

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

IN THE MATTER OF:

**PAUL C. HEWETT
LICENSE No. 164-G**

Case No. 9, 12-04-05

Respondent.

FINAL DECISION AND ORDER

THIS MATTER comes before the New Mexico Real Estate Appraisers Board (the “Board”) upon the 6 November 2013 filing of a Notice of Contemplated Action (“NCA”), and subsequent service of the notice with Paul Hewett (“Respondent”) on 18 November 2013.

A hearing before Dean Zantow, designated hearing officer, was held on 13 February 2013, in the Executive Conference Room, Farmington City Hall, 800 Municipal Drive, Farmington, New Mexico. The hearing officer was assisted by Board counsel, Assistant Attorney General Joseph M. Dworak. The purpose of the hearing was to take evidence concerning allegations contained in the NCA and related conduct of Respondent. The state appeared through its prosecuting attorney, Sally Galanter. Respondent appeared in person, pro se.

The prosecuting attorney offered twenty separate documents as exhibits, including electronic documents, all of which were entered into the record. Respondent offered ten exhibits, all of which were entered into the record without objection. A total of four witnesses testified during the hearing, including the Respondent.

On 15 April 2014, during a regularly scheduled and properly noticed meeting, the Board entered into executive session, pursuant to NMSA 1978, § 10-15-1(H)(1), (3). The Board reconvened immediately following its executive session, entered back into open session and made a determination.

Pursuant to the Uniform Licensing Act, Sections 61-1-1 to -34, having reviewed the Hearing Officer's Report dated 13 February 2014, the testimony and exhibits presented during the hearing and duly admitted into the record, the Board hereby finds the following:

FINDINGS OF FACT

The Board hereby adopts and incorporates by reference, as if fully stated herein, the Hearing Officer's Proposed Findings of Fact numbered 1 through 62, such findings being based on the record, testimony, and exhibits from the 13 February 2014 hearing.

CONCLUSIONS OF LAW

1. Respondent, Paul C. Hewett is a certified general appraiser (#164-G) and is subject to the jurisdiction of the Board pursuant to the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 to -33; the New Mexico Real Estate Appraisers Act, NMSA 1978, Sections 61-30-1 to -24; and the New Mexico Real Estate Appraisers Board Rules and Regulations, Title 16, Chapter 65, NMAC.
2. Pursuant to NMSA 1978, Section 61-30-7(L), the Uniform Licensing Act, Sections 61-1-1 to -34, and rules promulgated pursuant to the Real Estate Appraisers Act, the Board held a proper hearing on the above-referenced matter.

3. Respondent was provided timely notice of the hearing and was advised of his rights, including that he could appear at the hearing in person or through an attorney; that he would have the opportunity to admit evidence, testify, call witnesses, and cross-examine witnesses presented by the administrative prosecutor.
4. There is sufficient support to adopt the findings of the peer review analysis and reports.
5. The appraisal in question overstated the land value by using an income-based approach method, which lacks market support and is not sufficiently supported by quantitative local market data.
6. Respondent committed noted errors regarding the selection and analysis of comparable sales for the appraisal in question and failed to provide sufficient information to allow for adequate justification and review of the report.
7. The Board has adopted the Uniform Standards of Professional Appraisal Practice pursuant to Rule 16.62.1.8 NMAC.

“The national uniform standards of professional appraisal practice (USPAP) as promulgated by the appraisal standards board of the appraisal foundation, and adopted and incorporated by reference are the minimum requirements. The appraisal standards board's code of professional responsibility, as filed in the federal register, are the minimum professional and ethical standards that will govern appraisers practicing in New Mexico.”

8. The Preamble to the Uniform Standards of Professional Appraisal Practice states, in relevant part:

“The purpose of the Uniform Standards of Professional Appraisal Practice (USPAP) is to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers. It is essential that appraisers develop and communicate their analyses, opinions and conclusions to intended users of their services in a manner that is meaningful and not misleading.”

A preponderance of evidence in the record demonstrates that Respondent violated the Preamble to the Uniform Standards of Professional Appraisal Practice.

9. USPAP Standards Rule 1-1 states, in relevant part:

In developing a real property appraisal, an appraiser must:

- a. be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;
- b. not commit a substantial error of omission or commission that significantly affects appraisal; and
- c. not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affect the credibility of those results.

A preponderance of evidence in the record demonstrates that Respondent made a substantial error that significantly affected the appraisal in question. As such, Respondent’s conduct constitutes a violation of the Uniform Standards of Professional Appraisal Practice Standard 1-1(b).

10. USPAP Standards Rule 1-4 states, in relevant part:

In developing a real property appraisal, an appraiser must collect, verify, and analyze all information necessary for credible assignment results.

- (a) When a sales comparison approach is necessary for credible assignment results, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.
- (b) When a cost approach is necessary for credible assignment results, an appraiser must:
 - (i) Develop an opinion of site value by an appropriate appraisal method or technique.
- (c) When an income approach is necessary for credible assignment results, an appraiser must:
 - (iii) analyze such comparable data as are available to estimate rates of capitalization.

A preponderance of evidence in the record demonstrates that Respondent violated Standards Rule 1-4 (a), Standards Rule 1-4(b)(i), and Standards Rule 1-4(c)(iii).

11. USPAP Standard Rule 2-1 states, in relevant part:

Each written or oral real property appraisal report must:

- (a) Clearly and accurately set forth the appraisal in a manner that will not be misleading.
- (b) Contain sufficient information to enable the intended users of the appraisal to understand the report properly.

