

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
DIVISION OF REAL ESTATE, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 10-1098PL  
 )  
FRANCIS J. COLEMAN, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on May 12, 2010, in Venice, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Donna Christine Lindamood, Esquire  
Department of Business and  
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For Respondent: Daniel Villazon, Esquire  
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STATEMENT OF THE ISSUES

The issues in this case are whether Respondent violated Subsections 475.624(15), Florida Statutes (2006),<sup>1</sup> and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On July 7, 2009, Petitioner, Department of Business and Professional Regulation, Division of Real Estate (Department), filed a seven-count Administrative Complaint against Respondent, Francis J. Coleman (Mr. Coleman), alleging in Count One that Mr. Coleman violated Subsection 475.624(15), Florida Statutes, by having failed to exercise due diligence in developing an appraisal report and alleging in Counts Two through Seven that Mr. Coleman violated Subsection 475.624(14), Florida Statutes, by violating certain provisions of the Uniform Standards of Professional Appraisal Practice (USPAP) (2006). Mr. Coleman requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings on March 3, 2010, for assignment to an Administrative Law Judge to conduct the final hearing.

At the final hearing, the Department dismissed Counts Two through Seven of the Administrative Complaint and withdrew the allegation in paragraph 11(c) of the Administrative Complaint. The Department called Dennis J. Black as its expert witness. Petitioner's Exhibits 1 through 7 were admitted in evidence.

Mr. Coleman testified in his own behalf, and Respondent's Exhibits 1 and 2 were admitted in evidence.

The one-volume Transcript of the hearing was filed on June 16, 2010. The parties agreed to file their proposed recommended orders within 30 days of the filing of the Transcript. The parties filed their Proposed Recommended Orders, which have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Mr. Coleman is and was at all times material to this proceeding, a state-certified residential real estate appraiser in the State of Florida, having been issued license number RD-4033 in July 2003. Mr. Coleman has never had any prior disciplinary action taken against him.

2. In March 2007, Mr. Coleman received a request to perform an appraisal on a condominium unit located at 841 Amberjack Circle, Unit 304, Englewood, Florida (Subject Property). The purpose of the appraisal was for mortgage lending, and the lender was J.P. Morgan, Chase Bank, N.A.

3. The Subject Property is a newly-constructed three-bedroom, two-bath condominium unit with 1,903 square feet of gross living area. The Subject Property is located on the third floor and is the first unit in the development to be sold that has a view of a natural body of water and a preserve.

4. On March 10, 2007, Mr. Coleman developed and communicated an appraisal report on the Subject Property.

5. In determining his opinion of value, Mr. Coleman used the sales comparison approach. This approach requires the appraiser to find comparable sales of property similar to the property being appraised and to make adjustments for any differences from the property being appraised and the comparable properties. Mr. Coleman selected three properties to be used as comparable sales for his report.

6. The first property selected as a comparable sale is a third-floor, three-bath condominium unit located at 8520 Amberjack Circle, H2/301, Englewood, Florida (Comparable Sale 1). This unit contains 2,625 square feet of gross living area. Comparable Sale 1 sold for \$550,496.

7. The second property selected as a comparable sale is a second-floor condominium located at 8540 Amberjack Circle, H3/203, Englewood, Florida (Comparable Sale 2). This unit contains 1,927 square feet of gross living area. The recorded deed shows that the selling price of Comparable Sale 2 is \$408,000. Mr. Coleman was provided information by the developer that in addition to the original selling price of \$408,000 that upgrades had been purchased, bringing the total sale price of Comparable Sale 2 to \$417,200.<sup>2</sup> There was no information in the appraisal report to show why there was a discrepancy between the

selling price reported by the developer and the selling price contained in the public records.

8. The third property selected as a comparable sale is a second-floor condominium located at 8560 Amberjack Circle, H4/203, Englewood, Florida (Comparable Sale 3). This unit has 1,927 square feet of gross living area. At the time that Mr. Coleman was preparing the appraisal report, he could not find a listing for Comparable Sale 3 in the county records. It is not clear whether Mr. Coleman relied on online records or whether he actually went to the clerk's office to check the records. The deed that was recorded for Comparable Sale 3 shows a sale price of \$409,000. Mr. Coleman was advised by the developer that in addition to the selling price of \$409,000 that upgrades had been purchased, bringing the total sale price of Comparable Sale 3 to \$416,000.

