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BOARD OF
REAL ESTATE APPRAISERS
James S. Hsu 11/21/07
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Executive Director

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

COPY

IN THE MATTER OF THE
APPLICATION OF

PAUL CARPINTERI

TO OBTAIN A TRAINEE APPRAISER
PERMIT IN
THE STATE OF NEW JERSEY

Administrative Action

FINAL ORDER OF
DENIAL OF TRAINEE PERMIT

CERTIFIED TRUE COPY

This matter was opened to the New Jersey State Real Estate Appraiser Board ("the Board") upon the submission of a trainee Appraiser Permit Application by the Applicant in April of 2007. A Criminal History Background Check conducted in connection with this application revealed a conviction in Federal Court on March 18, 2004 for having engaged in a conspiracy to deprive an individual of his civil rights in violation of 18 U.S.C. § 241 in April of 1999. The Applicant had disclosed this conviction on his application form. He had been sentenced to serve thirty-three (33) months of imprisonment. Mr. Carpinteri testified before the Board in an appearance on July 10, 2007 that he had served 24 months of his sentence and was currently on probation, which was scheduled to terminate on July 18, 2007.

The incident that led to the Applicant's conviction was prompted by the murder of an Orange, New Jersey police officer, Joyce Carnegie, at a time when the Applicant was a police officer employed by the Orange Police Department. An individual named Earl Faison, who resembled a composite sketch of the suspect in this murder, was seen entering a taxicab on April 12, 1999. When approached by a police officer, Mr. Faison ran. A chase occurred. According to United States of America v. Smith, 294 E.3d 473, 475-76 (3rd Cir. 2002), Faison was ordered to stop, dropped a gun he apparently had in his possession, resisted the attempt to handcuff him and was pepper-sprayed and finally handcuffed.

By this point, nine other officers . . . had arrived on the scene. Upon noticing Faison's resemblance to the murder suspect, witnesses claimed that Thomas Smith (who was the senior officer on the scene) punched Faison. Then [officers] Payton and Carpinteri punched Faison and threw him in a squad car. [Officer] Garth and Thomas Smith then entered the squad car and repeatedly punched Faison as he lay on the seat. An unindicted officer pulled Smith and Garth out of the car.

. . . As the officers, in five separate cars, approached the police station, Thomas Smith ordered that they turn off their lights. Faison was brought into the station through the south entrance - - which led to a locker room - - even though the north entrance was the designated prisoner drop-off area. Numerous officers testified that they had never taken a prisoner through the south entrance of the police station.

Once in the station, Faison, still handcuffed, was laid on the floor of the south stairwell. Faison was never brought to the booking room, was never fingerprinted or photographed, and was never given the opportunity to wash the pepper-spray from his face and eyes - - all of which was contrary to routine police practice.

After Faison was placed in the stairwell, Payton began yelling at him, removed money from Faison's pocket, suggested that the money be given to Officer Carnegie's mother, and then pointed his gun at the handcuffed Faison's head. When an unindicted officer grabbed Payton's weapon, Brian Smith sprayed pepper-spray at close range into Faison's nose and mouth. Faison's breathing became labored and he soon died of cardiac

arrest.

Immediately after paramedics removed Faison's body from the police station, the officers initiated efforts to conceal their actions. Payton and Carpinteri wrote consistent but false incident reports[.]

Faison did not kill Officer Carnegie. Six days after his death, Officer Carnegie's murderer was arrested.

294 F.3d at 476.

A statement dated June 5, 2007 which was signed by the Applicant and submitted to the Board described the Applicant's role in the incident as follows:

The "suspect" was handcuffed and transported to the Orange Police Station where some officers, but not Paul Carpinteri, physically mistreated the prisoner which resulted in his demise. Paul Carpinteri prepared a report that did not include all of the information required and as a result of that, he was charged with conspiracy to violate civil rights. However, it was never alleged, nor was there any basis for believing, that Paul Carpinteri had anything to do with the physical abuse of this "suspect." As a result of his failure to provide a complete report, Paul Carpinteri was indicted and convicted.

Although the Federal court decision indicates that Mr. Carpinteri struck Mr. Faison at one point, a review of the transcripts of sentencing makes it unclear that this occurred: it was not mentioned. In the most favorable view of the conduct underlying the conviction, as described by his counsel in argument at sentencing: "[H]e was ordered to go write a report. And he was ordered to write a report that was consistent with [another officer's report]. He did that. He was wrong for having done that." 1T56-17 to 20.¹

¹ 1T = Transcripts of Proceedings before the Hon. John C. Lifland dated March 18, 2004.

