

FILED
BOARD OF
REAL ESTATE APPRAISERS
James Hsu
DR. JAMES S. HSU 10/9/07
Executive Director

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

COPY

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

Administrative Action

ACKELY O. ELMER, II
License No. 42RG0002310

AMENDED
FINAL ORDER
OF DISCIPLINE

TO PRACTICE AS A REAL ESTATE
APPRAISER IN THE STATE OF
NEW JERSEY

CERTIFIED TRUE COPY

This matter was opened to the New Jersey State Board of Real Estate Appraisers ("Board") following the Board's receipt of information relating to Ackely O. Elmer, II ("Mr. Elmer" or "respondent") and his compliance with the consent order entered into with the Board on March 21, 2006. Following its review, the Board, on March 23, 2007, issued a Provisional Order of Discipline provisionally finding that respondent had violated the terms of that consent order, specifically that he had accepted an appraisal assignment and performed, or attempted to perform, an appraisal without the assistance of a trainee.

The Provisional Order was sent by certified and regular mail to Mr. Elmer and also to Thomas L. Murphy, Esq., the attorney who represented Mr. Elmer in the matter giving rise to the May 2006 consent order. The Board received no response to the Provisional Order of Discipline within the 30 business day time frame set out in that order. The Board,

noting that the Provisional Order had been sent to respondent's address of record, and that no response had been received, entered a Final Order of Discipline on May 21, 2007, adopting the findings of fact and conclusions of law as proposed in the Provisional Order. Mr. Elmer's license was suspended for a period of three months (to commence 10 business days from the entry of the order) and he was directed to pay a civil penalty of \$1500.

On June 6, 2007, the Board received a letter from Mr. Murphy. In that letter, Mr. Murphy stated that he represented Mr. Elmer, and he acknowledged receipt of the May 21, 2007, Final Order of Discipline. Mr. Murphy asked that the matter be transmitted to the Office of Administrative Law as a "contested case." Mr. Murphy was advised that the Final Order was appealable to the Appellate Division of Superior Court. He was offered the opportunity to request relief from the Board, which he did. By letter dated June 11, 2007, Mr. Murphy indicated that the failure to respond was due to his personal circumstances and a mis-communication with his client. He asked that the Board stay the Final Order so that he could submit materials for the Board's consideration.

At its meeting on June 12, 2007, the Board considered Mr. Murphy's submission and determined that it would stay its final order and reopen the matter for submissions by the parties. Counsel for the Board advised Mr. Murphy and the prosecuting deputy by letter dated June 12, 2007.

On June 22, 2007, Mr. Murphy submitted a letter challenging the findings of fact and conclusions of law, specifically refuting that Mr. Elmer had accepted an appraisal assignment for the Smithville residence and violated the March 2006 consent order as

provisionally found by the Board. Mr. Murphy maintained that Mr. Elmer agreed to do "preliminary work" and did not accept the assignment.

The deputy attorney general prosecuting the matter responded to Mr. Murphy's submission by letter dated June 27, 2007. Referring to Mr. Elmer's sworn statement (provided in response to a Demand for Statement Under Oath), specifically paragraph #6, the deputy attorney general stated that respondent admitted to accepting the appraisal assignment. She further argued that the failure to deliver the report is part of a continuing pattern dating back to the 1990s.

At its meeting on July 10, 2007, the Board considered the record as it has developed since the Provisional Order was entered on May 21, 2007. The Board is not persuaded that respondent's submissions warrant a hearing in this matter. Respondent's statements, provided under oath on February 8, 2007, fully support the Board's determination that he indeed accepted the assignment and did so without the assistance of a trainee, as required by the March 2006 consent order.

The Board does not find persuasive the post event attempt by respondent and his counsel to parse the transaction into a preliminary appraisal subject to acceptance of a contract. The consumer's certification reveals clearly that respondent came to the residence on October 31, 2006 pursuant to an appointment made through Prudential Relocation Services. When no report was received by November 27, 2006, the contract was cancelled. Moreover, as Mr. Elmer stated in his own words in response to the Demand for Statement In Writing Under Oath, "If I had known the property owner required a different valuation other than the one I would develop on my own, I would not have accepted the appraisal assignment..." (Elmer response, paragraph 6).

