

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
DIVISION OF REAL ESTATE, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 11-1084PL  
 )  
RONALD C. HORMES, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice to all parties, a final hearing was conducted in this case on April 21, 2011, in St. Petersburg, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings. The parties were represented as set forth below.

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 ISSUE

The issue in this case is stated in three counts set forth the Administrative Complaint<sup>1/</sup>: Count I, whether Respondent, Ronald C. Hormes ("Hormes"), is guilty of violating section 475.624(15), Florida Statutes (2008),<sup>2/</sup> by failing to exercise reasonable diligence when preparing or developing an appraisal report; Count IV, whether Hormes is guilty of obstructing an investigation in violation of section 475.626(1)(f); and Count V, whether Hormes is guilty of failing to properly and adequately supervise a registered trainee appraiser in violation of section 475.624(4); and Florida Administrative Code Rule 61J1-4.010.

PRELIMINARY STATEMENT

On or about January 5, 2011, Petitioner, Department of Business and Professional Regulation, Division of Real Estate (hereinafter the "Division"), filed an Administrative Complaint charging Hormes as set forth above. Hormes returned the Election of Rights form seeking a formal administrative hearing. The Administrative Complaint and Election of Rights form were forwarded to the Division of Administrative Hearings ("DOAH") on February 28, 2011, and the case was assigned to the undersigned Administrative Law Judge so that a formal administrative hearing could be conducted. The hearing was held on the date set forth above, and both parties were present and represented by counsel.

At the final hearing, the Division called two witnesses: John Menard, accepted as an expert in real estate appraisal; and Michael R. McKinley, former investigator for the Division. The Division's Exhibits 1 through 4 were admitted into evidence. Official recognition was taken of Exhibits 6 through 8 and of section 475.611.

Hormes called two witnesses: Ronald C. Hormes, and Robert E. Keller, accepted as an expert in real estate appraising and appraisal instruction. One exhibit offered by Hormes was received into evidence.

A transcript of the final hearing was ordered by the parties. The Transcript was filed at DOAH on May 16, 2011. The parties were given ten days from filing of the transcript to submit proposed recommended orders. Each party timely submitted a Proposed Recommended Order, and each was duly considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. The Division is responsible for monitoring all licensed and certified real estate appraisers in the state. It is the Division's duty to ensure that all appraisers comply with the standards set forth in relevant statutes and rules.

2. Hormes has been a certified residential real estate appraiser for approximately 30 years. He operates a family-owned real estate appraisal business.

3. At all times material hereto, Mariano M. Alvarez II ("Alvarez"), a state-registered trainee real estate appraiser, was performing appraisal duties under Hormes' supervision. Alvarez is one of approximately 55 trainees who have worked under Hormes' supervision since 1993. Alvarez first became a trainee in Hormes' office in May 1997. He left the office early in 2004, but returned as a trainee in July 2004. Alvarez remained a trainee in Hormes' office until April 2011.

4. At issue in this case are three appraisals which will be referred to collectively herein as the "Townsend" appraisal.

5. In May 2008, Alvarez was technically working as a trainee with Hormes. However, Hormes had not given Alvarez any assignments since some time in 2007. Alvarez had become engaged in the operation of a business outside the area of real estate appraising and was not actively seeking work from Hormes in the appraisal field.

6. In the Spring of 2008, Alvarez received a request to engage in some appraisal work. He received an assignment letter for appraisal work from Karen Maller, an attorney representing some members of the Townsend family who were in a dispute concerning land and property left in an estate. The assignment letter dated May 30, 2008, asked Alvarez to prepare an appraisal and also to be an expert witness in an upcoming trial. It appears the assignment letter was emailed to Alvarez, i.e.,

there is no physical address for Alvarez on the letter. Most assignments are commenced by way of a letter setting forth the scope of the intended work to be performed. Sometimes the assignments are made by way of email, but hard copy letters are most common. The assignment letter was sent directly to Alvarez; Hormes was not an addressee on the letter, and it was not copied to him. A real estate appraisal trainee is generally not authorized to accept appraisal assignments directly.

