

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

LYDELL C. HUNTER, :
Petitioner, : Docket No.:
 : OSAH-GREAB-DEN-1510856-60-Teate
v. :
 : Agency Reference No.: 14A0077
GEORGIA REAL ESTATE APPRAISER :
BOARD, :
Respondent. :



OCT 22 2014

INITIAL DECISION

I. INTRODUCTION

Kevin Westray

Kevin Westray, Legal Assistant

Petitioner Lydell C. Hunter (“Petitioner”) appeals the denial of his application for a State Certified Residential Real Property Appraiser classification by the Georgia Real Estate Appraiser Board (“the Board” or “Respondent”). The evidentiary hearing on this matter was held on September 25, 2014 before the undersigned Administrative Law Judge. Alison Spencer, Esq., Senior Assistant Attorney General, represented Respondent. Petitioner appeared pro se. For reasons indicated, the undersigned recommends that Petitioner’s application for State Certified Residential Real Property Appraiser classification be **GRANTED**.

II. FINDINGS OF FACT

1. Mr. Hunter is not currently licensed in any capacity with the Board. However, he is classified as a Certified Residential Appraiser in the State of Wisconsin and has maintained such classification since October 18, 2000. (Exhibit P-1).
2. In the State of Georgia, Mr. Hunter was previously classified as a State Registered Real Property Appraiser from 1997 until 2000 and later as a Certified Residential Real Property Appraiser from 2000 until 2002. (Exhibit R-1).
3. On his State Registered Real Property Appraiser Application submitted to the Board on or about December 23, 1997, Mr. Hunter answered “No” to the following question (hereinafter “the prior conviction question”):

Have you ever been convicted of, pled nolo contendere to, or been granted first offender treatment upon being charged with (1) any criminal offense other than a traffic violation or (2) any traffic violation that involved driving under the influence of alcohol or drugs, homicide or feticide by vehicle, fleeing the scene of an accident, attempting to elude a police officer, or impersonating a law enforcement officer?

(Exhibit R-4).

4. On or about September 18, 1992, when Mr. Hunter was eighteen years old, he pled guilty to and was convicted of misdemeanor theft in the Circuit Court of Milwaukee County, Wisconsin. He was sentenced to two years of probation and required to complete one hundred hours of community service.¹ (Exhibits R-3, R-3A).

5. The Board approved Mr. Hunter's application and, beginning in December 31, 1997, he was classified as a Registered Real Property Appraiser. (Exhibit R-1).

6. Mr. Hunter submitted a State Certified Residential Real Property Appraiser application to the Board on or about November 7, 2000. He answered "No" to the prior conviction question on the application. His State Certified Residential Real Property Appraiser application was approved on November 8, 2000. Mr. Hunter again failed to disclose his 1992 conviction on Renewal Applications submitted to the Board on or about February 26, 2001 and February 22, 2002.

7. Mr. Hunter was subject to disciplinary action by the Board in 2002 for his conduct involving the appraisal of two properties. On or about July 18, 2002, the Board, by and through a Consent Order, sanctioned Petitioner for:

- (a) Failing or refusing to exercise reasonable diligence in developing real estate appraisals and preparing real estate appraisal reports in violation of O.C.G.A. § 43-39A-18(a)(9);
- (b) Negligence and incompetence in developing real estate appraisals and preparing real estate appraisal reports in violation of O.C.G.A. § 43-39A-18(a)(10);
- (c) Violating the standards for the development and communication of real estate appraisals promulgated by the Board in violation of § 43-39A-18(a)(8);
- (d) Committing substantial error of omission and commission which significantly affected real estate appraisals in violation of Substantive Regulation #539-3-.02(1)(d); and
- (e) Rendering real estate appraisal services in a careless and negligent manner in violation of Substantive Regulation #539-3-.02(1)(f).

