

**FILED**  
**BOARD OF**  
**REAL ESTATE APPRAISERS**  
*James Hsu*  
**DR. JAMES S. HSU** 5/13/08  
**Executive Director**

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

IN THE MATTER OF THE  
LICENSE OF

ACKLEY O. ELMER, II  
RG00023100

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

CERTIFIED TRUE COPY

Administrative Action

FINAL ORDER  
OF DISCIPLINE

COPY

This matter was opened to the New Jersey State Real Estate Appraiser Board ("the Board") upon receipt of information which the Board has reviewed and on which the following findings of fact and conclusions of law are made:

FINDINGS OF FACT

1. Respondent is a certified general real estate appraiser in the State of New Jersey, and has been a licensee of the Board at all times relevant hereto.
2. On or about July 13, 1999, the Board filed a Consent Order in connection with three complaints about respondent's acceptance of appraisal assignments for which he received payment, but failed to provide a report. The Order made findings of professional misconduct in violation of N.J.S.A. 45:1-21(e), and imposed a two year suspension, of which three months were to be actively served, and twenty one months were to be served as a period of probation. A civil penalty of \$5,000 was also imposed, as well as costs of \$223.86, and restitution of \$250.

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 timely fashion. By the terms of the Consent Order, respondent agreed that he would no longer undertake to perform residential appraisal reports without the assistance of a trainee. The Consent Order noted that respondent's failure to timely provide the reports was due to health problems, and required respondent to agree not to appraise residential property without the assistance of a trainee.

4. On or about October 10, 2007, an Amended Final Order of Discipline was entered by the Board for violation of the March 21, 2006 Consent Order, in that he took steps to appraise residential property without the assistance of a trainee. The basis for the Board's action was that respondent agreed to appraise a Smithville residence on October 24, 2006, but did not complete the assignment by November 27, 2006, at which time the assignment was cancelled. Respondent's appraising license was suspended for three months, and a civil penalty in the amount of \$1,500.00 was imposed by the Order.

5. On or about May 25, 2007, A Demand for Statement in Writing Under Oath ("the Demand") was sent to respondent by overnight and regular mail, asking respondent about allegations that he had been paid to perform two appraisal reports, on two different occasions, for two different consumers, and had failed to provide the reports. The inquiry was sent by overnight and regular mail to respondent's address of record. Regular mail was not returned. United Parcel Service tracking indicated that the overnight mailing had been delivered. No response was received.

6. On or about June 27, 2007, a copy of the Demand was sent by overnight and regular mail to attorney Thomas L. Murphy, Esq., who was representing respondent with respect to a Final Order of Discipline which had been filed on May 21, 2007,<sup>1</sup> which respondent was contesting.

7. On or about December 20, 2007, a Provisional Order of Discipline was entered, provisionally suspending respondent and imposing a civil penalty in the amount of \$2,500.00 for respondent's failure to cooperate with a Board investigation, in that he failed to respond to the Demand.

8. On or about January 20, 2008, more than six months following the first issuance of the Demand, respondent's attorney furnished a response to the Demand. Respondent's attorney explained that respondent had been undergoing "severe and obtrusive therapy and has for the most part been temporarily disabled and unable to properly function to perform certain duties."

9. On or about March 20, 2007, respondent went to C2 Village at Linwood to appraise a condominium. He was unaccompanied.

10. After taking photographs and notes about the interior of the condominium, respondent was paid \$300.00 by Marilu Gagnon, who had arranged for the appraisal in connection with her responsibility as executrix of an estate.

11. As of May 20, 2007, Ms. Gagnon had not received an appraisal report, nor restitution of the \$300.00 paid to respondent for the report.

12. Respondent states that he did not complete the appraisal report because

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<sup>1</sup> This Final Order of Discipline was ultimately amended.

he had learned that Ms. Gagnon had filed a complaint against him on an unspecified date.

13. On or about March 3, 2007, respondent went to 20 Walnut Road, Ocean City to take exterior photographs of the property in connection with an appraisal assignment commissioned by John G. Keidel, the owner of the property who also resided there. He was accompanied by another individual who drove the vehicle.

14. On or about March 8, 2007, respondent went to 20 Walnut Road unaccompanied, and inspected and photographed the interior of the residence. On that date, he was paid \$300.00 for the appraisal report.

15. As of May 18, 2007, respondent had not furnished an appraisal report, nor had he returned the \$300.00 to Mr. Keidel.

