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# Appraisal Subcommittee

*Federal Financial Institutions Examination Council*

June 28, 2006

Peter D. Kovach, Prosecuting Attorney  
Prosecution Division  
Commonwealth of Pennsylvania  
Governor's Office of General Counsel  
Department of State  
Office of Chief Counsel  
2601 North 3<sup>rd</sup> St., P.O. Box 2649  
Harrisburg, PA 17105-2649

Subject: *Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs v. Gina DiStefano/Zwanziger*

Dear Mr. Kovach:

This letter responds to your May 23, 2006 letter responding to our May 10, 2006 letter concerning the above matter, as supplemented by your June 15 and 23, 2006 emails to us.

In our May 10<sup>th</sup> letter, we concluded that, based on the representations in your May 23<sup>rd</sup> letter, the certified residential appraiser credential in the case under consideration was issued in error and was not supported by a successfully completed examination as required by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, ("Title XI") and the Appraiser Qualifications Board's ("AQB") certification criteria. The fact that the testing provider erroneously applied an incorrect cut score did not change the fact that the appraiser failed to obtain the score determined by the exam provider to be necessary to demonstrate competency. As a result, the appraiser's certified credential was not valid under Title XI for federally related transaction purposes.

As a result, we instructed the Pennsylvania State Board of Certified Real Estate Appraisers ("Board"), among other things, to:

- Notify the appraiser that the certified residential credential that she holds is not valid for federally related transactions. In your May 23<sup>rd</sup> letter, you stated that, because of due process considerations, you could not notify the appraiser that the certified credential that she holds is not valid for federally related transactions. You noted, however, that you had provided a copy of our May 10<sup>th</sup> letter to the appraiser's attorney, effectively putting her on notice of the ASC's position;
- Provide the appraiser a reasonable time period, not to exceed 60 days from the date of this letter, in which the appraiser may re-take the appropriate examination. In your June 15<sup>th</sup> email, you advised us that the appraiser now has chosen to take the examination on August 12, 2006, which is beyond our July 9<sup>th</sup> deadline for that action;
- Based on the examination results, validate or revoke the existing credential. In your communications, you noted, in essence, that the State must follow its due process procedures because the appraiser, in fact, has been issued a certification by the State; and

- Not later than 60 days from the date of this letter, notify the ASC regarding whether the appraiser has re-taken the examination and whether she successfully completed the examination (using the appropriate cut score). The July 9<sup>th</sup> deadline for this action has passed, and the appraiser has not yet taken the examination.

We also discussed what the Board would need to do should the appraiser not choose to re-take the certification examination. As noted above, the affected appraiser now has chosen to take the examination, which is scheduled for August 12, 2006, and further discussion of this alternative no longer is relevant.

We additionally noted that other appraisers might have been issued certified credentials in error based on the testing service applying an incorrect cut score. We instructed the Board to determine, within two weeks from your receipt of our May 10<sup>th</sup> letter, whether other certified residential or certified general appraisers were qualified using the incorrect cut score and to notify us of the results of that review as soon as possible. We advised the Board that, if other appraisers received certified credentials as a result of applying an incorrect cut score, the Board would need to follow the same notification, re-testing, and validation procedures discussed in our May 10<sup>th</sup> letter for these appraisers. In your May 23<sup>rd</sup> letter, you stated that five other appraisers were incorrectly qualified due to the use of the incorrect cut score. These appraisers, however, chose to take the appropriate examination and passed it using the correct cut score. Therefore, no further remedial action is needed.

In your June 23<sup>rd</sup> email, you noted, and we acknowledge, that, until the Board issues an order finding that the appraiser is not qualified to hold a certification, “there are simply allegations against her. . . .” You also stated in your email that, “[p]erhaps the ASC has powers or authority to unilaterally remove her authority to perform federally related transactions or de-list her from the registry based on the presented allegations but without an actual finding by the Board.”

As you know, the ASC maintains a National Registry of State Certified and Licensed Appraisers, as required by Title XI. Only licensed or certified appraisers whose information appears on “active” status on the National Registry are authorized to perform appraisals in connection with federally related transactions. Because the National Registry lists licensed appraisers who do not meet AQB criteria and yet qualify to perform appraisals in federally related transactions, the ASC decided in July 2002, to modify the National Registry and the ASC Web site to allow Registry and Web site users to distinguish between Licensed appraisers who have documented conformance with the criteria from those who have not. The change was made because several lenders and other users of appraisal services asked how they could determine whether an individual Licensed appraiser meets the criteria.

To help ensure that users of appraisal services were able to make fully informed employment and assignment decisions regarding Licensed appraisers, the ASC added a new data field to appraiser records in the Registry. The new field was placed on every appraiser record (*i.e.*, Licensed, Certified Residential, Certified General, and Transitional) and is titled, “Conforms to AQB Criteria.” The following codes populated the data field: “YES; NO; UNKNOWN.” “Yes” or “No” are self-explanatory. In our July 2002 letter, we stated that “Unknown” would be used when a State does not submit the necessary information or where the ASC has reasonable cause to believe that submitted data is inaccurate (in which case we will contact the State for data validation purposes). Since that time, we also have used this field when, based on credible

information, we have reasonable cause to believe that it is likely that an appraiser may not meet AQB criteria.

Based on your representations in written letters and emails, we have reasonable cause to believe that Gina DiStefano/Zwanziger's AQB compliant status currently is unknown. Therefore, until the State informs us that: (1) she has passed the examination scheduled for August 12<sup>th</sup>, or (2) the State has arrived at a final administrative decision in the pending disciplinary action against the appraiser respecting whether she qualifies for certification, we will list the appraiser's AQB-compliant status on the National Registry as "unknown."

Please contact us if you have further questions.

Sincerely,

Ben Henson  
Executive Director