

NEW MEXICO BOARD OF REAL ESTATE APPRAISERS
HEARING OFFICER'S REPORT
DISCIPLINARY HEARING, OCTOBER 7, 2016

IN THE MATTER OF:

TOMAS VALERIO
LICENSE NO 02916-L

Case No: 15, 12-07-23

HEARING OFFICER'S REPORT
Procedural History

This matter came before the duly appointed Hearing Officer, Board of Real Estate Appraisers Commissioner Ginny Olcott ("Hearing Officer") upon the filing of a Notice of Contemplated Action ("NCA") by the New Mexico Board of Real Estate Appraisers ("Board") against Tomas Valerio ("Respondent").

An evidentiary hearing was held before the Hearing Officer on October 7, 2016, at the 8th Judicial District, 108 Albright Street, Taos, NM 87571. The purpose of the hearing was to take evidence regarding the NCA and possible disciplinary action against Respondent's license.

Respondent appeared at the hearing in person *pro se*. The State appeared through its administrative prosecutor, Assistant Attorney General Regina Ryanczak. Assistant Attorney General Jennie Lusk was present to advise the Hearing Officer. The hearing was transcribed by Desirae Griego, Regulation and Licensing Department.

The State and Respondent each had the opportunity to present their respective cases and elicit evidence through witness testimony. The State called no witnesses; Respondent testified under oath and the State cross-examined him. The Hearing Officer submits this report pursuant to the Uniform Licensing Act ("ULA"), NMSA 1978, §§ 61-1-1 to -34.

Findings of Fact

1. The Board filed a complaint against Respondent on July 23, 2012, based on Respondent's reporting the same continuing education course for both the 2010 and 2012 licensing year;
2. On or about February 14, 2013, the Respondent signed a Stipulated Settlement Agreement ("SSA") agreeing to the Board's jurisdiction under the New Mexico Real Estate Appraisers Act, NMSA 1978, §§ 61-30-1 through 61-30-24 and acknowledging his failure to complete necessary continuing education as alleged. All

references to the SSA are from the Administrative Prosecutor's Ex. 2, Stipulated Settlement Agreement;

3. The SSA included Respondent's acknowledgement that he knowingly, intentionally and voluntarily waived of rights under the Uniform Licensing Act, §§61-1-1 through 61-1-31 including the right to an evidentiary hearing, right to assert any and all time limitations, to assert a claim of bias or to move to excuse any board member;

4. Respondent acknowledged that by entering the SSA he agreed that, if approved by the Board, the SSA became final and not subject to reconsideration, judicial review or appeal;

5. The SSA released the Board from any and all claims arising from the Board's decision to investigate the complaint, file the NCA or take action against Respondent's license;

6. The SSA provided that the Board reserved the right to initiate proceedings for any other violation of the New Mexico Real Estate Appraisers Act or rules and regulations adopted pursuant to the Act;

7. Respondent agreed that a violation of the conditions agreed to in the SSA could constitute a "separate and independent ground for disciplinary action" in the Board's discretion;

8. The SSA constituted disciplinary action to be reported to the Appraisers Subcommittee (ASC) National Registry;

9. Terms of the SSA required the Respondent to pay a fine of \$2,000 within six months of Respondent's receipt of the Board approval of the SSA;

10. The SSA also required Respondent to complete a seven-hour on-line board-approved course within thirty days of Board approval of the settlement as fulfillment of Respondent's outstanding 2012 licensing renewal requirements;

11. By December of 2013, the Respondent had not completed the terms of the SSA, and Respondent requested an extension on January 6, 2014, Respondent's Ex. G;

12. The extension was granted by the Board in April 2014 allowing six months to complete the terms of the original SSA (to be completed on or by Oct 15, 2014);

13. As of August 6, 2015, the Respondent had still not met the terms of the SSA;

14. The Board issued an Order to Show Cause on August 19, 2015 why the Board should not find Respondent in violation of the SSA and "impose any and all lawful sanctions at its disposal, Ex. 4;

15. On October 30, 2015, Respondent appeared before the Board but provided no evidence of compliance with the SSA, Administrative Prosecutor's Ex. 6;

16. On February 2, 2016, Respondent made a payment of \$1,000 toward the fine agreed to in the SSA dated February 14, 2013, Respondent's Ex. G;

17. On April 18, 2016, the Board voted to take disciplinary action;

18. On June 12, 2016, Respondent made another \$1000 payment toward the fine agreed to in the SSA, Respondent's Ex. G;

19. On July 25, 2016, a second NCA was issued based on Respondent's failure to comply with the terms of the original SSA;

20. Respondent signed for the receipt of the NCA on July 28, 2016;

21. Respondent completed an on-line course, "Understanding Residential Construction" on July 29, 2016;

22. On August 16, 2016, Respondent submitted a letter claiming his right to a formal hearing, despite his agreement to waive his rights under the Uniform Licensing Act, and noted that he had completed his continuing education requirements and paid the fines as agreed to in the SSA, Respondent's Ex. E;

23. The disciplinary hearing for Respondent in Case No: 15, 12-07-23 was scheduled and held October 7, 2016.



Ginny Olcott
Commissioned
Hearing Officer

BEFORE THE NEW MEXICO BOARD OF REAL ESTATE APPRAISERS

IN THE MATTER OF:)
)
TOMAS VALERIO)
LICENSE NO 02916-L)

Case No: 15, 12-07-23

FINAL DECISION AND ORDER

This matter came before the Board of New Mexico Real Estate Appraisers (“the Board”) upon receipt of Hearing Officer’s Report filed after a hearing held October 7, 2016.

