

FILED November 25, 2014 (Date)

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

14REA03
Board / Commission
[Signature]
Signature, Executive Officer

IN THE MATTER OF:)	CASE NO. 14-29 & 14-30
)	DIA NO. 14REA003
JACK RASH)	
)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
RESPONDENT)	DECISION AND ORDER

On October 2, 2014, the Iowa Real Estate Appraiser Examining Board (Board) issued a Notice of Hearing on Unlawful Acts and Imposition of Civil Penalties (Notice) to Jack Rash (Respondent). The Notice was personally served on Respondent on October 11, 2014. (Exhibit 1) The Notice scheduled a hearing to be held before the Board on November 17, 2014 at 10:30 a.m.

The following members of the Board presided at the November 17, 2014 hearing: Gene Nelsen, Appraiser, Chairperson; Caryl Swaim, Appraiser; Amanda Luscombe, Appraiser; Fred Greder, Appraiser; and Joan Scotter public member. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. Assistant Attorney General Pamela Griebel represented the public interest.

Respondent failed to appear for the hearing on November 17, 2014. Respondent left a voice mail message for the Board's Executive Officer, Toni Bright, at 10:13 a.m. This was 17 minutes before the hearing was scheduled to begin. Respondent's voice mail message stated only that he had car trouble and was waiting for a tow truck. Respondent provided his cell phone number for Ms. Bright to return his call. Ms. Bright, the Assistant Attorney General, and the Administrative Law Judge attempted to return Respondent's call shortly before the hearing start time of 10:30 a.m. Respondent did not answer his phone, and Ms. Bright left a voice mail message instructing Respondent to call her back. At about 10:35 a.m., Ms. Bright placed a second call to Respondent and once again got his voice mail. Ms. Bright left a second message telling Respondent that he needed to return her call by 10:45 a.m. or the hearing would proceed without him. Respondent did not call back, and the hearing proceeded in his

absence.¹ Respondent still had not called Ms. Bright when the hearing concluded at approximately 11:30 a.m.

After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2013), 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 Carter Crane, Beth Buell, and Toni Bright; and State Exhibits 1-14.

FINDINGS OF FACT

Licensing and Disciplinary History

On June 29, 1999, the Board issued Respondent certificate number CR02113 to practice as a residential real estate appraiser in the state of Iowa. (Exhibits 5, 8)

On August 7, 2012, Respondent was charged with violating Iowa Code sections 543D.17(1)(d),(e), and (f), 543D.18(1)(2009, 2011), and 193F IAC 7.2 and 7.3 by:

- failing to adhere to appraisal standards in the development and communication of appraisals;
- failing to exercise reasonable diligence in the development, preparation and communication of appraisals; and
- demonstrating negligence or incompetence in the development, preparation and communication of appraisals.

Following an evidentiary hearing, the Board determined that the alleged violations had been proven by a preponderance of the evidence. Effective January 4, 2013, Respondent's real estate appraiser certificate was placed on probation for a period of two years, subject to terms and conditions. The terms and conditions of probation required Respondent to submit quarterly logs of all of his appraisals and to have all appraisal reports prepared under the direct supervision of a Board-approved certified

¹ Iowa Code section 17A.12(3)(2013) and 193 IAC 7.27 authorize the Board to proceed with the hearing and render a decision in the absence of a party who fails to appear despite proper service of notice.

residential real estate appraiser for at least the first six (6) months of his probation. (Exhibit 8)

On May 8, 2013, the Board charged Respondent with failing to comply with the terms of probation. Following a hearing, the Board found that Respondent had completely failed to comply with the supervision requirements imposed as a condition of his probationary status. Respondent did not timely obtain Board approval for a supervisor, and he continued to prepare and release appraisal reports without obtaining any supervision from another certified appraiser. On January 23, 2014, the Board issued Findings of Fact, Conclusions of Law, Decision and Order revoking Respondent's real estate appraiser certificate no. CR02113. (State Exhibit 5; Toni Bright testimony) The revocation order was served on Respondent by restricted certified mail on January 28, 2014. (Exhibit 6; Toni Bright testimony)

