

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
DIVISION OF REAL ESTATE,)
)
Petitioner,)
)
vs.) Case No. 08-4417PL
)
JESSALYN RODRIGUEZ,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case before Larry J. Sartin, an Administrative Law Judge of the Division of Administrative Hearings, on January 5, 2009, by video teleconference between sites in Miami and Tallahassee, Florida.

APPEARANCES

For Petitioner: Robert Minarcin, Esquire
Division of Real Estate
Department of Business and
Professional Regulation
400 West Robinson Street, Suite N-801
Orlando, Florida 32801

For Respondent: Ainslee R. Ferdie, Esquire
Ferdie and Lones, Chartered
717 Ponce de Leon Boulevard, Suite 223
Coral Gables, Florida 33134

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent, Jessalyn Rodriguez, committed the violations alleged in a seven-count Administrative Complaint, filed with the Petitioner Department of Business and Professional Regulation on June 10, 2008, and, if so, what disciplinary action should be taken against her Florida real estate appraiser certification.

PRELIMINARY STATEMENT

On June 10, 2008, a seven-count Administrative Complaint, FDBPR Case No 20070044536, was filed with Petitioner Department of Business and Professional Regulation against Jessalyn Rodriguez, a certified residential real estate appraiser. It was alleged in the Administrative Complaint that Respondent had violated the following provisions of Florida law: Section 475.624(15), Florida Statutes (2007)(Count One); Section 475.624(4), Florida Statutes (2007), by violating Section 475.629, Florida Statutes (2007)(Count Two); Section 475.624(2), Florida Statutes (2007)(Count Three); Section 475.624(14), Florida Statutes (2007), by violating Standards Rule 1-1(a), (b), and (c), of the Uniform Standards of Professional Appraisal Practice (2006)(Count Four); Section 475.624(14), Florida Statutes (2007), by violating Standards Rule 1-2(e)(i) of the Uniform Standards of Professional Appraisal Practice (2006)(Count Five); Section 475.624(14), Florida Statutes

(2007), by violating Standards Rule 1-4(b) of the Uniform Standards of Professional Appraisal Practice (2006)(Count Six); and Section 475.624(14), Florida Statutes (2007), by violating Standards Rule 2-1(a) and (b) of the Uniform Standards of Professional Appraisal Practice (2006)(Count Seven).

On or about July 10, 2008, Respondent, through counsel, served a Notice of Appearance and Election of Rights with Petitioner disputing the material facts of the Administrative Complaint and requesting a formal administrative hearing.

On September 9, 2008, Petitioner filed the Administrative Complaint, Respondent's request for hearing, and a letter requesting that an administrative law judge be assigned to hear the matter. The request for hearing was designated DOAH Case No. 08-4417PL and was assigned to the undersigned.

On September 22, 2008, a final hearing was scheduled for November 24, 2008, by Notice of Hearing by Video Teleconference. The hearing was rescheduled on November 14, 2008, to the date of the hearing noted above, at the request of Respondent after changing her legal representation.

On December 29, 2008, Respondent filed an Answer and Response to Administrative Complaint. In this pleading, Respondent admitted to several allegations of fact in the Administrative Complaint and admitted to others with an

explanation. The Answer was offered and accepted into evidence as Respondent's Exhibit 1.

At the final hearing, Petitioner presented the testimony of Derrick Ham and Philip G. Spool. Petitioner also had admitted Petitioner's Exhibits 1 through 7. Respondent testified on her own behalf and had one exhibit admitted.

The Transcript of the final hearing was filed with the Division of Administrative Hearings on January 21, 2009. By Notice of Filing of Transcript entered January 22, 2009, the parties were informed that their proposed recommended orders were to be filed on or before February 2, 2009.

Respondent filed a proposed Recommended Order on January 30, 2009. Petitioner filed Petitioner's Proposed Recommended Order on February 2, 2009. Both proposed orders have been fully considered in preparing this Recommended Order.

All further references to the Florida Statutes in this Recommended Order are to the 2007 edition, unless otherwise noted.

FINDINGS OF FACT

A. The Parties.

1. Petitioner, the Department of Business and Professional Regulation, Division of Real Estate (hereinafter referred to as the "Division"), is an agency of the State of Florida created by Section 20.165, Florida Statutes. The Division is charged with

the responsibility for the regulation of the real estate industry in Florida pursuant to Chapters 455 and 475, Florida Statutes.

