

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
DIVISION OF REAL ESTATE, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 08-6260PL  
 )  
DEBORAH M. HALL, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on February 24, 2009, in New Port Richey, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Robert Minarcin, Esquire  
Department of Business and  
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Orlando, Florida 32801-1757

For Respondent: David P. Rankin, Esquire  
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STATEMENT OF THE ISSUE

The issue in this case is whether Respondent violated standards for a certified real estate appraisal, and, if so, what sanction should be imposed.

PRELIMINARY STATEMENT

On March 4, 2008, Petitioner, Department of Business and Professional Regulation, Division of Real Estate (hereinafter "Department"), filed an Administrative Complaint containing 14 separate counts against Respondent, Deborah M. Hall ("Hall"). The Administrative Complaint alleges violations of the statutes and rules governing Florida certified residential real estate appraisers.

Hall timely filed a request for a formal administrative hearing, which was then forwarded to the Division of Administrative Hearings ("DOAH") on December 17, 2008. At the final hearing, the Department called two witnesses: Wendy Young, Investigative Specialist II with the Department; and Diane M. Gilbert, an expert in residential appraisal practices. The Department's Exhibits 1, 2, 6, and 7 were admitted into evidence; official recognition was taken of the Department's Exhibits 3, 4, and 5. Hall presented the testimony of two witnesses: Robert Smith, former employee of Hall; and Deborah Hall. Hall did not introduce any independent exhibits.

The parties advised the undersigned that a transcript would be ordered of the final hearing. They were given ten days from the date the transcript was filed at DOAH to submit proposed recommended orders. The Transcript was filed on March 25, 2009. Respondent submitted a Proposed Recommended Order on April 3, 2009; Petitioner's Proposed Recommended Order was filed on April 6, 2009. Each of the submissions was timely, and they were given due consideration in the preparation of this Recommended Order.<sup>1</sup>

#### FINDINGS OF FACT

1. The Department is the state agency which is responsible for certifying and monitoring the performance of residential real estate appraisers. It derives its authority in this case from Chapter 475, Part II, Florida Statutes (2008).<sup>2</sup> The Department's headquarters are in Tallahassee, Florida.

2. Hall is a State of Florida certified residential real estate appraiser, holding License No. RD-4615. Hall resides in Port Richey, Florida.

3. The Department issued an Administrative Complaint against Hall alleging certain violations concerning an appraisal for property located at 2850 Gulf of Mexico Drive, Unit 6, Neptune of Longboat Key, Neptune Beach, Florida (the "Subject Property"). There were two appraisal reports alleged to have been issued for the Subject Property by Hall.

4. Hall was hired by Chapman and Associates, on behalf of Encore Mortgage Enterprises (Encore), to do an appraisal of the Subject Property, a one-bedroom, one-bath condominium unit located in a one-building, 12-unit condominium on Longboat Key, Florida. The approximate square footage of the unit was 773 square feet, with 657 square feet of that space identified as its living area. The last purchase of the Subject Property had been in May 2005, when it sold for \$297,500. Hall's alleged appraisal of the Subject Property assigned a value of \$472,000.

5. The original appraisal (Appraisal 1) prepared by Hall for the Subject Property was replete with errors. Those errors are not in dispute. However, based on the findings made below, the nature and extent of those errors are not material. Upon her initial review of Appraisal 1, Hall began to make corrections to the obvious errors. Her corrections appear in Appraisal 2, which is actually an updated version of Appraisal 1, as will be discussed further herein.

6. At all times pertinent hereto, Hall was an independent real estate appraiser working for herself. She had two employees, neither of whom was a certified real estate appraiser. Hall has been certified as a residential real estate appraiser for five years. During the real estate boom of 2006-2007, Hall did approximately 30 residential appraisals per

month. She is currently doing approximately ten per month, reflecting the slow-down in the real estate market in Florida.

7. Hall's normal practice is to prepare an appraisal utilizing a specially designed appraisal software known as Aurora. The Aurora software had several glitches when Hall first started using it, some of which still exist. However, it is a generally user-friendly software program, and Hall is able to work around the glitches.

