

FILED 6/16/10 (Date)

BEFORE THE REAL ESTATE APPRAISER EXAMINING BOARD
OF THE STATE OF IOWA

IA RE Appr Ex Board
Board / Commission
Signature, Executive Officer

IN THE MATTER OF:)	CASE NO. 10-15
)	DIA NO. 10DOCREA002
PHYLLIS COLLIER)	
CERTIFICATE NO. CR01584)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
RESPONDENT)	DECISION AND ORDER

On April 13, 2010, the Iowa Real Estate Appraiser Examining Board (Board) found probable cause to file a Notice of Hearing and Statement of Charges against Phyllis Collier (Respondent). Respondent was charged with failure to comply with a disciplinary order, in violation of Iowa Code section 272C.3(2)(a)(2009). A telephone prehearing conference was held with the attorneys on May 14, 2010. The hearing was held on May 18, 2010 at 10:00 a.m. Assistant Attorney General Pamela Griebel represented the state of Iowa. Respondent appeared and was represented by attorney Kevin Hitchins. The following Board members presided at the hearing: Michael Lara, Appraiser, Chairperson; Gregory Morehead, Appraiser; James Kesterson, Appraiser; Amy Thorne, Appraiser; Judy Zwanziger, Appraiser; and Maxine Moore Ballard, Public Member. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(2009) and 193 IAC 7.25(2). After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2009), to deliberate its decision. The Board instructed the administrative law judge to prepare Findings of Fact, Conclusions of Law, Decision and Order for their review, in conformance with their deliberations.

THE RECORD

The record includes the State's Prehearing Conference Report, the testimony of Respondent, and the State Exhibits, pp. 1-39.

FINDINGS OF FACT

1. Respondent has held certificate CR01584 as a residential real estate appraiser in the state of Iowa since 1992. Respondent's certificate is currently on indefinite probation, subject to numerous terms and conditions. (State Exhibits, pp. 1, 6-16)

2. The Board has been working with Respondent for more than two years to address serious deficiencies in her practice as a certified real estate appraiser.

a. On January 11, 2008, Respondent and the Board entered into a Combined Statement of Charges and Consent Order after Standard Three reviews of Respondent's appraisal reports identified multiple, serious violations of the Uniform Standards of Professional Appraisal Practice (USPAP). The Consent Order placed Respondent's certificate on probationary status and required her to:

- Complete a 15-hour tested USPAP course, a 30-hour classroom course on residential sales comparison and income approach, a 15-hour course on appraiser site valuation and cost approach; and a pre-approved classroom course on narrative report writing of at least 7 hours by April 1, 2008;
- Enter into a desk review consultation agreement with a desk review appraiser, pre-approved by the Board, on or before December 15, 2007, and submit a copy of the consultation agreement to the Board no later than December 30, 2008;
- Submit a total of six appraisal reports for review by the pre-approved desk reviewer for facial compliance with USPAP by June 30, 2008;
- Submit a copy of the appraisal reports as submitted for desk review, a copy of the desk reviewer's review reports, work files on all submitted appraisals, and a copy of any reissued appraisal report by July 15, 2008; and
- Submit monthly logs of all appraisals completed while on probation by the 10th of each month for the preceding month.

(State Exhibits, pp. 6-8)

b. Respondent completed all of the required education and submitted her monthly logs. (State Exhibit 3) Respondent contracted with experienced appraiser Terri Selberg to complete desk reviews on 6 appraisals. (State Exhibit 4). The first five desk reviews by Ms. Selberg revealed a consistent pattern of USPAP violations and poor/atypical methodology, including but not limited to:

- Failure to properly describe neighborhoods and neighborhood boundaries;

- Inconsistent information concerning property values, i.e. stating that values are increasing when demand and supply are in balance and there are foreclosures occurring;
- Failure to provide sufficient detail and description of property features, condition, and upgrades;
- Failure to select appropriate comparable sales, failure to adequately describe comparable sales, and failure to adequately make and explain adjustments;
- Failure to use matched pair analysis to achieve market derived adjustments;
- Use of atypical terminology such as average, never, equal etc.