2. Respondent, Jessalyn Rodriguez, is, and was at the times material to this matter, a Florida-certified residential real estate appraiser having been issued license number 4120.

3. The last license issued to Ms. Rodriguez is now an inactive Florida-certified residential real estate appraiser license at 12071 Southwest 131st Avenue, Miami Florida 33166.

B. Appraisal of 6496 Southwest 24th Street.

4. On or about June 1, 2007, Ms. Rodriguez developed, signed and communicated an appraisal report (hereinafter referred to as the "Appraisal"), for property located at 64967 Southwest 24th Street, Miami, Florida 33155 (hereinafter referred to as the "Subject Property").

5. At the time the Appraisal was made, Ms. Rodriguez was a Florida-certified residential real estate appraiser. The Subject Property, however, was zoned BU-1, a commercial district. The Administrative Complaint entered against Ms. Rodriguez, however, does not allege that Ms. Rodriguez committed any violation by performing an appraisal on commercially zoned property.

C. Errors and Omissions in the Appraisal.

6. Ms. Rodriguez on her sketch of the Subject Property contained in the Appraisal indicates that the total square footage of the Subject Property is 2,105 square feet. On the sketch, she breaks down the property into a 34.0 x 55.6 area of 1890.4 square feet, and a 5.0 x 43.0 area of 215 square feet.

7. In her documentation for the Appraisal, Ms. Rodriguez notes that the adjusted square footage of the Subject Property is 1,890 square feet and that the property appraiser reported the square footage at 1,709 square feet.

8. Ms. Rodriguez failed to verify that the reported 2,105 square feet contained in the Appraisal was accurate.

9. Ms. Rodriguez admitted in her Answer and Response to Administrative Complaint, Respondent's Exhibit 1, that she failed to verify that a rear addition to the Subject Property, most likely the 5.0 x. 43.0 additional area she measured, had not been permitted through Miami-Dade County. This unpermitted addition would account for the discrepancy in the square footage of the Subject Property noted in Ms. Rodriguez's notes. Had she investigated the discrepancy in square footage, it is possible she would have discovered the unpermitted addition and reported it in the Appraisal.

10. Ms. Rodriguez indicates in the Appraisal that the Subject Property has a "porch." The "porch" she was referring

to is a rather small area in the front of the Subject Property which has an overhang. The evidence failed to prove that this area, which is depicted in photos accepted in evidence, does not constitute a "porch."

11. Ms. Rodriguez incorrectly indicated in the Appraisal that the Subject Property had a "patio." Her suggestion that a "grass area" constituted a patio is rejected as unreasonable. While the Subject Property has a small "yard," it does not have a patio.

12. Ms. Rodriguez failed to indicate in the Appraisal that the Subject Property did not have any "appliances." The fact that appliances were to be installed after closing fails to excuse this omission.

13. Ms. Rodriguez did not make any adjustment for, or any explanation of, the 13-year age difference between the Subject Property and comparable sale 3.

14. The Supplemental Addendum section of the Appraisal incorrectly reports that the Subject Property had wood floors and that it had a new pool deck. Ms. Rodriguez has admitted these errors, indicating that they are "[t]ypographical error[s] but did not effect value since no monetary adjustment was made."

D. Failure to Document.

15. Ms. Rodriguez's documentation for the Appraisal lacked a number of items, all of which Ms. Rodriguez admits were not

maintained. The missing documentation included the following items which were not contained in her work file:

a. Support for a \$40 per square foot adjustment for comparable sale 1 and comparable sale 3 in the Sales Comparison Approach section of the Appraisal;

b. Support for a site size adjustment made to comparable sale 1 and comparable sale 2 in the Sales Comparison Approach section of the Appraisal;

c. Support for a \$1,500.00 "bathroom" adjustment to comparable sale 1, comparable sale 2, and comparable sale 3 in the Sales Comparison Approach section of the Appraisal;

d. Support for a \$5,000.00 "good" location adjustment made to comparable sale 1 and comparable sale 2 in the Sales Comparison Approach section of the Appraisal;