9. Mr. Coleman relied upon the sales information from the developer and concluded that the county clerk's office had erred in recording the total sale prices for Comparable Sale 2 and Comparable Sale 3.

10. There were at least 15 other units that were more similar to the Subject Property than Comparable Sale 1. Mr. Coleman selected Comparable Sale 1, because he wanted a unit that would have a higher price than the contract price for the Subject Property. He stated:

I knew that this property [Subject Property] sold for \$450,000, and if I was going to make it work at all I would have to use a comparable with a higher sale price. I believed at the time that the subject unit was worth more than \$450,000 that it sold for, at least that much. And so in order to show that the subject unit had that value, I used the higher price comparable. . . . I was asking the sales office for--give me unit that is of similar size that's sold for a higher price. And he said there weren't any that he was aware of, and I said, well give me something that shows that there's value at the subject property.

11. Mr. Coleman argues in his Proposed Recommended Order that he was bracketing when he chose Comparable Sale 1. There was no evidence presented that bracketing was involved in his decision to chose Comparable Sale 1 nor was there any evidence that bracketing was an accepted practice in Charlotte County, Florida, at the time the appraisal report was prepared and communicated.

12. Because Comparable Sale 1 was a larger unit than the Subject Property, Mr. Coleman made an adjustment in the price for Comparable Sale 1 to compensate for the difference in square footage. Mr. Coleman concluded that the value of a square foot of gross living area was \$100.<sup>3</sup> He did not comment in his appraisal report how he arrived at this price per square foot. The difference in the amount of square footage in the Subject Property and Comparable Sale 1 is 722 square feet. Thus, he adjusted the sale price for Comparable Sale 1 by deducting

\$72,200. Mr. Coleman also adjusted the price for Comparable Sale 3 by deducting \$5,000 for an additional bathroom.

13. None of the comparable sales have a view of a natural body of water or a preserve as does the Subject Property. The comparables have a view of man-made retention ponds, which are referred to as lakes. Mr. Coleman concluded that, based on his professional and personal knowledge, there is a premium for a view of a natural body of water and a preserve and stated in his report:

The adjustment for site is based on the list prices for the same unit in Hammock Cove condos versus the subject Preserve condo. The premium for having a view of Lemon Creek and the preserve is estimated at \$120,000. The adjustment is less than half the estimated difference.

14. The units in the development in which the Subject Property is located that have a view of the natural body of water or preserve were listed for sale at the time of the appraisal for approximately \$120,000 more than similar units without such a view. None of the units with a view of the natural water and preserve had sold at the time of the preparation of the appraisal report; therefore, there were no prior sales which could be used to determine the value of the view. After the appraisal was completed, there were some units with the view of the natural body of water and the preserve which sold for \$500,000. There was no evidence presented to

show whether these units were similar to the Subject Property in size, upgrades, or floor location.

15. The Department's expert, Dennis J. Black (Mr. Black), criticized Mr. Coleman for relying on the listing information from the developer, who was an interested party, in determining the value of the view of the natural body of water and the preserve. Mr. Black felt that Mr. Coleman should have gone to other sources for such information, such as other developments which were similarly situated.

16. Mr. Coleman knew from his own experience that units in the development in which he lived that had a similar view of the Subject Property sold for more than units without a view of the preserve. He did try unsuccessfully to find some developments that were similar to the one at issue with some units having a view of a natural body of water and other units having a view of man-made retention ponds. Therefore, Mr. Coleman did try to find sources other than the developer for a valuation of the view. Mr. Coleman concluded that the value of the view was less than half of the \$120,000 increase for which other units with a view of natural water and a preserve were being listed for sale. The record does not establish on what basis he made the assumption that the value of the view was less than half of \$120,000. Mr. Coleman made an adjustment of \$50,000 to the three comparable sales.



