

CERTIFIED TRUE COPY

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

FILED  
BOARD OF  
REAL ESTATE APPRAISERS  
*James Hsu*  
DR. JAMES S. HSU 2/13/07  
Executive Director

COPY

IN THE MATTER OF THE  
LICENSE OF

ANDREW S. O'CONNELL  
License RG01329

TO ENGAGE IN REAL ESTATE  
APPRAISING IN THE STATE  
OF NEW JERSEY

Administrative Action

FINAL DECISION AND ORDER

This matter was opened to the New Jersey State Real Estate Appraiser Board upon the filing of an Amended Complaint<sup>1</sup> by Zulima V. Farber, former Attorney General of New Jersey, by Ledra H. Horowitz, Deputy Attorney General. This Complaint, filed on August 2, 2006, alleged certain violations of the Uniform Standards of Professional Appraisal Practice ("the USPAP") and the Uniform Enforcement Act with respect to four

<sup>1</sup> Initially a Complaint was filed on June 4, 2004. There was no response submitted by respondent, and the record considered by the Board in this matter did not include that Complaint.

appraisal reports signed by respondent.<sup>2</sup>

Respondent was personally served with a copy of the Amended Complaint, Notice of Hearing and Notice to File Answer on August 4, 2006, as evidenced by a Certification of Service of Oscar G. Amaya, an Investigator employed by the Division of Consumer Affairs, Enforcement Bureau. (Exhibit S-1) Respondent failed to file an Answer to the Complaint. (Exhibit S-2, Certification of Ledra H. Horowitz, DAG, ¶18 dated October 3, 2006.)

On or about October 4, 2006, Deputy Attorney General Ledra H. Horowitz filed a Notice of Motion for Default in this matter. (Exhibit S-2) In support of and accompanying this Notice of Motion were the following documents: a Certification of Ledra H. Horowitz, D.A.G., a letter brief, and an Appendix of Complainant. These documents were personally served upon respondent on October 11, 2006, as established by a Certification of Service submitted by Eugene Marchione, an Investigator with the Enforcement Bureau. (Exhibit S-2) The Notice of Motion for Default advised respondent that a Motion seeking entry of Default and a Default Judgment would be heard by the Board on December 12, 2006, and indicated the time and place at which the hearing would occur. (Exhibit S-2)

On December 12, 2006, following the anticipated loss of a quorum convened to hear the matter, it was heard by a committee of the Board consisting of three Board members, including the Board's President, John A. McCann, who presided. The

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<sup>2</sup> Respondent was a licensee of the Board until his license was suspended by an Order dated August 2, 2002, which imposed a one year active suspension upon respondent. Respondent's license is currently in lapsed status.

committee made preliminary determinations, subject to subsequent ratification, modification or rejection by the full Board. The Board was provided with the opportunity to review the complete record, including the transcripts of the December 12, 2006 proceedings, prior to deliberating and voting for a final decision in this matter.

The December 12, 2006 proceedings were conducted in three parts, and preliminary determinations were made first with respect to the issue of default; then with respect to liability, i.e., whether violations of the Board's enabling act and regulations, and/or the Uniform Enforcement Act had occurred; and finally with respect to sanctions.

DAG Ledra H. Horowitz presented the certification of Charles Kirk, Assistant Executive Director of the Board, that notice of the date, time and place of the hearing had been sent by certified and regular mail to respondent's address of record. (Exhibit S-3) Based on that submission, as well as the previously noted certifications of Oscar Amaya and Eugene Marchione (Exhibits S-1 and S-2), the committee found that respondent had been served with the Amended Complaint, Notice of Hearing, the Notice to File Answer and the letter brief in this matter, as well as the Notice of Motion for Default, and had been provided with adequate notice of the date, time and place of the hearing. Respondent was not present at the proceedings, and the committee found him in default. On January 9, 2006, following review of the transcripts and exhibits, the full Board affirmed this finding.

The violations alleged by the Complaint in this matter concerned four appraisal reports. These reports consisted of an appraisal of 194 Cambridge Avenue, Jersey City, New Jersey, dated March 2, 2000; an appraisal of 57 Hancock Avenue, Jersey

City, New Jersey, dated March 10, 2000; and an appraisal of 219 70<sup>th</sup> Street, Guttenberg, New Jersey, dated February 16, 2000. (Exhibit S-8) The fourth appraisal report was dated October 1, 2001, and appraised 297 West Runyon Street, Newark, New Jersey. (Exhibit S-9) Respondent had testified under oath concerning these appraisal reports at investigative inquiries held on March 2, 2000 and January 31, 2002, the transcripts of which were entered into evidence at the hearing of this matter (Exhibits S-8, S-9)

Following D.A.G. Horowitz's presentation of the State's case, the committee preliminarily found that the State had proved its allegations with respect to all of the counts in the Amended Complaint. Specifically, the committee's recommended finding was that respondent had violated the Ethics Rule of the Uniform Standards of Professional Appraisal Practice ("the USPAP"), Standards Rule 1 and 2 of the USPAP, and/or violations of N.J.S.A. 45:1-21(b), (c), (d), (e) and (h) of the Uniform Enforcement Act. The full Board subsequently affirmed the committee's findings and conclusions on January 9, 2007. A more detailed analysis of the Board's findings and conclusions, and the rationale for those findings and conclusions, follows.

