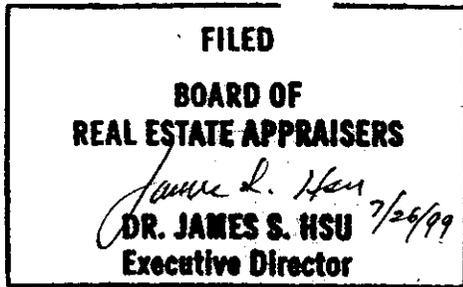


1156266426650



1156266426650

location	Collection-455
dsclass	Document
	Scruggs
title	Douglas
	42RC00123800
keywords	
	Final Order of
summary	Discipline
	07/26/1999
expiration_date	07/26/2064
author	Tracy Steel
max_versions	4
	Scruggs
document	Douglas
	42RC00123800
description	



Jul 20 1999

ORIGINAL

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF REAL ESTATE APPRAISERS

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

Administrative Action

DOUGLAS SCRUGGS
License No. RC 01238

FINAL ORDER
OF DISCIPLINE

TO PRACTICE REAL ESTATE
IN THE STATE OF NEW JERSEY



This matter was opened to the New Jersey State Board of Real Estate Appraisers upon receipt since September, 1997, of a series of complaints regarding a number of appraisals signed with the name of Douglas Scruggs. These appraisals all contained allegedly inflated figures for the dollar amount at which comparable properties were purportedly sold, which would have resulted in a correspondingly inflated amount for estimated value of the appraised property as determined by the appraiser. Based on the information reviewed, the Board made the following preliminary findings of fact and conclusions of law:

FINDINGS OF FACT

1. Respondent is a Certified Residential Appraiser in the State of New Jersey and has been a licensee at all times relevant hereto.
2. On January 12, 1999, respondent appeared before the Board at an investigative inquiry pursuant to subpoena. Also subpoenaed were workfiles related to 17 specific appraisals bearing

what purported to be the signature of Douglas Scruggs, performed in 1997 for Alta Financial Corporation, under the auspices of AJ Appraisal Corporation.

3. Respondent, upon advice of counsel, asserted his privilege against self incrimination in response to the question as to whether he had brought the 17 subpoenaed workfiles with him, or any documents whatsoever.

4. Respondent asserted, upon advice of counsel, his privilege against self incrimination when asked whether he had brought a curriculum vitae with him; how long he had been practicing appraising; whether he held any licenses to practice real estate appraising in other states; whether he allowed one Stanley Karitko, proprietor of AJ Appraisal Corporation, to use his signature on appraisals; whether he had performed any appraisals in the past year; and whether he kept workfiles for appraisals that he has completed.

5. Respondent asserted, upon advice of counsel, his privilege against self incrimination and declined to testify as to whether he had actually authored a letter signed Douglas Scruggs, dated September 29, 1997, and sent to the Board in response to a request for information about an appraisal at 318 Overbrook Road, Piscataway, New Jersey.

6. Respondent asserted, upon advice of counsel, his privilege against self-incrimination and declined to testify as to whether the signature "Douglas Scruggs" on photocopies of the 17 appraisals under subpoena was his signature, asserting his privilege against self incrimination.

CONCLUSIONS OF LAW

1. The State Real Estate Appraiser Board was established in the Division of Consumer Affairs by N.J.S.A. 45:14F-1 et seq. to regulate the appraiser profession.

2. Pursuant to N.J.S.A. 45:14F-8, the Board is empowered to administer and enforce the provisions of the Act, and establish a code of professional ethics for licensees in accord with the standards established by the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation.

3. Pursuant to N.J.S.A. 45:1-18, the Board and the Attorney General have broad investigative powers to inquire into possible violations of the Act and to examine records, books, documents, accounts or paper maintained by or for licensees used by licensees in the regular course of the practice of the profession of appraising.