17. Based on the adjustments made by Mr. Coleman for the size in the units, the view, and the additional bathroom, the adjusted sale price for Comparable Sale 1 was \$523,296. The adjusted sale price for Comparable 2 was \$467,200, and the adjusted sale price for Comparable Sale 3 was \$466,000. Thus, the range of adjusted sale prices of the comparable sales was from \$466,000 to \$523,296. He valued the Subject Property at \$500,000, which was within the range of the adjusted comparable sales. He testified that he tended to value the Subject Property a little higher because it had upgrades, a superior view, and was located on the third floor. The evidence does not demonstrate why he valued the Subject Property higher when an adjustment had been made for the superior view in computing the adjusted selling prices for Comparable Sales 1 and 2. Additionally, Comparable Sales 2 and 3 also had upgrades, as evidenced by the discrepancies between the recorded deeds and the selling prices provided by the developer. The only difference between the Subject Property and Comparable Sales 2 and 3 was the location of Comparable Sales 2 and 3 on the second floor and the location of the Subject Property on the third floor.

18. Mr. Coleman indicated in his appraisal report that the current condominium trends in the neighborhood of the Subject Property showed that the property values were stable, and the

demand/supply was in balance. Based on research that he had done for a book shortly before the effective date of the subject appraisal report, Mr. Black opined that the general market in the area of southern Sarasota County and northern Charlotte County was not stable, but was in a decline, with deteriorating property values and an oversupply of similar properties offered for sale. His opinion was of the overall market trends and not the trends of the particular neighborhood in which the Subject Property is located.

19. In his appraisal report, Mr. Coleman certified that he "performed this appraisal in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice [USPAP] that were adopted and promulgated by the Appraisal Standards Board of the Appraisal Foundation and that were in place at the time this appraisal report was prepared."

20. The following USPAP requirements were applicable to the instant case at the time the appraisal report was prepared.

Standards Rule 1-1

In developing a real property appraisal, an appraiser must:

(a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;

(b) not commit a substantial error of omission or commission that significantly affects an appraisal; and

(c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.

Standards Rule 1-2

In developing a real property appraisal, an appraiser must:

\* \* \*

(f) identify any extraordinary assumptions necessary in the assignment; . . .

Standards Rule 1-4

In developing a real property appraisal, an appraiser must collect, verify, and analyze all information necessary for credible assignment results.

(a) When a sales comparison approach is necessary for credible assignment results, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.

Standards Rule 2-1

Each written or oral real property appraisal report must:

(a) clearly and accurately set forth the appraisal in a manner that will not be misleading;

(b) contain sufficient information to enable the intended users of the appraisal to understand the report properly; and

(c) clearly and accurately disclose all assumptions, extraordinary assumptions,

hypothetical conditions, and limiting conditions used in the assignment.

Standards Rule 2-2

Each written real property appraisal report must be prepared under one of the following three options and prominently state which option is used: Self-Contained Appraisal Report, Summary Appraisal Report, or Restricted Use Appraisal Report.

(b) The content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:

\* \* \*

(iii) summarize information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment.

21. Mr. Black opined that Mr. Coleman violated USPAP Standards Rules 1-1(a), 1-1(b), and 1-1(c). According to Mr. Black, Mr. Coleman did not correctly employ the cost comparison method by giving more weight to Comparable Sale 1, which was the most dissimilar comparison sale. Mr. Black concluded that Mr. Coleman violated USPAP Standards Rule 1-1(b), because there was no support to demonstrate how Mr. Coleman arrived at the \$50,000 adjustment for the preserve view. Mr. Black opined that Mr. Coleman violated USPAP Standards Rule 1-1(c) by giving more weight to Comparable Sale 1 and by failing to demonstrate how he developed the adjustment for the preserve view.

22. Mr. Black opined that Mr. Coleman violated USPAP Standards Rule 1-2(f) by failing to identify the \$50,000 adjustment for the view in the work file or the report.

23. Mr. Black concluded that Mr. Coleman violated USPAP Standards 1-4(a) for failing to collect, verify, and analyze the information on other units which were more similar to the Subject Property than Comparable Sale 1.