The sixth appraisal submitted by Respondent contained numerous serious deficiencies and was the least compliant of all of the appraisals that Terri Selberg desk reviewed. Terri Selberg sent Respondent all of her desk reviews electronically and told her to call if she had any questions. However, Respondent never called Ms. Selberg to discuss the desk reviews, and the two of them did not meet until January 5, 2009. (State Exhibits, pp. 6-9)

c. On December 19, 2008, the Board notified Respondent that it was continuing her probation and requiring her to meet one-on-one with Ms. Selberg for instruction in the development of an appraisal report. Respondent was notified that the Board would select 2-3 reports from her logs for January-March 2009 to be reviewed by one of the Board's peer reviewers. (State Exhibits, p. 9)

d. Board peer reviewer Bill Pruett reviewed two of Respondent's appraisals and submitted reports to the Board. Mr. Pruett also identified numerous serious deficiencies in Respondent's appraisal reports and made findings similar to those of Terri Selberg. (State Exhibits, pp. 9-10)

e. On April 17, 2009, the Board filed a Statement of Charges against Respondent charging her with repeated failure to adhere to appraisal standards in the development and communication of appraisals and with demonstrating negligence or incompetence in the development, preparation, and communication of appraisals. (State Exhibits, p. 6)

3. Following a hearing, the Board issued a Decision and Order on December 7, 2009, which placed Respondent's certification on indefinite probation, effective immediately upon service of the Decision and Order. (State Exhibit, pp. 6-16) The Decision and Order included, in relevant part, the following conditions of probation:

1. For as long as Respondent is on probationary status, she shall submit a monthly log of all appraisals she has completed and shall provide the written log to the Board by the 10th of each month for the preceding month.

2. For at least the first six (6) months of probation, all of Respondent's appraisal reports shall be prepared under the direct supervision of a certified residential real property appraiser, pre-approved by the Board. Although Respondent will retain her status as a certified residential appraiser, the level of supervision provided to her must comply with the requirements of supervision of associate appraisers, as provided by 193F IAC 4.2 and 193F IAC chapter 15.

Respondent was also required to pay a \$75 hearing fee within 30 days of receipt of the Decision and Order. (emphasis original, State Exhibit, p. 15)

4. The Board's Decision and Order was sent to Respondent on December 8, 2009 with a cover letter stating: "The terms of the order are now in effect. Please review the terms of the Order closely. All terms will be closely monitored by the Board for compliance." (State Exhibit, p. 17)

The Board's Decision and Order was served on Respondent and on her attorney by certified mail on December 14, 2009. (State Exhibit, pp. 17-21) On December 17, 2009, Respondent emailed the Board's Executive Officer with the name and certificate number of an appraiser who had agreed to supervise Respondent. Respondent asked "How do I get her approved to supervise me?" (State Exhibit, p. 24) On December 22, 2009, the Board's Executive Officer wrote to Respondent and explained that her proposed supervisor would have to submit a few appraisals for a quick review by the Discipline Committee before she would be approved by the Board. (State Exhibit, p. 26).

5. On January 4, 2010, Respondent submitted her December 2009 Appraisal Log to the Board. It listed five appraisals. The last two appraisals on the list were dated December 21, 2009 and December 22, 2009. (State Exhibit, p. 27)

6. Respondent's proposed supervisor, Jane Borton, submitted two of her appraisals to the Board in mid-January 2010. (State Exhibit, p. 28) On February 3, 2010, the Board's Executive Officer wrote to Respondent notifying her that the Board had

approved Jane Borton to act as her supervisor. Ms. Borton was authorized to begin working as Respondent's supervisor upon receipt of the letter. (State Exhibit, p. 31)

7. On February 1, 2010, Respondent submitted her January 2010 Appraisal Log to the Board. It listed four appraisals completed by Respondent in January 2010. (State Exhibit, p. 30)

8. On February 15, 2010, the Board's Executive Officer wrote to Respondent reminding her that she still had not paid the \$75.00 disciplinary fee that was due within 30 days of receipt of the Board's Decision and Order. The Board's Executive Officer asked Respondent to explain how she was able to complete appraisals in December and January when she did not have a Board approved supervisor. (State Exhibit, p. 32)

9. On March 1, 2010, Respondent submitted her February appraisal log to the Board. (State Exhibit, p. 33) On March 9, 2010, the Board's Executive Officer again wrote to Respondent by certified mail asking for the unpaid \$75.00 hearing fee and for an explanation of how she completed appraisals in December and January without a Board approved supervisor. Respondent was given until March 18, 2010 to respond. Respondent signed the delivery receipt for the letter on March 15, 2010. (State Exhibit, pp. 34-35).