8. In April 2007, Hall's process for preparing an appraisal was as follows: Hall would give basic information about the subject property to her assistant, Robert Smith. Smith would input that basic information into an appraisal form, usually relying on the form from a recently completed appraisal done by Hall. This practice is known as "cloning," i.e., slightly amending an existing form with new information, resulting in a completely new appraisal form. It was Smith's practice to find an appraisal from the same geographic area as the property in question so that when he cloned the form, some of the same information could be used. For example, information about the neighborhood, topography, local schools, etc., would remain the same for properties in the same proximate geographic location.

9. Once Smith finalized the draft appraisal form, he would send it via email to Hall in the adjoining office. Hall would

finalize the appraisal by completing all unfinished portions of the appraisal form, correcting any errors or changes from the relied-upon form, and adding all the requisite addendums to the appraisal.

10. Addendums contained such items as color photos of comparable properties, property information about surrounding properties, sketches or diagrams of the subject property, maps of the area, etc. Hall considered the addendums to be her primary area of expertise and prided herself in having complete and usable addendums.

11. After emailing the draft appraisal to Hall, Smith's job would essentially be complete. He would not see the appraisal again until Hall had finalized it into its ultimate form, including addenda.

12. Hall would spend some time on the draft appraisal, but would work on several appraisals at the same time. When an appraisal was done, she would send it back to Smith with directions to release it to the client who had ordered it.

13. Appraisal 1 on the Subject Property was cloned by Smith from an earlier appraisal pursuant to directions from Hall. When Smith finished his preliminary work and prepared to email the draft to Hall, the Aurora software would not allow him to do so unless he electronically "signed" the draft with Hall's signature. (This is one of the afore-referenced glitches in the

Aurora software.) Because of that glitch, Hall had given Smith the authority to "sign" her name for the sole purpose of emailing her the draft. The email was going from one computer in Hall's office (at Smith's desk) to another computer in the office (at Hall's desk).

14. Neither Hall, nor Smith, intended the electronic "signing" of the draft appraisal to suggest that Hall had approved the draft. It was signed only so that the draft could be transferred via email to Hall.

15. However, when Smith sent Appraisal 1 to Hall, he also inadvertently sent it to the client, Chapman and Associates. Brett Branning, an appraiser working for Chapman and Associates, received the draft appraisal (Appraisal 1) and apparently believed it was a final product from Hall. Branning is a certified appraiser, and it was his job with Chapman and Associates to do a review of appraisals from outside appraisers. Branning reviewed Hall's appraisal, determined it to be inadequate, and then made a complaint to the Department. An investigation ensued.

16. During the course of the investigation, Hall was asked to submit her entire work file concerning her appraisal of the Subject Property to the Department. Contained within that work file was Hall's somewhat corrected version of Appraisal 1. That is, the appraisal in Hall's work file (Appraisal 2) was a

further cloned version of Appraisal 1, but it was not yet a final appraisal.<sup>3</sup>

17. Thus, when the Department investigator compared Appraisal 1 to Appraisal 2 from Hall's work file, it appeared Hall had issued a new appraisal, but had destroyed or otherwise eliminated Appraisal 1. Appraisal 2 in the work file was also replete with errors and omissions. It was, however, not a final product; it was an updated version of Appraisal 1.

18. The Department's investigator and expert witness each testified to the extreme number of errors in Appraisal 1 (as well as, the later version). Their testimony and conclusions were credible and indicated serious errors within the subject appraisal. However, inasmuch as the appraisal at issue was not a final product and not meant for release by Hall, their findings are not relevant to the decision reached herein.

19. Hall readily and candidly admits that Appraisal 1 is incorrect, incomplete, and insufficient. However, she maintains that her electronic signature on the appraisal is not indicative of its status as a final product; rather, the signature was added solely for an internal transfer of the appraisal from one office computer to another. Both her and Smith's testimony in this regard is credible.



CONCLUSIONS OF LAW

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

21. Licensure revocation proceedings are penal in nature. It is incumbent upon the Department in such cases to prove, by clear and convincing evidence, the truthfulness of the allegations against the licensee. Department of Banking and Finance v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292, 295 (Fla. 1987).