On January 29, 2014, the Board reported the revocation of Respondent's certificate (CR02113) to the National Registry of the Appraisal Subcommittee (ASC). The entry on the ASC's National Registry indicates that Respondent's Certificate Number CR02113 was revoked by the state of Iowa effective January 28, 2014. (Exhibits 2, 3; Toni Bright testimony)

Complaints and Investigation Following Respondent's Revocation

On September 22, 2014, the Board received a complaint from Carter M. Crane, who is a Vice-President with Wells Fargo. Mr. Crane reported that Respondent had completed 13 appraisal reports for Wells Fargo between February and July 2014, which was after his certificate was revoked. Respondent had represented himself as a certified appraiser in all of those reports. The fact that Respondent's certificate was revoked was only discovered after the appraisal reports were submitted and relied upon by Wells Fargo to approve loans, for refinancing, or to take other actions pertaining to the real estate. When Mr. Crane contacted the appraisal management company (ServiceLink) that made the arrangements for Respondent to prepare the 13 appraisal reports, he learned that Respondent had also completed additional appraisal reports for ServiceLink following his revocation. (State Exhibit 9; Carter Crane testimony)

Beth Buell, Vice-President of Valuation Compliance for ServiceLink Valuation Solutions, LLC, filed a second complaint against Respondent on September 24, 2014. Ms. Buell provided a list of 42 appraisal reports prepared by Respondent and submitted to ServiceLink between the dates of January 10, 2014 and July 24, 2014. Respondent represented himself as a certified appraiser in all of the reports that he prepared for

ServiceLink. The 42 appraisal reports listed by ServiceLink included the 13 appraisal reports from Wells Fargo's complaint. Ms. Buell later discovered four additional appraisal reports that were prepared and submitted by Respondent to ServiceLink after his certificate was revoked. These reports were signed by Respondent as a certified appraiser on April 2, 2014; May 12, 2014; May 15, 2014; and July 2, 2014. (State Exhibits 10, 14; Beth Buell testimony)

The testimony at hearing and the documentation submitted with the two complaints establishes that Respondent prepared and submitted at least 44 certified appraisal reports after he was served with notice of the Board's revocation order on January 28, 2014.² Respondent repeatedly represented himself as a certified appraiser on the reports and signed the reports as a certified appraiser, even though his certificate had been revoked. Respondent signed the report and provided his certificate number (CR02113) and its expiration date (06/30/2015), without disclosing that the certificate had been revoked. Respondent also provided a copy of his real estate appraiser certificate with the appraisal reports. (State Exhibits 9-14; Carter Crane and Beth Buell testimony; *See, e.g.* pp. 112, 113, 124, 166, 208)

ServiceLink issued checks totaling \$19,475.00 to Respondent's company, Star Performers, LTD, in payment for appraisal reports that he prepared and signed after January 10, 2014. These checks were dated between February 14, 2014 and August 15, 2014. (Beth Buell testimony; State Exhibit 14)

At hearing, Ms. Buell explained that ServiceLink checks the licensing status of appraisers (certificate number and expiration date) at the beginning of the year. As of January 1, 2014, Respondent's certificate was still in good standing. After that, ServiceLink relies on the "daily feed" from ASC.gov to provide information concerning any later disciplinary action. There was some problem with the ASC "daily feed" received by ServiceLink, and ServiceLink did not receive the usual timely notification that Respondent's certificate had been revoked. Ms. Buell testified that the problem with the "daily feed" from ASC has now been fixed. (Beth Buell testimony)

Any of Respondent's 44 appraisal reports that were submitted for lending purposes will now have to be redone by a certified appraiser at additional cost. In addition, Wells

² The Board is not counting the appraisal report that was signed by Respondent on January 10, 2014 as a violation because this was prior to the issuance of the revocation order. The Board is also not counting as a violation the appraisal report that was signed by Respondent on January 28, 2014. Respondent received notice of the Board's revocation order on January 28, 2014 at 4:18 p.m. (Exhibits 6, 11)

Fargo may be required to repurchase some of the loans that were made by Freddie Mac or Fannie Mae on the basis of Respondent's appraisal reports. (Carter Crane testimony)