24. Mr. Black opined that Mr. Coleman violated USPAP Standards Rules 2-1(a), 2-1(b), and 2-1(c). Mr. Black determined that Mr. Coleman's failure to show how he arrived at the \$50,000 adjustment for the view, when the information on which he was relying showed a value of \$120,000, constituted a violation of USPAP Standards Rule 2-1(a). Mr. Black concluded that Mr. Coleman violated USPAP Standards Rule 2-1(b) as follows:

[B]y failing to provide the information of the support and rationale for the \$50,000 adjustment. He has not provided sufficient information. He's also failed to explain how he arrives at the \$500,000 amount, which is \$15,000 above the amount that would have been determined by equal weighting of all comparables. And how he comes up with \$500,000 where the most weight would be given to Comparable Sale 1, which the most dissimilar sale.

Mr. Black opined that Mr. Coleman violated USPAP Standards Rule 2-1(c) by failing to disclose the extraordinary assumption that the view of the Subject Property was valued at \$50,000.

25. Mr. Black concluded that Mr. Coleman violated USPAP Standards Rule 2-2(b)(iii) by failing to support how he came up with the \$50,000 positive adjustment and by failing to explain the reasoning behind giving the most weight to the most dissimilar sale.

CONCLUSIONS OF LAW

26. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2009).

27. The Department has the burden to establish the allegations in the Administrative Complaint by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996).

28. The Department alleges that Mr. Coleman violated Subsection 475.624(15), Florida Statutes, which provides:

The board may deny an application for registration or certification; may investigate the actions of any appraiser registered, licensed, or certified under this part; may reprimand or impose an administrative fine not to exceed \$5,000 for each count or separate offense against any such appraiser; and may revoke or suspend, for a period not to exceed 10 years, the registration, license, or certification of any such appraiser, or place any such appraiser on probation, if it finds that the registered trainee, licensee, or certificateholder:

\* \* \*

(15) Has failed or refused to exercise reasonable diligence in developing an appraisal or preparing an appraisal report.

29. The disciplinary action against a licensee may be based only upon those offenses specifically alleged in the administrative complaint. See Cottril v. Department of Insurance, 685 So. 2d 1371 (Fla. 1st DCA 1996); Kinney v. Department of State, 501 So. 2d 129, 133 (Fla. 5th DCA 1984); Hunter v. Department of Professional Regulation, 458 So. 2d 842, 844 (Fla. 2nd DCA 1984).

30. In determining whether the Department has met its burden of proof, it is necessary to evaluate its evidentiary presentation in light of the specific factual allegations made in the Administrative Complaint. Due process prohibits an agency from taking disciplinary action against a licensee based upon conduct not specifically alleged in the agency's administrative complaint. See Hamilton v. Department of Business and Professional Regulation, 764 So. 2d 778 (Fla. 1st DCA 2000); Luskin v. Agency for Health Care Administration, 731 So. 2d 67, 69 (Fla. 4th DCA 1999).

31. The Department alleges in paragraph 11 of the Administrative Complaint that Mr. Coleman violated Subsection 475.624(15), Florida Statutes, in the following ways:

A. Respondent relied upon a much larger (2625 versus 1903 square feet of gross living area) Comparable Sale 1, selling for

\$550,496, adjusted to \$523,396, when there were closed sales of condominium units in the Subject Property's project equivalent in size to the Subject Property selling for between \$384,000 and \$416,000;

B. Respondent misstated the selling price for Comparable Sale 2 as \$417,200 instead of the actual \$408,000;

\* \* \*

D. Respondent misstated the selling price for Comparable Sale 3 as \$416,000 instead of the actual \$409,000;

E. Respondent made adjustments for "lake view" when the lake was a man-made water retention area;

F. Respondent erred in making adjustments for view (lake versus preserve) which should have offset each other;

G. Respondent failed to disclose an extraordinary assumption that Preserve-view condominiums were more valuable than other units in the Subject Property project;

H. Because no Preserve-view units had been sold prior to the effective date of the Report, Respondent had no basis for computing an adjustment for "Preserve-view";

I. Respondent mischaracterized condominium unit housing trends as having stable property values and in balance demand/supply when the trend was declining values and an oversupply in the market; and

J. Respondent relied on sales data from the onsite sales office for his comparable sales and failed to verify with a disinterested party.



