

CERTIFIED TRUE COPY

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

COPY

IN THE MATTER OF THE
APPLICATION OF

PHILIP A. BRUCCOLIERE

TO PRACTICE REAL ESTATE
APPRAISING IN THE STATE

FINAL ORDER OF
DENIAL OF LICENSURE

FILED
BOARD OF REAL ESTATE APPRAISERS
<i>James S. Hsu</i>
DR. JAMES S. HSU Executive Director 12/18/06

This matter was opened to the New Jersey State Board of Real Estate Appraisers ("the Board") upon receipt of an application for licensure received by the Board in September of 2005. The Criminal History Background Check, required pursuant to N.J.S.A. 45:14F-1 et seq., revealed that the Applicant had an extensive criminal history. The arrest history dated back to 1963, and because the disposition of the arrests listed were frequently not available to the Criminal History Review Unit, the Applicant was asked to assist the Board with information relating to the disposition of the arrests. According to the Applicant's explanation, the charges which led to a conviction are as follows:

- a) an arrest for conspiracy, for which he was sentenced to two years imprisonment, but served 30 days, and was placed on probation until November of 1976;
- b) an arrest in 1979 which resulted in a conviction for possession of explosives, for which he was fined \$1,000 and served two years of probation;

- c) an arrest in September of 1980 which resulted in a conviction of assault with a deadly weapon, resulting in a sentence of five years imprisonment;
- d) an arrest in June and July of 1983 which resulted in a conviction for conspiracy to sell marijuana, resulting in a five year sentence, served concurrently with the assault conviction; time actually served for both offenses was 2.5 years, with three years of probation;
- e) an arrest in 1989 which resulted in conviction on July 27, 1992 of possession with intent to distribute cocaine for which the applicant was sentenced to ten years in Federal prison.

The applicant was released from probation in 2003. Since May of 1998, he has been employed by MBA Appraisers, an entity with which his brother, an appraiser, is affiliated.

Inasmuch as some of the offenses of which the Applicant was convicted are disqualifying offenses under the Board's enabling statute, on April 11, 2006 the Applicant appeared before the Board to establish rehabilitation pursuant to N.J.S.A. 45:14F-10.2(c). On the date of his appearance, was asked about his criminal history. Inasmuch as the Applicant's last conviction occurred in 1992 (resulting in a ten year sentence), documentation with regard to the Applicant's criminal conduct was not readily accessible, according to the Applicant. Consequently the Board must rely to a great extent upon the Applicant's own description of his offenses, and the circumstances surrounding those offenses.

With respect to the 1992 conviction, the Applicant testified: "In 1989 I got involved in a money loaning situation which involved drugs." T8-24 to 25. Of the 1983

conviction, he explained: "[I]t was a money lending situation. The people I loaned the money to were involved in the drugs. I knew about it. I'm not going to deny it . . . I was arrested for distribution of marijuana. I did five years for that, two and a half years in jail[.]" T9-13-19.

When asked for further detail, the Applicant elaborated: "I knew people that were in that type of business [drugs]. They would need money to do a deal . . . I would loan them the money and they would do their deal . . . I got caught up in the conspiracy." T10-2 to 7.¹ The Applicant stated that he was able to provide financing through money obtained from an automobile leasing business, as well as from "speculating with properties in the Los Angeles area. I was living in California at the time . . . I was also involved in those years in a development, Twenty-Nine Palms . . . I made a substantial amount of money on that project also. Naturally, I got involved with the wrong people with loaning the money for these situations. I got myself in a lot of trouble which I regret." T10-16 to 11-5. When further pressed as to why he loaned money to people when he knew those people were going to engage in drug trafficking, his reply was: "I guess the excitement of it . . . I have no real reason for doing that except the excitement of it. The return, the return was substantial." T11-10 to 14.

Following the Applicant's April 11, 2006 testimony, the Board wrote to the Applicant seeking further documentation of his convictions. In September of 2006, he furnished the Board with nine pages of the presentencing report prepared in connection with his 1992 conviction. According to this report, the Applicant was more directly

¹ T = transcripts dated April 11, 2006.

implicated in drug deals than his testimony suggested. According to the report, he did more than simply provide financing. With regard to the 1992 conviction, he was arrested after he had provided payment to a confidential informant for in excess of five kilograms of cocaine, and he had asked the informant to place the cocaine in his (the Applicant's) car trunk. With respect to the 1983 conviction, the Applicant arranged to transport approximately 1000 pounds of marijuana for \$125,000.00.

In addition, the presentencing report indicated that the 1980 conviction for robbery and assault was based on the Applicant's striking a gas station attendant over the head with a .32 caliber revolver and taking approximately \$200 from the cashbox. In his testimony, the Applicant had described the incident as follows:

I got in a confrontation with a gentleman. I took the gun away from him and hit him with it, kind of a self-defense type thing. In the meantime, somebody called the cops.

T16-11 to 15.

It was further learned from the presentencing report that the conspiracy offense for which the Applicant was arrested in 1979² involved a conspiracy to defraud the United States (Federal Housing Authority) through a real estate transfer. The explosives conviction concerned seven sticks of dynamite and some blasting caps found in a

² The presentencing report indicates a 1977 date, and that the case was heard in Cherry Hill Municipal Court; however the Criminal History Background Check indicates an arrest on 7/31/79 in Camden County for possession of explosives. The sentence of two years probation and \$1,000 fine are the same for both. Thus the Applicant's indication of a 1979 date appears accurate, and the date on the presentencing report appears to be in error.

storage garage rented by the Applicant.

