

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
DIVISION OF REAL ESTATE, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 09-5356PL  
 )  
HOWARD KLAHR, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on December 16, 2009, by video teleconference at sites in Miami and Tallahassee, Florida, and on January 26, 2010, by telephone conference to hear closing arguments, before John D. C. Newton, II, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Robert Minarcin  
Assistant General Counsel  
Department of Business and  
Professional Regulation  
Division of Real Estate  
400 West Robinson Street, Suite N801  
Orlando, Florida 32801

For Respondent: Howard Klahr, pro se  
East Hill Valuation and Consulting  
5645 Coral Ridge Drive, No. 120  
Coral Springs, Florida 33076

STATEMENT OF THE ISSUES

1. Did the Respondent, Howard Klahr, fail to deliver or communicate appraisals of properties located at 5821 Southwest 20th Street, Miami, Florida and 2761-63 Southwest 31 Place, Miami, Florida 33133?

2. Did Respondent, Howard Klahr, commit or make fraud, misrepresentation, concealment, false promises, false pretenses, dishonest conduct, culpable negligence, or breach of trust in his business relationship with Jane Asorey.

3. What is the proper discipline, if any, to be imposed on Respondent, Howard Klahr (Mr. Klahr)?

PRELIMINARY STATEMENT

On December 10, 2008, the Petitioner, Department of Business and Professional Regulation, Division of Real Estate (DBPR) issued an Administrative Complaint that alleged Mr. Klahr had contracted to and been paid to develop and deliver appraisals of properties located at 5821 Southwest 20th Street, Miami, Florida, and 2761-63 Southwest 31st Place, Miami, Florida 33133. The Complaint alleged that Mr. Klahr did not develop or deliver the appraisals and did not return the money he was paid in advance for them.

Count I of the Complaint alleged that Mr. Klahr violated Section 475.624(16), Florida Statutes (2007)<sup>1</sup>, by failing to communicate an appraisal without good cause. Count II of the

Complaint alleged that Mr. Klahr violated Section 475.624(2), Florida Statutes, by fraud, misrepresentation, concealment, false promises, false pretenses, dishonest conduct, culpable negligence or breach of trust in a business transaction.

Count III of the Complaint alleged that Mr. Klahr violated Florida Administrative Code Rule 61J1-7.004 and Section 475.624(4), Florida Statutes, by failing to timely advise DBPR of a change in address. DBPR withdrew Count III at the hearing's onset.

Mr. Klahr filed a Petition for Formal Hearing and "Election of Rights" form dated January 14, 2009, with DBPR. On September 29, 2009, DBPR sent both documents to the Division of Administrative Hearings (Division) for conduct of the requested hearing. The Division set the hearing for December 16, 2009, and conducted the hearing as scheduled.

November 10, 2009, the Division issued its Order Directing Filing of Exhibits. The Order required the parties to file copies of all exhibits with the Division no later than five days before the hearing. The fifth day before the hearing date was December 11, 2009. DBPR filed its exhibits on December 10, 2009. Mr. Klahr sent his exhibits to the Division and DBPR by facsimile transmission the night of December 15, 2009. The Division accepted the exhibits as received on December 16, 2009.

DBPR objected to admission of any of Mr. Klahr's Exhibits because they were untimely filed depriving DBPR of a fair opportunity to rebut them or cross examine about them. The Administrative Law Judge reserved ruling on the objections and recessed the hearing mid-morning to permit counsel an opportunity to examine the proposed exhibits and consult with others. The Administrative law Judge also took an extended lunch recess for the same purpose. All parties presented their evidence during the December 16 hearing. The Administrative Law Judge continued the hearing for the sole purpose of allowing rebuttal evidence, responses to the rebuttal evidence, and closing arguments.

The continued hearing was set for January 15, 2010, by video conference. Mr. Klahr moved to reschedule the continued hearing. In a telephone conference held January 6, 2010, the DBPR withdrew its request to present rebuttal evidence. The parties agreed that they could present closing arguments in a telephone hearing. The hearing was rescheduled to January 26, 2010 for closing argument by the parties that choose to present argument.