(Exhibit R-8).²

8. Pursuant to the terms of the Consent Order, Mr. Hunter agreed to pay a fine of \$2,000.00 and complete a Board-approved course on the Uniform Standards of Professional Appraisal Practice ("USPAP") by October 1, 2002. He was advised in the Consent Order that his failure to comply with the agreed-upon terms would result in the revocation of his Real Estate Appraiser classification without further notice or hearing. (Exhibit R-8).

¹ State of Wisconsin v. Lydell L. Hunter, Criminal Action Number F 921967, Circuit Court of Milwaukee County, Wisconsin.

² In the Matter of Lydell Cisero Hunter, Case Nos. 01A0154 and 02A0153, Before the Georgia Real Estate Appraisers Board.

9. In a letter to the Board dated September 27, 2002, Mr. Hunter requested an extension of the deadline to comply with the terms of the Consent Order. The Board granted his request, and extended the deadline to October 15, 2002. After Mr. Hunter failed to pay the \$2,000.00 fine or submit proof of completion of the USPAP course by the termination of the October 15, 2002 deadline, the Board revoked his State Licensed Real Property Appraiser classification. (Exhibit R-11).

10. Mr. Hunter submitted an application seeking classification as a State Certified Residential Real Property Appraiser on or about April 24, 2009. The Board denied his application after a determination that he had not complied with the terms of the July 18, 2002 Consent Order. Mr. Hunter eventually completed the USPAP course and paid the \$2,000.00 fine in June 2009. (Testimony of Lydell Hunter; Exhibit R-12).

11. On February 5, 2014, Mr. Hunter submitted an application to the Board seeking classification as a State Certified Residential Real Property Appraiser (hereinafter "February 2014 Application"). On the February 2014 Application, Petitioner answered "Yes" to the prior conviction question. Petitioner also answered "Yes" to a question that read as follows: "Have you ever been disciplined by the Georgia Real Estate Commission or Appraisers Board or any other state or federal licensing agency or authority which regulates any profession." (Exhibit R-2).

12. Mr. Hunter also included affidavits from professional contacts, all of whom attested to his excellent character and reputation in the real estate community, with his February 2014 Application. In addition, Mr. Hunter submitted his transcript from the University of Wisconsin-Milwaukee, where he graduated in May 2013, academic awards, and documentation of his continued licensure and practice as a real estate appraiser in Wisconsin. (Exhibit R-2).

13. The Board considered Mr. Hunter's application during an April 2014 meeting. After reviewing his application and the attached documentation, the Board voted to deny his application and to not issue a classification to him. The Board advised Mr. Hunter of its determination in a letter dated April 23, 2014, whereupon Mr. Hunter filed a timely request for a hearing. (Exhibit R-9).

14. At the hearing of this matter, several of Mr. Hunter's colleagues in the real estate industry testified that he maintains an excellent character for honesty, truthfulness, integrity, and competence. Tamairo Moutry, who holds a broker's license in Georgia and Wisconsin and has employed him for over one year to work in her Wisconsin practice, testified that Mr. Hunter is a trustworthy and ethical employee. She further testified that she planned to employ him in her Georgia practice if he is granted an appraiser classification in Georgia. (Testimony of Tamairo Moutry; Testimony of Sandra Poss; Testimony of Rasheeda Ramos; Testimony of Paul Walker).

III. CONCLUSIONS OF LAW

1. As an applicant for classification as a State Certified Residential Real Property Appraiser, Mr. Hunter bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2. Georgia law provides that the Board shall grant appraiser classifications “only to persons who bear a good reputation for honesty, trustworthiness, integrity, and competence to transact real estate appraisal activity in such manner as to safeguard the interests of the public and only after satisfactory proof of such qualifications has been presented to the board.” O.C.G.A. § 43-39A-14 (2004).

3. The Board may issue classifications to applicants who have been convicted for the offense of theft only if:

- (A) The time periods identified in paragraph (1.1) of this subsection have passed since the applicant was convicted, sentenced, or released from any incarceration, whichever is later;³
- (B) No criminal charges are pending against the applicant; and
- (C) The applicant presents to the board satisfactory proof that the applicant now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact real estate appraisal activity in such a manner as to safeguard the interest of the public.

