

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

IN THE MATTER OF: M. CHARLES MIROCHA CERTIFICATE NO. CG02212 RESPONDENT))))))	CASE NO. 09-34 DIA NO. 09DOCRE006 FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER
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On May 20, 2009, the Iowa Real Estate Appraiser Examining Board (Board) found probable cause to file a Statement of Charges against M. Charles Mirocha (Respondent). Respondent was charged with failure to comply with a Consent Order, in violation of Iowa Code section 272C.3(2)(a)(2009). Respondent was served with Notice of Hearing and Statement of Charges by restricted certified mail on June 10, 2009. (State Exhibit 1)

A prehearing conference was held by telephone on July 9, 2009, but Respondent did not participate. The hearing was continued twice. The hearing was held on October 22, 2009 at 10:00 a.m. Respondent was served by restricted certified mail on September 10, 2009 but failed to appear for hearing. (State Exhibit 4) Assistant Attorney General Pamela Griebel represented the state of Iowa. The following Board members presided at the hearing: Michael Lara, Appraiser, Chairperson; Gregory Moorhead, Appraiser; James Kesterson, Appraiser; Amy Thorne, Appraiser; Judy Zwanziger, Appraiser; Maxine Moore Ballard and John Larson, Public Members. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. A certified court reporter recorded the proceedings.

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 these Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

THE RECORD

The record includes the State's Prehearing Conference Report, the testimony of the witnesses, and State Exhibits 1-5.

FINDINGS OF FACT

1. Respondent was issued Iowa certified general real estate appraiser certificate number CG02212 on February 25, 1999. Respondent was issued Illinois certified general real estate appraiser certificate number 553.001554 on October 1, 2007. (Testimony of Toni Bright; State Exhibits 1, 3)

2. On November 3, 2008, Respondent signed a Consent Order to resolve a Statement of Charges alleging that he violated the Uniform Standards of Professional Appraisal Practice (USPAP) and engaged in practices harmful and detrimental to the public and repeatedly demonstrating a lack of qualifications to assure the public a high standard of professional care. The Board approved the Consent Order on December 17, 2008. Pursuant to the terms of the Consent Order, Respondent's license was placed on probation and he was required to:

- Complete a 15-hour tested USPAP course, a 30-hour classroom course on general appraiser site valuation and cost approach, and a 30-hour classroom course on general appraiser report writing by April 1, 2009;
- Enter into a desk review consultation agreement with a desk review appraiser, pre-approved by the Board, on or before December 1, 2008 and submit a copy of the consultation agreement to the Board no later than December 15, 2008;
- Submit a total of six appraisal reports for review by the pre-approved desk reviewer for facial compliance with USPAP by May 1, 2009; and
- Submit monthly logs of all appraisals completed while on probation by the 10th of each month for the preceding month.

(State Exhibit 2; Testimony of Toni Bright)

3. On January 1, 2009, Respondent was issued Colorado certified general real estate appraiser certificate number CG100026544. Respondent's Colorado certificate will expire on December 31, 2011. (Testimony of Toni Bright; State Exhibit 5)

4. Respondent did not comply with any of the requirements of the December 17, 2008 Consent Order by the deadlines provided in the order. Respondent's Iowa

certificate number CG02212 expired on June 30, 2009. As of the date of hearing, Respondent had not submitted his certificate renewal or proof of the continuing education required for renewal, and his Iowa certificate was inactive. According to the National Registry Appraiser Report, Respondent's Illinois certificate remained active as of October 20, 2009. (Testimony of Toni Bright; State Exhibit 5)

5. As of the date of the hearing, Respondent still had not complied with any of the provisions of the Consent Order. He had not completed the 75 hours of required education, had not entered into a desk review consultation agreement with a Board approved desk reviewer, and had not submitted any appraisal reports or monthly logs. (Testimony of Toni Bright)

CONCLUSIONS OF LAW

I. Failure to Appear

If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of a party. 193 IAC 7.27(1).

The Respondent was properly served with the Statement of Charges and Notice of Hearing and with Notice of Rescheduled Hearing by restricted certified mail but failed to appear. The Board was authorized to proceed with the hearing.

II. Failure To Comply

Iowa Code section 272C.3(2)(a)(2009) provides, in relevant part:

2. Each licensing board may impose one or more of the following as licensee discipline:
 - a. Revoke a license, or suspend a license either until further order of the board or for a specified period, ...upon failure of the licensee to comply with a decision of the board imposing licensee discipline.

The preponderance of evidence established that Respondent violated Iowa Code section 272C.3(2)(a)(2009) by completely failing to comply with the Consent Order that he entered into with the Board on December 17, 2008. Respondent has not completed the

required hours of education, has not entered into an approved desk review consultation agreement, and has not submitted any appraisal reports or monthly appraisal logs.

DECISION AND ORDER

Respondent's complete failure to comply with the Board's Consent Order warrants immediate suspension of his certificate.


IT IS THEREFORE ORDERED that Iowa Real Estate Appraiser Certificate No. CG02212, issued to M. Charles Mirocha, is hereby **INDEFINITELY SUSPENDED**, effective immediately upon service of this Decision and Order.

IT IS FURTHER ORDERED that the Respondent may not apply for reinstatement of his certificate until he has fully complied with the terms of the December 17, 2008 Consent Order.

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.

IT IS FURTHER ORDERED that the Respondent shall notify all current clients of the fact that his certification has been indefinitely suspended within fifteen (15) days of receipt of this final decision, in accordance with 193 IAC 7.30(3). Within thirty days of receipt of this final order, the Respondent shall provide the Board with copies of the notice sent to clients. Compliance with this requirement shall be a condition for an application for reinstatement.

Dated this *17* day of *November*, 2009.


Michael Lara, Appraiser
Chairperson
Iowa Real Estate Appraiser Examining Board

cc: M. Charles Mirocha
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This decision becomes final agency action, unless, within 15 days after the date of notification or mailing of this decision, a motion to vacate is filed and served on all parties. A motion to vacate shall state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit or a person with personal knowledge of each such fact attached to the motion. 193 IAC 7.27(3).

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