e. Support for the \$4,000.00 garage adjustment made to comparable sale 2 in the Sales Comparison Approach section of the Appraisal;

f. Support for the \$15,000.00 pool adjustment made to comparable sale 2 in the Sales Comparison Approach section of the Appraisal;

g. Support for the \$350,000.00 Opinion of Site Value in the Cost Approach section of the Appraisal;

h. Support for the \$10,000.00 adjustment for the "As Is" Value of Site Improvements in the Cost Approach section of the Appraisal;

i. Support for the \$20,000.00 adjustment for Appliances/Porches/Patios/Etc. in the Cost Approach section of the Appraisal; and

j. Marshall and Swift pages for the time frame that the Appraisal was completed to justify the dwelling square footage price in the Cost Approach section of the Appraisal.

CONCLUSIONS OF LAW

A. Jurisdiction.

16. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2008).

B. The Burden and Standard of Proof.

17. The Division seeks to impose penalties against Ms. Rodriguez pursuant to the Administrative Complaint that include the suspension or revocation of her real estate appraiser's license. Therefore, the Division has the burden of proving the specific allegations of fact that support its charges by clear and convincing evidence. See Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996);

Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); and Pou v. Department of Insurance and Treasurer, 707 So. 2d 941 (Fla. 3d DCA 1998).

18. What constitutes "clear and convincing" evidence was described by the court in Evans Packing Co. v. Department of Agriculture and Consumer Services, 550 So. 2d 112, 116, n. 5 (Fla. 1st DCA 1989), as follows:

. . . [C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the evidence must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact the firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established. Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

See also In re Graziano, 696 So. 2d 744 (Fla. 1997); In re Davey, 645 So. 2d 398 (Fla. 1994); and Walker v. Florida Department of Business and Professional Regulation, 705 So. 2d 652 (Fla. 5th DCA 1998)(Sharp, J., dissenting).

C. The Charges of the Administrative Complaint.

19. In determining whether the Division has met its burden of proof, it is necessary to evaluate its evidentiary presentation in light of the specific allegations of wrongdoing made in the Administrative Complaint. Due process prohibits an

agency from taking penal action against a licensee based on matters not specifically alleged in the charging instrument, unless those matters have been tried by consent. See Trevisani v. Department of Health, 908 So. 2d 1108, 1109 (Fla. 1st DCA 2005); Aldrete v. Department of Health, Board of Medicine, 879 So. 2d 1244, 1246 (Fla. 1st DCA 2004); and Shore Village Property Owners' Association, Inc. v. Department of Environmental Protection, 824 So. 2d 208, 210 (Fla. 4th DCA 2002).

20. Section 475.624, Florida Statutes, authorizes the Florida Real Estate Appraisal Board (hereinafter referred to as the "Board") to discipline any Florida real estate appraiser who commits any of a number of offenses defined therein. In this case, the Division has charged Ms. Rodriguez with having committed seven total violations of Section 475.624, Florida Statutes: one violation of Section 475.624(15), Florida Statutes (Count One); one violation of Section 475.624(4), Florida Statutes (Count Two); one violation of Section 475.624(2), Florida Statutes (Count Three); and four violations of Section 475.624(14), Florida Statutes (Counts Four through Seven).

21. Because of their penal nature, the foregoing statutory provisions must be strictly construed, with any reasonable doubts as to their meaning being resolved in favor of the

certificateholder or registrant. See Jonas v. Florida Department of Business and Professional Regulation, 746 So. 2d 1261, 1262 (Fla. 3d DCA 2000)("[S]tatutes such as those at issue authorizing the imposition of discipline upon licensed contractors are in the nature of penal statutes, which should be strictly construed."); and Capital National Financial Corporation v. Department of Insurance, 690 So. 2d 1335, 1337 (Fla. 3d DCA 1997)("Section 627.8405 is a penal statute and therefore must be strictly construed: 'When a statute imposes a penalty, any doubt as to its meaning must be resolved in favor of a strict construction so that those covered by the statute have clear notice of what conduct the statute proscribes.'").

