

FILED
BOARD OF
REAL ESTATE APPRAISERS
CHARLES F. KIRK
For the Board 2/2/10

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

In the Matter of:

DEL F. FLANAGAN, SCRREA

CONSENT ORDER

COPY

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This matter was opened before the New Jersey State Real Estate Appraisers Board (the "Board") upon the Board's receipt of information regarding a series of appraisals that respondent Del F. Flanagan prepared upon property located at 377 Hopedale Drive Southeast, Berkeley, New Jersey (the "subject property appraisals"). In reviewing this matter, the Board has considered available information concerning the subject property appraisals, to include, without limitation, written statements that respondent provided to the Board and testimony that respondent offered when he appeared before the Board, *pro se*, for an investigative hearing on November 10, 2009.

Upon review of available information, the Board finds that respondent was engaged in October 2007 by Shore Community Bank to appraise new construction property located at 377 Hopedale Drive Southeast, Berkeley, New Jersey. At the time that respondent accepted the appraisal assignment, the property had not yet been constructed (the house was proposed new construction) and was under contract to be purchased for \$427,295. Respondent knew that his

niece (his brother's daughter) and her husband were the buyers of the property, and that his niece and her husband were seeking to secure a mortgage loan on the property from his client, Shore Community Bank. Notwithstanding that knowledge, respondent never disclosed in writing to Shore Community Bank, nor did he disclose in any of the appraisal reports that he prepared for the subject property, the familial relationship that existed between himself and the buyer of the property.

Respondent prepared three appraisal reports for the subject property - an initial appraisal report dated October 10, 2007, wherein he estimated the value of the property to be \$428,000; a second appraisal report dated March 7, 2008, wherein he again estimated the value of the property to be \$428,000; and a third appraisal report dated May 28, 2008, wherein he estimated the value of the property to be \$473,000. Respondent additionally submitted two update or completion reports on July 15, 2008 (the first of which was based on his May 28, 2008 estimate of value of \$473,000 and the second of which was based on the estimate of value of \$428,000 in his two prior reports).

Respondent developed a sales comparison approach and a cost approach in all three appraisal reports (excepting the two appraisal update reports he submitted in July 2008). Respondent initially estimated the gross living area of the subject property to be 2,298 square feet, based on his review of floor plans and

information set forth in the builder's sales brochure, and reported the gross living area to be 2,298 square feet in both the October 2007 and March 2008 appraisal reports. When respondent was requested to prepare a new appraisal in May 2008, respondent testified that he was then told by his client that he needed to include square footage measurements for the subject property in his report. Respondent further testified that he then went to the site, measured the property and calculated the gross living area to be 2,756 square feet. Respondent's May 2008 report was developed using the estimate of gross living area of 2,756 square feet. Respondent has since conceded, in his written statements and testimony before the Board, that he made a mistake in measuring the property, and that the actual square footage is in fact far closer to his initial estimate of 2,298 square feet (the property record card from the Ocean County Tax Office indicates a total living area of 2,392 square feet).

Within his May 2008 report, respondent opined that the value of the subject property was \$473,000. That higher value conclusion was a direct by-product of respondent's erroneous measurement and estimate of the gross living area of the subject property, as all adjustments made in the sales comparison approach were predicated on the inflated estimate. Additionally, the Board has concluded that respondent's value conclusion was unsupported by the sales comparison approach he developed in his May 2008

appraisal.

Based on the above findings, the Board concludes that respondent violated the following provisions of the Uniform Standards of Professional Appraisal Practice (the "USPAP") when he prepared the subject property appraisals:

1) Respondent violated the Ethics Rule of the USPAP by accepting an appraisal assignment in a situation where his independence and objectivity could have been compromised by his familial relationship with the buyer of the property, and by thereafter failing to disclose that relationship within any of the appraisal reports that he prepared and/or in any writing to his client.

2) Respondent violated Standards Rules 1-1 (a), (b) and (c) in his preparation of the May 2008 appraisal, by, *inter alia*, rendering appraisal services in a careless or negligent manner when he measured the property; by thereafter reaching a value conclusion within the May 2008 appraisal report that was compromised and inflated by his overstatement of the size of the house being appraised; and by failing to have reported a value that was reasonably supported by the data that respondent developed in his sales comparison approach.

The Board concludes that, by failing to ensure that the subject property appraisals conformed to the requirements of the USPAP and by violating the Ethics Rule of the USPAP, respondent

violated N.J.A.C. 13:40A-6.1 and engaged in professional misconduct, and that cause for formal action against respondent exists pursuant to N.J.S.A. 45:1-21(e) and/or N.J.S.A. 45:1-21(h). The parties desiring to resolve this matter without need for additional administrative proceedings, and the Board being satisfied that good cause exists for the entry of the within Order,

IT IS on this 2nd day of 2 February, 2010

ORDERED and AGREED:

1. Respondent Del F. Flanagan is hereby formally reprimanded for having engaged in professional misconduct, by having failed to comply with the requirements of the USPAP, in the manner set forth above.
2. Respondent Del F. Flanagan is hereby assessed a civil penalty in the amount of \$5,000, which penalty shall be paid in full upon entry of this Order.
3. Respondent Del F. Flanagan is hereby assessed costs of investigation, in the amount of \$218.00, which costs shall be paid in full upon entry of this Order.
4. Respondent shall, within six months of the date of entry of this Order, take and successfully complete a 15 hour course in the Uniform Standards of Professional Appraisal Practice. Respondent shall be required to secure pre-approval from the Board for any course he proposes to take to satisfy the requirements of this paragraph. The course shall be taken in a classroom setting

(that is, the Board will not approve an "on-line" course). For purposes of this paragraph, "successfully complete" shall mean that respondent shall pass any examination given at the end of the course and/or obtain a passing grade at the completion of the course. Respondent may not claim any continuing education credit for the completion of the course herein required.

NEW JERSEY STATE REAL ESTATE
APPRAISER BOARD

By: _____

Barry J. Krauser
Barry J. Krauser
Board President

I acknowledge that I have read and considered this Order, and agree to the entry of the Order as a matter of public record by the Board.

Del F. Flanagan
Del F. Flanagan, SCRREA