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supervision of the applicant had been of a questionable nature in terms of its adequacy. Consequently the applicant was asked to appear before the Board in connection with his application on March 13, 2001, and was advised that his application was denied, but that he might reapply six months from the date of his appearance.

The applicant has since reapplied for his certification, and has testified at investigative inquiries in connection with two appraisal reports he prepared while being supervised that were the subject of complaints to the Board: one concerning the appraisal of 297 West Runyon Street, Newark, and one concerning the appraisal of 87 Tillinghast Street, Newark.¹

In connection with the applicant's work on 297 West Runyon Street, Newark, he appraised the property at \$140,000 as of September 27, 2001. However the property was listed for sale from March 17, 2001 through September 17, 2001 for \$87,900, later reduced to \$76,900. Subsequent to the date of the applicant's report, the property was again listed for sale from October 9, 2001 through November 9, 2001, for \$87,900. The applicant was unable to explain the fact that shortly before and shortly after the date of his appraisal, the property was listed for

¹ "T" refers to the transcripts of the investigative inquiry held on January 31, 2002; "TT" refers to the transcripts of the investigative inquiry held on June 17, 2002.

substantially less than the amount of his value conclusion.²

The property had been purchased from the Bank of New York for \$21,900 on September 15, 2000 (with the sale recorded on October 13, 2000) by New Millennium Investment, which the applicant's appraisal report indicated as the current owner.

(Exhibit E) Prior to New Millennium's purchase of the property, it had been listed for sale for \$24,000. The applicant stated that the property had been totally renovated, with new fixtures and new plumbing. T18-13 to 17. However, the real estate agent charged with selling the property indicated to an Enforcement Bureau investigator that the only time he had been able to see the property, he noticed that its renovations consisted only of "insignificant" cosmetic work. Moreover, as of April 10, 2002, the Enforcement Bureau investigator found the property was gutted and vacant, with extensive renovations being done on the third floor.

The Board commissioned a field review of the 297 West Runyon report: the reviewer found that the comparables utilized in the report were superior to the subject, noted the presence of several boarded up dwellings along West Runyon and neighboring streets, which adversely affects property values, and which was not noted in the applicant's report. The field reviewer estimated

² An Enforcement Bureau investigation later ascertained that the only offer that had been made for the property through the listings broker was for \$65,500.

the value of the property as of September 21, 2001 to be approximately \$85,000.

In addition, two of the bedrooms in the subject were actually on the third floor, although the manner in which the applicant described the bedrooms, it appeared that they were all on the second floor. TT51-19.

With regard to the appraisal of 87 Tillinghast, the applicant appraised the property at \$141,000 as of January 18, 2002. The applicant performed the visual inspection of the property, gathered all the data, and was primarily responsible for the preparation of the report. TTT12-12 to 18.³ The applicant described the subject in the report as "adequately renovated." However he also stated in the report: "no recent upgrades or improvements." The property had been purchased on January 26, 2001 for \$35,000. Records also indicate there was a sale of the subject shortly prior to the date of valuation for \$62,000. The applicant described comparable #1 as "renovated," and comparable #2 as in "average plus" condition. The Multiple Listing described comparable #1 in the following terms: "All renovated house from top to bottom, new walls, electrical, plumbing, carpet, ready to move in[.]" No condition adjustment was made for comparables #1 and #2. Comparable #3, which was new

³ "TTT" = refers to the transcripts of an investigative inquiry of Michael Bassillo, Mr. Jean's latest supervisory appraiser, dated May 23, 2002.

construction, was given a 10% downward adjustment to reflect its new condition.

However the applicant's description of the condition of the subject in his testimony before the Board indicates no specific renovations: he described fixtures that were operational but not new; an absence of readily observable defects rather than a property in "renovated" or "average +" condition.⁴ Moreover, a 10% adjustment for comparable #3, which was in new condition, as opposed to the subject, which was 72 years old, with nothing specifically new or renovated that respondent could cite, appears inadequate. An Enforcement Bureau investigator also did not observe anything that could be described as "renovated" when he entered the premises.

An Enforcement Bureau investigator ascertained that no construction permits had been issued for 87 Tillinghast since 1985.

The Enforcement Bureau report contained photographs of two vacant properties within 50 and 100 feet of the subject that were boarded up and vacant. Additionally, a third property, 74 Tillinghast Street, was also observed to be vacant and boarded up. No mention of these boarded up properties was made in the

⁴ Mr. Jean agreed with the characterization of the condition of 87 Tillinghast as "totally renovated, TT24-13 to 24, with an effective age of 5 to 10 years, TT25-5 to 17. TT45-11 to 21; TT46-6 to 19. Otherwise Mr. Jean described the property as "average." TT40-19 to 25; TT44-2.

appraisal report, although that certainly would have affected the value of the subject.

