Mr. Choron's supervisor.

4. Mr. Choron went to Mrs. Purser's home and physically inspected the home while Mr. and Mrs. Purser were present.

5. Mr. Choron developed an appraisal report of the Purser property. Mr. Choron extracted data from appraisals of other property in the area in developing the report on the Purser property. This is not an uncommon practice in the appraisal profession.

6. Mr. Choron sent the appraisal report to Ms. Pfeiffer for her review. Ms. Pfeiffer reviewed the report and sent it to Mrs. Purser. Ms. Pfeiffer signed the appraisal on June 15, 2006, as the appraiser. Mr. Choron did not sign the appraisal.

7. By signing the appraisal report as the appraiser, Ms. Pfeiffer certified, among other things, that she had "performed a complete visual inspection of the interior and exterior areas of the subject property." Additionally, she certified the following:

I personally prepared all conclusions and opinions about the real estate that were set forth in this appraisal report. If I relied on significant real property appraisal assistance from any individual or individuals in the performance of this appraisal or the preparation of the

appraisal report, I have named such individual(s) and disclosed the specific tasks performed in this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in this appraisal report; therefore, any changes made to this appraisal is unauthorized and I will take no responsibility for it.

On page four³ of the appraisal report, Ms. Pfeiffer stated: "Brian Choron RI10526 assisted in the research, inspection, preparation of this appraisal report." On page 17 of the appraisal report, Ms. Pfeiffer indicated that she had inspected the property.

8. Ms. Pfeiffer admits that she incorrectly signed the appraisal report as the appraiser, that she should have signed as the supervisory appraiser, and that Mr. Choron should have signed the appraisal report as the appraiser.

9. The appraisal report listed the effective date of the appraisal as June 14, 2006. The final estimated value of the Purser property was listed as \$275,000.00.

10. Mr. Purser contacted Ms. Pfeiffer and was upset about some discrepancies which he perceived to be in the appraisal report. Ms. Pfeiffer and Mr. Choron developed a revised appraisal report, hereinafter referred to as the "revised appraisal." The revised appraisal was communicated to Mrs. Purser in October 2006. The final estimated value of the

property was listed the same as it was in the original appraisal, \$275,000.00.

11. The revised appraisal listed Mr. Choron as the appraiser. On page 8 of the revised appraisal, Mr. Choron signed the revised appraisal as the appraiser with a signature date of June 15, 2006. On the same page of the revised appraisal, Ms. Pfeiffer signed the revised appraisal as the supervisory appraiser with a signature date of June 15, 2006. She also indicated on that page that she had not inspected the property.

12. On page 18 of the revised appraisal, Mr. Choron signed the revised appraisal as the appraiser with a signature date of October 20, 2006. Ms. Pfeiffer signed on the same page as the supervisory appraiser with a signature date of June 15, 2006. Ms. Pfeiffer checked boxes on page 18 of the revised appraisal, indicating that she both did and did not inspect the property.

13. There are no issues with the valuation of the Purser property. None of the experts who testified at the final hearing found fault with the market value placed on the property.

CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2008).

15. The Department has the burden to establish the allegations in the Amended Administrative Complaint by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996). In Counts IV, V, IX, and X of the Amended Administrative Complaint, the Department alleges that Ms. Pfeiffer violated Subsections 475.624(14) and 475.624(15), Florida Statutes, which provide:

The board may deny an application for registration, licensure, or certification; may investigate the actions of any appraiser registered, licensed, or certified under this part; may reprimand or impose an administrative fine not to exceed \$5,000 for each count or separate offense against any such appraiser; and may 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, if it finds that the registered trainee, licensee, or certificateholder:

* * *

(14) 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.

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

16. The Department also alleged in the Amended Administrative Complaint that Ms. Pfeiffer violated Rules 2-1(a) and 2-3 of the USPAP, which provide:

2-1 Each written or oral real property appraisal report must:

(a) clearly and accurately set forth the appraisal in a manner that will not be misleading;

* * *

2-3 (This Standards Rule contains binding requirements from which departure is not permitted.)

Each written real property appraisal report must contain a signed certification that is similar in content to the following form:

I certify that, to the best of my knowledge and belief:

--the statements of fact contained in this report are true and correct.

--the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions that are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.

--I have no (or the specified) present or prospective interest in the property that is the subject of this report and no (or the specified) personal interest with respect to the parties involved.

--I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.

--my engagement in this assignment was not contingent upon developing or reporting predetermined results.

--my compensation for completing this assignment is not contingent upon the

development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.

--my analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.