On December 24, 2009, the court reporter filed the Transcript of the hearing held December 16, 2009. On January 10, 2010, the court reporter filed a corrected Transcript.

At the January 26, 2010, hearing conducted by telephone conference call, Petitioner's Exhibits 1 through 9 were admitted into evidence without objection. Respondent's Exhibits 1, 2, and 3 were admitted over objection. Respondent's Exhibits 4, 5, and 6 were admitted into evidence without objection. Respondent's Exhibits 7, 8, and 9 were not admitted. Both parties rested. Only Mr. Klahr offered closing argument.

On February 15, 2010, DBPR timely filed its Proposed Recommended Order. On February 16, 2010, Mr. Klahr filed his untimely Proposed Recommended Order. Despite being untimely, it has been considered.

#### FINDINGS OF FACT

1. Respondent, Howard Klahr, is a Florida state certified general real estate appraiser trading as Easthill Valuation and Consulting. He holds license number RZ-2678 and has since August 2003.

2. On January 7, 2007, Jane Asorey, now Jane Zuleta, met with Mr. Klahr and engaged him to provide appraisal evaluations of two properties and to provide expert witness and consulting services for Ms. Asorey's dissolution of marriage case.

3. One property was the marital home, a single family residence located at 5821 Southwest 20th Street, Miami, Florida.

4. The other property was a duplex located at 2761-2763 Southwest 31st Place, Miami, Florida.

5. The duplex appraisal evaluation was to be "retrospective" and evaluate the worth of the duplex in 1991, 1999, and 2005. The appraisal evaluation of the single family residence was to be for the value in 2005. The evaluations were also to include a review of appraisals prepared by others.

6. Ms. Asorey paid Mr. Klahr a retainer of \$1,000.00 for the appraisal evaluation and services on November 7, 2007, including a \$500.00 charge for the appraisal evaluation. Ms. Asorey made the check out to Mr. Klahr's company, Easthill Valuation and Consulting.

7. Mr. Klahr accepted the payment and cashed Ms. Asorey's check.

8. In a November 5, 2007, e-mail, Ms. Asorey provided Mr. Klahr the telephone number and e-mail address for her attorney.

9. That November 5, 2007, e-mail explained that the work was for dissolution of marriage trial scheduled for December 14, 2007.

10. Mr. Klahr and Ms. Asorey did not enter into a written engagement agreement.

11. Despite repeated efforts by Ms. Asorey to obtain the evaluations, Mr. Klahr never provided her or her attorney the appraisal evaluation he agreed to provide and for which he had been paid.

12. Mr. Klahr attended the deposition of an appraiser in the legal proceeding. Ms. Asorey paid him an additional \$750.00 for that service.

13. Ms. Asorey spoke to Mr. Klahr on December 20, 2007, and reminded him of the need for his report and a December 28, 2007, deadline for filing the evaluation in her case.

14. Because Mr. Klahr did not provide the appraisal evaluation, Ms. Asorey missed exhibit deadlines in her case and had to continue the trial.

15. On January 2, 2008, Ms. Asorey sent Mr. Klahr an e-mail importuning him to call her, advising him of her repeated efforts to reach him by telephone since December 20, 2007, and emphasizing the urgent need for the report which was overdue.

16. There is no evidence that Mr. Klahr responded to that e-mail.

17. Because Mr. Klahr did not provide the appraisal evaluation, Ms. Asorey had to engage and pay another appraiser to provide the evaluations.

18. On July 26, 2008, the Department advised Mr. Klahr of its investigation and provided him a copy of the complaint.

19. The complaint specified that Mr. Klahr had not provided the appraisal reports and described Ms. Asorey's efforts to communicate with him.

20. Bernardo Yepes, the Department Investigator, spoke to Mr. Klahr October 15, 2008. Mr. Klahr stated that he had sent the DBPR documents responding to the complaint. Mr. Yepes advised Mr. Klahr that the Department had not received the documents. He asked Mr. Klahr to send them by facsimile transmission.