O.C.G.A. § 43-39A-14(b)(2) (2014).

4. In the present case, Mr. Hunter’s criminal conviction for theft took place in 1992, approximately twenty-two years prior to his current application. He satisfied all of the requirements of his sentence and no criminal charges are pending against him. He presented satisfactory proof that he bears a good reputation for honesty, trustworthiness, integrity, and competence through the supportive testimony and affidavits of his colleagues and documentation of his continued practice as a certified residential appraiser in Wisconsin, where he has never been subject to disciplinary action in fourteen years of practice. Accordingly, Mr. Hunter’s character for good reputation has been clearly restored since his 1992 conviction.

5. An applicant’s false statement of material fact on an application may, in itself, be sufficient grounds for refusal of appraiser classification. O.C.G.A. § 43-39A-14(d) (2014). Mr. Hunter’s indication that he had no prior convictions on his initial application and renewal applications constituted false statements of material fact. Upon the first such application, he was still quite young had just moved from Wisconsin, and incorrectly opined that its disclosure was not

³ For applicants with a single conviction, at least two years must have passed since the applicant “satisfied all terms and conditions of any sentence imposed . . . before making application for licensure or approval.” O.C.G.A. § 43-39A-14(1.1) (2014).

required. However, denial of his application is not mandatory. Petitioner truthfully indicated on his current application that he had previously been convicted of a crime. Moreover, he submitted overwhelming evidence that he maintains an excellent reputation “honesty, trustworthiness, integrity, and competence to transact real estate appraisal activity.” Petitioner has never been subject to discipline in the State of Wisconsin, where he has worked as an appraiser since 2000. Petitioner’s colleagues testified that they know him to be trustworthy, competent, and to have outstanding moral character. Therefore, Petitioner has shown, by a preponderance of the evidence, that the false statements on his prior applications should not bar his appraiser classification.

6. Prior disciplinary action by any occupational licensing body against an applicant’s license or classification may, in itself, be sufficient ground for refusal of an appraiser classification. O.C.G.A. § 43-39A-14(h) (2014). If an applicant’s license or classification has previously been revoked, the Board may issue an appraiser classification only if:

- (1) At least five years have passed since the date that the applicant's occupational registration, license, or certification was revoked or surrendered;
- (2) No criminal charges are pending against the applicant at the time of application; and
- (3) The applicant presents to the board satisfactory proof that the applicant now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact real estate appraisal activity in such a manner as to safeguard the interests of the public.


Id.

7. Mr. Hunter’s State Certified Residential Real Property Appraiser classification was revoked by the Board on October 15, 2002, more than eleven years prior to his current application. No criminal charges are pending against him. As discussed *supra*, Mr. Hunter has proved by a preponderance of the evidence that he now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact real estate appraisal activity in such a manner as to safeguard the interests of the public. Accordingly, the Board is not prohibited from granting Mr. Hunter’s application. Further, the evidentiary record demonstrates that Mr. Hunter’s application should be granted. Although Mr. Hunter failed to timely meet the terms of the Consent Order, giving rise to the revocation of his classification, he has since complied with the terms of the Consent Order by completing the 15-hour USPAP course and paying the \$2,000.00 fine. Moreover, Mr. Hunter has demonstrated significant improvement in the years since the conduct that gave rise to the sanction by graduating from college and obtaining additional experience and expertise pursuant to his career as an appraiser in Wisconsin. Accordingly, Mr. Hunter has proved that the prior disciplinary action against his classification should not foreclose the grant of his current application.

IV. DECISION

In accordance with the foregoing Findings of Fact and Conclusions of Law, it is the recommendation of the undersigned that Mr. Hunter's application for classification as a State Certified Residential Real Property Appraiser be **GRANTED**.

SO ORDERED, this 21st day of October 2014.


Steven W. Teate
Administrative Law Judge