7. Alvarez apparently accepted the assignment from Maller and began working on the Townsend appraisal. The correspondence listed below followed the initial assignment letter:

- A June 30, 2008, letter from Maller concerning the upcoming trial dates in January 2009. The letter contained no physical address, but had email addresses for both Alvarez and Hormes. The email address for Hormes was his personal address, not his work address.
- A September 8, 2008, email from Maller to Alvarez, copied to Hormes, indicating receipt of Alvarez's draft appraisal.
- A September 14, 2008, email from Maller to Alvarez, copied to Hormes, seeking a draft for the residential portion of the appraisal.

- A September 15, 2008, email from Maller addressed to both Alvarez and Hormes, providing comments on the appraisal that had been submitted.
- A November 7, 2008, letter addressed to Alvarez (only) at Hormes' business address.

8. Hormes does not admit any knowledge of the assignment accepted by Alvarez prior to receiving Maller's emails in September. At that time, Hormes became concerned and called Maller to inform her that she was not a client of his office. Hormes left messages with Maller concerning this fact, but it is unclear whether he ever talked directly to Maller. Hormes also attempted to call Alvarez about the purported assignment. Hormes testified that, "I put in, you know, phone calls to him. He is difficult to contact." Again, it is unclear at what point in time Hormes initially talked directly to Alvarez about this matter.

9. After Hormes contacted Maller to inform her that she was not his client, Maller then sent Alvarez a letter in which Hormes was not copied. That letter dated November 7, 2008, basically reiterates the facts concerning the upcoming trial in January 2009, one of the two purposes set forth in the original assignment letter to Alvarez. The computer-generated footer at the bottom of the letter states: T:\Carrie\Geiger,William\Townsendv.Morton\Correspondence\Witness 002-Alvarez.doc, as

compared to the footer on the original (June 30, 2008) letter which says: F:\Carrie]Geiger,William\Townsendv.Morton\correspondence\Alvarez-Hormes 001.wpd. Clearly the November correspondence was meant for Alvarez only. The reason for that change cannot be determined from the evidence presented at final hearing in this matter. It may reasonably be inferred that as of November, Maller no longer considered both Hormes and Alvarez her expert appraisers. Instead, the November 7, 2008, letter is addressed solely to Alvarez as "Expert-Appraiser."

10. Alvarez was using Hormes' office during the time he was acting as a trainee. Hormes expected each of his trainees to do their work at his office, rather than operating remotely. Trainees had access to the office computers, fax machines, copiers, and a library of information. That being the case, it is difficult to ascertain why Hormes had difficulty contacting Alvarez once he found out about the Maller assignment. That is, if Alvarez was using Hormes' office to prepare the appraisal, he would seem to be accessible to Hormes.

11. During his interview with the Division's investigator in December 2009, Hormes acknowledged some supervisory involvement with the Townsend appraisal. Hormes could not remember making any statement to that effect to the investigator at the final hearing in this matter. However, the investigator received confirmation from both Hormes and Alvarez that the

appraisals provided to Maller were only in draft form. The investigator's testimony in this regard is credible.

12. Hormes' attorney wrote a letter to the Division dated December 9, 2009, in which Hormes was described as the "Supervising Appraiser" for the Townsend appraisal. The attorney who wrote the letter was eventually released by Hormes based upon issues relating to competency. The attorney's law firm did not require Hormes to pay for that attorney's work. Hormes seemed to insinuate at final hearing that the release of his attorney indicates that the statements made in the December 9, 2009, letter were inaccurate. However, there was no competent or persuasive evidence to support that insinuation.<sup>3/</sup>

13. During the investigation undertaken by the Division concerning the propriety of the Townsend appraisal, Hormes and Alvarez were questioned by an investigator at a single interview. During that interview, Alvarez did most of the talking and responded to most of the questions about the appraisal. It is clear that Alvarez had the greatest amount of knowledge and information concerning the Townsend appraisal, but it is unclear how much knowledge Hormes had. Hormes was at least aware of the work that Hormes had done on the appraisal.