On August 27, 2014, ServiceLink sent a letter notifying Respondent that it was removing him from ServiceLink's approved appraiser panel due to the revocation of his certification. Respondent did not respond to this letter. (State Exhibit 10, p. 52; Beth Buell testimony)

CONCLUSIONS OF LAW

The term "*certified real estate appraiser*" shall only refer to individuals who hold the certificate.³ The Board is authorized to impose civil penalties against a person who is not registered or certified under Iowa Code chapter 543D for any violation of Iowa Code section 543D.15.⁴

193F IAC chapter 16 is entitled "Enforcement Proceedings Against Nonlicensees." For purposes of this chapter, "nonlicensees" includes a person whose certificate or associate registration has been revoked by the Board.⁵ The grounds for issuing an order requiring compliance with 543D or imposing civil penalties up to \$1,000 per violation include, in relevant part:

16.2(1) Use of the term "certified real estate appraiser" by a person who is not certified as a real estate appraiser by the board or in compliance with the temporary practice provisions of 193F-10.2(543D).

Notice of the Board's intent to require compliance and impose a civil penalty shall be served upon the nonlicensee by restricted certified mail, return receipt requested, or by personal service.⁶ The Board has personally served Respondent with notice of its intent to impose civil penalties for his use of the title "certified real estate appraiser" after his certificate was revoked. The notice served on Respondent properly informed him of the number of alleged violations and the \$1,000 maximum civil penalty per violation. (State Exhibit 1).

The preponderance of the evidence established that Respondent prepared and submitted at least 44 residential appraisal reports after he received notice of the revocation of his certificate as a residential real estate appraiser on January 28, 2014. In

³ Iowa Code section 543D.15(1)(2013).

⁴ Iowa Code section 543D.21(4)(a)(2013); 193F IAC chapter 16.

⁵ 193F IAC 16.1.

⁶ 193F IAC 16.4(1).

his submission of the reports, Respondent repeatedly represented himself to be a certified residential real estate appraiser with an active certification. In fact, Respondent's certificate was revoked, effective January 28, 2014.

The Board's rules specifically authorize the Board to consider the following factors when determining whether to impose a civil penalty and the amount of the civil penalty:

1. The time elapsed since the unlawful practice occurred.
2. Evidence of reform or remedial actions.
3. Whether the violation is a repeat offense following a prior warning letter or other notice of the nature of the infraction.
4. Whether the violation involved an element of deception.
5. Whether the unlawful practice violated a prior order of the board, court order, cease and desist agreement, consent order, or similar document.
6. The clarity of the issue involved.
7. Whether the violation was willful and intentional.
8. Whether the licensee acted in bad faith.
9. The extent to which the nonlicensee cooperated with the board.
10. The circumstances leading to the violation.⁷

In this case, the Board is authorized to impose a maximum civil penalty of \$44,000, or \$1,000 for each appraisal report that Respondent prepared, signed and submitted following the effective date for the revocation of his certification. The Board has determined that the facts of this case warrant the maximum civil penalty for each violation. Respondent's violations were repeated and ongoing over a seven month period. Respondent has had no contact with the Board and it is not known if he is continuing to falsely represent himself as a certified real estate appraiser in the state of Iowa. Respondent's violations involve misrepresentation and deception. Respondent clearly knew that his certificate had been revoked and yet continued to represent himself as an appraiser in good standing, submitted his certificate number and expiration date (prior to revocation) with the reports, and even included a copy of his certificate with the reports that he submitted. The violations were both willful and intentional, and Respondent has acted in bad faith. There is no evidence that Respondent has taken any remedial action whatsoever. In addition, Respondent has not cooperated with the Board. He never responded to the Notice issued by the Board, he failed to appear for the hearing, and he failed to return calls from the Board on the

⁷ 193F IAC 16.6.

day of the hearing. Moreover, Respondent's violations have caused severe harm to the public and may have eroded the public trust in the real estate appraiser profession as a whole.

DECISION AND ORDER

IT IS THEREFORE ORDERED that Respondent Jack Rash shall immediately **CEASE AND DESIST** holding himself out as a certified real estate appraiser in the state of Iowa.

