

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

**GEORGIA REAL ESTATE
APPRAISERS BOARD,**

Petitioner,

v.

**JOHN ROBERT LAYNE, III,
Classification No. CR245774,**

Respondent.

**DOCKET NO. OSAH-GREAB-
SAN-1418433-117-OAKLEY**

Agency No. 10A0272



JAN 9 2014

INITIAL DECISION

K. Westray
Kevin Westray, Legal Assistant

A hearing was held in this matter on January 7, 2014, to consider the Petitioner's assertions in support of the imposition of sanctions against the Respondent's State Certified Residential Real Property Appraiser classification. The Georgia Real Estate Appraisers Board (the "Board") was represented by Alison L. Spencer, Senior Assistant Attorney General. The Respondent was not present.

Findings of Fact

1.

The record in this matter evidences that the Respondent was served with the Notice of Hearing on November 21, 2013. The Respondent's awareness of the hearing scheduled for January 7, 2014, was evidenced by his December 26, 2013, request for a continuance. The Respondent failed to appear after having received reasonable notice of the scheduled hearing.

2.

The Respondent is the holder of a State Certified Residential Real Property Appraiser classification. The Respondent has held this classification since September, 2007. Previously, the Respondent was the holder of a State Licensed Real Property Appraiser classification. The Respondent held this classification from 2002 until 2007. Initially, the Respondent was classified as a State Registered Real Property Appraiser in 2001. Exhibit P-1.

3.

In July, 2008, the Respondent conducted an appraisal and prepared an appraisal report for real property located at 155 Mockingbird Drive, Eatonton, Putnam County, Georgia (the "Mockingbird Drive Property"). The appraisal report prepared by the Respondent reported that the fair market value of the Mockingbird Drive Property was \$145,500.00 as of July 24, 2008 (the "Appraisal"). Exhibit P-3. Thereafter, a review appraiser determined that the fair market value of the Mockingbird Drive Property was \$58,000.00 as of July 24, 2008 (the "Review Appraisal"). Exhibit P-5.

4.

The Appraisal contained inconsistencies as well as errors and omissions of required information, including:

- a) The Appraisal represented that the Mockingbird Drive Property was owned by Armand Glenn Rivers. In fact, the Mockingbird Drive Property was jointly owned by Mr. Rivers and Tammy Lynn Paradise. Exhibits P-3, P-6 and P-6A; Testimony of Mr. Snelling.
- b) The Appraisal failed to report the recent prior sale of the Mockingbird Drive Property to the borrower. In fact, the Mockingbird Drive Property had been sold to the borrower four (4) months earlier, in April, 2008. Exhibits P-3, P-6 and P-6A; Testimony of Mr. Mosley and Mr. Snelling. Further, the Appraisal failed to report that the previous sale of the Mockingbird Drive Property involved a transaction that was one hundred percent (100%) financed with a one (1) year balloon payment to the creditor. Exhibits P-3, P-5 and P-7; Testimony of Mr. Mosley and Mr. Snelling.
- c) The Appraisal failed to report any improvements to the Mockingbird Drive Property or any external factors occurring within the four (4) months upon which the reported increase in value was based. Testimony of Mr. Snelling. In fact, no improvements had been made to the Mockingbird Drive Property during the previous four (4) month period. In fact, no relevant external factors occurred in the area of the Mockingbird Drive Property during the previous four (4) month period. Exhibit P-3; Testimony of Mr. Mosley.
- d) The Appraisal incorrectly described the location of the Mockingbird Drive Property as "located on the shores of Murder Creek/Lake Sinclair" and incorrectly reported that the Mockingbird Drive Property provides a "typical" view of a "creek/cove". In fact, the Mockingbird Drive Property was located on a site bordering Murder Creek which is over two (2) miles from the open, navigable waters of Lake Sinclair. In fact, the Mockingbird Property is located on a portion of Murder Creek which is shallow and muddy and at times unnavigable. In fact, real property located on Murder Creek is in a vastly different market area than real property located on the shores of Lake Sinclair. Exhibits P-3 and P-5; Testimony of Mr. Mosley and Mr. Mindemann.