10. On April 1, 2010, the Board's Executive Officer emailed Respondent's approved supervisor, Jane Borton, and asked when she began to supervise Respondent's appraisals. Ms. Borton promptly responded that she began supervising right after Respondent received the approval letter. On April 2, 2010, Ms. Borton identified February 11, 2010 as the date that she started as Respondent's supervisor. (State Exhibit, pp. 37-38)

11. The Board's file did not contain any communication from Respondent in response to the Executive Officer's requests for explanations. At hearing, Respondent claimed that she responded to the Board's Executive Officer by email and explained that she did not understand that she was required to stop performing appraisals until her supervisor was approved. Respondent did not provide a copy of the email that she claims to have sent, and the Board did not believe her. (Testimony of Respondent)

CONCLUSIONS OF LAW

Iowa Code section 272C.3(2)(a)(2009) authorizes the Board to revoke or suspend a license upon failure of the licensee to comply with a decision of the board imposing

licensee discipline. The preponderance of the evidence established that Respondent failed to comply with the Board's decision, issued on December 7, 2009, which imposed discipline. Effective immediately upon service of the Decision and Order, Respondent was required to have Board approved supervision for every appraisal that she performed. Respondent performed and issued six appraisals without any supervision after she was notified of the Board's Decision and Order and before she obtained Board approval for her supervisor. Moreover, Respondent failed to even respond to the Board's request for an explanation for her unsupervised practice.

Respondent claims that she misunderstood the Board's Decision and Order and that it never occurred to her that she was not permitted to continue performing appraisals until after she obtained supervision. Respondent's explanations were not credible. The Decision and Order explicitly stated that it was in effect immediately upon service and that all of Respondent's appraisals had to be prepared under the direct supervision of a pre-approved supervisor. It was Respondent's professional responsibility to carefully review the Decision and Order and to seek advice of her attorney, if necessary, to guide her future actions in compliance with the Order. Respondent has repeatedly failed to exercise reasonable diligence and attention to detail in her preparation of appraisal reports and now she has similarly failed to exercise reasonable diligence and attention to detail in her response to the Board's disciplinary order.


The Board's prior Decision and Order identified numerous serious deficiencies in Respondent's appraisal practice that had not improved, even following extensive remedial education and desk review. Following the previous hearing, the only way that the Board was willing to allow Respondent to continue to practice as a certified residential appraiser was if all of her appraisals were closely supervised by another appraiser approved by the Board. Respondent's failure to abide by this supervision requirement placed the public interest and welfare at risk. Based on her response to the last disciplinary order, the Board no longer believes that Respondent is amenable to direction or supervision.

DECISION AND ORDER

IT IS THEREFORE ORDERED that Iowa Real Estate Appraiser Certificate No. CR01584, issued to Phyllis Collier, is hereby **REVOKED**.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 193 IAC 7.41, that the Respondent shall pay \$75.00 within thirty (30) days of receipt of this decision for fees associated with conducting the disciplinary hearing.

Dated this ^{16th} day of *June*, 2010



Michael Lara, Appraiser
Chairperson
Iowa Real Estate Appraiser Examining Board

cc: Kevin Hitchins
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Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A. 193 IAC 7.37.

FILED 7/9/10 (Date)
IA REAL ESTATE
Board / Commission Exam Board

BEFORE THE IOWA REAL ESTATE APPRAISER EXAMINING BOARD
OF THE STATE OF IOWA

IN THE MATTER OF
PHYLLIS A. COLLIER
CR01584
Respondent.


: NOTICE TO BOARD IN Signature, Executive Officer
: COMPLIANCE WITH
: IAC 193-7.30(3)
:

CASE NO. 10-15

COMES NOW Respondent Phyllis A. Collier by and through her attorney Kevin R. Hitchins and states as follows:

1. According to IAC 193—7.30(3), a licensee must notify in writing all current clients of the fact his/her license has been revoked within 15 days of licensee's receipt of a final decision of the board revoking such license.
2. Said rule also states that licensee shall file copies of such notices with the board within 30 days of receipt of a final decision of the board.
3. An order revoking Respondent's license was entered on June 16, 2010.
4. As of the date of receipt of that order, Respondent had no current clients that required notifications in writing that license had been revoked.
5. This notice is intended as Respondent's compliance with IAC 193—7.30(3).

Phyllis A. Collier

By 
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Attorneys for Respondent

Copy: Assistant Attorney General Pamela Griebel
Department of Inspections and Appeals, assigned Administrative Law Judge
Phyllis Collier

The undersigned certifies that the above pleading was served upon all parties to the above cause to each of the attorneys of record or an unrepresented party herein at their respective addresses disclosed on this pleading on July 8, 2010.

By: U.S. Mail Delivered FAX Overnight Courier
 Certified Mail Courthouse Inbox

Signature: 