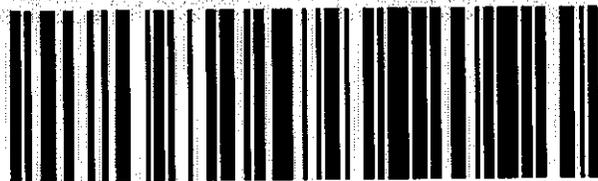
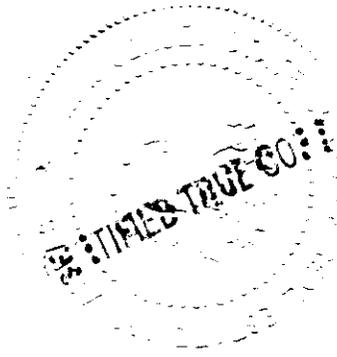


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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
NEW JERSEY STATE BOARD
OF REAL ESTATE APPRAISERS

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

MICHAEL R. BASSILLO
License # RC 01159

TO PRACTICE REAL ESTATE
APPRAISING IN THE STATE OF
NEW JERSEY

Administrative Action
FINAL DECISION AND ORDER

FILED
BOARD OF
REAL ESTATE APPRAISERS
James S. Hsu 7/27/05
DR. JAMES S. HSU
Executive Director

This matter was originally opened to the Board of Real Estate Appraisers ("the Board") upon the filing of a Complaint by Peter C. Harvey, Attorney General of New Jersey, by John P. Miscione, Deputy Attorney General, on May 20, 2004. The Complaint alleged violations of the Uniform Standards of Professional Appraisal Practice ("the USPAP"¹) in connection with seven appraisal reports. An Answer was filed in this matter, but was subsequently withdrawn pursuant to the terms of a Consent Order agreed to by respondent and approved by the Board on March 8, 2005. By the further terms of that Order, respondent agreed not to

¹ These standards, which are applied throughout the United States, and the violation of which is deemed professional misconduct pursuant to Board regulation, are explained at greater length infra. See pages 11-12.

contest the allegations of the Administrative Complaint, and further acknowledged that the Board would be able to make appropriate findings with regard to the uncontested allegations.

The Order also provided that respondent would have the opportunity to appear before the Board on his own behalf to present arguments in mitigation with respect to any sanctions the Board might determine, including suspension or revocation of respondent's real estate appraiser license or a lesser sanction, and to mitigate costs and monetary penalties the Board might determine to assess.

On March 8, 2005, at the Board's regularly noticed meeting date, a formal public hearing was held. Respondent at that time indicated, in response to questioning by Deputy Attorney General Miscione, that he had willingly and knowingly entered into the Consent Order and understood its terms. Following this testimony from respondent, and the Board's agreement to the terms of the Consent Order, the State presented the factual basis underlying the State's formal Complaint, i.e., the factual basis for the allegations that violations of the statute and regulations regulating the practice of real estate appraising had occurred.

The Complaint concerned seven appraisal reports signed by respondent: appraisals of 87 Bayside Avenue, Atlantic Highlands, New Jersey with a date of valuation of May 12, 2000; 84 Sitgreaves Street, Phillipsburg, New Jersey with a date of valuation of May 19, 2000; 196-200 Washington Avenue, Phillipsburg, New Jersey with

a date of valuation of May 19, 2000; 216-218 East 9th Street, Plainfield, New Jersey with a date of valuation of June 14, 2000; 34-36 Bennett Street, Phillipsburg, New Jersey with a date of valuation of July 12, 2000; 113 Bartine Avenue, Somerville, New Jersey with a date of valuation of August 8, 2000; and 87 Tillinghast Street, Newark, New Jersey with a date of valuation of January 18 2002. At least six of the seven properties, according to respondent, ultimately wound up in foreclosure.