#### Specific Findings of Fact and Conclusions of Law

##### Counts I through III: The Jersey City/Guttenberg Reports

Counts I through III of the Complaint alleged that respondent did not maintain adequate workfiles, as required by the Recordkeeping provision of the Ethics Rule of the USPAP. With respect to the first three appraisal reports that were referenced above, which were the subject of a consumer complaint ("the Jersey City/Guttenberg reports"), the Board was presented with ample evidence in the record indicating that

respondent was unable to explain how the reports had been prepared or document the sources he had consulted because of poorly maintained workfiles. With respect to the appraisal of 57 Hancock, for example, there were two different appraisal reports generated by respondent's office, each bearing respondent's signature, and each bearing the same date. The reports differed, however, in that each identified a different "current owner" of the subject property. There was no documentation in respondent's workfile to explain the issuance of the two different reports. Respondent admitted that the workfile ought to have contained a record of the computerized tax search that undoubtedly had taken place in connection with the report (a routine step in the appraisal process), as well as a record of a multiple listings search, but that it did not contain these documents. Respondent admitted that all reports prepared by apprentice Albert Donald, including the Jersey City/Guttenberg reports, were similarly lacking in the ordinary documentation to be expected in a workfile. There were virtually no records present in the workfiles of these properties, apart from copies of the reports. (Exhibit S-8, T36-11 to T37-23; T47-19 to 25; T50-5 to 10; T68-12 to 69-10; T71-8 to 72-4; T121-12 to 122-6 (unable to document comparables considered for Guttenberg property).

A further allegation in the Amended Complaint with respect to the Jersey City/Guttenberg reports was that respondent failed to directly supervise his apprentice, Albert Donald, in violation of N.J.A.C. 13:40A-6(b). In fact, respondent's attempt to explain his inadequate workfiles demonstrated respondent's failure to adequately supervise his apprentice. Respondent testified that the apprentice whose services he utilized in connection with the three reports was disorganized and inefficient. (Exhibit S-8, T69-14 to 70-8) Additionally, he testified that all workfiles entrusted to Albert Donald

lacked the basic documentation to be expected in a workfile. (Exhibit S-8, T48-4 to 8) Thus respondent admitted that he made it a practice to permit an inefficient and disorganized apprentice to maintain the workfiles that he, respondent, was ultimately responsible for, as the supervising appraiser.

The Board finds that respondent failed to comply with USPAP's Recordkeeping requirements, which constitutes professional misconduct pursuant to N.J.A.C. 13:40A-6.1, and thus subjects respondent to sanctions for the violation of N.J.S.A. 45:1-21(e) and (h). The Board further finds that respondent failed to directly supervise his apprentice, which constitutes professional misconduct and subjects him to sanctions pursuant to N.J.S.A. 45:1-21(e) and (h).

Counts I through III also allege that respondent failed to analyze the contracts for sale with respect to the Jersey City/Guttenberg reports, in violation of Standards Rule 1-5(a) of the USPAP, which requires such an analysis where a contract exists. The reports indicate on their face that the subject properties were under contract at the time that the reports were prepared. (Exhibit S-8) Respondent nonetheless testified that it was not his practice to review contracts for sale in connection with appraisals that he performed. (Exhibit S-8, T40-2 to 5; T125-13 to 15) The Board thus finds that respondent did not comply with Standards Rule 1-5(a) of the USPAP, and consequently engaged in professional misconduct pursuant to N.J.A.C. 13:40A-6.1, and is subject to sanctions pursuant to N.J.S.A. 45:1-21(e) and (h). It should be noted that a review of the contract might have revealed certain irregularities connected with the sale of the Jersey City/Guttenberg properties which might have led to greater scrutiny of the loan

applications by a potential lender.<sup>3</sup>

The heart of the allegations in Counts I through III of the Amended Complaint address misrepresentations in connection with the size and condition of the subjects and comparables in the Jersey City/Guttenberg reports, and the selection of comparables that were inappropriate for use in those reports. Violations of Standards Rules 1-1(a), (b) and (c) and 2-1(a) of the USPAP are alleged. Standards Rule 1-1(a) requires appraisers to be aware of, understand, and correctly employ recognized methods and techniques necessary to produce a credible appraisal. Standards Rule 1-1(b) prohibits appraisers from committing a substantial error of omission or commission that significantly affects an appraisal; Standards Rule 1-1(c) prohibits appraisers from rendering appraisal services in a careless or negligent manner, such as by making a series of errors which in the aggregate affect the credibility of an appraisal report. Standards Rule 2-1(a) requires appraisers to clearly and accurately set forth appraisal results in a manner that is not misleading.