21. Mr. Klahr did not send the responsive documents to the DBPR by facsimile transmission or any other means.

22. The first time that Mr. Klahr provided any person copies of the appraisal reports that he maintains he prepared was on December 15, 2009; that was the night before the final hearing when Mr. Klahr submitted them to the Clerk of the Division of Administrative Hearings and to the DBPR attorney.

23. Mr. Klahr held a real estate license in 2002 and 2003. He was disciplined for violations of real estate licensing laws in 2002 or 2003.

24. Mr. Klahr had a previous complaint, similar to the complaint in this matter, filed against him. It was dismissed after an administrative hearing.

#### CONCLUSIONS OF LAW

25. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties pursuant to Sections 120.569 and 120.5791, Florida Statutes (2009).



26. Section 475.624, Florida Statutes, permits the Florida Real Estate Appraisal Board to impose a fine of up to \$5,000 and to revoke or suspend the license of a licensed or registered appraiser for the 18 offenses that it lists. Section 475.624(16), Florida Statutes, identifies one offense with which Mr. Klahr is charged. It provides for discipline of an appraiser who "[h]as failed to communicate an appraisal without good cause."

27. Section 475.624(2), Florida Statutes, identifies another offense with which Mr. Klahr is charged. It provides for discipline of an appraiser who "[h]as been guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest conduct culpable negligence, or breach of trust in any business transaction in this state. . . ."

28. The Department must prove the alleged violations by clear and convincing evidence. Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborn, 670 So. 2d 932 (Fla. 1996). Clear and convincing evidence must be credible. The memories of witnesses must be clear and not confused. The evidence must produce a firm belief that the truth of allegations has been established. Slomowiitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983). Evidence that conflicts with other evidence may be clear and convincing. The trier of fact must resolve

conflicts in the evidence. G.W.B. v. J.S.W. (in Re Baby E.A.W.), 658 So. 2d 961, 967 (Fla. 1995).

29. The evidence that Mr. Klahr did not communicate the appraisal reports without good cause to Ms. Asorey is clear and convincing, despite his conflicting testimony and the purported transmittal e-mail and evaluations produced the night before the hearing. There are several reasons that the evidence is clear and convincing. They involve demonstrated credibility of Ms. Asorey and Mr. Klahr's lack of credibility.

30. In contrast to Mr. Klahr, Ms. Asorey's demeanor was credible. The copies of e-mails are consistent with her testimony. There is no dispute that Ms. Asorey sent the e-mails that she says she sent. And Mr. Klahr had copies of them.

31. Ms. Asorey's contemporaneous actions confirm that Mr. Klahr did not provide the appraisal evaluations. She incurred the expense of engaging another appraiser to provide the reports that Mr. Klahr did not. A copy of the court docket also supports her testimony that she had to continue her dissolution trial.

32. The timing of Mr. Klahr's production of the appraisal evaluations he claims that he communicated belies his claim. At the hearing Mr. Klahr testified that he had e-mailed appraisal reports to Ms. Asorey on December 25, 2007. The Department advised Mr. Klahr of the investigation and provided him a copy

of the complaint on July 26, 2008. In an interview on October 15, 2008, Mr. Klahr said he had submitted documents responding to the complaint. The investigator advised Mr. Klahr then that the documents had not been received and asked him to resubmit them. He did not.

33. At the hearing Mr. Klahr offered and testified about a purported e-mail transmitting the appraisal reports as attachments. The first time Mr. Klahr provided the reports to anyone was when he submitted them as exhibits for the hearing in this cause.

34. Mr. Klahr is a licensed professional. He is familiar with the Department's investigation and disciplinary process because he previously faced disciplinary charges by the Board of Property Appraisers, through an administrative hearing, and the Board of Realtors. It is incredulous to believe that in the span of two years and two months Mr. Klahr would not have produced the two documents that directly refuted the charges against him until the night before the hearing on the charges.

35. Mr. Klahr's purported e-mail of December 25, 2007, transmitting the two purported reports states, "Please send a reply message to confirm receipt." Mr. Klahr does not claim that he received a reply message. And he does not claim that he took any further actions to verify or ensure delivery of the report as a result of not receiving a reply message. By his own

claims and documents offered, Mr. Klahr was unsure as of December 25, 2007, whether Ms. Asorey had received the appraisal reports. Yet he offered no evidence of any further efforts to determine if Ms. Asorey had received them. This conflict between a written acknowledgement of uncertainty about the effectiveness of communicating the appraisal reports and the absence of any effort to ensure the communication further supports the conclusion that Mr. Klahr did not communicate the appraisal reports.