Following the State's presentation of its case, which included the entry into the record of the relevant pages of the seven appraisal reports, and copies of deeds and multiple listing printouts related to those reports, as well as transcripts of two investigative inquiries held in 2002, and an investigative report relating to the seven appraisals, the Board went into Executive Session for deliberations. When the Board returned to Public Session, it unanimously adopted findings of fact and conclusions of law with regard to the allegations of the Complaint as follows:

With regard to Count I of the Complaint:

a) the appraisal report of 84 Sitgreaves left blank the section wherein the current owner of the property should have been indicated;

b) the appraisal of 216-218 E. 9th Street indicated the current owner of the property was Dominion Enterprises; on the date of

valuation, May 19, 2000, the owner was EMC Mortgage Corp. Dominion did not take title of the property until July 6, 2000;

c) the appraisal of 113 Bartine indicated the current owner on the valuation date of August 8, 2000 was Dominion Enterprises; Dominion did not take title until October 6, 2000;

d) the appraisal of 87 Bayside indicated the current owner was Hayley Rose Holdings on the valuation date of May 12, 2000; at that time, Janet Salerno was the owner; Hayley Rose did not take title until June 23, 2000, at which time it acquired the property from Haledon Investors for \$1; Haledon Investors had acquired the property on the same date, June 23, 2000, from Janet Salerno for \$230,000;

e) the appraisal of 34-36 Bennett indicated the current owner was Dominion Enterprises on the valuation date of July 12, 2000; Dominion did not acquire the property until July 31, 2000;

f) the appraisal of 196-200 Washington indicated the current owner of the property was Dominion Enterprises on May 19, 2000, the valuation date; Dominion did not acquire the property until September 8, 2000.

The Board found that in each instance above the misidentification of the current owner, and the failure to identify the current owner, were misleading in light of the Conduct Section of the Ethics Rule of the Uniform Standards of Professional Appraisal Practice (the USPAP), as well as a violation of Standards

Rule 2-1(a) (the requirement to clearly and accurately set forth an appraisal in a manner that is not misleading). In light of N.J.A.C. 13:40A-6.1, which indicates that failure to comply with the USPAP may be construed as professional misconduct, the Board found that respondent was subject to sanctions pursuant to N.J.S.A. 45:1-21(e). This also constituted misleading or deceptive conduct subjecting respondent to sanctions pursuant to N.J.S.A. 45:1-21(b).

With Regard to Count II of the Complaint:

Five of the seven properties had transferred ownership within the 12 months prior to the date of the report. One of the reports indicated that the property had transferred ownership, but incorrectly identified the date and price of the sale. Four of the reports affirmatively stated that there had been no prior sale within the past year. These four properties were among those referenced in Count I whose ownership had been inaccurately identified. Thus:

- a) 216-218 E. 9th Street transferred for \$100 on October 1, 1999; the date of respondent's report was June 14, 2000;
- b) 113 Bartine transferred on July 28, 2000 for \$123,600; the appraisal date was August 8, 2000 (and the value conclusion was \$180,000);
- c) 34-36 Bennett transferred on September 1, 1999 for \$68,000; the appraisal date was July 12, 2000 (and the value conclusion was \$138,000);

d) 196-200 Washington transferred on September 26, 1999 for \$95,000; the appraisal date was May 19, 2000 (and the value conclusion was \$143,000);

e) 87 Tillinghast transferred on December 11, 2001 for \$62,000; the date of valuation was January 18, 2002 (and the value conclusion was \$141,000). This sale was not indicated on the appraisal report. Instead, a purported sale for \$35,000 on January 26, 2001 was indicated in the report.

The Board found that in each instance the failure to indicate and analyze the prior sale in the report constituted a violation of Standards Rule 1-5(b)² of the USPAP; this, and the affirmative indication in each report of no prior transfer within a year also constitutes a violation of Standards Rule 2-1(a) of the USPAP, failure to clearly and accurately set forth an appraisal in a manner not misleading. Consequently the Board found respondent had engaged in professional misconduct pursuant to N.J.A.C. 13:40A-6.1, and was subject to sanctions pursuant to N.J.S.A. 45:1-21(e). This also constituted misleading or deceptive conduct subjecting respondent to sanctions pursuant to N.J.S.A. 45:1-21(b).

