

3.

On or about October 15, 2009, a complaint was filed against Respondent pertaining to a real property appraisal he conducted. The Board opened an investigation on Respondent and referred the results of that investigation to the Board's legal counsel. (Ex. P-2; Testimony of Shonda Mason.)

4.

On or about February 1, 2012, while the above-referenced investigation was still pending, Respondent allowed his State Certified Residential Real Property Appraiser classification to lapse. Pursuant to O.C.G.A. § 43-39A-14(g), the Board issued an order (the "Final Order") revoking Respondent's State Certified Residential Real Property Appraiser classification. The Final Order was served on Respondent at his address of record on February 22, 2012. (Ex. P-3, P-4, P-5; Testimony of Mason.)

5.

Respondent failed to submit a written request for hearing subsequent to service of the Final Order on February 22, 2012. The Final Order revoking Respondent's State Certified Residential Appraiser classification became final on March 2, 2012. (Testimony of Mason.)

6.

Following the March 2, 2012, revocation of Respondent's State Certified Residential Real Property Appraiser classification, staff working on behalf of the Board failed to properly update the Board's records in the licensing database to reflect the change in status from "lapsed" to "revoked." (Testimony of Mason; Testimony of Frank Ambio.)

7.

On or about October 21, 2013, Respondent submitted an Appraiser Reinstatement Application to the Board seeking to have his State Certified Residential Real Property Appraiser classification reinstated. Respondent requested that his classification be placed on inactive status. (Ex. P-6; Testimony of Ambio.)

8.

However, pursuant to state law, an individual is ineligible to become re-classified as a real estate appraiser until five years after the date that the classification was revoked. Thus, Respondent is ineligible to have his State Certified Residential Real Property Appraiser classification reinstated until March 2, 2017. (Testimony of Ambio.)

9.

On October 21, 2013, Respondent was inadvertently allowed to reinstate his State Certified Residential Real Property Appraiser classification. (Ex. P-6, P-7; Testimony of Ambio.)

10.

On January 1, 2014, Respondent submitted an online License Renewal Application to the Board regarding his State Certified Residential Real Property Appraiser classification. Respondent was allowed to renew his classification. (Ex. P-7; Testimony of Ambio.)

11.

On January 6, 2014, Respondent submitted an Appraisal Change Application to the Board seeking to reactivate his State Certified Residential Real Property Appraiser classification. Respondent was allowed to reactivate his classification. (Ex. P-8; Testimony of Ambio.)

12.

Subsequent to the submission of the Appraisal Change Application referenced above, staff of the Board discovered that Respondent had erroneously been allowed to reactivate a State Certified Residential Real Property Appraiser classification which had been revoked. (Testimony of Ambio.)

II. CONCLUSIONS OF LAW

1.

The Commission seeks to sanction Respondent by revoking his classification. Therefore, the Commission bears the burden to prove, by a preponderance of the evidence, that Respondent's Certified Residential Real Property Appraiser classification should be revoked. Ga. Comp. R. & Regs. 616-1-2-.07(1), -.21(4).

2.

When a contested case is referred to the Office of State Administrative Hearings, the administrative law judge assigned to the case has "all the powers of the referring agency" O.C.G.A. § 50-13-41(b). The evidentiary hearing is *de novo*, and the administrative law judge "shall make an independent determination on the basis of the competent evidence presented at the hearing." Ga. Comp. R. & Regs. 616-1-2-.21(1).

3.

The Board has the full power to discipline appraisers in any manner permitted by the governing chapter. O.C.G.A. § 43-39A-13. Appraiser classifications shall be granted 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. O.C.G.A. § 43-39A-14(a).

4.

Any licensee who allows a classification to lapse during the pendency of an investigation may have that classification revoked by order of the Board. O.C.G.A. § 43-39A-14(g). The order becomes final ten days after the order is served on the licensee unless a written request for hearing is submitted to the Board before the expiration of the ten day period. O.C.G.A. § 43-39A-14(h). Whenever a classification has been revoked because it was allowed to lapse during the pendency of an investigation, the appraiser classification may only be reissued if “[a]t least five years have passed since the date that the applicant's occupational registration, license, or certification was revoked or surrendered.” O.C.G.A. § 43-39A-14(h).

5.

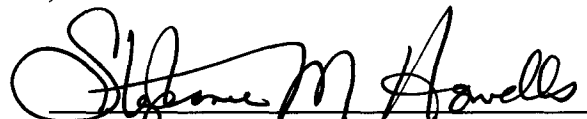
The Board proved, by a preponderance of the evidence and as detailed in the Findings of Fact, above, that the Respondent allowed his Certified Residential Real Property Appraiser classification to lapse during the pendency of an investigation and that his appraisal classification was properly revoked pursuant to the Final Order. While the Board admittedly made a clerical error in failing to update the Board’s records to reflect that Respondent’s classification had been revoked and made subsequent errors in allowing Respondent to reinstate, renew and reactivate his State Certified Residential Real Property Appraiser classification, these errors did not bestow any substantive rights upon the Respondent when reinstatement was prohibited by valid law. *See Corey Outdoor Adver., Inc. v. Bd. of Zoning Adjustments*, 254 Ga. 221, 225-26 (1985) (regarding a sign permit issued in violation of a valid ordinance); *see also 21st Century Telesis Joint Venture v. FCC*, 318 F.3d 192, 202 (D.C. Cir. 2003) (holding a party may not “turn [an agency’s] clerical error into a windfall of ‘rights it would not otherwise enjoy’” (quoting *Oregon v. FCC*, 102 F.3d 583, 586 (D.C. Cir. 1996))). In fact, because Respondent’s classification was

erroneously reinstated in contravention of Georgia Code section 43-39A-14(h), it was “void, of no effect, and subject to revocation.” *Corey Outdoor Adver.*, 254 Ga. at 225-26. Moreover, the Respondent’s expenditure of sums in reliance upon the Board’s error will not raise an estoppel against revocation. *Id.* at 226. Thus, the Board has established sufficient grounds for the revocation of Respondent’s erroneously reinstated State Certified Residential Real Property Appraiser classification.

III. DECISION

For the foregoing reasons, Respondent’s State Certified Real Property Appraiser classification is hereby **REVOKED**.

SO ORDERED, this 18th day of December, 2014.


STEPHANIE M. HOWELLS
Administrative Law Judge