D. Count One; Violation of Section 475.624(15), Florida Statutes.

22. Section 475.624(15) Florida Statutes, designates the following conduct as a disciplinable offense:

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

23. The Division proved clearly and convincingly that Ms. Rodriguez failed to exercise reasonable diligence in developing the Appraisal in that she failed to investigate discrepancies in the square footage of the Subject Property and the other errors and omissions found in the Findings of Fact

portion of the Recommended Order. Had she inquired, she should have realized that there was an addition to the Subject Property that had not been properly permitted, a fact that she failed to report.

24. The Division's assertion that it had also proved this violation due to the failure of Ms. Rodriguez to recognize that the Subject Property was zoned commercial ignores the fact that the Division did not allege this failure to be a violation in the Administrative Complaint. To consider this fact would constitute a denial of Ms. Rodriguez's due process right to be fully informed of the charges against her.

25. The Division has proved clearly and convincingly that Ms. Rodriguez violated Section 475.624(15), Florida Statutes, as alleged in Count One.

E. Count Two; Violation of Section 475.624(2), Florida Statutes, By Having Violated Section 475.629, Florida Statutes.

26 Section 475.624(4) Florida Statutes, designates the following conduct as a disciplinable offense:

(4) Has violated any of the provisions of this part or any lawful order or rule issued under the provisions of this part or chapter 455.

In support of this alleged offense, the Division has alleged that Ms. Rodriguez violated Section 475.629, Florida Statutes, which provides:

Retention of records.--An appraiser registered, licensed, or certified under this part shall retain, for at least 5 years, original or true copies of any contracts engaging the appraiser's services, appraisal reports, and supporting data assembled and formulated by the appraiser in preparing appraisal reports. The period for retention of the records applicable to each engagement of the services of the appraiser runs from the date of the submission of the appraisal report to the client. These records must be made available by the appraiser for inspection and copying by the department on reasonable notice to the appraiser. If an appraisal has been the subject of or has served as evidence for litigation, reports and records must be retained for at least 2 years after the trial.

27. Section 475.629, Florida Statutes, requires more than the retention of appropriate records for a five-year period. It also requires that an appraiser keep "original or true copies of any contracts engaging the appraiser's services, appraisal reports, and supporting data assembled and formulated by the appraiser in preparing appraisal reports" and that those records are to "be made available by the appraiser for inspection and copying by the department on reasonable notice to the appraiser."

28. Ms. Rodriguez admitted, and the evidence proved, that she lacked all the supporting data for the Appraisal. Her assertion that some of that data was "done in computer or a computer based program" does not meet the requirements of

Section 475.629, Florida Statutes. Ms. Rodriguez was able to and, in some instances, did print pages from the computer programs she utilized. She failed to print other pages containing information which should have been maintained in her records for the Appraisal.

29. The Division has proved that Ms. Rodriguez has violated Section 475.629, Florida Statutes, and, therefore, has proved clearly and convincingly that she violated Section 475.624(4), Florida Statutes, as alleged in Count Two.

F. Count Three; Violation of Section 475.624(2), Florida Statutes.

30. The Division asserts in its proposed recommended order that Ms. Rodriguez violated Section 475.624(2), Florida Statutes, by committing "culpable negligence" or "breach of trust."

31. Section 475.624(2) Florida Statutes, designates the following conduct as a disciplinable offense:

(2) Has been guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest conduct, culpable negligence, or breach of trust in any business transaction in this state or any other state, nation, or territory; has violated a duty imposed upon her or him by law or by the terms of a contract, whether written, oral, express, or implied, in an appraisal assignment; has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or has formed an intent, design, or scheme to engage in such misconduct and committed an overt act in furtherance of such intent, design, or scheme. It is immaterial to the guilt of

the registered trainee, licensee, or certificateholder that the victim or intended victim of the misconduct has sustained no damage or loss; that the damage or loss has been settled and paid after discovery of the misconduct; or that such victim or intended victim was a customer or a person in confidential relation with the registered trainee, licensee, or certificateholder, or was an identified member of the general public.

32. The terms "culpable negligence" have been defined as:

The failure to exercise the degree of care rendered appropriate by the particular circumstances, and which a man of ordinary prudence in the same situation and with equal experience would not have omitted

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Alfert, 1987 West Law 488130 (FDOAH 1987).

