

FILED
Department of Business and Professional Regulation
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Date 7/29/2010
File # 2010-06972

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

FILED

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DIVISION OF
ADMINISTRATIVE
HEARINGS

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

Petitioner,

v.

DBPR CASE NO.: 2008052272
DOAH CASE NO.: 09-3947PL
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 June 8, 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 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 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 34-57 are approved and adopted and incorporated herein by reference.
5. The Board voted to modify the conclusions of law in Paragraphs 58 and 59 of the Recommended Order after determining the modifications 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 58 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 that Mr. Facendo violated Section 475.624(14), Florida Statutes. The 2006 edition of the USPAP was not applicable to certified real estate appraisers doing business in Florida in 2007 and 2008.

7. Paragraph 59 of the Recommended Order shall read as follows:

Accordingly, Counts Three, Four, Five, Six, and Eight of the Administrative Complaint should be dismissed.

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

DISPOSITION

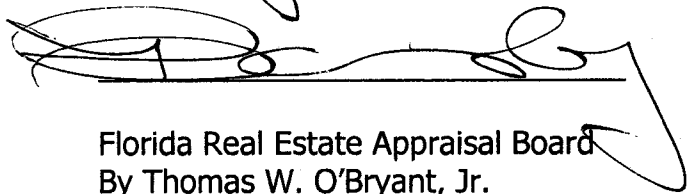
The Administrative Law Judge's Recommendation is approved and adopted by the Board in its entirety.

WHEREFORE, IT IS HEREBY ORDERED and ADJUDGED that:

The 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 16 day of July, 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 Malinsky, 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 _____ day of _____, 2010.

Brandon M. Nichols
July 29, 2010

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