Based on the above information, the Board finds that the evidence indicates that the applicant's reports overstate the value of the respective subjects. The depiction of the condition of the properties was misleading, in that the properties appeared to be at best in average condition, while the comparables, from the information available to the applicant, appeared to be in above average condition. The failure to mention boarded up and vacant buildings in the vicinity of the subjects, which would have significantly impacted on value, is also important. The Board finds that these two reports, in the preparation of which the applicant participated after a long apprenticeship period; and to which the applicant's contributions were major; and which the applicant persisted in justifying at the investigative inquiries, by means of speculative and argumentative explanations and broad generalizations rather than logical and reasonable responses;⁵ were in violation of the Uniform Standards of

⁵ For example, when asked why 297 West Runyon was listed for \$76,900 shortly before he appraised it for \$140,000: "[P]eople list properties for whatever they want to list it for, you can list a property for a million dollars if you want to, \$50 if you want to, that doesn't necessarily mean that's what the property is worth." T17-3 to 7. When asked why, if 297 West Runyon was totally renovated, there was nothing in the report indicating it had been renovated recently: "Well, it's been maintained." T18-20 to 19-4. When asked about the fact that the property had been listed for \$24,900 a year before he appraised it for \$140,000: "[I]f it's sold a year ago for \$35,000, why

Professional Appraisal Practice (the USPAP) in the following respect: they were in violation of Standards Rule 1-1(a), requirement of correctly employing recognized methods and techniques necessary to produce a credible appraisal (selection of comparables; failure to indicate boarded up and vacant property); Standards Rule 1-5(a) (failure to indicate prior sale of 297 W. Runyon (where property was purchased by New Millennium Investment)); Standards Rule 1-1(b), requirement not to make significant error of omission or commission significantly affecting an appraisal (failure to indicate two bedrooms in 297

couldn't it be worth \$140,000 now? Why couldn't it?" T46-3 to 5. With regard to the issue as to whether 297 West Runyon would have greater market appeal if all the bedrooms were on the second floor, rather than two of the three being on the third floor: "Actually it might have greater market appeal [with bedrooms on the third floor] because in Newark and Irvington and a lot of places where a lot of times people rent out the other floors or just Section Eight out these floors, you get more money for it." T54-11 to 15. Although afterwards, Mr. Jean acknowledged that generally bedrooms on the second floor would have greater market appeal. T58-15 to 59-1. Moreover, Mr. Jean's explanation as to why he did not indicate the sale of 87 Tillinghast for \$62,000, close to the date of his appraisal, as required by Standard Rule 1-5 of the USPAP, his lengthy response was evasive and unconvincing. He stated he did not report the sale because it was not recorded. This has sometimes been advanced as a reason for an appraiser not knowing about a sale. Yet Mr. Jean was aware of the sale, and even indicated the new owner as the owner of record on his report. It should be noted that the reporting of the second sale, so close to the date of the appraisal report, would have made the report's value conclusion of \$141,000 less credible, without an analysis of the sale, pointing out possible factors (transaction not at arms length; extensive renovations) to reconcile the information.

West Runyon were on third floor)⁶; violation of the Conduct Section of the Ethics Rule, by communicating results in a misleading or fraudulent manner and communicating a misleading or fraudulent report.

Pursuant to N.J.S.A. 45:1-21, licensure may be denied for, inter alia, professional misconduct, N.J.S.A. 45:1-21(e) (see also N.J.A.C. 13:40A-6.1, whereby USPAP violations may be deemed professional misconduct); N.J.S.A. 45:1-21(b) (use of deception). Pursuant to N.J.A.C. 13:40A-3.4(e), the experience requirements for licensure must only consist of "appraisal experience which complies with USPAP." While respondent, as an apprentice, was not responsible for the appraisal reports he signed, as is the supervisory appraiser, respondent's testimony throughout the two investigative inquiries attempted to justify the misleading aspects of the reports. Moreover, the Board finds that his testimony, particularly where he attested to the renovated condition of the subject properties, was entirely lacking in credibility and misleading. See, e.g., FN 5, supra.

The violations cited above are particularly serious because they demonstrate an abrogation of the function envisioned for real estate appraisers when the Financial Institutions

⁶ On page 8 of the Provisional Order of Discipline issued on July 25, 2002, the Order incorrectly referenced 87 Tillinghast instead of 297 West Runyon with regard to this particular error; this was pointed out by the applicant's counsel in the request for reconsideration dated August 28, 2002.

Restitution, Recovery and Enforcement Act of 1989 (FIRREA) prompted the creation of the state regulatory boards, following the savings and loan crisis of the 1980s. Financial institutions are ostensibly relying on those reports to authorize hundreds of thousands of dollars in loans, which may be in turn sold to other financial institutions ultimately relying upon the original appraisal report. The sales histories of 297 West Runyon and 87 Tillinghast indicate that these properties may very well be involved in a "flip" - defined in a communication of the Appraisal Standards Board as a term "commonly used to describe the transfer of property where fraud is used to obtain inflated prices and loans." The title histories suggest that careful scrutiny was warranted in preparing these reports, because in both cases there was a relatively quick turnover of the properties, with a substantial rise in the sales price of the properties, and no clear indication that more than a cursory renovation of the properties has taken place. The best that can be said of the applicant is that, despite a long apprenticeship, he has demonstrated that he does not regard it as important to provide the information and engage in the research that may protect those who rely on his appraisal reports from "flips."

