

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
DIVISION OF REAL ESTATE,)
)
Petitioner,)
)
vs.) Case No. 09-0700PL
)
FRED R. CATCHPOLE)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, this cause was heard by Linda M. Rigot, the assigned Administrative Law Judge of the Division of Administrative Hearings, on February 17, 2010, by video teleconference with sites in Jacksonville and in Tallahassee, Florida.

APPEARANCES

For Petitioner: Robert Minarcin, Esquire
Department of Business and
Professional Regulation
400 West Robinson Street, Suite N801
Orlando, Florida 32801-1757

For Respondent: Martin A. Pedata, Esquire
Martin Pedata, P.A.
150 Wildwood Road
Deland, Florida 32720

STATEMENT OF THE ISSUE

The issue presented is whether Respondent Fred R. Catchpole is guilty of the allegations contained in the Amended Administrative Complaint filed against him, and, if so, what disciplinary action should be taken against him, if any.

PRELIMINARY STATEMENT

On January 8, 2008, Petitioner Florida Department of Business and Professional Regulation, Division of Real Estate, issued an Administrative Complaint against Respondent Fred R. Catchpole, alleging that Respondent had violated statutes and rules regulating his conduct as a licensed real estate appraiser. Respondent timely requested an administrative hearing regarding those allegations, and this cause was transferred to the Division of Administrative Hearings on February 11, 2009, to conduct the evidentiary proceeding.

Three continuances of the scheduled final hearing were granted, two of them on an emergency basis. By Order entered November 17, 2009, Petitioner's Motion to Amend Administrative Complaint, filed August 17, 2009, was granted. Accordingly, the Amended Administrative Complaint filed August 17, 2009, stands as and for the charging document in this cause. At the commencement of the final hearing, Petitioner voluntarily dismissed Paragraph numbered six in the Amended Administrative Complaint.

Petitioner presented the testimony of Benjamin L. Clanton and Francois K. Gregoire, and Respondent testified on his own behalf. Additionally, Petitioner's Exhibits numbered 1, 9, 10, and 11 were admitted in evidence. Petitioner's request for official recognition of the two-page map of the counties in Florida, which was filed post-hearing, was granted.

FINDINGS OF FACT

1. Respondent Fred R. Catchpole became a licensed appraiser in the State of Florida in 1993. In 2006 he became a certified residential appraiser in the State of Florida. He is still so licensed.

2. Since 1994 he has maintained offices at 5449 Marcia Court, in Jacksonville, Duval County, and at Unit 202, 533 Seabreeze Boulevard, in Daytona Beach, Volusia County. In 1995 he added an office at 303 Hermitage in Valrico, Hillsborough County. He has maintained all three offices continuously from then through the date of the final hearing in this cause.

3. Since opening these offices, he has provided the addresses for all three offices to Petitioner, and Petitioner's employees have visited all three offices. When the law changed, Respondent registered his corporation Worldwide Appraisal Service, Inc., with Petitioner and specifically registered his corporation at all three addresses.

4. Each of the three offices is a stand-alone operation, with its own separate bank accounts and separate accounting systems. Respondent has, historically, worked two days a week at each of the three offices. He considers each of those offices to be his "primary" office since they operate separately and he spends an equal amount of time in each of them.

5. Over the years Respondent has supervised a number of trainee appraisers, among them Fred C. Bowermaster and William E. Woods. He has supervised Bowermaster from January 24, 1995, through the time of the final hearing except for one four-month time period. He has supervised Woods from August 28, 1995, through the time of the final hearing. It is noted that Petitioner's records reflect that Respondent's supervision of Woods started both in 1995 and in 1998.

6. Bowermaster works in Volusia County at Respondent's Seabreeze Boulevard address. Bowermaster is 71 years old and is described by Respondent as "the oldest living trainee." For a while, Woods worked in Duval County and then moved to Hillsborough County. Respondent describes him as "the second oldest trainee." At all times, all required paperwork and notices of address and changes of address were filed by Respondent, Bowermaster, and Woods.

7. When a licensee has more than one business address, Petitioner requires that the licensee register all addresses.

At all times, Respondent has complied with that requirement. There is no prohibition against a licensee having more than one office or more than one business address.

8. At all times material hereto, when Respondent has been present at one of his offices, he has maintained communication with the others. He has also had other certified appraisers assisting him in the training and supervision of his trainees.

9. Duval County is not contiguous to Volusia County or Hillsborough County, and Hillsborough and Volusia Counties are not contiguous to each other.

10. Petitioner has never taken any disciplinary action against Respondent, Bowermaster, or Woods.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the subject matter hereof and the parties hereto. §§ 120.569 and 120.57(1), Fla. Stat.

12. Petitioner seeks to take disciplinary action against Respondent in this proceeding. The burden of proof, therefore, is on Petitioner, and Petitioner must prove the allegations in its Amended Administrative Complaint by clear and convincing evidence. Dep't of Banking & Finance, Division of Securities & Investor Protection v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996). Petitioner has not met its burden.

13. The Amended Administrative Complaint contains two counts. Count One alleges that Respondent is guilty of failing to have the same business address as the registered trainee real estate appraiser being supervised, in violation of Section 475.6221(1), Florida Statutes, and, therefore, in violation of Section 475.624(4), Florida Statutes.

14. Section 475.6221(1) provides, in part, as follows:

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. [Emphasis added.]