The Board has determined that the three month suspension as set forth in the Provisional Order of Discipline is appropriate. Because Mr. Elmer's license had been suspended effective June 6, 2007 (ten business days following entry of the Final Order of May 21, 2007), and because that order remained in effect until the Board stayed it on June 12, 2007, Mr. Elmer shall be given credit for the six days of the suspension already served. Therefore the 90 day suspension, now reduced to 84 days, shall commence 45 days after the entry of this Final Order.

This order amends the Final Order entered on May 21, 2007. Based on the above, the Board now makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Respondent is a Real Estate Appraiser in the State of New Jersey and has been a licensee at all relevant times.
2. On or about July 13, 1999, a two (2) year suspension was imposed upon respondent, three (3) months of which were served as a period of active suspension, with the remainder stayed and served as a period of probation. A civil penalty of five thousand dollars (\$5,000) was also imposed, as well as costs of two hundred twenty three dollars and eighty six cents (\$223.86), and two hundred and fifty dollars (\$250) in restitution. The basis of this suspension was respondent's acceptance of fees for appraisal reports, and then failure to complete the appraisal assignments, accompanied with repeated misrepresentations such as promises that the appraisal report was complete and would be delivered or mailed forthwith.
3. On March 21, 2006, a Consent Order was filed by the Board in connection with four consumer complaints in 2005 about appraisal reports that were contracted for

with respondent and were either not delivered or not delivered in a timely fashion. By the terms of that Consent Order, respondent agreed that he would no longer undertake to perform residential appraisal reports without the assistance of a trainee.

4. On or about October 24, 2006, respondent agreed to appraise a Smithville, New Jersey residence.

5. On or about October 31, 2006, respondent went to the Smithville residence unaccompanied by any other person.

6. Respondent walked with difficulty, and the occupants of the residence assisted him in inspecting the residence by verbally describing the rooms of the house to him and photographing the interior of the house for him.

7. When respondent had not completed the appraisal assignment by November 27, 2006, the appraisal assignment was cancelled.

8. A Demand for Statement in Writing Under Oath dated January 24, 2007, was forwarded to respondent. In his response respondent admitted to visiting the Smithville residence on October 31, 2007, without a trainee and to being assisted by the occupants of the Smithville residence as described in paragraph #6. supra.

9. Respondent admitted that he accepted the appraisal assignment.

10. Respondent admitted he was not assisted by a trainee in connection with the appraisal of the Smithville residence.

CONCLUSIONS OF LAW

1. Respondent's acceptance of the appraisal assignment in Smithville and performing or attempting to perform steps of the appraisal process such as inspection and photography of the residence without the assistance of a trainee constitutes a failure to

comply with the Board Order of March 21, 2006, in violation of N.J.A.C. 13:45C-1.4. This subjects respondent to sanctions pursuant to N.J.S.A. 45:1-21(e). This order amends the Final Order entered on May 21, 2007.

ACCORDINGLY, IT IS on this 9th day of October, 2007,

ORDERED that:

1. Respondent's license is suspended for a period of three (3) months, with credit given for the six days his license was actively suspended prior to the June 12, 2007, stay of the Board's May 21, 2007 Final Order. The active suspension of 84 days for violation of N.J.S.A. 45:1-21(e), shall commence forty-five (45) days following the entry of this Final Order.

2. Respondent is hereby ordered to pay a civil penalty in the amount of one thousand five hundred dollars (\$1,500). 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, 124 Halsey Street, Third Floor, Newark, NJ 07101, not later than 30 days from the entry of this order.

NEW JERSEY STATE BOARD
OF REAL ESTATE APPRAISERS

By Stephen P. Giocondo
Stephen P. Giocondo
Board President