33. In the same Recommended Order, a "breach of trust" is defined as:

Any act done by a trustee contrary to the terms of his trust, or in excess of his authority and to the detriment of the trust; or the wrongful omission by a trustee of the any act required of him by the terms of the trust Every violation by a trustee of a duty which equity lies upon him, whether willful and fraudulent or done through negligence, or arising through mere oversight and forgetfulness.

Id.

34. Because of the errors and omission committed by Ms. Rodriguez, the Division has proved clearly and convincingly that she committed culpable negligence and a breach of trust as those terms are used in Section 475.624(2), Florida Statutes, as alleged in Count Three of the Administrative Complaint.

G. Counts Four through Seven; Section 475.624(14), Florida Statutes.

35. Section 475.624(14), Florida Statutes, designates the following conduct as a disciplinable offense:

(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.

36. In Counts Four through Seven of the Administrative Complaint, it is alleged that Ms. Rodriguez violated the following Rules of the Uniform Standards of Professional Appraisal Practice (2006)(hereinafter referred to as the "Uniform Standards"): Rule 1-1(a), (b), and (c) (Count Four); Rule 1-2(e(i) (Count Five); Rule 1-4(b) (Count Six); and Rule 2-1(a) and (b).

H. Count Four; Violation of Section 475.624(14), Florida Statutes.

37. In Count Four, it is alleged that Ms. Rodriguez violated Rule 1-1(a), (b), and (c) of the Uniform Standards, which provides that an appraiser, "[i]n developing a real

property appraisal" must:

(a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;

. . . .

(b) not commit a substantial error or omission or commission that significantly affects an appraisal; and

. . . .

(c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of the an appraisal, in the aggregate affects the credibility of those results.

. . . .

38. The Division proved clearly and convincingly that Ms. Rodriguez violated Rule 1-1(a) and (c) of the Uniform Standards by her failure to account for the discrepancy in the square footage of the Subject Property in the first instance and by the accumulation of errors in the second instance.

39. The Division failed to prove clearly and convincingly that Ms. Rodriguez violated Rule 1-1(b) of the Uniform Standards. Again, the Division has argued that the failure to recognize that the property was zoned commercial supports a finding that she violated this portion of the Uniform Standard. The Division's reliance on this factor is misplaced due to its failure to allege the error in the Administrative Complaint.

40. The Division proved clearly and convincingly that Ms. Rodriguez violated Section 475.624(14), Florida Statutes, by violating Rule 1-1(a) and (c) of the Uniform Standards as alleged

in Count Four.

I. Count Five; Violation of Section 475.624(14), Florida Statutes.

41. In Count Five, it is alleged that Ms. Rodriguez violated Rule 1-2(e)(i) of the Uniform Standards, which provides that an appraiser, "[i]n developing a real property appraisal" must "identify the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal, including "(i) its location and physical, legal, and economic attributes"

42. Ms. Rodriguez failed to accurately identify the physical or legal attributes of the Subject Property. She provided incorrect information concerning physical attributes, such as wood floors, a pool deck, and appliances that did not exist. She also failed to report the unpermitted addition.

43. The Division proved clearly and convincingly that Ms. Rodriguez violated Section 475.624(14), Florida Statutes, by violating Rule 1-2(e)(i) of the Uniform Standards as alleged in Count Five.

J. Count Six; Violation of Section 475.624(14), Florida Statutes.

44. In Count Six, it is alleged that Ms. Rodriguez violated Rule 1-4(b) of the Uniform Standards, which provides that an appraiser, "[i]n developing a real property appraisal" must "collect, verify, and analyze all information necessary for credible assignment results:

. . . .

- (b) When a cost approach is necessary for credible assignment results, an appraiser must:
 - (i) develop an opinion of site value by an appropriate appraisal method or technique;
 - (ii) analyze such comparable cost data as are available to estimate the cost new of the improvements (if any); and
 - (iii) analyze such comparable data as are available to estimate the difference between the cost new and the present worth of the improvements (accrued depreciation).

45. The Division proved clearly and convincingly that Ms. Rodriguez violated Section 475.624(14), Florida Statutes, by violating Rule 1-4(b) of the Uniform Standards as alleged in Count Five. This conclusion is based upon the uncontroverted expert opinion testimony of Philip G. Spool, that Ms. Rodriguez failed to maintain any documentation in her workfile to substantiate the various adjustments to the comparable sales she made in valuing the Subject Property in violation of this Uniform Standard.