--I have (or have not) made a personal inspection of the property that is the subject of this report. (If more than one person signs this certification, the certification must clearly specify which individuals and which individuals did not make personal inspection of the appraised property.)

--no one provided significant real property appraisal assistance to the person signing this certification. (If there are exceptions, the name of each individual providing significant real property appraisal assistance must be stated.)

17. The Department has established by clear and convincing evidence that Ms. Pfeiffer did not use reasonable diligence in preparing the original appraisal report in violation of Subsection 475.624(15), Florida Statutes. She signed the appraisal report as the appraiser and indicated that she had inspected the property. However, she did acknowledge in the appraisal report that Mr. Choron had assisted in the inspection, research, and preparation of the report.

18. By certifying in the original appraisal report that she had inspected the property, she violated Rule 2-3 of the USPAP and therefore violated Subsection 475.624(14), Florida Statutes.

19. The evidence did not establish that Ms. Pfeiffer intentionally tried to mislead her client in the preparation of the appraisal report. Mr. and Mrs. Purser were present when Mr. Choron physically inspected the property. Ms. Pfeiffer issued a revised appraisal when showed that Mr. Choron was the appraiser who did the appraisal. In the revised appraisal, Ms. Pfeiffer indicated in one section that she did not inspect the property but in another section indicated that she did and did not inspect the property. Again, since the Pursers were present when Mr. Choron inspected the property, they had knowledge of who actually inspected the property and would not have been misled by the statements in the revised appraisal.

20. In the revised report, both Mr. Choron and Ms. Pfeiffer put the signature date of the report as June 15, 2006, on page 8 of the revised report. On page 18 of the revised appraisal, Mr. Choron put a signature date of October 20, 2006, and Ms. Pfeiffer put a signature date of June 15, 2006. Again, the report was not proofed in a diligent manner, but there was no attempt to intentionally mislead the

client. The Department has failed to establish that Ms. Pfeiffer violated Rule 2-1(a) of the USPAP.

21. Florida Administrative Code Rule 61J1-8.002 sets forth the disciplinary guidelines to be used by the Florida Real Estate Appraisal Board (Board). The guidelines list the usual range of penalties for a violation of Subsections 475.624(14) and 475.624(15), Florida Statutes, as a five-year suspension to revocation and administrative fine of \$1,000.00. Florida Administrative Code Rule 61J1-8.002(4) provides that the Board may deviate from the guidelines when there are aggravating or mitigating circumstances.

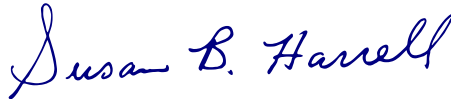
22. Ms. Pfeiffer has demonstrated mitigating circumstances that would require a lesser penalty than those listed in the penalty guidelines. There was no harm to the consumer or public. The market value assigned to the Purser property was proper. There was no intent to mislead Mrs. Purser about who inspected the property because Mrs. Purser was present when the property was inspected by Mr. Choron. Ms. Pfeiffer tried to correct her errors in the revised report.

23. No evidence was presented by the Department as to the amount of costs incurred in the investigation and prosecution of this case.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered finding Ms. Pfeiffer guilty of violating Subsections 475.624(14) and 475.624(15), Florida Statutes, and Rule 2-3 of the USPAP; dismissing Count IX of the Amended Administrative Complaint; placing Ms. Pfeiffer on probation for two years; imposing an administrative fine of \$1,000.00; and requiring Ms. Pfeiffer to complete the 15-hour USPAP course.

DONE AND ENTERED this 27th day of January, 2009, in Tallahassee, Leon County, Florida.



SUSAN B. HARRELL
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of January, 2009.

ENDNOTES

^{1/} Unless otherwise indicated, all references to the Florida Statutes are to the 2005 version.

^{2/} Unless otherwise indicated, all references to the USPAP shall be to the 2005 version.

^{3/} The identifying page numbers are located in the upper right corner of the page.

COPIES FURNISHED:

Robert Minarcin, Esquire
Department of Business &
Professional Regulation
400 West Robinson Street, Suite N801
Orlando, Florida 32801-1757

Cathy Pfeiffer
120 Mount Pilot Street
Cantonment, Florida 32533

Ned Luczynski, General Counsel
Department of Business and
Professional Regulation
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-0792

Thomas W. O'Bryant, Jr., Director
Division of Real Estate
Department of Business and
Professional Regulation
400 West Robinson Street, Suite 802N
Orlando, Florida 32801

Frank K. Gregoire, Chairman
Real Estate Appraisal Board
Department of Business and
Professional Regulation
400 West Robinson Street, Suite 801N
Orlando, Florida 32802-1900

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.