

BEFORE THE NEW MEXICO REAL ESTATE APPRAISERS BOARD

In the Matter of:

GERRY HERRERA

Unlicensed,

Respondent.

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No. REA 16-06-COM

DEFAULT ORDER

THIS MATTER came before the New Mexico Real Estate Appraisers Board (the "Board") on June 9, 2017, for a decision pursuant to provisions of the Uniform Licensing Act, NMSA 1978, §§ 61-1-1 through 61-1-33 ("ULA"). After due deliberation, the Board finds that:

1. The Board has complied with all notice and hearing provisions of the ULA and has afforded Respondent Gerry Herrera all applicable due process rights.

2. In accordance with NMSA 1978, § 61-1-4(D), the Board sent its Notice of Contemplated Action ("NCA") in Case number 16-06-COM, Exhibit 1, to Respondent at his/her last known address of record on March 17, 2017 via United States Postal Service Certified Mail, Return Receipt Requested, Article No.9171 9690 0935 0076 8949 51. Exhibit 2.

3. The NCA notified Respondent that the Board has before it sufficient evidence which, if not rebutted or satisfactorily explained at a formal hearing, justifies its imposition of a fine for unlicensed practice against Respondent, based on information that Respondent operates All-Inclusive Appraisals and Inspections (AIAI), an unlicensed business.

4. It is “unlawful for a person to engage in the business, act in the capacity of, advertise or display in any manner or otherwise assume to engage in the business of, or act as, a real estate appraiser trainee, a state licensed residential real estate appraiser or a state certified real estate appraiser without a license issued by the [real estate] board. A person who engages in the business or acts in the capacity of a real estate appraiser trainee, a state licensed residential real estate appraiser or a state certified real estate appraiser has submitted to the jurisdiction of the state and to the administrative jurisdiction of the board.” NMSA 1978, Sec. 61-30-4 (2014).

5. The NCA alleges that Respondent/AIAI drafted, prepared and published an “appraisal” for Marge and Darrell Pflaster on property located at 2206 Brillante St., Santa Fe, New Mexico, on February 14, 2016.

6. The NCA alleges that Respondent used the Uniform Residential Appraisal Report form for the “appraisal” for the Brillante Street property.

7. The NCA alleges that, at all times material to the “appraisal”, Respondent/AIAI possessed no registration, certification or licensure from the Board.

8. The NCA notified Respondent of his/her opportunity for a formal hearing to rebut the allegation that he/she engaged in unlicensed real estate appraisal practice and/or business in violation of NMSA 1978, Sec. 61-30- 10 (2014) (stating that it is unlawful for “any person in New Mexico to engage or attempt to engage in the business of developing or communicating real estate appraisals or appraisal reports without first registering as a real estate appraiser trainee or obtaining a license or certificate from the board under the provisions of the Real Estate Appraisers Act” and, further prohibiting a person from assuming or using a title, designation or abbreviation “likely to create the impression of a state certified real estate appraiser” without being registered, certified or licensed by the board).

9. The NCA notified Respondent of his/her right to a formal hearing to rebut the allegation that he/she has engaged in unlicensed real estate appraisal practice in violation of NMSA 1978, Sec. 61-1-3.2 (providing that the board may impose a civil penalty of \$1,000 against a person who "without a license, engages in a profession or occupation regulated by the board" and that the board may assess Respondent for administrative costs of an investigation and hearing).

10. The NCA notified Respondent that the Board will take action to impose a fine for unlicensed practice unless "within twenty (20) days after receipt of this Notice of Contemplated Action, the Respondent requests of the Board a formal hearing by certified mail, return receipt requested."

11. NMSA 1978, § 61-1-4(E) authorizes the Board to take the action contemplated in the NCA if a person does not mail a request for a hearing within the time and in the manner prescribed by law. It further provides that such action taken by the Board shall be final and not subject to judicial review.

12. Respondent did not request a hearing within the time and in the manner prescribed. See Exhibit 3 (Affidavit of Marcus Erickson).

13. Respondent has not otherwise communicated with the Board or offered any evidence rebutting or explaining the violations alleged in the NCA.

14. The Board is authorized to enforce its Order and payment of the penalty imposed through an action in the name of the state to enjoin the practice of engaging in real estate appraisal without a license. NMSA 1978, Sec. 61-30-22.

15. Therefore, unless Respondent timely pays the penalty Ordered below, the Board will turn to the Court to enjoin Respondent's unlawful unlicensed practice and enforce its penalty provision.

The Board enters the following Default Order:

CERTIFICATE OF SERVICE BY CERTIFIED MAIL

I, Kathleen Roybal do hereby certify that I mailed a true and correct copy of the above Default Order in Case No. 16-09 COM before the New Mexico Real Estate Appraisers Board to Respondent at his/her last known address of P.O. Box 65565, Albuquerque NM 87193, as shown by the records of the New Mexico Real Estate Appraisers Board this 5th day of June, 2017.
October

PRINTED NAME OF INDIVIDUAL CERTIFYING SERVICE

Kathleen Roybal

K Roybal

Signature

Return Receipt Request No: 91719690093501551570 14

EXHIBIT 1

BEFORE THE REAL ESTATE APPRAISERS BOARD
FOR THE STATE OF NEW MEXICO

In the Matter of:

GERRY HERRERA)
)
Unlicensed,) Case No. REA 16-06-COM
)
Respondent.)

