

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
DIVISION OF REAL ESTATE,)
)
Petitioner,)
)
vs.) Case Nos. 09-6822PL
) 09-6824PL
FRED CATCHPOLE AND)
WILLIAM WOODS,)
)
Respondents.)
_____)

RECOMMENDED ORDER OF DISMISSAL

On April 26, 2010, a hearing was held by means of video teleconferencing, with sites in Tallahassee and Jacksonville, Florida, before Lisa Shearer Nelson, a duly-appointed Administrative Law Judge.

APPEARANCES

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

For Respondents: Fred R. Catchpole, pro se
5449 Marcia Circle
Jacksonville, Florida 32210

William Woods, pro se
2103 Herndon Street
Dover, Florida 33527

STATEMENT OF THE ISSUES

The issues to be determined are whether Respondents violated

the provisions of Section 475.624, Florida Statutes (2007), and Florida Administrative Code Rule 61J1-7.001, as charged in the Administrative Complaints, and if so, what penalty should be imposed?

PRELIMINARY STATEMENT

On October 8, 2009, the Department of Business and Professional Regulation, Division of Real Estate, filed separate Administrative Complaints (DBPR Case Nos. 2009016581 and 2009016587, respectively) against Fred Catchpole and William Woods, alleging violations of Section 475.624, Florida Statutes (2007), and Florida Administrative Code Rule 61J1-7.001. Each Respondent disputed the allegations in the Administrative Complaints, and on December 17, 2009, the cases were forwarded to the Division of Administrative Hearings for assignment of an administrative law judge.

Because the allegations in the Administrative Complaints concerned the preparation of the same appraisal report, the cases were consolidated, and were originally scheduled for hearing February 16 and 17, 2010. At the request of Respondents, the matter was continued and rescheduled for April 26 and 27, 2010. The Department moved to amend the Administrative Complaints because of a typographical error in Count II, and the Motion to Amend was granted by Order on March 10, 2010. The hearing began as scheduled, and at the commencement of the hearing, Petitioner announced that it was proceeding only on Counts I and II of the

Amended Administrative Complaints. Petitioner's Exhibits numbered 1-4, and 7-8 were admitted into evidence with no objection. The Department submitted the testimony of James Courchaine. In light of the events that took place during the hearing, the remaining relevant procedural matters will be included in the Findings of Fact and Conclusions of Law below.

FINDINGS OF FACT

1. Petitioner is the state agency charged with the licensing and regulation of real estate appraisers pursuant to Section 20.165 and Chapters 455 and 475, Part II, Florida Statutes (2009).

2. Respondent, Fred Catchpole, is a licensed real estate appraiser, having been issued license number RD-7674.

3. Respondent, William E. Woods, is a registered trainee appraiser, issued license RI-4855. At the times relevant to these complaints, Mr. Woods was supervised by Respondent Catchpole.

4. On October 8, 2009, the Department issued Administrative Complaints against both Respondents. At the heart of both Administrative Complaints were allegations related to an appraisal report allegedly prepared by Catchpole and Woods. With the exception of the order in which Respondents are identified, the allegations in paragraphs four and six of the Administrative Complaints are identical. Quoting from the Administrative

Complaint in Case No. 09-6822 (DBPR Case No. 2009016581), the Administrative Complaint alleges the following:

4. On or about September 25, 2007, Fred Catchpole (Respondent) and William Woods developed and communicated an appraisal report (Report 1) for property commonly known as 2250 Braxton Street, The Villages, Florida 32162 (Subject Property), and estimated its value at \$190,000.00. A copy of Report I is attached hereto and incorporated herein as Administrative Complaint Exhibit 1.

* * *

6. Respondent made the following errors and omissions in Report 1:

- A) Incorrect effective on the cover of the report, the correct date is September 25, 2007;
- B) Incorrect effective date on in the Reconciliation section of the report;
- C) Incorrect effective date on the signature page of the Report;
- D) Incorrect Subject Property Inspection date on the signature page of the Report;
- E) Incorrect Comparable Sales inspection date on the signature page of the report; . . .

5. The Amended Administrative Complaint alleges the same facts, with the same dates.

6. At hearing, it was established that there is no appraisal report developed or communicated that is dated September 25, 2007. The Report, attached to each Administrative Complaint and each Amended Administrative Complaint, is actually dated February 25, 2007.

7. Once it was established that there was no appraisal report matching the dates alleged in the Administrative

Complaint, the Department moved to dismiss the Amended Administrative Complaints in their entirety, with prejudice.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action in accordance with Sections 120.569 and 120.57(1), Florida Statutes (2009).

9. These disciplinary actions by Petitioner are penal proceedings in which Petitioner seeks to discipline Respondents' licenses as real estate appraisers. Petitioner bears the burden of proof to demonstrate the allegations in the Amended Administrative Complaints by clear and convincing evidence.

Department of Banking and Finance v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

10. Once it was established that there was no appraisal report developed or communicated on the date identified in the Amended Administrative Complaints, the Department elected not to present any further evidence. Accordingly, the Department failed to sustain the allegations against Respondents by clear and convincing evidence.

RECOMMENDATION

Upon consideration of the facts found and conclusions of law

reached, it is

RECOMMENDED:

That the Florida Real Estate Appraiser's Board enter Final Orders with respect to each Respondent dismissing the Amended Administrative Complaints in their entirety.

DONE AND ENTERED this 27th day of April, 2010, in Tallahassee, Leon County, Florida.



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

Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of April, 2010.

COPIES FURNISHED:

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

Fred Catchpole
5449 Marcia Circle
Jacksonville, Florida 32210

William Woods
2103 Herndon Street
Dover, Florida 33527

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
Division of Real Estate
Department of Business and
Professional Regulation
400 West Robinson Street, Suite N801
Orlando, Florida 32801-1757

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.