14. The Townsend appraisal was, by everyone's admission, not an acceptable work product. It was flawed in many areas and failed to meet the minimum standards for a real estate



appraisal. Hormes simply says that Alvarez had "gone rogue" and that he had done the appraisal on his own. At final hearing, Hormes disavowed any direct work on the appraisal or that he supervised Alvarez's work on the appraisal. In fact, Alvarez admitted to the investigator that he had forged Hormes' signature on the reports and that Hormes was not aware of that fact.

15. During the course of the investigation by the Division, Hormes was asked to provide copies of the Townsend appraisal, along with the two other draft appraisals that Alvarez had been working on for Maller. Hormes advised the investigator that he would provide copies of the report, but he did not provide them. Portions of the work file from Hormes' office were provided to the investigator, but copies of the reports were never provided to the Division.

16. Hormes contends he never knew about the Townsend appraisal and, therefore, did not have a work file concerning the report. However, if Alvarez was working on the reports using Hormes' office and equipment and Alvarez was still under Hormes' supervision at the time of the investigation, it is difficult to reconcile Hormes' stated inability to have the appraisal reports and Alvarez's work file made available. Further, as Alvarez's supervising appraiser, it seems that Hormes would be able to direct Alvarez to provide the reports.

17. Alvarez was retained as a real estate appraisal trainee in Hormes' office throughout the investigation and during the preparation for final hearing in this matter. At some point just prior to the final hearing, Alvarez was released by Hormes.

#### CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2010).

19. The burden of proof is on the Division to show, by clear and convincing evidence, that Hormes committed the acts alleged in the Administrative Complaint. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). The clear and convincing evidence standard is used in the instant case because the action is a penal licensure proceeding. Munch v. Dep't of Prof'l Reg., 592 So. 2d 1136 (Fla. 1st DCA 1992).

20. Clear and convincing evidence is an intermediate standard of proof which is more than the "preponderance of the evidence" standard used in most civil cases, but less than the "beyond a reasonable doubt" standard used in criminal cases. See State v. Graham, 240 So. 2d 486 (Fla. 2d DCA 1970). Clear and convincing evidence has been defined as evidence which:

[R]equires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)

(citations omitted).

21. The Division is given the right to discipline an appraiser's license for certain violations. Section 475.624 states in pertinent part:

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:

\* \* \*

(2) Has 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 or any other state, nation, or territory; has violated a duty imposed upon her or him by law or by the terms of a

contract, whether written, oral, express, or implied, in an appraisal assignment; has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or has formed an intent, design, or scheme to engage in such misconduct and committed an overt act in furtherance of such intent, design, or scheme. It is immaterial to the guilt of the registered trainee, licensee, or certificateholder that the victim or intended victim of the misconduct has sustained no damage or loss; that the damage or loss has been settled and paid after discovery of the misconduct; or that such victim or intended victim was a customer or a person in confidential relation with the registered trainee, licensee, or certificateholder, or was an identified member of the general public.

\* \* \*

(4) Has violated any of the provisions of this part or any lawful order or rule issued under the provisions of this part or chapter 455.

\* \* \*

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

22. Disciplinary actions as contemplated in the above-referenced statute may be based only upon those offenses specifically alleged in the Administrative Complaint. See Cottrill v. Dep't of Ins., 685 So. 2d 1371 (Fla. 1st DCA 1996); Kinney v. Dep't of State, 501 So. 2d 129, 133 (Fla. 5th DCA 1987); and Hunter v. Dep't of Prof'l Reg., 458 So. 2d 842, 844 (Fla. 2d DCA 1984). A statute imposing a penalty is never to be

construed in a manner that expands the statute. Hotel and Rest. Comm'n v. Sunny Seas No. One, 104 So. 2d 570, 571 (Fla. 1958).

