

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
DIVISION OF REAL ESTATE, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 08-4616PL  
 )  
FRANK LAPLATTE, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

On December 5, 2008, an administrative hearing in this case was conducted in Naples, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Robert Minarcin, Esquire  
Department of Business and  
Professional Regulation  
400 West Robinson Street, Suite 801N  
Orlando, Florida 32801-1757

For Respondent: David F. Garber, Esquire  
Garber, Hooley & Holloway, LLP  
700 Eleventh Street South, Suite 202  
Naples, Florida 34102

STATEMENT OF THE ISSUES

The issues in this case are whether the allegations of the Amended Administrative Complaint are correct, and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

By Administrative Complaint dated June 11, 2007, the Department of Business and Professional Regulation, Division of Real Estate (Petitioner), essentially alleged that Frank LaPlatte (Respondent) issued a real estate appraisal report, indicating that the Respondent had inspected the interior of the appraised property and that he had not conducted such an inspection. The Respondent disputed the allegation and requested a formal administrative hearing. The Petitioner forwarded the request to the Division of Administrative Hearings, which scheduled and conducted the hearing.

On November 12, 2008, the Petitioner filed a Motion to Amend the Administrative Complaint. The hearing was transferred to the undersigned Administrative Law Judge on November 20, 2008, who granted the pending motion at the commencement of the hearing.

At the hearing, the Petitioner presented the testimony of two witnesses and had Exhibits numbered 2 through 7 admitted into evidence. The Respondent testified on his own behalf and presented the testimony of two witnesses.

A Transcript of the hearing was filed on December 22, 2008. The parties filed Proposed Recommended Orders on January 16, 2009, pursuant to a stipulated extension of the filing deadline.

Both of the Proposed Recommended Orders have been reviewed in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times material to this case, the Respondent was a certified residential real estate appraiser, holding Florida license number RD3233.

2. At all times material to this case, James Berry was a registered real estate appraiser trainee, holding Florida license number RI16607.

3. Mr. Berry was in training with the Respondent, who was his supervisory appraiser.

4. On December 11, 2006, the Respondent and Mr. Berry issued an appraisal report for residential property located at 9602 Whilehall Street, Naples, Florida, 34109, the "subject property."

5. Mr. Berry conducted the appraisal and prepared the computer-generated appraisal report. He thereafter affixed his digital signature to the report as the appraiser.

6. The Respondent reviewed Mr. Berry's appraisal and thereafter affixed his digital signature to the report as the supervisory appraiser.

7. The appraisal report was on a form designated as "Freddie Mac Form 70, March 2005" and "Fannie Mae Form 1004, March 2005."

8. Beginning on page five and continuing onto page six of the form was an "appraiser's certification." Included within the appraiser's certification was a statement that the appraiser "performed a complete visual inspection of the interior and exterior areas of the subject property."

9. Page six of the form included a "supervisory appraiser's certification." The supervisory appraiser's certification did not state that the supervisory appraiser conducted a visual inspection of the property.

10. The lower part of page six contained a boxed portion containing separate parts that were divided only by space between blocks of text.

11. On the left side of the boxed portion was a part titled "APPRAISER" that included the appraiser's name, license number, company name and address, and appraisal date. It also included the appraiser's digital signature and the date of signature.

12. Below the appraiser's information was a part titled "ADDRESS OF PROPERTY APPRAISED" that included the address and valuation of the subject property.

13. Below the part titled "ADDRESS OF PROPERTY APPRAISED" was a part titled "LENDER/CLIENT" that included the relevant information.

14. On the right side of the boxed portion was a part titled "SUPERVISORY APPRAISER (ONLY IF REQUIRED)" that included the supervisory appraiser's name, license number, company name and address, the supervisory appraiser's digital signature, and the date of signature.

15. Below the part titled "SUPERVISORY APPRAISER (ONLY IF REQUIRED)" was a part titled "SUBJECT PROPERTY," which included the following boxes and text:

Did not inspect subject property

Did inspect exterior of subject property  
from street

Date of Inspection \_\_\_\_\_

Did inspect interior and exterior of  
subject property

Date of Inspection \_\_\_\_\_

16. Below the part titled "SUBJECT PROPERTY" was a part titled "COMPARABLE SALES," which included the following boxes and text:

Did not inspect exterior of comparable  
sales from street

Did inspect exterior of comparable sales  
from street

Date of Inspection \_\_\_\_\_

17. The appraisal form contained no instructions to specifically indicate whether the appraiser or the supervisory

appraiser was responsible for completing the "SUBJECT PROPERTY" part.

18. Mr. Berry had performed the interior and exterior inspection of the subject property. In completing the form on the computer, Mr. Berry checked the box within the "SUBJECT PROPERTY" part indicating that the interior and exterior of the property had been inspected.

19. The Respondent did not inspect the interior and exterior of the subject property.

20. The evidence is insufficient to establish that either Mr. Berry or the Respondent knew that the supervisory appraiser was apparently responsible for completing the "SUBJECT PROPERTY" part of the boxed section.

21. The Petitioner asserted that the client for the appraiser at issue in this proceeding ("Landwatch/Countryside") required that a supervisory appraiser perform an interior and exterior inspection of the subject property. The assertion was not supported by credible evidence and is rejected.

#### CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2008).

23. The Amended Administrative Complaint alleged that the Respondent was guilty of fraud in a business transaction and

violated Subsection 475.624(2), Florida Statutes (2006). The Amended Administrative Complaint further alleged that the Respondent violated Subsection 475.624(14), Florida Statutes (2006), by violating the Uniform Standards of Professional Appraisal Practice (USPAP) Scope of Work Rule, USPAP Standards Rule 2-1(a), and USPAP Standards Rule 2-3.

24. In relevant part, Section 475.624, Florida Statutes (2006), provides as follows:

475.624 Discipline.--The board may deny an application for registration 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:

\* \* \*

(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.

\* \* \*

(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. (Emphasis supplied)

25. License revocations and discipline procedures are penal in nature. The Petitioner must demonstrate the truthfulness of the allegations in the Amended Administrative Complaint by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). In order to be "clear and convincing," the evidence must be "of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established." See Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).



26. The form utilized in this case was apparently created by housing finance agencies of the United States government. There was nothing within the appraisal report form that specifically indicated whether an appraiser or a supervisory appraiser was responsible for completion of the form, including the referenced boxes on the lower right side of the boxed portion on page six. There was no credible evidence that appraisers receive training on completion of the specific form at issue in this proceeding as a requirement of licensure.

27. Review of the boxed portion on page six of the form reveals that the title above each of the parts is of an identical type font and size. Although a vertical line between the left and right sections could divide the boxed portion into two sections, one titled "APPRAISER" and the other titled "SUPERVISORY APPRAISER (IF REQUIRED)," no such line exists, and there is otherwise no clear division between the parts.

28. A close reading of the appraisal form certification statements might lead a careful reader to deduce that the boxes and text under the section titled "SUPERVISING APPRAISER" are to be completed by the supervising appraiser, because the appraiser's certification specifically includes a statement that the appraiser performed a complete visual inspection of the interior and exterior of the property. Presumably, there would be no reason for an appraiser to check a duplicative box to

indicate that he inspected the interior and exterior of the property when, by signing the appraisal report, an appraiser had apparently already certified that such an inspection has been conducted.

29. However, during cross-examination at the hearing, Mr. Berry, the appraiser, was asked a question regarding the apparent duplication, and he responded that it was "really an issue that's the scope of work, because not always do you need an inspection on the property; isn't that right?" Counsel for the Petitioner replied "[t]hat's true" and continued with the cross-examination, suggesting that, despite the appraiser's certification, an interior and exterior inspection is not always performed.

30. The Respondent signed a certification that did not even suggest he had performed an inspection of the property, and it is not unreasonable, given the text of the appraisal form certifications, to correctly conclude that the inspection of the subject property was performed by Mr. Berry.

31. Webster's dictionary defines fraud to be an "intentional perversion of the truth in order to induce another to part with something of value or to surrender a legal right" or "an act of deceiving or misrepresenting." The evidence presented in this case is insufficient to clearly and

convincingly establish that the Respondent committed fraud in preparation of the appraisal report.

32. The USPAP Scope of Work Rule essentially states that the Respondent's work must meet or exceed the "expectations of parties who are regularly intended users for similar assignment" and "what an appraiser's peers' actions would be in performing the same or similar assignment."

33. The evidence presented in this case is insufficient to clearly and convincingly establish that the Respondent's work violated the USPAP Scope of Work Rule.

34. USPAP Standards Rule 2-1(a) provides that each written or oral appraisal report "must clearly and accurately set forth the appraisal in a manner that will not be misleading."

35. The evidence presented in this case is insufficient to establish that the Respondent violated USPAP Standards Rule 2-1(a), because the evidence fails to clearly and convincingly establish who was responsible for placing the checkmark in the box on the preprinted form.

36. USPAP Standards Rule 2-3 requires that a written appraisal report must contain a signed statement including the following certification:

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

\* \* \*

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 the certification, the certification must clearly specify which individuals did and which did not make a personal inspection of the appraised property.)

37. The evidence presented in this case establishes that the Respondent violated USPAP Standards Rule 2-3. The supervisory appraiser's certification on the appraisal report does not state whether or not the Respondent made a personal inspection of the property, and the Respondent failed to clearly specify on the report whether or not he personally inspected the appraised property.

38. Florida Administrative Code Rule 61J1-8.002 sets forth disciplinary guidelines applicable to this case. The guidelines suggest that a violation of Subsection 475.624(14), Florida Statutes (2006), normally warrants a penalty of a five-year suspension up to revocation and an administrative fine of \$1,000. It must be noted that the Petitioner's proposed penalty, premised on a finding of guilt on all four counts set forth in the Amended Administrative Complaint, was a two-year suspension; a \$5,000 fine; completion of a USPAP course; and a two-year probationary period, in addition to an assessment of costs.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Business and Professional Regulation, Division of Real Estate, enter a final order finding Frank LaPlatte in violation of one count of Subsection 475.624(14), Florida Statutes (2006), and imposing an administrative fine of \$2,500 and a six-month suspension, during which an appropriate USPAP course must be completed, followed by a three-year period of probation.

DONE AND ENTERED this 17th day of February, 2009, in Tallahassee, Leon County, Florida.

*William F. Quattlebaum*

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Filed with the Clerk of the  
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this 17th day of February, 2009.

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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 this case.