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The Board was presented with proofs indicating that respondent misrepresented the size of the comparables used in 57 Hancock and 194 Cambridge. These appraisal reports both used the same three Jersey City comparables. According to both appraisal reports, comparable #1, 133 Prospect Street, had 3200 square feet; however records in

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<sup>3</sup> According to the testimony of complainant Tara Smalls, the sellers agreed to contract for and pay for any renovations necessary to make the properties rentable; to hire a property manager to find tenants for each unit; and to pay the difference between rents collected and mortgage payments due during the renovation period, until the properties were fully occupied. Exhibit S-7, T33-11 to 34-14)

the assessor's office indicated the property had 3570 square feet. The reports indicated that comparable #2, 192 Griffith Street, had 2800 square feet; however the assessor's office records indicated it had 4569 square feet. The reports indicated that comparable #3, 312 Liberty Street, had 2300 square feet; however the assessor's office records indicated it had 2655 square feet. (Exhibit S-10) Respondent himself admitted in his testimony that if the figures obtained from the assessor's office were accurate, the value conclusions reached by the reports would be reduced "considerably." (S-8, T53-7 to 24)

The Board notes that property record cards in the assessors' offices, while not infallible, are generally considered the most reliable source for the gross living area of comparables, in those situations where appraisers cannot gain access to the interior of the property to actually observe and measure the size of the property (as is generally the case with comparables). In fact, respondent indicated in the Jersey City/Guttenberg reports that one of the sources of his information was the "tax office," both with respect to the subjects and the comparables.

With respect to the gross living area of the subjects, although respondent claimed the "tax office" as an information source, there was evidence presented to the Board that the assessor's office was not the source of the figures employed in respondent's reports. Respondent's appraisal of 194 Cambridge indicated a gross living area of 3381 for the subject, while the assessor's office records indicated 2973 square feet; the appraisal of 57 Hancock indicated the subject had 3447 square feet, while the assessor's office records indicated 3570 square feet; and the Guttenberg appraisal indicated the subject had 3325 square feet, while the assessor's office indicated 3059

square feet.

Thus, disparities in the square footage figures relating to two of the subject properties are significant; the disparities relating to all three of the comparables used in both reports are significant, and in the case of comparable #2, used in both the 94 Cambridge and 57 Hancock reports, shocking.

With respect to the Guttenberg report, comparables #2 and #3 were selected, not from Guttenberg, but from North Bergen. Respondent claimed that he could not find comparable sales within Guttenberg itself. (S-8, T120-22 to 121-7) However, evidence was presented indicating that there were properties located in Guttenberg that could have been considered as comparables, including two sales on the same street and block as the subject. (Exhibit S-10) These properties would not have been considered at all by respondent, however, given the parameters he chose for his search for comparables. Respondent testified that because he was advised that the subject was under contract for \$280,000, he only reviewed comparables within that price range; while the properties that sold in the subject's neighborhood had a sales price significantly below respondent's search parameters. (S-8, T122-19 to 123-20) This practice, which virtually amounts to the selection of comparables based upon a pre-determination of value, is in and of itself a violation of Standards Rule 1-1(a).

Further, respondent's report indicates that comparable #1 in the Guttenberg appraisal, 6910 Madison, is 25 years old. A simple review of a multiple listing printout in respondent's workfile indicated that 6910 Madison was "brand new construction." (S-8, T115-24 to 116-6; T117-4 to 5) Respondent admitted that had he taken the "brand new" condition of the comparable into account, it would have resulted in a lower value

conclusion for the subject. (S-8, T117-11 to 21)

An independent expert opined that the value conclusions in the Jersey City/Guttenberg reports were "dramatically" inflated. 194 Cambridge, appraised by respondent at \$223,00, was valued by the expert at \$150,000; 57 Hancock, appraised by respondent at \$225,000, was valued at \$168,000; and the Guttenberg property, appraised by respondent at \$280,000, was valued at \$170,000. Some of the problematic entries in respondent's reports, noted above, appear calculated to inflate the value of the subject, such as the apparently minimized square footage of the comparables in the Hancock and Cambridge reports. All of the problematic conduct cannot be explained as part of a deliberate scheme to inflate value, however. Testimony was presented that highlighted, for example, the fact that if one accepted respondent's square footage figures in the two Jersey City reports as accurate, an adjustment should have been made for the fact that the subjects were (according to respondent's figures) approximately one thousand square feet larger in gross living area than the comparable. Respondent acknowledged that there "probably should have been" an adjustment, although he pointed out that this would have raised the value conclusion for the subject by approximately \$25,000, which in his opinion would have been "inflated." (S-8, T56-8 to 57-3) The failure to make an adjustment for a one thousand square foot size disparity, a sharp departure from generally accepted appraisal practice, suggests that even respondent did not take his own figures seriously.