23. Count I alleges Hormes failed to practice with the level of care and skill which is recognized by a reasonably prudent appraiser as being acceptable under similar conditions and circumstances. See § 475.624(15). The evidence presented at final hearing addressed Hormes' lack of knowledge about the Townsend appraisals. However, there is persuasive evidence that Hormes had some prior knowledge of Maller's request for work from Alvarez. There are at least three emails from Maller which were copied to Hormes and at least one letter went to Alvarez at Hormes' business address. Inasmuch as Hormes testified that his trainees did their work at his office, using his equipment, it is incongruous to say that Hormes was totally unaware of Alvarez's activities, vis-à-vis, the Townsend appraisal. Hormes' previous attorney represented that Hormes had overseen Alvarez's work, although the attorney may have been misinformed. Despite all that, however, it does not appear that Hormes was in any way involved in the actual preparation of the Townsend appraisal or that he failed to practice at an appropriate level of skill as to the reports issued pursuant to that project. The Division did not meet its burden of proof as to Count I.

24. Count IV alleges failure by Respondent to provide, upon demand, copies of three appraisal reports prepared by his

office for Maller, thereby obstructing or hindering the Division in its enforcement of the law. See § 475.626(1)(f). The evidence presented at final hearing is not sufficiently clear and convincing to prove that Hormes refused or failed to provide documentation within his control. Although it would seem logical that Hormes could use his authority over Alvarez to make the trainee provide copies of the report to the Division, there is no evidence that Hormes had custody of the reports. The Division did not meet its burden of proof as to Count IV.

25. Count V alleges Hormes failed to properly and adequately supervise a trainee operating within his office. See § 475.624(4) and rule 61J1-4.010(1). The version of rule 61J1-4.010 in effect at the time of the violations alleged in the Administrative Complaint stated:

(1) All registered trainee appraisers shall be subject to direct supervision by a supervising appraiser who shall be state licensed or certified in good standing.

(2) The supervising appraiser shall be responsible for the training and direct supervision of the appraiser trainee by:

(a) Accepting responsibility for the appraisal report by signing and certifying the report is in compliance with the Uniform Standard of Professional Appraisal Practice [USPAP].

(b) Reviewing the appraiser trainee appraisal reports; and

(c) Personally inspecting each appraised property with the appraiser trainee . . . .

26. It is clear Hormes had supervisory responsibilities for Alvarez's appraisal work. Under the rule in place in 2008, Hormes would signify his acceptance of Alvarez's work by way of signing the report prepared by Alvarez and certifying that the report was in compliance with USPAP. In the present case, Hormes did not signify his acceptance of Alvarez's work; Alvarez forged Hormes' signature on the report. Nonetheless, Hormes remained responsible for supervising Alvarez. Under section 475.624(2)(b), Hormes was responsible for reviewing the trainee's appraisal reports. Clearly, Hormes did not review the Townsend appraisals, even though Hormes was, or should have been, aware of the request Alvarez received from Maller (as he was copied on the emails). Therefore, Hormes should have been diligent in determining what services Alvarez had performed for Maller. He did not do so. The Division met its burden of proof as to Count V.

27. Hormes was not involved in the preparation of the Townsend appraisal, did not authorize Alvarez to undertake that assignment on his own, and did not accept responsibility for Alvarez's work by way of signing the reports. But Alvarez was a trainee under Hormes' supervision, and Hormes failed to adequately monitor and supervise Alvarez's work.

28. The Division did not meet its burden of proof in this matter as to Counts I and IV in the Administrative Complaint. There is clear and convincing evidence to support the allegation in Count V.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered by Petitioner, Department of Business and Professional Regulation, Division of Real Estate, finding Respondent, Ronald C. Hormes, guilty of Count V of the Administrative Complaint. A fine of \$1,000.00 and a two-year period of probation should be imposed.

DONE AND ENTERED this 10th day of June, 2011, in Tallahassee, Leon County, Florida.



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R. BRUCE MCKIBBEN  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 10th day of June, 2011.



ENDNOTES

1/ The Administrative Complaint contained five counts, but two of them were dismissed prior to the final hearing.

2/ Unless specifically stated otherwise herein, all references to Florida Statutes shall be to the 2008 version.

3/ There are gaping holes in the evidence presented in this case that could have been filled by testimony from attorneys Maller and Stump, as well as by testimony from Alvarez.

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.