Since the Applicant was released from prison in 1998, he has worked for his brother, an appraiser in Cherry Hill. The Applicant's brother is a licensee with an unblemished record, in that there has been no disciplinary action taken against him by the Board.

When asked how the Board could be assured that he would not engage in criminal activity again, the Applicant stated: "Believe me, I don't want to get involved in anything like that again. It has been eight years. I haven't even been in touch, considered being in touch with anyone of that type of character again. I'm happily married . . . We have three children which we are raising. I have four of my own. I don't want to put myself through that again[.]" T15-11 to 21.

The Board has considered the rehabilitative factors set forth in N.J.S.A. 45:14F-10.1. These include:

- (1) The nature and responsibility of the position at issue;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the individual when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions that may have contributed to the offense;
- (8) Any evidence of rehabilitation.

The Applicant's criminal history implicates not an isolated offense, but a pattern of criminal behavior. With regard to the Applicant's age, the most egregious of the

Applicant's criminal acts, possession of cocaine with intent to distribute, related to activity engaged in at a time when the Applicant was already in his fifties. According to the Applicant's testimony, the motive for his criminal activities was both greed and the excitement engaging in criminal acts. Social conditions that might have contributed to the offense apparently involve an election by the Applicant to associate with persons who engaged in criminal activity over a long period of time during his adult life, and also (according to the Applicant's testimony) implicate the possession by the Applicant of excess moneys that he wished to increase.

The Applicant has not been arrested since 1998, when he was released from prison. Since that time, he has worked for his brother without any adverse result. The Applicant has submitted statements both from relatives and from business associates attesting to his good character. In this regard, New Jersey's Supreme Court has noted on the subject of rehabilitation of attorneys: "The absence of any misconduct over a period of intervening years will, of course, be noted . . . and a particularly productive use of one's time subsequent to the misconduct will be credited. Affirmative recommendations from people aware of the applicant's misconduct who specifically consider the individual's fitness in light of that behavior may also be found probative of present good character." Matter of the Application of Donald G. Matthews, 94 N.J. 59, 82 (1983) (citations omitted). None of the persons who have submitted writings favorable to the Applicant have addressed his prior criminal history. Moreover, while there is evidence that the Applicant has spent his time since his release from prison without engaging in criminal conduct, refraining from violating the law, without more, cannot be considered a "particularly productive use of one's time."

Here, the Applicant's prior good conduct following his release from prison after his 1983 criminal conviction was followed by a 1992 conviction for even more egregious misconduct. Two and one half years of prison had not sufficed to deter the Applicant, already arrived at full maturity and late middle age, from further criminal conduct. Although the lengthy prison term served by the Applicant for the 1992 conviction hopefully will have served as a deterrent to future criminal conduct, the Board does not find that respondent has established rehabilitation by clear and convincing evidence. The fact that the Applicant appears to have downplayed or even misrepresented the nature of his criminal activity in his testimony before the Board is also significant.

The Board finds that the Applicant's criminal history relates adversely to real estate appraising in that it demonstrated a lengthy involvement in criminal activity tending to demonstrate that the Applicant lacked the high standard of integrity required of real estate appraisers. Relying upon appraisal reports, financial institutions grant loans for hundreds of thousands of dollars. Appraisers are subject to numerous pressures to tailor reports, and for this reason the Uniform Standards of Professional Appraisal Practice, which are binding upon licensed and certified appraisers both in New Jersey and throughout the United States, stress under the Ethics Rule that appraisers must perform assignments ethically, with impartiality, objectivity, and independence, and without accommodation of personal interests. The Board has repeatedly noted that the Board itself was created pursuant to Federal legislation in the aftermath of the Savings and Loan crisis of the 1980s, and that its primary mission is to ensure the integrity and competence of appraisers. The role of the appraiser as protective gatekeeper is too important to entrust to an individual who has an extensive

criminal history involving crimes of moral turpitude, and whose rehabilitation has not been established by clear and convincing evidence.

Based on the foregoing findings and conclusions, a Provisional Order of Denial of Licensure was entered on October 2, 2006, provisionally denying the Applicant's application for licensure. A copy of the Order was forward to the Applicant by certified and regular mail at his address of record at 114 Steffens Blvd., Camden, Delaware 19934 on October 3, 2006. The record indicates that the certified mail was served upon the Applicant on October 10, 2006, and that the regular mail was not returned. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 30th business day following entry unless the Applicant 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 the Applicant's request for consideration and reasons therefor.

Although the record reflects that the Provisional Order was served upon the Applicant, no response has been received to date. Accordingly, the Board considered the matter, and determined that further proceedings were not necessary, and that the Provisional Order should be made final.

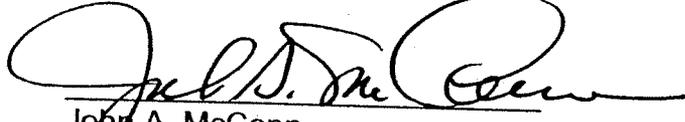
ACCORDINGLY, IT IS on this 18th day of December, 2006,

ORDERED that:

1. The Applicant's application for licensure as a real estate appraiser is

hereby denied pursuant to N.J.S.A. 45:14F-10.1, in that the Applicant has committed more than one disqualifying offense, and has not established rehabilitation by clear and convincing evidence. The Applicant's application is also denied pursuant to N.J.S.A. 45:1-21(f).

NEW JERSEY STATE BOARD
OF REAL ESTATE APPRAISERS

A handwritten signature in black ink, appearing to read "John A. McCann", written over a horizontal line.

John A. McCann
President