For these reasons, the Board finds that the State has proven its allegations that respondent significantly misrepresented the size of the comparable sales properties

with respect to the three Jersey City/Guttenberg reports. This constitutes a violation of Standards Rule 1-1(a), 1-1(b), 1-1(c) and 2-1(a) of the USPAP. With respect to the Guttenberg property (Count III), the State has proven its allegations that respondent's report was misleading in that he selected inappropriate comparables. Respondent also misrepresented the age of comparable #1 (which was new construction, and not 25 years old, as indicated in the report.) This constitutes a violation of Standards Rule 1-1(a) and (b) of the USPAP, as well as Standards Rule 2-1(a). Pursuant to N.J.A.C. 13:40A-6.1, these violations subject respondent to sanctions under N.J.S.A. 45:1-21(e) and (h) of the Uniform Enforcement Act. The misleading nature of the conduct further subjects respondent to sanctions pursuant to N.J.S.A. 45:1-21(b).

Count IV: 297 West Runyon

With respect to the appraisal of 297 West Runyon Street, Newark, Count IV alleges the failure to analyze the contract for sale, a clear violation of Standards Rule 1-5(a) of the USPAP. The report indicates that the subject was under contract for \$140,000, without addressing the matter further, even to indicate that the contract was not available for analysis.

An even more egregious violation of Standards Rule 1-5 (a), however, is the failure to analyze any current listings for sale of the subject. The State alleges that respondent engaged in misleading or fraudulent conduct in that his report represented "N/A" (not applicable) where the listing price of the subject should have been indicated in the report. Exhibit S-11, an investigative report provided by the Enforcement Bureau of the Division of Consumer Affairs, the investigative arm of the professional and occupational boards, indicates that the subject had been listed for sale from August

through November of 2000 for \$24,900; and again, from March 2001 through September of 2001 at \$76,900. (Exhibit S-11) Respondent's report, dated September 27, 2001, appraised the property at \$140,000, without explaining why the property failed to sell when offered for sale at significantly lower amounts over a period of months. (Exhibit S-9, appraisal report)

Count IV alleged that respondent misrepresented the size and condition of the subject and the comparables. The State presented evidence indicating that the comparables, which respondent's report described as in "average" condition, were actually superior at least in size and location to the subject, which respondent's report also described as in "average" condition. All three comparables were "considerably larger" than the subject, and than reported in respondent's report: respondent's report indicates the subject as 2150 square feet, with the comparables approximately 2200, 2400 and 2400 square feet, respectively. An independent expert's field review indicates that the comparables actually ranged in size from 3000 square feet to 3500 square feet, a substantial difference, and were located in more expensive neighborhoods than the subject's location. (S-10, field review) Respondent testified that it is his practice to describe virtually all properties as in "average" condition, regardless of the description of those properties in the multiple listings. (Exhibit S-9, T57-7 to 21; T61-5 to 16) The Board finds that this statement in and of itself is an egregious deviation from the standard practice of real estate appraising, in that in many, if not most, instances, the multiple listing (MLS) description is the only information the appraiser is able to consult with regard to the interior condition of a comparable property, since, unlike the subject of the appraisal report, the appraiser typically has no

access to the interior. Thus the Board finds that to utterly disregard MLS descriptions, and assume that all properties are in "average" condition, is itself a violation of Standards Rules 1-1(a) and 2-1(a).

The Amended Complaint alleged that respondent's report was also misleading in that it conveyed miscellaneous inaccurate information with respect to 297 West Runyon. The report indicated no rent controls in Newark for properties similar to the subject, whereas rent controls do exist for such properties. (S-10, field review) Respondent's report also stated that there were no adverse conditions noted which would affect the subject or surrounding homes. However evidence was presented indicating that the neighborhood had a number of boarded-up dwellings that the Board finds would adversely affect property values in the area. (S-10, field review) Finally, respondent's report indicated rental income for the subject of \$1,850 per month (\$750 for one unit, and \$1,100 for the second unit), while evidence was presented that the rentals for the subject would range from \$650 to \$725 per apartment. (S-10, field review)

The Board finds that respondent's misrepresentations reflected in his implying no current sales listing history by indicating "N/A" in the section of the report where a listing price and the relevant listing dates should have been entered, along with any relevant analysis, as well as respondent's misrepresentations with respect to the size and condition of 297 West Runyon and the comparables, constitute violations of Standards Rule 1-1(a), (b) and (c) and Standards Rule 2-1(a), and pursuant to N.J.A.C. 13:40A-6.1 constitute professional misconduct, subjecting respondent to sanctions pursuant to N.J.S.A. 45:1-21(e) and (h). In addition, the misrepresentations subject respondent to

sanctions pursuant to N.J.S.A. 45:1-21(b).

With respect to all four Counts of the Amended Complaint, the Board further finds that respondent's course of conduct, as noted supra, constitutes gross negligence, subjecting respondent to sanctions pursuant to N.J.S.A. 45:1-21(c); and his individual acts and omissions as described above also constitute repeated acts of negligence, subjecting him to sanctions pursuant to N.J.S.A. 45:1-21(d).