² This rule requires that an appraiser analyze any prior sales within one year of the property being appraised (for a one-to-four family residential property); as of 2003, appraisers are required to analyze prior sales within three years, rather than one year. See page 12, infra.

With Regard to Count III of the Complaint:

Two of the properties were listed for sale at the time of the appraisal report, and respondent did not indicate this in the appraisal report.

a) 216-218 East 9th Street was listed for sale at \$117,900 on November 18, 1999, with the listing still current on June 14, 2000, when the property was appraised for \$190,000; the report affirmatively stated: "Title on the subject has not transferred in the past twelve months, nor has the subject been listed for sale in the past 12 months".

b) 84 Sitgreaves was listed for sale at \$72,500 on November 4, 1999, and the listing was still current on May 19, 2000, when the property was appraised for \$115,000.

The Board found that in each instance the failure to report and analyze a current listing for sale of a property being appraised constituted a violation of Standards Rule 1-5(a) of the USPAP; pursuant to N.J.A.C. 13:40A-6.1, this constituted professional misconduct, subjecting respondent to sanctions pursuant to N.J.S.A. 45:1-21(e); this also, along with the affirmative indication that the property had not been listed for sale in the past 12 months, constituted misleading conduct subjecting respondent to sanctions pursuant to N.J.S.A. 45:1-21(b).

With regard to Count IV of the Complaint:

All seven appraisal reports indicated that the properties were under contract for sale at the time of the appraisal. There was no analysis of the contract in the reports. The Board found that in each instance this constituted a violation of Standards Rule 1-5(a), the USPAP requirement that appraisers analyze all current agreements for sale of the property being appraised. The Board further found that, pursuant to N.J.A.C. 13:40A-6.1, this subjected respondent to sanctions pursuant to N.J.S.A. 45:1-21(e) for professional misconduct. This also constituted misleading or deceptive conduct subjecting respondent to sanctions pursuant to N.J.S.A. 45:1-21(b).

With Regard to Count V of the Complaint:

This Count alleged respondent knowingly permitted his apprentice, Necker Jean, who prepared and signed the report, to communicate a misleading and fraudulent report.

The Board determined that respondent, by signing the report, took responsibility for the report in its entirety, and therefore, to the extent the report was misleading or fraudulent, he was himself communicating the report. The Board therefore dismissed the allegations of Count V.

With Regard to Count VI of the Complaint:

This count alleged professional misconduct with respect to all seven reports. Inasmuch as the Board had already found professional

misconduct with regard to four of the counts of the Complaint, the Board considered the findings with regard to this count to be subsumed in the findings and conclusions within Counts I through IV. The Board thus in essence found the professional misconduct alleged in Count VI, but included those findings within the findings made with regard to the facts alleged in Counts I through IV.

DISCUSSION

Respondent does not essentially contest the errors or mistakes indicated in the Board's findings; he rather asserts in mitigation that he acted in good faith, and that the violations committed were not intentional. With regard to the inaccuracies in his reports as to the current ownership of the properties being appraised, he stated he had no reason to question the data provided to him. He has also maintained, in his testimony at investigative proceedings which are part of the record, that the value conclusions reached in his reports were appropriate.

Specifically, respondent claimed that with regard to the misidentification of the current owners in five of the reports (Count I), he was relying upon information provided to him by a licensed realtor who was the operations manager for Dominion Enterprises, Paula Rycyk, and indicated that he had no reason to disbelieve Mrs. Rycyk's representations. He stated that he had telephoned the assessor's office and was told that the entry of the