32. The Department presented evidence in the form of expert testimony and exhibits which may have supported other violations, but the factual basis for such evidence was not included in the Administrative Complaint. Thus, the determination of whether disciplinary action should be taken by the Department is limited to the factual allegations of misconduct listed in paragraph 11 of the Administrative Complaint.

33. The Department has established by clear and convincing evidence that Mr. Coleman violated Subsection 475.624(15), Florida Statutes. The Department established that the use of Comparable Sale 1 was inappropriate. The unit was over 700 square feet larger than the Subject Property. There were other properties, which were closer in similarity to the Subject Property than Comparable Sale 1. Based on Mr. Coleman's testimony, the use of Comparable Sale 1 was to get a higher value for the Subject Property.

34. The Department established that Mr. Coleman relied on the sales information from the developer, an interested party, to determine the selling prices for Comparable Sale 2, when the public records showed a different selling price. However, the Department did not establish that the selling prices, which Mr. Coleman used for Comparable Sale 2 and Comparable Sale 3, were incorrect as set forth in the Administrative Complaint.

35. No evidence was presented to support the factual allegations contained in subsections E and F of paragraph 11 of the Administrative Complaint.

36. The Department did not establish by clear and convincing evidence that Mr. Coleman failed to disclose the extraordinary assumption that units with a preserve view had more value than units without a view of a preserve. He did disclose the extraordinary assumption. He did not disclose how he determined the value of the view, but that was not the factual allegation alleged.

37. The Department did not establish by clear and convincing evidence that Mr. Coleman mischaracterized the condominium unit housing trends. Although Mr. Black testified that based on the research he had done for a book, his testimony was for general market trends and did not involve the neighborhood of the Subject Property.

38. The Department did not establish by clear and convincing evidence that Mr. Coleman failed to verify the sales data that he received from the developer with a disinterested party. Mr. Coleman did check the public records for the comparables. The selling prices contained in the public records for Comparable Sale 1 was the same as listed in the developers records. The sale price of Comparable Sale 2, without the upgrades, was the same for both the public records and the

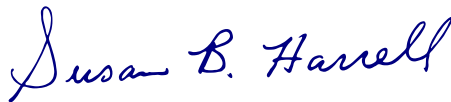
developer's records. Mr. Coleman did check the public records for the sale price of Comparable Sale 3, but was unable to locate the information. The Department did not present clear and convincing evidence that on the date of the appraisal report that the selling price for Comparable Sale 3 was available through the public records.

39. Florida Administrative Code Rule 61J1-8.002 contains the disciplinary guidelines applicable to this proceeding. Florida Administrative Code Rule 61J1-8.002(3) provides that the recommended range of penalties for a violation of Subsection 475.624(15), Florida Statutes, ranges from a five-year suspension to revocation and an administrative fine of \$1,000. Pursuant to Florida Administrative Code Rule 61J1-8.002(4), the Florida Real Estate Appraisal Board may deviate from the recommended penalties based on a showing of mitigating or aggravating circumstances. Mr. Coleman has not had any prior disciplinary action taken against him. Six of the seven counts of the Administrative Complaint were dismissed at the commencement of the final hearing. Of the ten factual allegations of misconduct in the Administrative Complaint, the Department withdrew one of the allegations at the final hearing and failed to establish eight of the remaining allegations by clear and convincing evidence.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered finding that Mr. Coleman violated Subsection 475.624(15), Florida Statutes, and suspending his license for six months.

DONE AND ENTERED this 9th day of August, 2010, in Tallahassee, Leon County, Florida.



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SUSAN B. HARRELL  
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Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 9th day of August, 2010.

ENDNOTES

<sup>1/</sup> Unless otherwise indicated, all references to the Florida Statutes are to the 2006 version.

<sup>2/</sup> The developer had provided a document entitled "Hammocks closed files and closing schedule detail," which provided information on sales in the Subject Property development between December 2006 and March 2007.

<sup>3/</sup> It is unclear how he calculated the price for a square foot at \$100. Mr. Coleman's appraisal report listed the price per square foot of the Subject Property based on the selling price as \$236.47 and the price per square foot for Comparable Sale 1 based on the selling price as \$209.71.

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.