#### Determination of Sanctions

The Amended Complaint seeks revocation or suspension of respondent's license, along with an Order directing respondent to cease and desist from engaging in real estate appraising in the State of New Jersey, monetary penalties pursuant to N.J.S.A. 45:1-25, as well as costs, and attorneys fees. In making a determination in this regard, the Board has considered both the nature of the conduct found and respondent's disciplinary history with the Board.

With respect to Counts I through III of the Amended Complaint, the violations found must be considered in light of the surrounding circumstances. 194 Cambridge, appraised at \$223,000 on March 2, 2000, was purchased by Eastern Seaboard Corp. on April 11, 2000 for \$140,000 (Exhibit S-10, field review), before it was purchased by Tara Smalls for \$223,000. 57 Hancock was purchased by Eastern Seaboard Corp. on June 13, 2000 for \$150,00; and sold on the same date, June 13, 2000, to Tara Smalls for \$225,000, the amount for which it was appraised by respondent on March 10, 2000. 219 70<sup>th</sup> Street, Guttenberg was purchased by Eastern Seaboard Corp. on April 19, 2000 for \$175,000, and sold on that same date to Tara Smalls for \$280,000, the amount for which it was appraised by respondent on February 16, 2000. While

"flipping" property (purchasing real estate low and selling it again in a short time frame for a quick profit) is not necessarily proof of illegal activity, back-to-back purchases and sales of this nature warrant heightened scrutiny. Respondent himself characterized the transactions as part of a "scam." (Exhibit S-8, T41-11 to 19; see also T32-17 to 33-9 (referring to persons involved in the sale of the Jersey City/Guttenberg transactions as "ridiculous scam artists" ; T57-9 to 23) Respondent testified that he was not surprised by the back-to-back transactions with regard to the properties purchased by Tara Smalls, based upon his knowledge of the individuals promoting the sales. (Exhibit S-8, T57-4 to 23; T74-3 to 25; T115-23) Nevertheless; respondent justified his value conclusions, greatly in excess of the price at which Eastern Seaboard Corp. purchased the properties, by speculating that Eastern Seaboard had obtained the properties at a bargain price because of distress sales or other such scenarios, see e.g. S-8, T59-3 to 15). However, this does not address the context in which these matters reached the Board: if indeed there were "scam artists" behind the Jersey City/Guttenberg

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transactions, it would be difficult to explain what the "scam" consisted of, if the properties were indeed worth the price for which complainant Tara Smalls purchased them. It is not a "scam" to buy properties at a bargain price and sell them at their market value.

The violations found with regard to Count IV, the appraisal of 297 West Runyon, are clearly egregious. Respondent's report reached a value conclusion of \$140,000. The expert's review presented by the State reached a value conclusion for the subject of \$85,000. The listing history of the subject (which was omitted from the report by respondent) supports the expert's conclusion. The date of valuation was September 27,

2001. The subject had been offered for sale at \$76,900 from March through September 17, 2001, and had failed to sell at that price. The recent listing history was thus highly relevant information. Had respondent included this sales history in his report, it would have caused any rational reader of the report to doubt the credibility of the value conclusion.

The violations found by the Board are thus in the context of circumstances highly suggestive of inflated value conclusions. Had respondent an unblemished history with the Board in terms of discipline, the Board finds there would be sufficient basis in the record for the ultimate sanction of revocation. However respondent's disciplinary history is not unblemished. On May 20, 1998, respondent was the subject of a formal reprimand, as well as a civil penalty of \$500, based upon findings of professional misconduct pursuant to N.J.S.A. 45:1-21(e) in connection with an appraisal of a West Orange property. With respect to this matter, respondent retracted the value conclusion reached in the appraisal report that was the subject of the complaint. (Exhibit S-19,

Appendix of Complainant, Exhibit F) On May 30, 2001, the Board imposed a public reprimand, a civil penalty of \$500 and investigative costs in the amount of \$1365.00 on respondent. The disciplinary action was based on respondent's admission to having falsely certified that he personally inspected a Jersey City property when he had not inspected the property; and respondent's having failed to indicate that the property was in need of extensive renovation, when the property did require such renovation. The Board found that respondent had engaged in misrepresentation in violation of N.J.S.A. 45:1-21(b) and professional misconduct in violation of N.J.S.A. 45:1-21(e). The Board specifically noted that the violations found were of a serious nature, generally meriting

more severe sanctions, but that respondent had been granted consideration because of certain personal problems for which he had sought treatment. (Exhibit S-19, Appendix of Complainant, Exhibit G) Subsequently, a Final Order of Discipline was entered on August 6, 2002, suspending respondent's real estate appraiser license for one year, based upon HUD's having removed respondent from its Appraiser Roster for one year. Some of the violations cited by HUD as a basis for its action, following a field review of three of respondent's reports, are similar to the violations found herein in connection with Counts I through IV, i.e., failure to make appropriate adjustments where the subject was 70 years old and a comparable was 30 years old; inaccurate description of a comparable as in "average" condition when it was fully renovated and should have been described as in "good" condition, and failure to make any adjustment for the condition of the comparable as contrasted with the condition of the subject; failure to note defects in the subject; failure to analyze existing contracts for sale of the subjects in violation of Standards Rule 1-5(a) of the USPAP; selection of comparables in better overall condition than the subject, and failure to make any condition adjustment. (Exhibit S-12)