NOTICE OF CONTEMPLATED ACTION

1. Respondent is not licensed under the Real Estate Appraisers Act, NMSA 1978, Section 61-30-1 *et seq.*, but is subject to the jurisdiction of the New Mexico Real Estate Appraisers Board (hereafter "Board") pursuant to NMSA 1978, Section 61-1-3.2.

2. The Board has sufficient evidence, which if not rebutted or explained, will justify the Board in taking action against Respondent pursuant to NMSA 1978, Sections 61-1-3.2 and 61-30-22©, and imposing fines in the amount of one thousand (\$1,000) dollars per violation and administrative costs pursuant to Section 61-1-3.2 and 61-30-22(C), NMSA 1978, on account of Respondent's violations of 16.62.16 (False Advertising) and 16.62.17 (Unlicensed Practice/Penalties), NMAC and NMSA 1978, Section 61-30-22 (C)(Civil penalties).

3. This action is based upon the following allegations: Respondent operates a business named All Inclusive Appraisals & Inspections ("AiAi"). Respondent holds himself out as home inspector and appraiser. Respondent drafted, prepared and published a real estate "appraisal" for Marge and Darrell Pflaster for a property located at 2206 Brillante St., Santa Fe, NM, on or about February 14, 2016. Respondent used Uniform Residential Appraisal Report form for the "appraisal" prepared on February 14, 2016. At all times material hereto, Respondent did not possess any registration,

certification or licensure from the Real Estate Appraisers Board for the purpose of preparing real estate appraisals..

4. Unless the Respondent, within twenty (20) days after service of this Notice of Contemplated Action, deposits in the mail a certified return receipt requested letter, addressed to the Board at the address below and containing a request for hearing, the Board will take the contemplated action.

5. The formal hearing, if requested, will be conducted pursuant to the New Mexico Uniform Licensing Act, NMSA 1978, Sections 61-1-1 *et seq.*

Pursuant to NMSA 1978, Section 61-1-8, the Respondent is specifically advised as follows:

A person entitled to be heard under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] shall have the right to be represented by counsel or by a licensed member of his own profession or occupation, or both; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefor to the board or hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the board or the hearing officer. All notice issued pursuant to Section 61-1-4 NMSA 1978 shall contain a statement of these rights.

B. Upon written request to another party, any party is entitled to:

- (1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and
- (2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

The party to whom such a request is made shall comply with it within ten days after the mailing or delivery of the request. No request shall be made less than fifteen days before the hearing.

C. Any party may take depositions after service of notice in accordance with the Rules of Civil Procedure for the District Courts. Depositions may be used as in proceedings governed by those rules.

THE STATE OF NEW MEXICO
REAL ESTATE APPRAISERS BOARD



Dean Zantow
Chair
Real Estate Appraisers Board
P.O. Box 25101
Santa Fe, New Mexico 87504

CERTIFICATE OF SERVICE BY CERTIFIED MAIL

Return Receipt Request No: 9171 9690 0935 0076 8949 51

I, Marcus Erickson, do hereby certify that I mailed a true and correct copy of the above provided Notice of Contemplated Action in Case No. REA16-16-1000 before the State of New Mexico Real Estate Appraisers Board to the Respondent/Licensee at his/her last known address of record, as shown by the records of the Real Estate Appraisers Board this 17th day of March, 2017.

Marcus Erickson
Print the Name of Individual Certifying Service

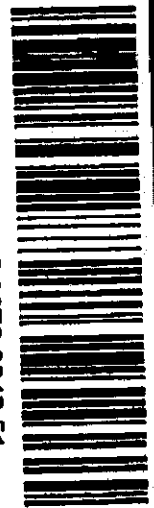
Compliance Officer / RLD
Title/Organization

Marcus Erickson
Signature

EXHIBIT 2

State of New Mexico
Regulation & Licensing Department
Real Estate Appraisers Board
PO Box 25101
Santa Fe, NM 87505

420.97



9171 9690 0935 0076 8949 51


Gerry Herrera
P.O Box 65565
ABQ, NM 87193

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- 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.

1. Article Addressed to

Gerry Herrera
P.O Box 65565
ABQ, NM 87193



9590 9402 2035 6123 4181 64

2. Article Number (Transfer from service label)
9171 9690 0935 0076 8949 51

COMPLETE THIS SECTION ON DELIVERY


A. Signature Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery

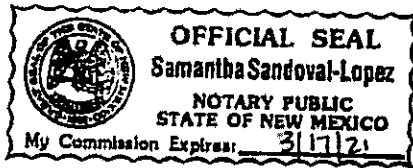
D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
- Adult Signature
 - Adult Signature Restricted Delivery
 - Certified Mail®
 - Certified Mail Restricted Delivery
 - Collect on Delivery
 - Collect on Delivery Restricted Delivery
 - Insured Mail
 - Insured Mail Restricted Delivery (over \$500)
 - Priority Mail Express®
 - Registered Mail™
 - Registered Mail Restricted Delivery
 - Return Receipt for Merchandise
 - Signature Confirmation™
 - Signature Confirmation Restricted Delivery

after the search, I found that no such record of registration, certification or licensure exists. I swear that the statements contained herein are true and correct to the best of my knowledge.


Marcus Erickson
New Mexico Real Estate Appraisers Board

SUBSCRIBED AND SWORN to before me on this 12 day of June, 2017, by Marcus Erickson, Compliance Officer for the New Mexico Real Estate Appraisers Board.




Notary Public

My Commission Expires:

March 17, 2021