IT IS FURTHER ORDERED that Respondent shall pay a civil penalty of \$1,000 for each of the forty-four (44) appraisal reports that he prepared in violation of Iowa Code section 543D.15 after January 28, 2014. The total civil penalty of \$44,000 shall be paid to the Board within thirty (30) days of the issuance of this Decision and Order. In accordance with Iowa Code section 543D.21(3)(2013), these civil penalties will be deposited in the housing trust fund created by Iowa Code section 16.181.

Respondent retains active licensure with the Iowa Real Estate Commission. Board staff shall promptly notify the Iowa Real Estate Commission of this enforcement action against Respondent. In addition, any further violations of Iowa Code chapter 543D by Respondent will result in his referral for criminal prosecution and/or the filing of an application for an injunction in district court.⁸

Dated this 25th day of November, 2014.



Gene Nelsen, Appraiser

Chairperson

Iowa Real Estate Appraiser Examining Board

cc: Jack Rash, Respondent
Pamela Griebel, Assistant Attorney General

Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated

⁸ See 193F IAC 16.7

within the time provided by rule 7.32(17A). A motion to vacate must 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 of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion. See 193F IAC 7.27(3).

Judicial review of the Board's action may be sought in accordance with the Iowa administrative procedure act (Iowa Code chapter 17A), from and after the date of the Board's order.

FILED 10/2/14 (Date)
IA. RE. Appr. Ex. Board
Board / Commission
Joni A. Bright
Signature, Executive Officer

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

IN THE MATTER OF:)	Case No. 14-29 & 14-30
)	
Jack Rash)	
)	
Respondent.)	NOTICE OF HEARING ON
)	UNLAWFUL ACTS AND IMPOSITION
)	OF CIVIL PENALTIES

The Iowa Real Estate Appraiser Examining Board ("Board") issues this Notice of Hearing pursuant to Iowa Code Sections 17A.12(2) and 543D.21 (2013). Respondent is a former certified residential real estate appraiser in Iowa. His Certificate No. CR02113 was revoked by the Board on January 23, 2014, following contested case in Case No. 13-12. The Board has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 272C, and 543D (2013) and 193F IAC chapter 16.

**A. TIME, PLACE AND NATURE OF HEARING,
AND HEARING PROCEDURES**

1. **Hearing.** A contested case hearing will be held before the Board on the 17th day of **November**, 2014, at **10:30 a.m.** at the Board's offices at 200 E. Grand, Ste. 350, Des Moines, IA 50309.
2. **Answer.** Within 20 days of the date you are served with this Notice you must file an answer to the charges as provided in 193 Iowa Admin. Code 7.9.
3. **Prehearing Conference.** A prehearing conference is not ordered, but either party may request a pre-hearing conference under 193 Iowa Admin. Code 7.21.
4. **Presiding Officer.** The full Board shall serve as presiding officer at hearing. The Board may request that an ALJ make initial rulings on prehearing matters, and be present to assist and advise the Board at hearing, as described in 193 Iowa Admin. Code 7.10(4). A request that an ALJ preside at the hearing must be filed within 20 days of the day you are served with this Notice pursuant to Iowa Code section 17A.11 and 193 Iowa Admin. Code 7.10(2).
5. **Hearing Procedures.** Board rules on hearing procedures may be found at 193 Iowa Admin. Code chapter 7, and 193F Iowa Admin. Code chapters 8 and 16. You have the right to respond to the charges, produce evidence on your behalf, cross-examine witnesses, and examine any documents introduced at hearing. Consult rule 193 Iowa Admin. Code 7.22 if you need to request an alternative time or date. Given the serious nature of the charges, hearing will not be continued except upon the most exigent circumstances. The hearing will be open to the public.

6. **Default.** If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and 193 Iowa Admin. Code 7.27.

7. **Prosecution.** This case will be prosecuted by an Assistant Attorney General acting on behalf of the public interest (the State). Copies of all pleadings shall be filed with the Board, with copies mailed to: Assistant Attorney General Pamela Griebel, Iowa Department of Justice, Hoover Building, 2nd Fl., Des Moines, Iowa, 50319. Phone: 515-281-6403; E-mail: pgriebe@ag.state.ia.us.