K. Count Seven; Violation of Section 475.624(14), Florida Statutes.

46. In Count Seven, it is alleged that Ms. Rodriguez violated Rule 2-1(a) and (b) of the Uniform Standards, which provides that "[e]ach written or oral real property appraisal report must":

- (a) clearly and accurately set forth the appraisal in a manner that will not be misleading;
- (b) contain sufficient information to enable the intended users of the appraisal to understand the report properly; . . .

47. The Division proved clearly and convincingly that Ms. Rodriguez violated Section 475.624(14), Florida Statutes, by violating Rule 2-1(a) and (b) of the Uniform Standards as alleged in Count Seven. Again, this conclusion is based upon the uncontroverted expert testimony of Mr. Spool that her failure to maintain any documentation in her work file to substantiate the various adjustments to the comparable sales she made in valuing the Subject Property constituted a violation of this Uniform Standard.

L. The Appropriate Penalty.

48. The only issue remaining for consideration is the appropriate disciplinary action which should be taken by the Board against Ms. Rodriguez for the violations the Division proved. To answer this question it is necessary to consult the "disciplinary guidelines" of the Board set forth in Florida Administrative Code Chapter 61J1-8.002. Those guidelines

effectively place restrictions and limitations on the exercise of the Board's disciplinary authority. See Parrot Heads, Inc. v. Department of Business and Professional Regulation, 741 So. 2d 1231, 1233 (Fla. 5th DCA 1999) ("An administrative agency is bound by its own rules . . . creat[ing] guidelines for disciplinary penalties."); and § 455.2273(5), Fla. Stat.

49. The penalty guideline for a violation of Section 475.624(15), Florida Statutes, is a suspension of five years to revocation and a fine not to exceed \$1,000.00. Fla. Admin. Code R. 61J1-8.002(3)(r).

50. The penalty guideline for a violation of Section 475.624(4), Florida Statutes, by violating Section 475.629, Florida Statutes, is a penalty of up to revocation and a fine up to \$5,000.00. Fla. Admin. Code R. 61J1-8.002(3)(g).

51. The penalty guideline for a violation of Section 475.624(2), Florida Statutes, of culpable negligence or breach of trust is a fine of \$1,000.00 to a one-year suspension. Fla. Admin. Code R. 61J1-8.002(3)(e).

52. Finally, the penalty guideline for a violation of Section 475.624(14), Florida Statutes, is from a five-year suspension to revocation and a fine of \$1,000.00. Fla. Admin. Code R. 61J1-8.002(3)(q).

53. Florida Administrative Code Rule 61J1-8.002(4) provides for the consideration of certain aggravating and

mitigating circumstances, but only if proper notice is given. No such notice was provided in this proceeding.

54. In Petitioner's Proposed Recommended Order, it has been suggested that the recommended penalty should be a six-month suspension of Ms. Rodriguez's license, that she be required to pay a fine of \$3,500.00, that she placed on probation for a period of two years, that she be required to pay the \$808.00 in investigative costs for this matter, and that she be required to successfully complete the 15-hour USPAP course.

55. While most of the Division's suggested penalty seems appropriate, it is noted that Ms. Rodriguez's license has been inactive due to this matter for some time. She has, therefore, effectively served a more than adequate "suspension" of her license. While the Division proved most of the alleged violations, those violations appear to have occurred due, not to any "bad motive," but rather to lack of appropriate education, which can be remedied by requiring that Ms. Rodriguez complete the 15-hour USPAP course.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered by the Commission:


1. Finding that Ms. Rodriguez is guilty of the violations alleged in Counts One through Seven of the Administrative Complaint as found in this Recommended Order;

2. Placing Ms. Rodriguez's appraiser license on probation for a period of two years, conditioned on her successful completion of the 15-hour USPAP course;

3. Requiring that she pay an administrative fine of \$2,000.00; and

4. Requiring that she pay the investigative costs incurred in this matter by the Division.

DONE AND ENTERED this 23rd of February, 2009, in Tallahassee, Leon County, Florida.



LARRY J. SARTIN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day of February, 2009.

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 these cases.