

FILED
Department of Business and Professional Regulation
Deputy Agency Clerk
CLERK Brandon Nichols
Date **6/11/2010**
File # **2010-05209**

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

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

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

Petitioner,

v.

DBPR CASE NO.: 2008-052267
DOAH CASE NO.: 09-3946PL
LICENSE NO.: RD 2598

MICHAEL ANTHONY FACENDO,

Respondent.

_____ /

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 was represented by Robert Minarcin, Assistant General Counsel. Respondent was neither present nor represented by counsel.

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 in Paragraphs 1-23 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 24-46 are approved and adopted and incorporated herein by reference.

4. The Board voted to modify the conclusion of law in Paragraph 47 and to reject in its entirety Paragraph 48 of the Recommended Order after determining the modification and rejection 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).

5. Paragraph 47 of the Recommended Order shall read as follows:

Finally, even though the Department has proven that Mr. Facendo violated the Record Keeping Section of the Ethics Rule of the USPAP (2006), this proof is insufficient to establish Mr. Facendo violated Section 475.624(14), Florida Statutes.

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

DISPOSITION

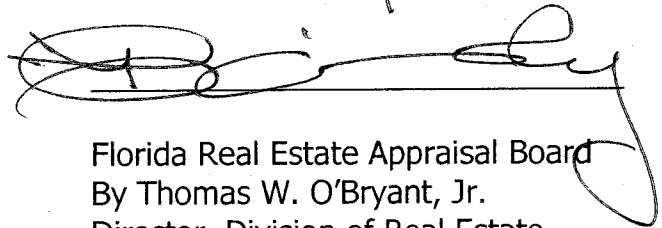
The Administrative Law Judge's Recommendation is approved and adopted by the Board in its entirety.

WHEREFORE, IT IS HEREBY ORDERED and ADJUDGED that:

The Amended Administrative Complaint against Respondent, Michael Anthony Facendo, 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 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: **Norman Malinski, Esquire**, 2875 Northeast 191st Street, Suite 508, Aventura, FL 33180; and to **Patricia M. Hart, 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

7008 1830 0001 1442 7930

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 \$	
Ret (Endorse)	
Restrict (Endorse)	Norman Malinski, Esquire 2875 Northeast 191 st Street Suite 508 Aventura, Florida 33180 (Michael Facendo) (FO/RM)
Total P	
Sent To	
Street, Apt or PO Box	
City, State, ZIP+4	
PS Form 3800, August 2006	
See Reverse for Instructions	