8. **Respondent's Counsel.** Copies of all pleadings filed with the Board shall be provided to: [Counsel unknown]

9. **Settlement.** The procedural rules governing the Board's settlement process are found at 193 Iowa Administrative Code 7.42. If you are interested in pursuing settlement of this matter, please contact Assistant Attorney General Pamela Griebel.

10. **Communications.** You may not contact Board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You should direct any questions to Assistant Attorney General Pamela Griebel, or Toni Bright, the Board's Executive Officer, at 515-725-9025.

B. STATEMENT OF CHARGES

11. Respondent's certificate as a residential real estate appraiser was revoked on January 23, 2014, following contested case hearing in Case No. 13-12.

12. Respondent's certificate was revoked for failure to comply with a disciplinary order of the Board. Prior to the revocation of his certificate, respondent was prohibited by Board order from performing appraisal services in Iowa except under the supervision of a Board approved supervisor, as set out in the Board's January 4, 2013 order in Case No. 12-14.

13. Respondent did not challenge the Board's revocation in judicial review. Mr. Rash signed for a copy of the Order on January 28, 2014, at 4:18 p.m. His then counsel received a copy by email on January 23, 2014. The Board's revocation order was placed on its website as soon as Mr. Rash was notified. The National Registry was timely notified of the revocation. Lenders and appraisal management companies would accordingly have been on notice that Respondent was no longer authorized to practice as a certified appraiser, had the Registry been checked.

14. Respondent did challenge the Board's discipline order in Case No. 12-14 in judicial review under Iowa Code chapter 17A. The Board's order was upheld in all respects by

the reviewing district court on April 4, 2014, Case No. CVCV121105, Black Hawk County District Court.

15. After Respondent's certificate was revoked, he continued to sign and certify appraisals as a certified residential real estate appraiser. On September 23, 2014, the Board received a complaint (Case 14-29) including 13 appraisals signed and certified by Respondent as a certified appraiser. The Board received a second complaint (Case 14-30) on September 24, 2014 from an appraisal management company alleging that Mr. Rash signed and certified 42 appraisals as a certified appraiser after his certificate was revoked. There is overlap in the complaints. The exact total of appraisals completed by Mr. Rash as a certified appraiser following the revocation of his certificate is unknown.

16. Respondent's flagrant violations of law are harmful and detrimental to the lender and the appraisal management company who relied upon appraisals that were illegally submitted, the property owners who may now face uncertainty as to the appraised value of their residential properties, and the public which depends on the reliability and integrity of certified real estate appraisers, as provided in Iowa Code section 543D.18(1).

17. Respondent violated Iowa Code section 543D.15 by using the title "certified real estate appraiser" and signing and certifying appraisals as a certified real estate appraiser after his certificate was revoked. He is accordingly subject to civil penalties of up to \$1,000 per violation, pursuant to Iowa Code section 543D.21(4)(a), which could be \$1,000 per appraisal if maximum penalties are imposed.

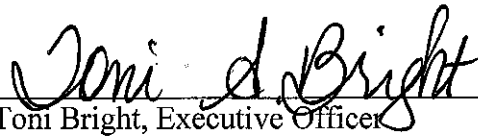
18. If Respondent fails to appear at hearing and rebut the information provided to the Board in the complaints, the Board will impose the maximum civil penalty supported by the evidence, at \$1,000 per appraisal.

19. If Respondent fails to pay any civil penalty imposed, the penalty may be enforced in district court as provided in Iowa Code section 543D.21(7).

20. Respondent is also subject to injunctive relief by the district court, as provided in Iowa Code subsections 543D.21(1) and (8).

21. While Respondent is no longer a certified appraiser, his revocation order is subject to a future application to reinstate. Respondent is placed on notice that entry of civil penalties, if the charges are sustained, will likely preclude any future reinstatement given the willful, deceptive, and harmful impacts of his actions on the public. If civil penalties are entered, the Board will also share the order resulting from the hearing with the Iowa Real Estate Commission.

This Notice of Hearing is filed and issued on the 2nd day of October, 2014.



Toni Bright, Executive Officer
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Copies to:

Assistant Attorney General Pamela Griebel
Respondent (restricted certified mail, return receipt requested)
Department of Inspections and Appeals, assigned Administrative Law Judge