In light of the present findings with respect to Counts I through IV of the Amended Complaint, and respondent's prior conduct, the Board finds that revocation, the most severe sanction, is the only appropriate sanction in this matter. The USPAP are standards developed by the Appraisal Standards Board of the Appraisal Foundation, a nonprofit organization charged under the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) with establishing standards for appraisers with regard to federally related transactions. The Board has incorporated the USPAP by reference into its overall regulatory scheme. See N.J.A.C. 13:40A-6.1. The

Board's enabling act owes its existence to FIRREA, which in turn was enacted in response to the savings and loan crisis (caused at least in part by mortgage fraud facilitated by inflated appraisals). Respondent has abrogated the function envisioned for real estate appraisers under FIRREA, a watchdog function protective of both the general public and financial institutions who may be the victims of faulty appraisal reports. Appraisal reports are required by financial institutions in order to provide assurance that, in a worst-case scenario, where mortgage loans granted and are not repaid, the underlying property can be sold for enough money to cover any loss by the financial institution, or the institution to which the lending institution ultimately sells the mortgage. When the value conclusion of an appraisal report is significantly inflated, that protection is removed.

Tara Smalls, who purchased the properties appraised in the Jersey City/Guttenberg reports, was negotiating with foreclosure specialists at the time she provided the testimony that initiated the Board's investigation of respondent. She never met respondent. Her testimony depicted dealings with three men, described by respondent himself as "scam artists," representing a company called Eastern Seaboard, who convinced her by means of too-good-to-be-true assurances to purchase run-down residential rental properties. Her testimony recounts her dealings with Eastern Seaboard, and her gradual realization that by purchasing the Jersey City/Guttenberg properties she had not made a smart investment, but embarked upon a financial disaster. Her depiction of the circumstances does not at all reference respondent, but focuses rather on the false assurances she was provided with by the Eastern Seaboard representative who induced her to buy the properties. Nevertheless,

a brief exchange at the end of Ms. Smalls' testimony highlights the significant role played by respondent in the financial disaster alleged by Ms. Smalls. The Board's counsel commented, with a respect to Ms. Smalls' complaint: "The real estate appraiser is actually a small part of it as far as you're concerned." Whereupon a Board member remarked to Ms. Smalls:

Q: Although these transactions ultimately were dependent upon the appraiser confirming the grossly inflated values?

A: Right.

(s-7, T59-19 TO 25)

Whether or not Ms. Smalls was the victim of a mortgage fraud scheme on the part of Eastern Seaboard is not for the Board to determine. However, the sales history of all four properties, including the back-to-back transfers for widely divergent prices, and the misrepresentations and inaccuracies are highly suggestive of the inflated value conclusions that are characteristic of a mortgage fraud scheme. Respondent's errors and omissions are not benign errors; they are the sort of errors and omissions that facilitate mortgage fraud.

Respondent's conduct, past and present, demonstrates that he is not fit for the fiduciary responsibility envisioned for real estate appraisers under FIRREA, and reflected in the Board's enabling statute and implementing regulations. Consequently, the Board finds that revocation of respondent's real estate appraising certification is the only appropriate sanction in this matter.

Moreover, in recognition of the egregious nature of the violations found, and in order to deter other licensees from such conduct in the future, the Board has determined to impose civil penalties in the amount of \$10,000 for each of the four

appraisal reports that were cited in the Amended Complaint, for each of which violations of N.J.S.A. 45:1-21(b), (c), (d), (e) and (h) have been found, as specified supra. Thus the total amount of civil penalties imposed is \$40,000, as determined by the committee and affirmed by the full Board.

With respect to attorneys fees, the Board committee reviewed proofs on December 12, 2006 indicating that counsel fees totaling \$5,220 for work relating to this matter, up until May 1, 2005, had been incurred. Subsequent to that date, a total of \$6,304 in legal fees were incurred for the work of both DAG Sunil Raval and DAG Ledra Horowitz. (Exhibits S-14, S-15 and S-16) Proof was submitted of transcripts costs for inquiries held on April 1, 2001 and September 26, 2001 relating to the investigation of this matter totaled \$1,911.66. (Exhibit S-17) Certifications submitted by investigators in this matter document costs of investigation of \$568.97 in 2006, \$353.73 in 2005, and \$99.65 in 2004. A separate certification by investigator John Vatasin indicated a total of \$3,485.79 related to the investigative report dated June 12, 2002. (Exhibit S-11) At the December 12, 2006 proceedings, the Attorney General requested that the record be left open for a supplementary submission relating to costs and attorneys fees. This request was granted by the committee. In addition, the committee recommended granting full costs and attorneys fees. On January 9, 2007, the full Board reviewed all the submissions including the supplementary submissions, together with an undated certification by DAG Horowitz submitted with a cover letter dated January 4, 2007. Documentation was submitted with respect to \$4,401 in legal fees incurred from September 13, 2006 to the present date; \$400 paid for the expert report that constituted Exhibit S-10; and \$493 paid for a transcript dated December 12, 2006, the transcripts of

the previous proceedings which had been forwarded to all the Board members.

