

FILED
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File # **2010-05210**

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.

HARVEY W. SIGMOND,

Respondent.

DBPR CASE NO.: 2008-033481
DOAH CASE NO.: 09-3685PL
LICENSE NO.: RD 2479

2010 JUN 14 A 11:53
DIVISION OF
ADMINISTRATIVE
HEARINGS
FILED

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 March 30, 2010, in Orlando, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order, Petitioner's Exception to the Recommended Order, Respondent's Response to Petitioner's Exception to the Recommended Order, and Respondent's Exceptions to the Recommended Order. Petitioner was represented by D. Christine Lindamood, Senior Attorney. Respondent was present and represented by Robert C. Shearman, Esquire.

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

RULING ON PETITIONER'S EXCEPTION

The Board reviewed and considered Petitioner's Exception to the Recommended Order and denied it.

RULING ON RESPONDENT'S EXCEPTIONS

The Board reviewed and considered the Petitioner's Exceptions 1 and 3-5 to the Recommended Order and denied them on the basis that they were not proper exceptions as provided in Section 120.57(1)(k), Florida Statutes.

Petitioner's Exception 2 is granted for the reasons set forth in the exceptions and Paragraph 36 of the Recommended Order is rejected in its entirety, with no substitution, and the Board determined the rejection is as reasonable or more reasonable than what had been put forth by the Administrative Law Judge.

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order in Paragraphs 1-30 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 conclusions of law set forth in the Recommended Order in Paragraphs 31-35, 37, and 39-42 are approved and adopted and incorporated herein by reference.

4. The Board voted to modify the conclusion of law in Paragraph 38 of the Recommended Order after determining the modification is as reasonable or more reasonable than what had been put forth by the Administrative Law Judge. Paragraph 38 of the Recommended Order shall read as follows:

The Department has established by clear and convincing evidence that Mr. Sigmond falsely certified that he had analyzed and reported any offering for sale of the Subject Property for the last 12 months in his Report.

5. The Board voted to reject, without substitution, the conclusion of law in Paragraph 43 of the Recommended Order after determining the rejection is as reasonable or more reasonable than what had been put forth by the Administrative Law Judge.

6. The Board voted to reject, without substitution, the conclusions of law in Paragraphs 44-46 of the Recommended Order after determining these 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).

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

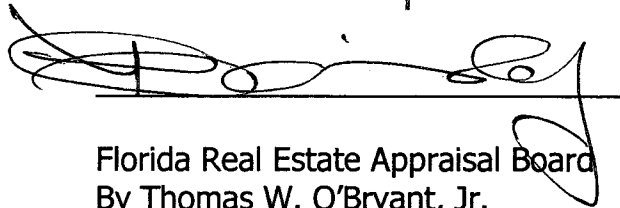
DISPOSITION

Upon a complete review of the record in this case, and based upon the granted exception, the modification, and the rejections to the conclusions of law, the Board determined that the disposition recommended by the Administrative Law Judge be modified to be as follows:

Respondent violated Subsections 475.624(2) and 475.624(15), Florida Statutes. Counts Three through Ten of the Administrative Complaint are hereby dismissed. Respondent shall pay an administrative fine in the amount of \$3,000.00 and costs in the amount of \$529.65. Respondent shall pay the fine and costs by separate checks payable to Florida Department of Business and Professional Regulation, Division of Real Estate, Real Estate Appraisal Board at 400 West Robinson Street, Suite 801N, Orlando, Florida 32801-1757, within 30 days of the filing of this Final Order.

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

DONE AND ORDERED this 26 day of May, 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: **Robert C. Shearman, Esquire**, P.O. Box 280, Ft. Myers, FL 33902-0280; and to **Susan B. Harrell, 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 11th day of June, 2010.

Brandon M. Nichols

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