15. Petitioner has failed to prove Respondent guilty of violating Section 475.6221(1), and, therefore, Section 475.624(4), Florida Statutes, as alleged in Count One. The evidence is clear that Bowermaster's address, according to Petitioner's records, is the same as the location of one of Respondent's offices. Even if it were different, as Woods' address is different, there is no evidence as to whether Bowermaster's address or Woods' address is a business address or a mailing address. Petitioner's computer-screen print-outs

admitted in evidence merely reflect an "address" for each of them, and the certifications submitted as evidence by Petitioner specifically say that the addresses given therein are mailing addresses. Lastly, there is no evidence to show that those trainees did not share a business address with Respondent or with a secondary supervisory appraiser.

16. Count Two of the Amended Administrative Complaint alleges that Respondent is guilty of failing to supervise a trainee real estate appraiser in the county where the supervising appraiser's primary business address is located and registered with the Department, or in any county contiguous to the county where the supervising appraiser's primary business address is located and registered with the Department, in violation of Florida Administrative Code Rule 61J1-4.010(5) and, therefore, in violation of Section 475.624(4), Florida Statutes.

17. Florida Administrative Code Rule 61J1-4.010(5) provides that:

(5) When supervising any aspect of the appraisal process, a supervisory appraiser shall train or supervise registered appraisers located in:

(a) The county where the supervising appraiser's primary business address is located and registered with the Department; and

(b) Any county contiguous to the county where the supervisory appraiser's primary

business address is located and registered with the Department.

18. Petitioner has failed to prove Respondent guilty of violating Florida Administrative Code Rule 61J1-4.010(5) and, therefore, Section 475.624(4), Florida Statutes, as alleged in Count Two of the Amended Administrative Complaint. This dispute revolves around the term "primary business address." Petitioner seeks to ignore Respondent's actual business operations and, instead, rely on dictionary definitions for the word "primary." Such an approach is simplistic and, in this cause, forms an inadequate basis for disciplinary action.

19. If Respondent had a main office with satellite offices, he would be required, pursuant to the Rule, to supervise Bowermaster and Woods in the county where his main office is located or in a contiguous county. But the evidence is uncontroverted that Respondent does not have a main office. Rather, he has three equal offices, each of which is a stand-alone operation with its own separate bank accounts and its own accounting systems. The evidence is further uncontroverted that Respondent spends an equal amount of time at each office. In addition, Petitioner has allowed Respondent to register his trainees at the addresses used, and his trainees have been permitted to register in two of the counties where Respondent has primary offices.

20. In its Proposed Recommended Order, Petitioner relies on Florida Administrative Code Rule 61J1-7.004(3), a Rule not cited in the Amended Administrative Complaint and, therefore, not a Rule Respondent is charged with violating. That Rule requires an appraiser with more than one business address to designate the primary business address. There is no evidence as to which of his offices, if any, Respondent has designated as his primary business address or which one Petitioner considers his primary business address, if any, and why. Petitioner's own records admitted in evidence in this proceeding merely use the term "address" and not "primary business address" or use the term "located at" or "additional locations at." Since Petitioner has not proven which address is Respondent's primary business address, Petitioner has failed to prove that his trainees are not located in the county of Respondent's primary business address or a contiguous county.

21. The clear and convincing evidence in this record is that Bowermaster's address is the same as Respondent's office in Volusia County and that Woods' address is in Hillsborough County as is one of Respondent's offices. It appears obvious that the intent of the Rule is to ensure that trainees are being properly and/or directly supervised. No evidence was offered that either Bowermaster or Woods is or has been inadequately supervised, and

Respondent is not charged with any breach of his supervisory responsibilities.

22. In its Proposed Recommended Order, Petitioner recommends that Respondent's license be suspended for one year, that he be fined \$5,000, that he take 15 hours of coursework, and that he be placed on probation for two years. Even if Petitioner had proved that Respondent had willfully violated the Statutes and Rule as charged, which Petitioner has not, this recommendation is stunning in view of the uncontroverted evidence that Respondent's office and trainee locations have been in place for over a decade with the full knowledge of Petitioner, that there is no suggestion of harm to anyone, and that Petitioner has taken no prior disciplinary action against him. A reasonable and fair discipline to be imposed under the facts of this case, if Respondent had been found guilty, would be requiring Respondent to cease his supervision of any trainee Petitioner believes to be improperly located. Respondent has already borne the burden of retaining an attorney to defend him in this administrative proceeding where the dispute is limited to Respondent's position that he has three primary business addresses and Petitioner's position that he can only have one.

RECOMMENDATION

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

RECOMMENDED that a final order be entered finding Respondent not guilty and dismissing the Amended Administrative Complaint filed against him.

DONE AND ENTERED this 11th day of May, 2010, in Tallahassee, Leon County, Florida.

Linda M. Rigot

LINDA M. RIGOT
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 11th of May, 2010.

COPIES FURNISHED:

Robert Minarcin, Esquire
Department of Business and
Professional Regulation
400 West Robinson Street, Suite N801
Orlando, Florida 32801-1757

Martin A. Pedata, Esquire
Martin Pedata, P.A.
150 Wildwood Road
Deland, Florida 32720

Reginald Dixon, General Counsel
Department of Business and
Professional Regulation
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-0792

Thomas W. O'Bryant, Jr., Director
Department of Business and
Professional Regulation
Division of Real Estate
400 West Robinson Street
Suite 802 North
Orlando, Florida 32801

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.