4. Pursuant to N.J.A.C. 13:45C-1.2, licensees have a duty to cooperate with investigations conducted by the Board, and the failure to cooperate may be deemed by the Board to constitute professional misconduct within the meaning of N.J.S.A. 45:1-21(e), subjecting the licensee to discipline pursuant to N.J.S.A. 45:1-21(h).

5. The USPAP Record Keeping provision provides that appraisers must prepare written records of all appraisal assignments, which are termed workfiles, and keep these workfiles for at least five years after preparation.

6. Compliance with USPAP is mandatory for New Jersey real estate appraisers pursuant to N.J.A.C. 13:40A-6.1, and failure to comply with USPAP may be construed as professional misconduct in violation of N.J.S.A. 45:1-21(e).

7. Respondent's invocation of the Fifth Amendment privilege against self-incrimination with respect to any and all questions posed to him concerning his activities as an appraiser, and with respect to providing the Board with documents he is legally required to retain was an improper invocation of the privilege.

8. Respondent's failure to provide information or records relating to his conduct as a licensee constitutes the failure to cooperate, as specifically defined by N.J.A.C. 13:45C-1.3.

DISCUSSION

Before a witness may assert the Fifth Amendment privilege against self incrimination, there must be a "real and appreciable danger" that a response may render him criminally liable. United States v. Harmon, 339 F.2d 354, 359 (6th Cir. 1964), cert. denied sub nom Harmon v. United States, 380 U.S. 944, 85 S.Ct. 1025, 13 L.Ed.2d 963 (1965) . See also State v. Patton, 256 N.J. Super. 413, 419 (App. Div. 1992), rev'd on other grounds, 133 N.J. 389 (1993) (citing Grosso v. United States, 390 U.S. 62, 67, 88 S.Ct. 709, 713, 19 L.Ed.2d 906, 911 (1968) ("where statutorily required . . . information 'would readily incriminate [defendant], and which he may reasonably expect would be provided to prosecuting authorities,' the 'hazards of incrimination can only be characterized as 'real and appreciable.'"). Where there is no such danger, there is consequently no privilege. Thus respondent cannot be the "final arbiter of whether his [Fifth Amendment] invocation is proper -- his say so does not establish the hazard of incrimination." Hoffman v. United States, 341 U.S. 479, 486, 71 S.Ct. 814, 95 L.Ed. 1118, 1124 (1951). Respondent has not advanced any specific basis for his assertion of his right against self-incrimination, or identified the criminal liability that might attach to a response to some of the questions which respondent refused to answer, such as whether or not he kept a workfile (a requirement imposed by USPAP, and consequently imposed by N.J.A.C. 13:40A-6.1 on all New Jersey licensed appraisers), or how long he had been an appraiser. Thus respondent's invocation of the Fifth Amendment privilege was in certain instances patently inappropriate. Moreover the Fifth Amendment privilege does not exist with regard to "'records required to be maintained by law.'" In re Siegel, 208 N.J. Super. 588 (App. Div.), certif. denied, 105 N.J. 568 (1986). See also Matter of Grand Jury Empanelled March 19, 1980, 680 F.2d 327, 336 n.15 (3d Cir. 1982), aff'd in part rev'd in part on other grounds sub nom. United States v. Doe, 465 U.S. 605, 104 S.Ct. 1237, 79 L.Ed.2d 552 (1984); State v. Stroger, 97 N.J. 391, 406 (1984), cert. denied sub nom. Stroger v. New Jersey, 469 U.S. 1193, 105 S.Ct. 971,

83 L.Ed.2d 974 (1985)(citing Shapiro v. United States, 335 U.S. 1, 32-33, 68 S.Ct. 1375, 1391-92, 92 L.Ed. 1787, 1807 (1948) (no privilege for "records required by law to be kept in order that there may be suitable information of transactions which are the appropriate subjects of governmental regulation and the enforcement of restrictions validly established").