The full Board reviewed these submissions in open session and voted to grant the full amount of attorneys fees requested: a total of \$11,524, previously requested, as well as the \$4,401 sought in the supplementary submission, for a total of \$15,925 in counsel fees, finding that this was incurred for necessary legal work which was reasonable in amount both in terms of the number of hours expended and the hourly fees charged. The Board also voted to grant the costs sought in Exhibit S-17 in the total amount of \$1,911.66, for transcripts dated April 24, 2001 and September 26, 2001; costs indicated in exhibit S-13 of \$3,485.70 for an investigative report compiled by the Enforcement Bureau; as well as the \$893 in costs sought in the supplementary submission, for a total amount of \$6,290.36 in costs. The Board found all of the investigative costs justified, in that the time spent was reasonable given the importance of the matter under investigation, and the fees claimed were reasonable in amount.

See Poritz v. Stang, 288 N.J. Super. 217, 221-22 (App. Div. 1996) (actual hours reasonably expended should be weighed, as well as reasonableness of hourly weight, and overall reasonableness of costs considering expected to return to State and interest to be vindicated). See also Rendine v. Pantzer, 141 N.J. 292, 336 (1995).

However, the full Board modified the December 12, 2006 determination of the committee to grant full costs, in that it denied some of the \$4,508.05 in costs originally sought in Exhibit S-13, granting the \$3,485.70 sought for the investigative report, but rejecting the \$1,022.35 in costs sought pursuant to certifications dated September 13, 2006 for expenses incurred in 2006, 2005 and 2004 by the Enforcement Bureau, in that there was no indication in the relevant submissions as to what specific services the

costs related to.

Accordingly,

IT IS ON THIS 13<sup>th</sup> DAY OF February, 2007

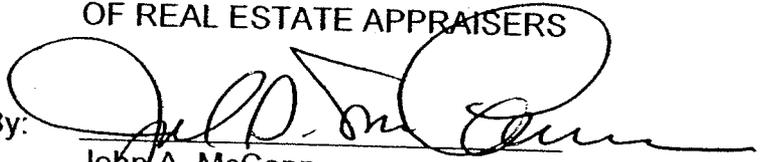
ORDERED THAT:

1. Respondent's certification to engage in real estate appraising in the State of New Jersey is hereby revoked.
2. Pursuant to N.J.S.A. 45:1-25, respondent is hereby assessed \$40,000.00 in civil penalties; \$15,925 in attorneys fees; and \$6,290.36 in costs. The total amount assessed is \$62,215.36.
3. Respondent shall forward payment of the above amount, in the form of a certified check, money order or attorney trust account check, made payable to the State of New Jersey, to the attention of Dr. James S. Hsu, Executive Director, Board of Real Estate Appraisers, 124 Halsey Street, Third Floor, P.O. Box 45032, Newark, NJ 07101. Payment is to be made within twenty one (21) days following the issuance of this Order.
4. In the event that respondent fails to provide timely payment to the Board in the amount assessed in accordance with paragraphs #2 and #3, supra, a certificate of debt may be filed, with interest calculated in accordance with R. 4:42-11 from the date of entry of the within Order.
5. In the event that respondent enters into a payment plan with the Board within twenty one (21) days following the entry of this Order, such payment plan shall provide for acceleration of all amounts due in the event of default, plus payment of interest calculated in accordance with R. 4:42-11 from the date of entry of the within Order.

6. In addition to the relief provided for in paragraphs #2, #3 and #4, , any default in payment shall also entitle the Board to make application to a court of competent jurisdiction for an order directing compliance and any other relief in aid of litigant's rights, including the imposition of attorneys fees for said application, or to make any other application as provided by Law.

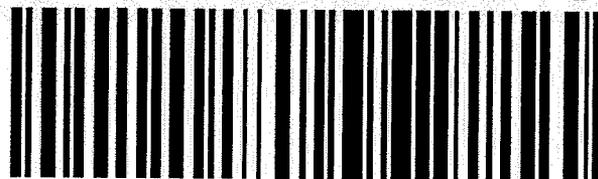
NEW JERSEY STATE BOARD  
OF REAL ESTATE APPRAISERS

By:



John A. McCann  
Board President

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location	licfile- 25014
summary	Consent Order 03/01/2007
author	Adrienne McCauley
expiration_date	03/01/2072
max_versions	4
title	Ottaviano, William J
document	Ottaviano, William J
keywords	
dsclass	compdoc
description	