During a regularly scheduled and properly noticed meeting held October 21, 2016, the Board entered into executive session, pursuant to NMSA 1978, §§ 10-15-1(H)(1) and (3), to discuss this matter. The Board reconvened immediately following its executive session, entered back into open session and made a determination. In open session, the Board voted unanimously with one abstention to issue its final decision and Order.

Pursuant to the Uniform Licensing Act (“ULA”), §§ 61-1-1 to -34, having reviewed the Hearing Officer’s Report, the testimony and exhibits presented during the hearing and duly admitted into the record, the Board hereby proffers the following:

FINDINGS OF FACT

The Board adopts and incorporates by reference, as if fully stated herein, the Hearing Officer’s proposed Findings of Fact numbered 1 through 23, such findings being based on the record, testimony, and exhibits from the October 7, 2016 hearing, and attached hereto.

CONCLUSIONS OF LAW

1. Respondent is licensed as a real estate appraiser No. 02916-L, and is subject to the jurisdiction of the Board pursuant to the ULA; the New Mexico Real Estate Appraisers Act (“Appraisers Act”), NMSA 1978, §§ 61-30-1 to -24; and the New Mexico Real Estate Appraisers Board Rules and Regulations (“board rules”), Title 16, Chapter 65, NMAC.

2. Pursuant to the Appraisers Act at § 61-30-7(L), the ULA and board rules, the Board held a proper hearing on the above-referenced matter.

3. Respondent waived his rights under the ULA in the Stipulated Settlement Agreement he signed and the Board approved in 2013;

4. The New Mexico Board of Real Estate Appraisers is authorized to fine, deny, revoke, suspend, stipulate or otherwise limit or take other disciplinary action against Respondent, NMSA 1978, § 61-30-15.

5. The New Mexico Board of Real Estate Appraisers is authorized to establish procedures for disciplinary action compliant with the ULA;

6. The New Mexico Board of Real Estate Appraisers is authorized to take action against Respondent's license pursuant to the Appraisers Act at § 61-30-15 and board rules;

7. Respondent's failure to comply with terms of the 2013 settlement agreement demonstrated "bad faith, untrustworthiness, impropriety, fraud, dishonesty or any unlawful act." NMSA 1978, § 61-30-15 (A)(9).

ORDER

Based upon these Findings of Fact and Conclusions of Law, a quorum of the Board rendered the following order:

IT IS ORDERED THAT RESPONDENT, LICENSE NO. 02916-L, shall:

- (1) pay a \$1000 penalty to the Board within 30 days of the date of this Order in order to correct for his previous late payment;
- (2) be audited for compliance with continuing education credits for the next two licensure renewal cycles; and
- (3) receive a letter of reprimand, which the Board shall post for public, based on violations of the ULA, board rules and the Appraisers Act.

IT IS SO ORDERED.

**FOR THE NEW MEXICO REAL ESTATE
APPRAISERS BOARD**

October 26, 2016

DATE

/s/ e-signed

DEAN ZANTOW, CHAIR

*Executed electronic signature via e-mail
authorization dated 10-26-16*

CERTIFICATE OF SERVICE

I hereby certify that a copy of this order was sent to the following persons:

Administrative Prosecutor:

Regina Ryanczak (*e-mail only*)
rryanczak@nmag.gov

Respondent:

Tomas Valerio
52 Valerio Road
Ranchos de Taos, NM 87577

Certified Mail to Respondent No.: 9171 9690 0935 0079 1569 57 Date: 10/27/16
Return Receipt Requested

Case No. 15, 12-
07-23
Page 2 of 2

Tomas Valerio
52 Valerio Road
Ranchos de Taos, NM 87557
15,12-07-23

9171 9690 0935 0079 1569 57

SENDER: COMPLETE THIS SECTION	RECEIVER: COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none">■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.■ Print your name and address on the reverse so that we can return the card to you.■ Attach this card to the back of the mailpiece, or on the front if space permits.	<p><i>Tomas Valerio</i></p> <p><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
	B. Received by (Printed Name) <i>Tomas Valerio</i>	C. Date of Delivery <i>15</i>
Article Addressed to:	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
<p>Tomas Valerio 52 Valerio Road Ranchos de Taos, NM 87557 15,12-07-23</p>	3. Service Type <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™ <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery	
2. Article Number (Transfer from service label)	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, July 2013	9171 9690 0935 0079 1569 57	
	Domestic Return Receipt	