- e) Inappropriately, the Appraisal was reported on a Land Appraisal Report which does not require the reporting of prior sales of the appraised property or prior sales of the properties used as comparable properties. Exhibits P-3 and P-5; Testimony of Mr. Snelling and Mr. Mosley.
- f) The Appraisal incorrectly reported that the Mockingbird Drive Property was "not mapped" on a FEMA map. Exhibits P-3 and P-5; Testimony of Mr. Mosley. In fact, an accurate description of the Mockingbird Drive Property would include the notation that a "small part of the lot near the edge of the creek is likely in the flood plain." Exhibit P-5; Testimony of Mr. Mosley.
- g) The Appraisal was based on the use of three (3) comparable properties which were not the most similar and proximate to the Mockingbird Drive Property. Testimony of Mr. Mosley; Exhibits P-3 and P-5; *see* Testimony of Mr. Mindemann. In fact, the Appraisal reported as comparable properties three (3) lakefront homes with superior amenities and which were located on the shores of Lake Sinclair. The properties reported as comparable in the Appraisal were homes which were sited with open views of Lake Sinclair and with access to lake-based recreation. Exhibit P-3; Testimony of Mr. Mosley; *see* Testimony of Mr. Mindemann. Contrary to these facts, the Respondent certified that he had "selected a minimum of three recent sales of properties most similar and proximate to the subject property for consideration in the sales comparison analysis." Exhibit P-3; *see* Testimony of Mr. Mosley.
- h) The Appraisal was based upon the inappropriate use of a comparable property which was situated on two (2) lots. Inappropriately, the Appraisal did not report that the property was located on two (2) lots and did not report the method by which the value of the reported value of a portion of the two (2) lots was derived. Exhibit P-3 and P-5; Testimony of Mr. Mosley.
- i) Inappropriately, the Appraisal failed to report previous sales within the past three (3) years of two (2) of the properties used as comparable properties. Exhibits P-3 and P-5; Testimony of Mr. Mosley.
- j) The Appraisal reported an estimated value of the Mockingbird Drive Property based upon a series of vastly inaccurate information including the use of comparable properties which were in fact not comparable to the Mockingbird Drive Property. The Appraisal was "very poor" and reported a predetermined value for the Mockingbird Drive Property. Testimony of Mr. Mosley; *see* Testimony of Mr. Mindemann.
- k) The Appraisal estimated the market value of the Mockingbird Drive Property to be \$145,500.00 as of July 24, 2008. Exhibit P-3. In fact, the market value of the Mockingbird Drive Property was \$58,000.00 as of July 24, 2008. Exhibit P-5; Testimony of Mr. Mosley. After exposure to the market for a period of fourteen (14) months, the value of the Mockingbird Drive Property was quantified as

\$50,000.00 by means of a sales transaction in July, 2011. Testimony of Mr. Mindemann.

The cumulative effect of these substantial inconsistencies and inaccuracies as well as errors and omissions of required information caused significant misrepresentations in the Appraisal and caused the communication of the Appraisal to be grossly misleading.

5.

On July 31, 2008, the lender to whom the Appraisal was submitted extended funds in reliance upon the estimation of market value reported in the Appraisal. Exhibit P-8; Testimony of Mr. Mindemann. Thereafter, the Mockingbird Drive Property was transferred by Deed Under Power of Sale in April, 2010. Exhibit P-9. Testimony of Mr. Mindemann. The lender realized a loss in the amount of in excess of \$75,859.00 in connection with its financing and refinancing of the Mockingbird Drive Property and was harmed by its reliance upon the Appraisal. Testimony of Mr. Mindemann.

Conclusions of Law

1.

The Respondent received reasonable notice of the hearing in this matter. The Respondent's failure to appear on the scheduled hearing date was not excused. The Respondent's failure to appear did not preclude the taking of evidence at the scheduled hearing. O.C.G.A. § 43-39A-21(b); Ga. Comp. R. & Regs. r. 616-1-2-.30(5)

2.

The Board has full power to revoke the classification of a real estate appraiser in the State of Georgia. O.C.G.A. § 43-39A-13.

3.

The hearing in this matter satisfied the requirements of O.C.G.A. § 43-39A-21.

4.

The Board has power to revoke the Respondent's classification as a state certified residential real property appraiser on the basis of the substantial errors of omission and commission which caused significant misrepresentations in the Appraisal. O.C.G.A. § 43-39A-18(b)(2); Ga. Comp. R. & Regs. r. 539-3-.02(1)(d) and r. 539-3-.02(1)(g).

5.

The Board has the power to revoke the Respondent's classification as a state certified residential real property appraiser on the basis of the numerous violations of the standards for the development and communication of the Appraisals. O.C.G.A. § 43-39A-18(b)(8); Ga. Comp. R. & Regs. § 539-3-.01(1)(f).

6.

The Board has the power to revoke the Respondent's classification as a state certified residential real property appraiser on the basis of the failure to exercise reasonable diligence in the development and communication of the Appraisal. O.C.G.A. § 43-39A-18(b)(9).

7.

The Board has the power to revoke the Respondent's classification as a state certified residential real property appraiser on the basis of the negligence and incompetence in developing and communicating the Appraisal, as well as the failure to exercise reasonable diligence and the negligence in communicating the Appraisal. O.C.G.A. § 43-39A-18(b)(9)-(10); Ga. Comp. R. & Regs. § 539-3-.02(1)(e).

8.

The Board has the power to revoke the Respondent's classification as a state certified residential real property appraiser on the basis of the Respondent's demonstration of incompetency to act as an appraiser in a manner which safeguards the interest of the public. O.C.G.A. § 43-39A-18(b)(15).

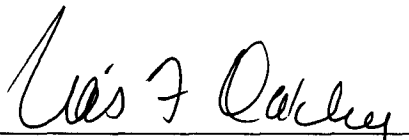
9.

The Board has the power to revoke the Respondent's classification as a state certified residential real property appraiser on the basis of the Respondent's failure to employ in a correct manner the methods and techniques that are necessary to produce an accurate and credible appraisal. Ga. Comp. R. & Regs. r. 539-3-.02(1)(c) and r. 539-3-.02(1)(c)(1)(d).

Decision

For all the above and foregoing reasons, the Respondent's classification as a State Certified Residential Real Property Appraiser in the State of Georgia is hereby **REVOKED**.

This 9th day of January, 2014.


Lois F. Oakley
Administrative Law Judge