Respondent's refusal to answer virtually any and all questions thus constitutes a blatant failure to cooperate which stymies the Board in its regulatory purpose. To permit the mere uttering of the words "self-incrimination" to bring every investigation to a standstill would virtually paralyze the Board and certainly thwart the public interest. The Board cannot countenance a licensee's refusal to offer even the minimal compliance with the duty to cooperate entailed in an acknowledgement of keeping workfiles, which is an obligation of all licensees; or to produce the contents of those workfiles required to be kept by law at the request of the Board, so that the Board may ascertain whether appraisals adhere to required standards. While the Fifth Amendment "protects an individual from being compelled to 'provide the State with evidence of a testimonial or communicative nature,'" Patton, supra, 256 N.J. Super. at 417, there is no Fifth Amendment violation where records are voluntarily kept pursuant to legal requirements. See United States v. Doe, 465 U.S. 605, 611, 104 S.Ct. 1237, 1241-42, 79 L.Ed.2d 552 (1984) (preparation of subpoenaed papers was "wholly voluntary, and they cannot be said to contain compelled testimonial evidence, [therefore compliance cannot be avoided] merely by asserting that the item of evidence [to be] produce[d] contains incriminating writing"); State v. Stroger, supra 97 N.J. at 407 (defendant "knew not only what records he had to keep, and in what form, but he knew that he could be audited at any time," thus production of records required by law to be maintained not privileged). To refuse to cooperate in this manner is to completely abrogate the duty of a licensee.

A Provisional Order of Discipline was forwarded to Respondent on May 11, 1999, informing him that he faced suspension based on his failure to cooperate unless he complied with the following terms of the Order within thirty (30) days:

1) That Respondent submit to the Board a notarized Statement in Writing Under Oath, indicating whether he has performed appraisals in the years 1997, 1998, and 1999, and approximately how many appraisals he has performed in each of these years; and indicating whether he has been performing appraisals in any states other than New Jersey during those years. Respondent is to also state approximately how many appraisals he has performed in those other states, specifying the states in which he has been active.

2) That Respondent indicate on the aforesaid statement whether or not he complies with the requirement to maintain workfiles of those appraisals he has performed.

3) That if respondent does maintain workfiles, he submit to the Board workfiles for all appraisals performed on residential property in the State of New Jersey from March through September in 1997.

4) That Respondent submit to the Board a log of all appraisals performed by him in 1997, including information identifying the property appraised, the type of property appraised, the type of appraisal prepared, the date of the appraisal report, and the reporting format used

Respondent was informed that his suspension would take effect at 5:00 P.M. on the thirtieth day following the entry of the Provisional Order of Discipline, unless respondent either complied with the Board's terms or requested a modification or dismissal of the above stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal to Dr. James Hsu, Executive Director of the Board.

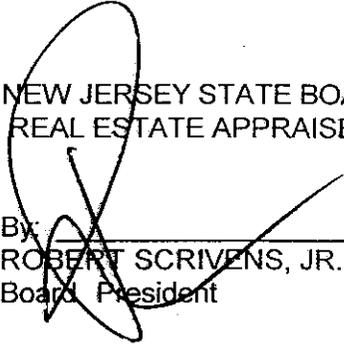
The Provisional Order of Discipline was filed on May 11, 1999. Certified mail return receipts have been received indicating a date of service of May 21, 1999 for Respondent, and May 13, 1999 for Respondent's attorney, Scott Siegel, Esq.

No response has received by the Board from Respondent.

ACCORDINGLY, IT IS on this 26th day of July, 1999,
ORDERED that:

1. Respondent's license is suspended until he has complied with the terms this Order. Licensure is hereby suspended, by operation of this Order, and shall remain suspended until such time as the Board concludes that respondent has complied in full and issues a further order to vacate the suspension. Prior to resuming active practice in New Jersey Respondent shall be required to appear before the Board (or a committee thereof) to demonstrate his fitness to do so, and any practice in this State prior to said appearance shall constitute grounds for the charge of unlicensed practice. In addition, the Board reserves the right to place restrictions on Respondent's practice should his license be reinstated.

NEW JERSEY STATE BOARD OF
REAL ESTATE APPRAISERS

By: 
ROBERT SCRIVENS, JR., SCGREA
Board President