22. The clear and convincing evidence standard requires:

[T]hat the evidence be found to be credible, the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts at issue. The evidence must be of such a 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 to be established.

Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

23. The evidence presented by the Department's witnesses was indeed clear and convincing as to the errors that appeared in Appraisal 1, which Hall had initially prepared. Both the investigator and the expert called by the Department provided an excellent description of the facts. However, there is no

credible testimony from the Department that Appraisal 1 was a final product, intended by Hall to be the result of her work on that job. The fact that an electronic signature appeared on the appraisal was sufficiently explained by Hall and Smith as an accident, pure and simple.<sup>4</sup>

24. The Department has alleged violation by Hall of three particular statutory provisions: Sections 475.624, 475.6221, and 475.629, Florida Statutes, which are set forth in pertinent part below.

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.

\* \* \*

(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.

\* \* \*

(6) Has had a registration, license, or certification as an appraiser revoked, suspended, or otherwise acted against, or has been disbarred, or has had her or his registration, license, or certificate to practice or conduct any regulated profession, business, or vocation revoked or suspended by this or any other state, any nation, or any possession or district of the United States, or has had an application for such registration, licensure, or certification to practice or conduct any regulated profession, business, or vocation denied by this or any other state, any nation, or any possession or district of the United States.

\* \* \*

(10) Has been found guilty, for a second time, of any misconduct that warrants

disciplinary action, or has been found guilty of a course of conduct or practice which shows that she or he is incompetent, negligent, dishonest, or untruthful to an extent that those with whom she or he may sustain a confidential relationship may not safely do so.

\* \* \*

(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.

475.6221 Employment of and by registered trainee real estate appraisers.--

(1) A registered trainee real estate appraiser must perform appraisal services under the direct supervision of a licensed or certified appraiser who is designated as the primary supervisory appraiser. The primary supervisory appraiser may also designate additional licensed or certified appraisers as secondary supervisory appraisers. A secondary supervisory appraiser must be affiliated with the same firm or business as the primary supervisory appraiser and the primary or secondary supervisory appraiser must have the same business address as the registered trainee real estate appraiser. The primary supervisory appraiser must notify the Division of Real Estate of the name and address of any primary and secondary supervisory appraiser for whom the registered trainee will perform appraisal services, and must also notify the division within 10 days after terminating such relationship. Termination of the relationship with a primary supervisory

appraiser automatically terminates the relationship with the secondary supervisory appraiser.

475.629 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.

25. There has not been any showing by the Department that Hall's unintentional and mistaken "publication" of Appraisal 1 was violative of any statutory prohibition set forth above. Clearly, there was never any intent on Hall's part to do anything improper or fraudulent. Nor were Smith's actions--for which Hall was responsible--intentional or meant to harm, defraud or otherwise harm a client.

26. In short, the Department did not, by clear and convincing evidence, establish the violations set forth in the Administrative Complaint.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered by Petitioner, Department of Business and Professional Regulation, Division of Real Estate, dismissing the complaint against Deborah M. Hall.

DONE AND ENTERED this 8th day of April, 2009, in Tallahassee, Leon County, Florida.



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R. BRUCE MCKIBBEN  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 8th day of April, 2009.

ENDNOTES

<sup>1/</sup> Petitioner's Proposed Recommended Order violates Florida Administrative Code Rule 28-106.215 in that it exceeds 40 pages without leave of the Administrative Law Judge. However, in light of the ruling herein, there is no prejudice to Respondent caused by the violation.

<sup>2/</sup> Unless particularly stated to the contrary, all references to Florida Statutes in this Recommended Order shall be to the 2008 version.

<sup>3/</sup> In fact, by that time, Hall had been notified by her client to stop doing work on the file, and she had not taken steps to further finalize the appraisal.

<sup>4/</sup> Ironically, Respondent's Proposed Recommended Order contains errors (see paragraphs 17 and 22), which are clearly mistakes and were not meant to be part of the final product. This is amusingly indicative of the adage that, "Mistakes happen."

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 this case.