At sentencing District Court Judge John C. Lifland commented: "Mr Carpinteri's concealment had a lot to do with his conviction of the conspiracy, in that it was a rather extreme distortion of what Mr. Carpinteri knew to have happened." 1T67-21 to 24. He further noted: "He was attempting to conceal his own actions and the actions of others, in the hopes that the situation would go away." 1T68-11 to 13. He described the report as "False. Extremely false." 1T86-17.

Judge Lifland, in sentencing, took into account Mr. Carpinteri's prior history: "Mr Carpinteri was born and raised in the community he served, Orange, New Jersey, and he spent his entire life doing the right thing except he did not do the right thing in April of 1999 on the day of these events. I need not ask why. The fact is Mr. Carpinteri sits here convicted of conspiracy to violate the civil rights of Mr. Faison." 1T108-16 to 22.

Mr. Carpinteri's sentencing was at the bottom of the range in the sentencing guidelines. Judge Lifland explained: "He obviously has no prior criminal convictions or he would not have been a police officer. And in my sentencing judgments, that is very important. Also very important to me is that he had, of all the defendants, the least to do with the tragic events of the evening, though unfortunately, enough to do with those events that he stands here convicted of conspiracy. And in my judgment, did not have a minor role." 1T109-2 to 9.

Pursuant to N.J.S.A. 45:1-21(f), conviction of a crime of moral turpitude or relating adversely to the profession of real estate appraising is grounds for denial of licensure. Pursuant to N.J.S.A. 2A:168A-2, a licensing authority may disqualify an applicant for licensure for a conviction relating adversely to the profession for which licensure is sought, provided that the licensing authority takes into consideration eight

factors. These are: a) the nature and duties of the profession for which licensure is sought; b) the nature and seriousness of the offense; c) the circumstances under which the crime was committed; d) the date of the crime e) the age of the person at the time of the offense; f) whether the offense was an isolated incident or repeated; g) social conditions contributing to the crime; h) evidence of rehabilitation.

The offense was committed in 1999, somewhat removed in time from the present, although Mr. Carpinteri was still on probation when he appeared before the Board. Mr. Carpinteri was 35 years of age at the time of the criminal conduct, well into adulthood, and presumably less vulnerable to peer pressure than a younger, more impressionable officer might have been. The incident appears to be isolated in nature, as Judge Lifland indicated in his remarks at sentencing. The offense was committed under stressful circumstances due to the recent killing of a police officer, and presumably Mr. Carpinteri's desire to protect fellow-officers who had engaged in misconduct in an overreaction to that killing, following the arrest of a suspect who initially resisted arrest and was armed.

Of primary importance, however, among the factors to be considered here, are the nature of the profession of real estate appraising, and the nature of the offense of which Mr. Carpinteri was convicted. Real estate appraising is a profession for which a high standard of integrity is required. Appraisers are often subjected to pressures, sometimes subtle, to inflate value to ensure that a real estate transaction occurs. In matters relating to divorce or to tax appeals, there may be pressures in the other direction. The appraiser, in order to comply with the ethical standards required by the Uniform Standards of Professional Appraisal Practice must be willing to forego or

lose an assignment or a client, if necessary, inasmuch as an appraiser must issue reports that convey objective results. The Board's enabling legislation owes its very existence to Federal legislation enacted in response to the savings and loan crisis of the 1980s, in which inflated appraisals were found to play a significant role. Thus ensuring integrity and objectivity in the appraising process may justifiably be characterized as the moving force behind the Board's statutory purpose.

Although Mr. Carpinteri apparently had only limited involvement with the brutal treatment afforded Mr. Faison, the conduct for which he was convicted was the falsification or tailoring of a report concerning that conduct. A young man's life had been lost. Mr. Faison had been pepper-sprayed "at close range, into his nose and mouth" while lying on the floor, handcuffed. Mr. Carpinteri was a fully mature adult, not a youth in his twenties, and knew or should have known how serious these events were, and what the stakes were in a cover-up of these events. Yet Mr. Carpinteri chose to submit a deceptive report of these events. He was unable to withstand the pressure after a human life had been taken, and the stakes were obviously extremely high. It has not been demonstrated to the Board that Mr. Carpinteri would be able to withstand pressure when stakes of merely a financial nature are involved. Indeed, his testimony before the Board leads to the conclusion that to date he does not fully take responsibility for his wrongdoing.

Mr. Carpinteri stated to the Board, with respect to his conviction: "I have learned my lesson. I've paid dearly for my mistake." 2 T16-9-10.² While his testimony before the

² 2T = Transcripts of appearance before the New Jersey State Real Estate Appraiser Board dated July 10, 2007.

