

**FILED**  
Department of Business and Professional Regulation  
Deputy Agency Clerk  
CLERK Brandon Nichols  
Date **5/12/2009**  
File # **2009-03584**

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

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

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

Petitioner,

vs.

DBPR CASE NO.: 2007044536  
DOAH CASE NO.: 08-4417PL  
LICENSE NO.: RD 4120

JESSALYN RODRIGUEZ,

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 March 30, 2009, in Orlando, Florida, , for the purpose of considering the Administrative Law Judge's Recommended Order, the Respondent's Exceptions to the Recommended Order, and the Petitioner's Response to Respondent's Exceptions to the Recommended Order copies of which are attached hereto as Exhibits A, B, and C, respectively). Petitioner was represented by Robert Minarcin, Senior Attorney. Respondent was not present or represented.

Upon review of the Recommended Order, the Exceptions and Response, the argument of record, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

#### RULINGS ON EXCEPTIONS

1. Respondent's Exception A is denied on the basis it is not a proper Exception as set forth in Section 120.57(1)(k), Florida Statutes, and Rule 28-106.217, Florida Administrative Code, in that it does not identify the legal basis for the exception and fails to include appropriate and specific citations to the record and on the basis that there is competent and substantial evidence to support the Findings of Fact set forth in the Recommended Order.

2. Respondent's Exception B is denied on the basis it is not a proper Exception as set forth in Section 120.57(1)(k), Florida Statutes, and Rule 28-106.217, Florida Administrative Code, in that it does not identify the legal basis for the exception and fails to include appropriate and specific citations to the record

3. Respondent's Exception C is denied on the basis it is not a proper Exception as set forth in Section 120.57(1)(k), Florida Statutes, and Rule 28-106.217, Florida Administrative Code, in that it does not identify the legal basis for the exception and fails to include appropriate and specific citations to the record.

4. Respondent's Exception D is denied on the basis it is not a proper Exception as set forth in Section 120.57(1)(k), Florida Statutes, and Rule 28-106.217, Florida Administrative Code, in that it does not identify the legal basis for the exception and fails to include appropriate and specific citations to the record.

5. Respondent's Exception E is denied on the basis it is not a proper Exception as set forth in Section 120.57(1)(k), Florida Statutes, and Rule 28-106.217, Florida Administrative Code, in that it does not identify the legal basis for the exception and fails to include appropriate and specific citations to the record.

6. Respondent's Exception F is denied on the basis it is not a proper Exception as set forth in Section 120.57(1)(k), Florida Statutes, and Rule 28-106.217, Florida Administrative Code, in that it does not identify the legal basis for the exception and fails to include appropriate and specific citations to the record.

#### 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 458, Florida Statutes.
2. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

#### PENALTY

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Administrative Law Judge be ACCEPTED.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

1. Respondent's license to practice as Florida state certified residential real estate appraiser is hereby placed on PROBATION for a period of two (2) years, conditioned on her successful completion of the 15-hour USPAP course.

2. Respondent shall pay an administrative fine in the amount of \$2,000.00 and investigative costs in the amount of \$808.50. Respondent shall pay the fine and costs by separate checks 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, before the end of probation.

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: **Ainslee R. Ferdie, Esquire**, Ferdie & Lones PA, 717 Ponce De Leon Blvd., Suite 223, Coral Gables, FL 33134-2064, to **Larry J. Sartin, 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

U.S. Postal Service<sup>TM</sup>  
**CERTIFIED MAIL<sup>TM</sup> RECEIPT**  
*(Domestic Mail Only; No Insurance Coverage Provided)*

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage \$

f Ainslee R. Ferdie, Esquire  
(Endo) Ferdie and Lones, PA  
Rest 717 Ponce De Leon Blvd #223  
(Endo) Coral Gables, FL 33134-2064  
Total

Sent FO (Rodriguez-2007044536) RM  
Street  
or PO Box No.  
City, State, ZIP+4

PS Form 3800, August 2006

See Reverse for Instructions

7008 1140 0004 0276 3836

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

**FILED**  
09 MAR -6 AM 10:48  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

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

DOAH CASE NO. 08-4417PL  
DBPR CASE NO. 2007044536

Petitioner,

vs

JESSALYN RODRIGUEZ,

Respondent.

EXCEPTIONS TO RECOMMENDED ORDER

To: Division of Real Estate

COMES NOW, JESSALYN RODRIGUEZ, Respondent, by her undersigned attorney and submits her exceptions to the Recommended Order and says as follows:

FINDINGS OF FACT

A. While the statement is correct, it is so because representative of the agency used economic coercion and threats for her to surrender the same without due process and the Administrative Judge excluded evidence of the coercion and the defacto result is to have effected a six (6) month suspension in her ability to earn funds as an appraiser.

