

FILED
Department of Business and Professional Regulation
Deputy Agency Clerk
CLERK Brandon Nichols
Date **5/13/2010**
File # **2010-04032**

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

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

Petitioner,

v.

JAMES EDWARD LESTER, JR.,

Respondent.

DBPR CASE NO.: 2008001566
DOAH CASE NO.: 09-0642PL
LICENSE NO.: RZ 2783

FILED
2010 MAY 17 AM 11:53
DIVISION OF
ADMINISTRATIVE
HEARINGS

FINAL ORDER

THIS CAUSE came before the FLORIDA REAL ESTATE APPRAISAL BOARD (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, at a duly noticed public meeting on February 1, 2010, in Orlando, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order. Petitioner was represented by Robert Minarcin, Senior Attorney. Respondent was not present but was represented by Daniel Villazon, Esquire.

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

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

3. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 475, Part II, Florida Statutes.

4. The conclusions of law set forth in the Recommended Order in Paragraphs 33-44 are approved and adopted and incorporated herein by reference.

5. The Board voted to modify the conclusion of law in Paragraph 45 and to reject in their entirety both paragraphs numbered 46 of the Recommended Order after determining the modification and rejections are as reasonable or more reasonable than what had been put forth by the Administrative Law Judge. The Board found the Administrative Law Judge did not have jurisdiction to dispose of constitutional issues in an administrative proceeding. Cook v. Fla. Parole & Prob Comm'n, 415 So. 2d 845 (Fla. 1st DCA 1982). Furthermore, the Board found that the Administrative Law Judge, who *sua sponte* raised and decided the issue of which edition of the USPAP standards were applicable in this proceeding after the final hearing without giving the parties an opportunity to present evidence and/or argument, departed from the essential requirements of law by denying the Department due process. Dept. of Fin. Servs. v. Mistretta 946 So. 2d 79 (Fla. 1st DCA 2006).

6. Paragraph 45 of the Recommended Order shall read as follows:

Counts III through XII, which involve alleged violations of Section 475.624(14), by means of violating the USPAP standards, 2005 edition, have not been proven by clear and convincing evidence and should be dismissed.

7. There is competent, substantial evidence to support the conclusions of law adopted by the Board.

DISPOSITION

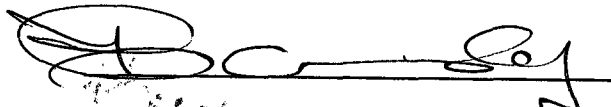
The Administrative Law Judge's Recommendation is approved and adopted by the Board in its entirety.

WHEREFORE, IT IS HEREBY ORDERED and ADJUDGED that:

The Amended Administrative Complaint against Respondent, James Edward Lester, Jr., is DISMISSED.

This Final Order shall take effect upon being filed with the Clerk of the Department of Business and Professional Regulation.

DONE AND ORDERED this 30 day of March, 2010.



Florida Real Estate Appraisal Board
By Thomas W. 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 BUSINESS AND PROFESSIONAL REGULATION 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: Daniel Villazon, Esquire, 1420 Celebration Blvd., Suite 200, Celebration, FL 34747; and to Lisa Shearer Nelson, 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 13th day of May, 2010.

Brandon M. Nichols

7009 1680 0000 8574 1789

U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT <i>(Domestic Mail Only; No Insurance Coverage Provided)</i>	
For delivery information visit our website at www.usps.com ®	
OFFICIAL USE	
Postage \$	Postmark
Certified Fee	
DANIEL VILLAZON, ESQ 1420 CELEBRATION BLVD SUITE 200 CELEBRATION, FL 34747	
RM FO (LESTER)	
PS Form 3800, August 2006 See Reverse for Instructions	

4

7009 1680 0000 8574 1796

U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT <i>(Domestic Mail Only; No Insurance Coverage Provided)</i>	
For delivery information visit our website at www.usps.com ®	
OFFICIAL USE	
Postage \$	Postmark
Certified Fee	
LISA SHEARER NELSON ADMINISTRATIVE LAW JUDGE DOAH, THE DE SOTO BUILDING 1230 APALACHEE PKWY TALLAHASSEE, FL 32399-3060	
RM FO (LESTER)	
PS Form 3800, August 2006 See Reverse for Instructions	