records of recent sales was as much as three to four months behind; so that he could not find information contradicting the information provided by Mrs. Rycyk. With respect to the failure to indicate prior sales of properties within one year (Count II), respondent states that the computerized records he relied on indicated no prior transfers. He further stated that the failure to indicate the prior sale within a year for 87 Tillinghast was due to the fact that he assumed the trainee who performed the work, Necker Jean, had correctly performed the research. Moreover, respondent argued that the report's citation, in error, of the sale of an unrelated property within the previous year, indicates that an effort was made to conform with the USPAP requirements of Standards Rule 1-5 to analyze prior sales within a year. With respect to the failure to indicate that two of the properties were currently listed for sale (Count III), it is not clear what justification or explanation respondent has offered, apart from his assertion that he did not knowingly communicate a misleading report. With regard to respondent's failure to analyze the contracts for sale of the subject properties, respondent maintains that he thought it was sufficient to indicate that the subject property was under contract for sale, and did not realize that he was supposed to analyze the contract until he was advised differently, at an appraisal course he had taken for continuing education. Respondent further indicates that he has been seriously

ill, and that the beginning stages of his illness may have impacted upon his everyday decisionmaking and "lack of follow through."

The Board, in its evaluation of the seven reports, has focused primarily on the nature of the errors committed: a finding of deliberate intent to commit the violation is not an element in finding a violation of Standards Rule 1-5, Standards rule 2-1(a) or of the USPAP's Ethics Rule. The Board finds that the violations committed were extremely grave, not careless errors which any appraiser might commit over a long career, nor mere technicalities of questionable importance. Rather, the findings herein represent substantial violations of the statute and regulations governing appraisal practice which go to the heart of the need to regulate appraisers in order to protect the public.

Reference has been made throughout the Board's findings of fact and conclusions of law to the Uniform Standards of Professional Appraisal Practice (USPAP). These are standards developed and promoted by the Appraisal Standards Board of the Appraisal Foundation. The Appraisal Foundation is a nonprofit private organization charged under the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) with establishing uniform standards for appraisers that may be applied nationwide. The Board was established as a result of FIRREA, federal legislation enacted following the savings and loan crisis of the 1980's which encouraged the enactment of legislation

throughout the United States on the state level, creating state boards regulating real estate appraisers. Under FIRREA, federal oversight ensures that appraisers licensed or certified by the states are held to certain minimal standards in terms of educational and experiential requirements; and that federally-related transactions conform to the USPAP. In New Jersey, the Board's enabling statute authorized the Board to establish a code of professional ethics meeting the standards established by the USPAP, see N.J.S.A. 45:14F-8g, and, in promulgating N.J.A.C. 13:40A-6.1, the Board has incorporated by reference the requirement that New Jersey real estate appraisers adhere to the USPAP.

Standard Rule 1-5 of the USPAP, which primarily addresses sales history, is of crucial importance in forestalling and detecting mortgage fraud schemes. At the time the reports at issue here were written, USPAP required that sales of the property being appraised (the subject property) within one year prior to the date of the report had to be indicated and analyzed in the appraisal report. Since then, Standard Rule 1-5 has been modified to require a three-year sales history. The reader of a report, such as the client financial institution providing the financing for which the appraisal report serves as a justification, who learns from the report that 34-36 Bennett transferred for \$68,000 on September 1, 1999, and notes a value conclusion of \$138,000 reached in July of the following year, may examine the report to ascertain what had

been done to the property to warrant a doubling in transfer price. If no explanation is offered in the report (such as that significant renovations were made to the property, or that the \$68,000 sale price was a distress sale, and/or that the present contract for sale contained certain advantageous provisions) the reader of the report may be led to question the value conclusion of the report, and insist upon a second appraisal report. Similarly, a report reader ascertaining that 216-218 E. 9th Street had been listed for sale since November of 1999 at \$117,900, and had not sold at that price, may be led to wonder why, on June 14, 2000, the appraiser reached a value conclusion of \$190,000.

IndyMac, the financial institution that was the original complainant in this matter with regard to six of the reports, did not have the protection in connection with these reports that adherence to Standards Rule 1-5 would have provided. Respondent acknowledged that IndyMac would not have loaned money on the six properties without an appraisal report, and thus the report was one of the necessary components in the transaction upon which IndyMac relied in making the loans. All of the loans made on these properties by IndyMac went into foreclosure, and because IndyMac had not sold the mortgages to other institutions, IndyMac lost a significant amount of money on these transactions.