B. The premises was in residential use and the lender requested a residential appraisal.

C. 9. Short of a survey, there is no fully accurate basis to determine square

footage. The existence of an addition was based on speculation as to a flat roof and there was no readily apparent constructive distinction in the structure itself and no certified public records was presented. The appraiser showed the discrepancy, if the lender desired further investigation, such is not a primary function of the appraisal process. No liens or pending proceedings were shown as to the alleged addition or competent proof of anything wrong. Burden of proof is with the agency.

12. This was unrealistic conclusion. Both in new and vacant residences. appliances are safe kept off premises to guard against theft and vandalism. Nor does this effect the opinion of value.

13. Age difference above does not require adjustment when using comparables based on market price.

15. The judge failed to consider both the undisputed opinion to these items and the use of recognized electronic data basis to compute the items arrived at.

### **CONCLUSION OF LAW**

D. While the statement of law is right, the application of the law to the facts is unsupported. While noting she had noted a discrepancy, the Judge then substitutes his judgment for hers, where there is not on scintilla that she did not follow reasonable diligence. This is not an absolute, and it is not necessary to cross every "t" and dot every "i". There is no showing that the result was not reasonable or was improperly procured. The Count fails on a common sense approach that appraisers are not required to be surveyors or engineers.

E Count Two:



The conclusion in paragraph 28 is not consistent with modern usage. Even the State's expert acknowledged the use of electronic programs is more prevalent. The assertion of a horse and buggy approach for a penal purpose is inconsistent with modern technology and good practice and legislative intent.

F. Count Three

The Judge misconstrues the difference between "culpable negligence" and mere simple negligence. The original term culpable was derived from "criminal" and as such requires a standard of recklessness and the reaching of some damage or harm, neither of which were demonstrated. It cannot be the legislature's intent to apply a penal standard to simple acts of negligence where no damage occurs. No evidence was produced of damage and in some respects the State expert agreed that some of the "standards" did not effect anything or were inconsequential.

37. Count Four through Count Seven:

While quoting, the order fails to consider under (b) "significantly effects an appraisal". Indeed, no evidence showed that any alleged item effected the value of the appraisal either individually or collectively. This included a statement of square footage of the "property" when the quantity of land was not at issue. However, none of the "discrepancies" was shown to have effected value. Indeed, the State expert specifically declined to give an opinion as to value. Indeed, the appraisal for a "residential loan" was just that. Not only are the charges cumulative and unsupported, but are based on a delegation to a non-legislative agency.

49. It seems inconsistent that the State Agency expert is the instructor for the USPAP course and the State Agency and the Judge concurred in make the course

attendance mandatory. Not only has she become deprived of income for more than six months for what are "de minimus" violations of standards that fail to keep current.

Further, the Administrative Judge failed to note that the complaint was not by the party ordering the appraisal, i.e. lender, but by a prospective buyer who did not buy and sought in The effect to obtain an unjustified excessive appraisal for the purchase should have been placed in the perspective of so called toxic loans, where loans were made for amounts in excess of the true value. This appraiser is penalized for providing a realistic appraisal as compared to an inflated appraisal. None of the evidence disputed the accuracy of her conclusions, but rather nit picked on how it was reached. Such does not comport with the spirit of the law and instead provided a false incentive to deal with form and not substance. The basic intent of the law is to provide honest opinion of value. Appraisers may disagree on both results and basis for results, and still be readily admissible in litigated matters where value is material, i.e. condemnation proceedings.

For the above reasons, the Board should reject the Recommended Order, dismiss the charges, with at the most a reprimand to meet the technical standards. No wrongdoing or corrupt motive was shown or found.

Respectfully submitted:

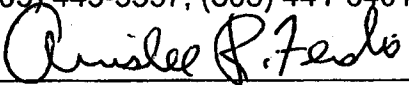


AINSLEE R. FERDIE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 3<sup>rd</sup> day of March, 2009 to: **Robert Minarcin, Senior Attorney, Division of Real**

estate, DBPR Legal Section, Suite N 801, Hurston Bldg., North Tower, 400 West  
Robinson St., Orlando, Fl. 32801-1757 and **Hon. Larry J. Sartin, Administrative Law  
Judge**, Div. Of Administrative Hearings, The DeSoto Building, 1230 Apalachee  
Parkway, Tallahassee, Fl. 32399-3060 and the **original** to **Thomas W. O'Bryant, Jr.,  
Director** Division of Real estate Department of Business and Professional Regulation,  
400 West Robinson Street, Hurston Building-North Tower, Suite N802, Orlando, Fl.  
32801.

FERDIE & LONES, CHARTERED  
Attorney for Respondent  
717 Ponce de Leon Blvd., Suite 223  
Coral Gables, Fl. 33134  
Tel: (305) 445-3557; (305) 441-6401

By:   
AINSLEE R. FERDIE  
Fla. Bar #024273