A preponderance of evidence in the record demonstrates that Respondent's reports were not clear, were not accurate, and were misleading, all of which exhibit that Respondent violated Standards Rule 2-1 (a) and Standards Rule 2-1(b).

12. Failure to comply with USPAP Standard Rules is a violation of the Real Estate Appraisers Act, Section 61-30-15(B).

13. The Board concludes that a preponderance of the evidence reveals that Respondent violated the Uniform Standards of Professional Appraisal Practice and the Real Estate Appraisers Act.
14. Pursuant to Section 61-30-15, the Board is authorized to revoke, suspend, reprimand, or place on probation Respondent's license for violations of the Real Estate Appraisers Act.

ORDER


Based upon these Findings of Fact and Conclusions, a quorum of the Board renders the following decision and Order:

IT IS THEREFORE ORDERED that Respondent:

- i. Pay a fine of four thousand dollars (\$4,000.00);
- ii. Pursuant to Section 61-1-4(G), bear all costs of the disciplinary proceeding, an amount totaling two thousand, fifty-nine and fifty-two cents (\$2,259.52);
- iii. Submit all payments within six (6) months from the date of this Order; and
- iv. Successfully complete thirty (30) hours of professional education in advanced sales comparison and cost comparison methods, none of which shall be credited toward other continuing education requirements, within twelve (12) months of this Order.

IT IS SO ORDERED.

May 9, 2014
DATE



DEAN ZANTOW, CHAIR
ON BEHALF OF THE BOARD

JUDICIAL REVIEW

This Order constitutes a final decision for purposes of initiating any contemplated judicial review pursuant to the provisions of NMSA 1978, Section 39-3-1.1. An aggrieved party has the right to judicial review of this Order by filing a notice of appeal under Rule 1-074 NMRA.

Service copies sent to:

Sally Galanter, Esq.
Administrative Prosecutor
PO Drawer 1508
Santa Fe, NM 87504-1508

Respondent:
Paul C. Hewett
P.O. Box 1140
Farmington, NM 87499

Certified Mail to Respondent No.: 7009 1680 0000 1953 6863
Return Receipt Requested

Date: May 12, 2014

STATEMENT OF RIGHTS

61-1-17. Petition for review.

A person entitled to a hearing provided for in the Uniform Licensing Act, who is aggrieved by an adverse decision of a board issued after hearing, may obtain a review of the decision in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

39-3-1.1. Appeal of final decisions by agencies to district court; application; scope of review; review of district court decisions.

A. The provisions of this section shall apply only to judicial review of agency final decisions that are placed under the authority of this section by specific statutory reference.

B. Upon issuing a final decision, an agency shall promptly:

(1) prepare a written decision that includes an order granting or denying relief and a statement of the factual and legal basis for the order;

(2) file the written decision with the official public records of the agency; and

(3) serve a document that includes a copy of the written decision and the requirements for filing an appeal of the final decision on:

(a) all persons who were parties in the proceeding before the agency; and

(b) every person who has filed a written request for notice of the final decision in that particular proceeding.

C. Unless standing is further limited by a specific statute, a person aggrieved by a final decision may appeal the decision to district court by filing in district court a notice of appeal within thirty days of the date of filing of the final decision. The appeal may be taken to the district court for the county in which the agency maintains its principal office or the district court of any county in which a hearing on the matter was conducted. When notices of appeal from a final decision are filed in more than one district court, all appeals not filed in the district court in which the first appeal was properly filed shall be dismissed without prejudice. An appellant whose appeal was dismissed without prejudice pursuant to the provisions of this subsection shall have fifteen days after receiving service of the notice of dismissal to file a notice of appeal in the district court in which the first appeal was properly filed.

D. In a proceeding for judicial review of a final decision by an agency, the district court may set aside, reverse or remand the final decision if it determines that:

(1) the agency acted fraudulently, arbitrarily or capriciously;

(2) the final decision was not supported by substantial evidence; or

(3) the agency did not act in accordance with law.

E. A party to the appeal to district court may seek review of the district court decision by filing a petition for writ of certiorari with the court of appeals, which may exercise its discretion whether to grant review. A party may seek further review by filing a petition for writ of certiorari with the supreme court.

F. The district court may certify to the court of appeals a final decision appealed to the district court, but undecided by that court, if the appeal involves an issue of substantial public interest that should be decided by the court of appeals. The appeal shall then be decided by the court of appeals.

G. The procedures governing appeals and petitions for writ of certiorari that may be filed pursuant to the provisions of this section shall be set forth in rules adopted by the supreme court.

H. As used in this section:

(1) "agency" means any state or local public body or officer placed under the authority of this section by specific statutory reference;

(2) "final decision" means an agency ruling that as a practical matter resolves all issues arising from a dispute within the jurisdiction of the agency, once all administrative remedies available within the agency have been exhausted. The determination of whether there is a final decision by an agency shall be governed by the law regarding the finality of decisions by district courts. "Final decision" does not mean a decision by an agency on a rule, as defined in the State Rules Act [14-4-1 NMSA 1978]; and

(3) "hearing on the matter" means a formal proceeding conducted by an agency or its hearing officer for the purpose of taking evidence or hearing argument concerning the dispute resolved by the final decision.

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Paul C. Hewett
P.O. Box 1140
Hewett & Associates
Farmington, NM 87499

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Your item was delivered at 11:22 am on May 13, 2014 in FARMINGTON, NM 87499		
May 13, 2014, 8:30 am	Out for Delivery	FARMINGTON, NM 87401
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