Respondent noted that the principals of Dominion Enterprises, indicated as the current owner on four of the appraisal reports were criminally indicted in this matter. He observed:

[T]he owners of this company [Dominion Enterprises] stopped paying 28 mortgages all in the same month. IndyMac had every one of the loans and cried foul and went back and went through the reports and started the investigation.

Respondent asserted in his written submission that those in control of Dominion Enterprises

did everything in [their] power to deceive all the parties involved in these transactions. They ran a finely tuned organization that entailed the submission of fraudulent listing forms, phony order forms, and a high pressure [sic] tactics on myself and my employees. . . . [They] played a finely tuned shell game.

Thus respondent appears to be describing Dominion Enterprises as involved in a criminal conspiracy. If this is so, respondent's conduct, and the reports that he provided, appear to have facilitated the goals of the conspiracy.

Respondent states that he was himself deceived by Dominion Enterprises. He further states that despite his 20 years of experience as an appraiser, he still does not understand the scheme that the principals of Dominion Enterprises were engaged in.

It is difficult to conceive of any get-rich-quick scheme where it would profit the property owner to walk away, in a rising market, from a mortgage on a property where the original loan had been granted based upon an appraisal report with a valid value conclusion. Nevertheless, without addressing the accuracy vel non

of respondent's value conclusions, the Board has found that respondent's violations stemmed from his refraining to take certain important steps which, as an appraiser, he was obligated to have taken. Such steps are required of appraisers as a means of preventing faulty appraisals and/or mortgage fraud. Whether or not respondent was deceived by Dominion Enterprises himself, or understood Dominion's scheme, is simply not relevant. Respondent's acts and omissions constituted USPAP violations which were of the type that facilitate mortgage fraud.

The failure to correctly identify the current owners of six of the properties is key here. Respondent explains his failure to report prior sales of the subject property with a year in his appraisal reports, as required by Standards Rule 1-5, as being due to the fact that computerized title records are not up-to-date in tracking recent property sales. However, respondent's own attempts to justify the violations found in Count I, the misidentification of the current owner of the properties being appraised, serve to demonstrate an utter disregard for Standard Rule 1-5.

Respondent states that with respect to 87 Bayside, he was advised by Pauline Rycyk, operations manager of Dominion Enterprises, that there had been a title change. He asserts he then called the assessor's office, and was told that because the recordation filings were 6 to 8 weeks behind, the ownership change could not be confirmed. Thus, if one accepts respondent's account

as credible, and respondent indeed believed there had been an ownership change, he had good reason to believe that there had been a sale within the prior 8 weeks. Standard Rule 1-5 thus required that he indicate and analyze this sale within the prior year. According to respondent's own argument in mitigation, instead of asking Mrs. Rycyk even the basics, the date of the sale and the sales price, respondent elected to change the identification of the "current owner" in the report, but ignored Standard Rule 1-5's requirements, and permitted the report to issue with the misleading indication "N.S. past 1 yr. TRWRedi" (no sale in the past year according to his information source, TRW). Respondent thus seeks to "mitigate" one USPAP violation on the basis of having committed another USPAP violation: failing to make any attempt to comply with Standard Rule 1-5 and investigate the property's sales history.³

³ In connection with 87 Bayside Avenue, on May 21, 2002 the following exchange took place at an investigative inquiry (Exhibit S-2 in the record) wherein respondent was asked about the logical disconnect of adjusting the property's ownership to reflect a recent sale which the report itself states did not occur:

MR. BASSILLO: . . . I prepared this report just like I have done a hundred times before I prepare a report. I submit it and they call me back and say, "No, you have the name change wrong. There was a title change three weeks ago for this or for that and the wrong name is in there. You didn't know about that sale so now you have to put that in. I have to revise the report and send it on its way. Happens every day.

Q: On that issue, Mr. Bassillo, your report states unequivocally, I would suggest, that there are no sales

(continued...)