16. Respondent states that the task he had been engaged for was not a residential appraisal because he was paid to confirm whether 20 Walnut Road was a "tear down."

17. The Uniform Standards of Professional Appraisal Practice ("the USPAP") define an appraisal as an opinion of value. It further states: "An appraisal must be numerically expressed as a specific amount, as a range of numbers, or as a relationship (e.g., not more than, not less than) to a previous value opinion or numerical benchmark.

18. To ascertain whether a property is a "tear down" is to ascertain whether a property is worth more in its existing state than it would be worth if the property were torn down and valued as land alone.

19. To ascertain whether a property is a "tear down" necessarily involves

reaching opinions of value.

### CONCLUSIONS OF LAW

1. Respondent's failure to timely provide appraisals in two instances where he agreed to provide appraisals and was paid to provide appraisals constitutes professional misconduct in violation of N.J.S.A. 45:1-21(e).
2. Respondent's lengthy delay in replying to Board requests for information constitutes a failure to cooperate with a Board investigation in violation of N.J.A.C. 13:45C-1.2, subjecting respondent to sanctions pursuant to N.J.S.A. 45:1-21(e).
3. Respondent's appraisal of residential property without the assistance of a trainee constitutes a failure to comply with a Board Order in violation of N.J.A.C. 13:45C-1.4, subjecting respondent to sanctions pursuant to N.J.S.A. 45:1-21(e).
4. If respondent's failure to timely provide appraisals and to timely respond to Board requests for information is due to a health condition, his lengthy history of failure in this regard indicates that respondent is incapable of carrying out the functions of a licensee pursuant to N.J.S.A. 45:1-21(i), and his failure to timely return payment when he cannot furnish an appraisal, and promising timely reports when he knows or should know he cannot furnish them, still constitutes professional misconduct in violation of N.J.S.A. 45:1-21(e).

Based on the foregoing findings and conclusions, a Provisional Order of Discipline was entered on March 13, 2008, provisionally suspending respondent's appraising license for two years, with respondent not to be reinstated unless or until he was able to demonstrate to the Board that he was able to perform the functions of a licensee. Respondent was given the alternative of electing to voluntarily surrender his

license, with such surrender to be deemed a revocation. A civil penalty was also provisionally imposed in the amount of \$1,500.00, with the penalty to be waived if respondent elected to surrender his appraisal license. Respondent was also provisionally ordered to provide restitution to Marilu Gagnon in the amount of \$300.00. A copy of the Order was forwarded to respondent by certified and regular mail at his address of record. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 30<sup>th</sup> business day following entry unless respondent 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 respondent's request for consideration and reasons therefor.

No response to the Provisional Order has been received from respondent. Certified mail was returned, unclaimed. Regular mail has been returned. Because the mailings were directed to respondent's address of record, the Board deems service to have been effected. Accordingly, the Board determined that further proceedings were not necessary, and that the Provisional Order should be made final.

ACCORDINGLY, IT IS on this 13<sup>th</sup> day of May, 2008,

ORDERED that:

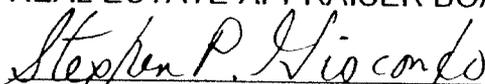
1. Respondent's license is hereby suspended for a period of two years, which suspension shall commence fifteen (15) days following the filing of this Order. Respondent's license shall not be reinstated until such time as he demonstrates to the Board that he is fit to perform the functions of a licensee. In the alternative, respondent

may elect a voluntary surrender of his license, to be deemed a revocation.

2. A civil penalty in the amount of \$2,500.00 is hereby imposed for respondent's violation of N.J.S.A. 45:1-21(e). Payment shall be sent in the form of a certified check or money order made payable to the State of New Jersey, within thirty (30) days following the filing of this Order, to the attention of Dr. James S. Hsu, Executive Director, Board of Real Estate Appraisers, P.O. Box 45032, 124 Halsey Street, 3<sup>rd</sup> Floor, Newark, NJ 07101. This penalty will be waived if respondent elects to surrender his license.

3. Respondent shall furnish restitution in the amount of \$300.00 to Marilu Gagnon. Payment shall be in the form of a certified check or money order made payable to Marilu Gagnon and forwarded to Dr. James S. Hsu, as specified in paragraph #2, supra.

4. If payment is not made within forty five (45) days following the filing of this Order, a certificate of debt shall be filed.

NEW JERSEY STATE  
REAL ESTATE APPRAISER BOARD  
  
Stephen P. Giocondo  
Board President