36. Clear and convincing evidence establishes that Mr. Klahr failed to communicate his appraisal to Ms. Asorey. The facts that establish the failure to communicate establish that Mr. Klahr is guilty of a breach of trust in the business transaction with Ms. Asorey.

37. Mr. Klahr accepted payment in advance for his appraisal evaluations. He knew the evaluations were necessary evidence in Ms. Asorey's dissolution proceeding. He knew the importance of timely producing them in December. Ms. Asorey trusted Mr. Klahr to perform the work she had paid for in a timely fashion. Mr. Klahr breached that trust by not performing the work and not communicating about delays in any fashion. This is a violation of Section 475.624(2), Florida Statutes.

38. Florida Administrative Code Rule 61J1-8.002 establishes disciplinary guidelines for Chapter 475. For a

violation of Section 475.624(2), breach of trust, it provides that: "The usual action of the Board shall be to impose a penalty from a \$1000 fine to a 1 year suspension." For a violation of Section 475.624 (16), failure to communicate appraisal, Florida Administrative Code Rule 61J1-8.002 provides the same range of penalties. Florida Administrative Code Rule 61J1-8.002(2) also provides for probation in addition to any other penalty imposed.

39. Florida Administrative Code Rule 61J1-8.002(4) identifies mitigating and aggravating circumstances. Clear and convincing evidence establishes the aggravating circumstance of a degree of harm to Ms. Asorey, two counts in the Administrative Complaint, and a discipline of Mr. Klahr for violation of Florida real estate licensing laws in 2002 or 2003. But the evidence does not establish the reason for or severity of the discipline. Neither party gave notice of intent to introduce aggravating or mitigating circumstances as contemplated by Florida Administrative Code Rule 61J1-8.002(4)(a) before admission of the evidence. But the evidence that establishes the aggravating circumstances is evidence admitted to establish the offenses themselves.

40. In light of the aggravating circumstances and the disciplinary guidelines a 90-day suspension of Mr. Klahr's license and a \$1,000 fine for Count I, a \$1,000.00 fine and a

90-day suspension for Count II, and concurrent terms for each count of 18 months' probation during which Mr. Klahr must satisfactorily complete 15 hours of education coursework in the areas of Florida Law and Ethics are appropriate. Requiring restitution of \$1,000.00 to Ms. Asorey is appropriate corrective action as permitted by Section 455.227(2)(g), Florida Statutes.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Florida Department of Business and Professional Regulation, Division of Real Estate enter a final order that:

1. Dismisses Count III;
2. Finds that Mr. Klahr violated 475.624(2), Florida Statutes, and imposes a fine of \$1,000, 90-day suspension of Mr. Klahr's license, an 18-month term of probation during which Mr. Klahr must satisfactorily complete 15 hours of education coursework in the areas of Florida Law and Ethics;
3. Finds that Mr. Klahr violated Section 475.624 (16), Florida Statutes, and imposes a fine of \$1,000, 90-day suspension of Mr. Klahr's license, an 18-month term of probation during which Mr. Klahr must satisfactorily complete 15 hours of education coursework in the areas of Florida Law and Ethics;

4. Makes the terms of probation and periods of suspension concurrent with the probation beginning after the period of suspension concludes; and

5. Requires Mr. Klahr to pay Jane Zuleta \$1,000.00 within 30 days of the date of the final order.

DONE AND ENTERED this 24th day of February, 2010, in Tallahassee, Leon County, Florida.



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JOHN D. C. NEWTON, II  
Administrative Law Judge  
Division of Administrative Hearings  
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1230 Apalachee Parkway  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 24th day of February, 2010.

ENDNOTE

<sup>1/</sup> All statute citations are to the 2007 Florida Statutes unless otherwise noted.

COPIES FURNISHED:

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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.