Based on the foregoing findings and conclusions, a Provisional Order was entered by the Board on July 25, 2002, denying respondent's application for licensure, and a copy was

served on respondent. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 30th business day following entry unless respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting respondent's request for consideration and reasons therefor.

A response was received dated August 28, 2002, requesting that the Board reconsider its findings and conclusions in this matter. On behalf of the applicant, numerous points were raised. For instance, he asserts 1) that the list price of a property (such as 297 West Runyon) is not necessarily determinative of the value of the property; 2) that the investigator's observation of the condition of 297 West Runyon (that the property was uninhabitable and in need of much work) was six months after the date of valuation of the appraisal report, and therefore precluded a conclusive determination of the condition of the property six months earlier, when it was appraised; 3) that construction permits are not a reliable indication as to whether or not work was performed; 4) it was not necessary to indicate that there were boarded up dwellings in the neighborhood, because this was part of the character and the nature of the

neighborhood; 5) the broker listing was not included because it couldn't be found, and this was a learning period; 6) the bedroom location description was an oversight.

The Board considered these factors and determined that further proceedings were not necessary. Furthermore, the Board did not feel that the applicant has demonstrated that he has acquired the requisite competence for licensure. As stated in the Provisional Order of Denial, the basis for denial is N.J.S.A. 45:1-21(b) and (e) (professional misconduct pursuant to N.J.A.C. 13:40A-6.1, whereby USPAP violations may be deemed professional misconduct). At the time when Mr. Jean's application was filed, the experience requirements for licensure indicated: "Only appraisal experience which complies with USPAP shall qualify for consideration [to meet the experience requirement for licensure]. N.J.A.C. 13:40A-3.4. That regulation has since been modified, and now directly incorporates by reference the standards established by "The Real Property Appraiser Qualification Criteria and Interpretation of the Criteria" (hereinafter AQB Criteria) as promulgated by the Appraisal Qualification Board of the Appraisal Foundation, the minimal Federal standards to which the Board adheres. Federal standards similarly indicate that to satisfy experience requirements for licensure, that experience must be USPAP-compliant. See, e.g., AQB Criteria, Page 8.

The Board's enabling legislation was passed subsequent to

the passage of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), in the wake of the savings and loan crisis of the 1980s. Cherokee W. Wooley, comment, Regulation of Real Estate Appraisers and Appraisals: The Effects of FIRREA, 43 Emory L.J. 357, 375 (1994). FIRREA encouraged the establishment of state agencies to certify and license real estate appraisers. Id. at 359. The "devastating" effect of faulty appraisals, id. at 358, in particular inflated appraisals, was an important motive force in the savings and loan crisis, the creation of FIRREA, and thus the creation of the Board itself. See ibid. ("[M]any of the failed institutions held mortgages for which the appraisals were grossly inaccurate or insufficiently documented"); Peter G. Weinstock & Christopher T. Klimko, Banking Law Developments, 45 SW. L.J. 1265, 1291 (Spring, 1992) (noting that Congress thought "inflated and otherwise improper appraisals" contributed to crisis); Vernon Martin, Appraisal Fraud and How It Works, 108 Banking L.J. 144, 159 (March-April 1991) (explaining that "'land flipping' - multiple sales of a single property in a short period with the intention of deceptively inflating value - was used as data by some appraisers trying to justify higher than warranted value").

Mr. Jean's reports were not USPAP compliant, and more important, the errors were misleading; and Mr. Jean persisted in attempting to justify the misleading aspects of the reports.

Moreover, his testimony with regard to the condition of the subject properties was lacking in credibility and misleading, in that he could indicate no specifics with regard to renovation. Mr. Jean's lack of competence is of particular concern to the Board because the errors he makes are of the type that would facilitate mortgage fraud, premised on inflated appraisals of the type that concerned Congress when it passed FIRREA. The role of gatekeeper which FIRREA intended, by promoting the creation of state licensing boards monitoring the qualifications of appraisers, is virtually abrogated where prior sales of residential property are not researched, current listings for sale are not researched, renovations are not documented to explain why an appraisal report reaches a value conclusion significantly higher than the price at which a residence has been recently offered for sale, or has sold for. The Board notes that Mr. Jean's lack of competence, as demonstrated by his errors and his intransigence in defending these errors, are of the type that could facilitate the very evil that the Board was created to remedy.

IT IS, ON THIS 23rd DAY OF October, 2002,

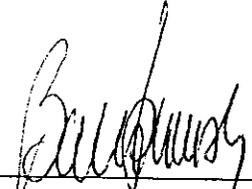
ORDERED THAT:

1. The application for licensure is hereby denied.

2. Should the application wish to reapply for licensure, he must:

a) re-apply for a trainee permit, and acquire a further year of appraisal experience, under the supervision of an appraiser who is to be pre-approved by the Board, at the Board's discretion;

b) the Board will not entertain an application for licensure for a one-year period from the effective date of this Order. Prior to consideration of an application for licensure, the applicant should demonstrate successful completion of a course in report writing, as well as a course in the Uniform Standards of Professional Appraisal Practice. The applicant is to submit the courses he intends to enroll in to the Board, for the Board's prior approval.



Barry J. Krauser
Board President