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STUART RABNER  
ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street  
P.O. Box 45029  
Newark, New Jersey 07101

By: Susan Carboni  
Deputy Attorney General  
(973) 648-2894

FILED  
BOARD OF  
REAL ESTATE APPRAISERS  
*James Hsu 3/18/07*  
DR. JAMES S. HSU  
Executive Director

COPY

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

ORIGINAL

IN THE MATTER OF THE LICENSE OF :  
:  
WILLIAM J. OTTAVIANO, :  
RP01431 (expired) :  
:  
TO ENGAGE IN REAL ESTATE :  
APPRAISING IN THE STATE :  
OF NEW JERSEY :  
:

CONSENT ORDER

This matter was opened to the New Jersey State Board of Real Estate Appraisers ("the Board") upon receipt of information alleging that respondent had been performing appraisals and signing them, using his trainee designation after his trainee permit had expired. It was further alleged that respondent placed on the reports the name and "signature" of a supervisory appraiser who had not authorized their use, and who had not participated in the preparation of the appraisal reports.

Respondent's trainee permit had expired on or about August 31, 2002. Based on respondent's testimony before the Board on November 14, 2006, the Board finds that respondent signed at least eight appraisal reports for properties in New Jersey subsequent to the expiration of his trainee permit, misrepresenting that his permit had not expired, and performed the aforementioned appraisals in violation of N.J.S.A. 45:14F-21(c), without the participation of any licensed or certified appraiser. These appraisal reports were for properties located at 107 Warren Street, Paterson, dated August 28, 2004; 135 12<sup>th</sup> Avenue, Paterson, dated February 14<sup>th</sup>, 2005; 20 Jackson Street, a/k/a 22 Jackson Street, Passaic, dated August 1, 2004; 45 Michelle Way, Montville, dated July 20, 2005; 1 Columbus Avenue, Edison, dated March 14, 2005; 72 Corbin Avenue, Jersey City, dated November 16, 2002; 50 Bryant Avenue, Jersey City, dated September 8, 2005; 654 South 15<sup>th</sup> Street, Newark, dated December 2, 2005, all such appraisals occurring in the State of New Jersey.

Inasmuch as the parties wish to resolve this matter expeditiously, without admissions by respondent and without further proceedings,

IT IS ON THIS 1st DAY OF March, 2007,

HEREBY ORDERED AND AGREED THAT:

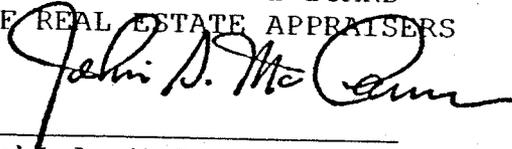
1. Respondent shall pay a civil penalty in the amount of

\$2,500. Payment shall be in the form of a certified check, money order or attorney trust account check, made payable to the State of New Jersey, and forwarded to the attention of Dr. James S. Hsu, Executive Director, Real Estate Appraiser Board, P.O. Box 45032, Newark, NJ 07101. An initial payment of \$500.00 shall accompany the submission of this signed agreement. Beginning on April 1, 2007, and continuing on the first day of every month thereafter, respondent shall forward payment of at least \$100.00 until the entire \$2,500.00 has been satisfied. If any individual payment is not received within 15 days of the first day of the month in which it is due, the entire unpaid balance due and payable under this Order shall immediately become accelerated and be deemed due and payable without the need for notice and presentment, with interest calculated in accordance with R. 4:42-11 from the date of default. In addition to the relief provided for in this paragraph, this default shall also entitle the Board to make application to a court of competent jurisdiction for an order directing compliance and any other relief in aid of litigant's right, including the imposition of attorneys fees for said application, or to make any other application as provided by law.

2. Respondent, without acknowledging the conduct alleged, shall cease and desist from engaging in real estate appraising unless or until he is licensed or certified to do so, and shall

cease and desist from signing appraisal reports as a trainee with a trainee permit number unless or until he has a valid trainee permit issued by the Board. Respondent shall also cease and desist from preparing and/or submitting appraisal reports employing the name and license numbers of appraisers without the knowledge or authorization of those appraisers.

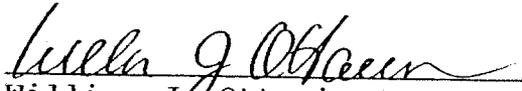
NEW JERSEY STATE BOARD  
OF REAL ESTATE APPRAISERS



By: \_\_\_\_\_

John A. McCann  
Board President

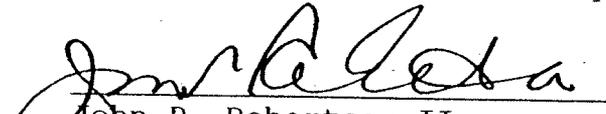
I have read and understood the above Order and consent to abide by its terms.



William J. Ottaviano

Date: 2/27/07

Consent as to form and entry: \_\_\_\_\_



John P. Robertson, II  
Attorney for respondent

Date: 2/27/07