Board was understandably guarded, it is not clear that to this date he appreciates the significance of the conduct for which he was convicted, in terms of his reliability in the area of truthfulness in sensitive positions or stressful circumstances. In describing the content of his report, and what had been omitted from it, he testified:

They said that I didn't give him medical attention. I had no idea he needed medical attention. They said that we took him up from one side of the building. And the truth was, we took him from another side of the building. 2T11-16 to 21.

Mr. Carpinteri further explained:

THE WITNESS: And what happened was, is that we went into the wrong entrance. We were directed to go into that entrance by a lieutenant. But anyway, I stated in my report that a gentleman went up a flight of stairs and he collapsed in a chair. And that's not the accurate thing that happened. 2T12-18 to 23.

When asked whether he deliberately withheld certain facts from the report, he responded that he was ordered to do so, by unspecified police lieutenants. 2T13-21 to 14-1. When Board members attempted to elicit further information from Mr. Carpinteri as to the wrongful conduct for which he was convicted, he stated that it basically amounted to failure to provide medical aid, and then added: "I had no idea he had an asthma attack." 2T21-25 to 22-10. When pressed as to any observations or critical remarks made by the sentencing judge, Mr. Carpinteri appeared to have misunderstood, and to be focusing on an earlier proceeding³, stating that the judge had

³ The five police officer defendants in this case were found guilty by a jury. Subsequently, the District Court issued a post-verdict judgment of acquittal as to the conspiracy convictions of the officers. The government appealed, and prevailed upon appeal. United States of America v. Smith, 294 F.3d 473, 475 (3rd Cir. 2002).

found him not guilty of conspiracy:

MR. ADDIS: And what did he find you guilty of?

THE WITNESS: He didn't find me guilty, the jury did.

MR. ADDIS: Oh, I see what you're saying, okay. What did the judge say in imposing the sentence? Does anything stick in your mind? Was he particularly harsh or particularly critical in any particular aspect?

THE WITNESS: Just that he felt that I didn't do anything wrong. 2T24-1 to 20.

Mr. Carpinteri appears ethically unaware in his testimony: he does not seem even now to understand the reasons for his conviction, and what was wrong with his conduct. A thorough review of the sentencing transcripts does not reveal any prosecutorial argument based on Mr. Carpinteri's failure to provide medical aid, and there was no comment by the judge to that effect. Mr. Carpinteri was found to have tailored his report of the events surrounding Mr. Faison's arrest; but Mr. Carpinteri states that he was ordered to do so, and remembers that at one point a judge felt that he, Carpinteri, had done nothing wrong. Thus, despite Mr. Carpinteri's testimony that he had learned his lesson, he has demonstrated the contrary in his appearance before the Board. In the face of an event that should lead to intense self-examination, Mr. Carpinteri seems focused on defensiveness and self justification, with minimal acceptance of responsibility.

A review of the record indicates that Mr. Carpinteri has many good qualities: it appears he is a good father, a good husband, a good neighbor, and (with the exception of the crime at issue here) a law abiding person. However, the conduct that he engaged in on this one occasion, which resulted in a criminal conviction, is deceptive conduct which relates adversely to the profession of real estate appraising in the most striking fashion: it is not a minor offense. Mr. Carpinteri has not presented sufficient evidence

that he possesses the high standard of integrity required of real estate appraisers in the practice of the profession, in the face of this criminal conviction. Alternatively stated, Mr. Carpinteri has not at this time established rehabilitation by clear and convincing evidence. Thus, in an analysis based on the rehabilitative factors, the first, the nature of real estate appraising; the second, the nature and seriousness of the offense; and the last, inadequate demonstration of rehabilitation, overbear all the rest, requiring the Board to deny this application.

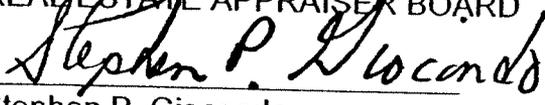
The Board set forth these findings of fact and conclusions of law in a Provisional Order entered on September 28, 2007, provisionally denying the applicant a trainee permit. A copy of the Order was forwarded to the applicant and the applicant's attorney. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 30th business day following entry unless the applicant requested modification or dismissal thereof by submitting a written request for modification or reversal, setting forth any and all reasons why the Board's findings of fact and conclusions of law should be modified or reversed, and submitting any and all documents or other written evidence supporting the applicant's request for consideration and reasons therefore.

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

ACCORDINGLY, IT IS on this 28th day of November, 2007,

ORDERED that:

1. The Applicant's application for a real estate appraiser trainee permit is hereby denied.

NEW JERSEY STATE
REAL ESTATE APPRAISER BOARD

Stephen P. Giocondo
Board President