



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
REAL ESTATE APPRAISER COMMISSION
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March 8, 2004

CERTIFIED MAIL

Mr. Steven D. Fritts, Chairman
Appraisal Subcommittee
2000 K Street, NW, Suite 310
Washington, D.C. 20006

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As the Chairman of the Tennessee Real Estate Appraiser Commission, I am responding to your January 29, 2004 correspondence relative to your findings after your December 5 through 8, 2003 field review of our regulatory program.

- (1). Finding: Tennessee does not always conform to Appraiser Qualifications Board ("AQB") criteria when upgrading appraiser trainees to State certified or State licensed credentials.**

More specifically, you indicated that the AQB's *Real Property Appraiser Qualification Criteria and Interpretations of Criteria* effective July 1, 2000, state that an applicant who has successfully completed the state licensed or certified examination must upgrade from a registered trainee to a licensed or certified appraiser within twenty-four (24) months after successfully completing the examination. In your review of our files, you determined that six (6) applicants were upgraded to certified residential appraisers and four (4) were upgraded to licensed appraisers after twenty-four (24) months had elapsed from the date that they successfully completed his or her respective examinations. Based on your finding, you then requested that the Commission address this problem by reviewing all past records to ensure that the examinations were passed within the appropriate time frame, requiring that any certified appraisers who do not meet this AQB criterion take the appropriate examination, downgrading the certified appraisers to a registered trainee or state licensed appraiser within sixty (60) days from January 29, 2004, implementing procedures to ensure that the Commission conforms to this criterion

in the future, and keeping the subcommittee informed of the Commission's progress in addressing this concern.

The Commission staff has already checked the Commission's records to ensure that all of the appraisers who were certified after July 1, 2000, became certified within twenty-four (24) months from the date that the applicant successfully completed the certification examination. Additionally, the Commission has already implemented procedures to ensure that all certified appraiser applicants will become certified within twenty-four (24) months of successfully completing the examination and we will keep the subcommittee informed of our progress in addressing this issue.

However, we would like to express our concerns and objections to the request that we downgrade the six (6) certified appraisers who became certified beyond the twenty-four (24) month period from the date that the applicant's successfully completed the certification examination. Please note that when the Commission staff reviewed their files they found six (6) certificate holders that did not comply with the AQB criteria; however, they were not the same six (6) individuals that the field review committee found. I have attached a copy of the name of the certificate holders that the Commission staff discovered as being noncompliant. (Exhibit "A").

In any event, your request to downgrade the six (6) applicants without a formal hearing raises some Constitutional issues, particularly the deprivation of procedural due process, which is the notice and opportunity to be heard in order to protect a person's property and liberty interests. U.S. Const. amend. XIV and Tenn. Const. art. I, § 8. The six (6) certified appraisers have a property interest in their certification which is granted by the Commission. In the case of Martin v Sizemore 78 S.W.3d 249 (2000), the Court held that "...the right to engage in a chosen profession or occupation without unreasonable governmental interference or deprivation is both a property and a liberty interest protected by the Due Process Clause of the Fourteenth Amendment and Tenn. Const. art. I, § 8." The Martin Court (citing Barry v Barchi 443 U.S. 55, 64 & n. 11, 99 S. Ct. 2642, 2649 & n. 11, 61 L.Ed.2d 365 (1979), further held that "A professional license, issued by the State, which can be suspended or revoked only upon a showing of cause is a constitutionally protectable property interest because the holder of a license has a clear expectation that he or she will be able to continue to hold the license absent proof of culpable conduct." The Tennessee Uniform Administrative Procedures Act incorporates these Constitutional considerations by providing that a licensee or certificate holder is entitled to a contested case proceeding if his or her license or certificate will be revoked or suspended. Tenn. Code Ann. § 4-5-320. The Commission not only has the authority to revoke or suspend a licensees or certificate holder's license for good cause, but it also has the authority to restrict that license or certificate pursuant to Tenn. Code Ann. § 62-39-326. The AQB's directive to downgrade the six (6) certified appraisers is placing a restriction on

their certifications. If the six (6) certificate holders are downgraded to state licensed appraiser or registered trainee, then they cannot appraise the same types of properties with the same transactional values as is permitted with a certification.

More specifically, Tennessee statutes provide that the "agency" as defined in Tenn. Code Ann. § 4-5-102(2), meaning the Commission, is the body that determines if action should be taken to revoke, suspend or restrict an individual's license or certificate. Tenn. Code Ann. § 4-5-320(b) states that, "When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, *the existing license does not expire until the application has been finally determined by the agency...* (emphasis added)" Tenn. Code Ann. § 4-5-320(c) further states that "No revocation, suspension, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license."

On a more practical level, the Commission's primary duty and function is to protect the health, safety and welfare of the citizens of Tennessee as the regulatory agency for the real estate appraiser profession. The Commission queries how these six (6) certified appraisers are a threat to the health, safety and welfare of Tennessee citizens. They are not unqualified or incompetent appraisers simply because they became certified more than twenty-four (24) months after they successfully completed their certification examination. The Commission needs to have good cause to revoke, suspend or restrict an individual's license or certification. To the best of the Commission's knowledge, there are no pending allegations of wrongdoing against any of these six (6) certified appraisers to warrant any disciplinary action against them. In fact, there are no past or pending complaint against any of the six (6) certified appraisers. How then, can the Commission downgrade these appraisers when there is no good cause shown, which will ultimately restrict ability to make a living and to practice their profession?

The six (6) certified appraisers cannot be deprived of the property interest in their certifications, which is their livelihood, without good cause and without affording them their Constitutional due process right of notice and an opportunity to be heard before the Commission. The Commission can only revoke, suspend or restrict a certified appraiser's certification on the grounds that are enumerated in statute pursuant to Tenn. Code Ann. §62-39-326, none of which are failing to comply with AQB criteria.

If the ASC does not agree with the Constitutional and practical considerations that we have detailed in this letter and the ASC still wants the Commission to downgrade the six (6) applicants, then we would respectfully request additional time to comply with that request.

(2). Finding: Tennessee regulations are not consistent with current AQB criteria.

You indicated in your letter that the basis for this finding was that our current rules do not reflect the change in the AQB criteria for education. Specifically, you indicated that our rules do not state that all applicants must take a fifteen (15) hour National Uniform

Standards of Professional Appraisal Practice ("USPAP") course, or its equivalent that is conducted by an AQB certified USPAP instructor and that our rules permit applicants to receive appraisal experience credit for textbook authorship, or publishing nonresidential appraisal journal articles, which is contrary to AQB criteria.

In response to these assertions, the Commission's amended rules which will soon be effective, do state that all applicants must take a fifteen (15) hour USPAP course which is conducted by an AQB certified USPAP instructor, the only word that is missing in our rules is the word "National". We also realized upon your inspectors' review of our amended rules, that we do have a provision in our rules which states that the Commission may grant an applicant experience credit for textbook authorship and published appraisal journal articles, which is contrary to AQB criteria. We acknowledge these inconsistencies with the AQB criteria and we will correct it with our next rulemaking hearing. Pending a rulemaking hearing, we can address these issues in the Commission's policies.

As requested, we will notify the subcommittee when the pending rules become effective and all other future rules that address the noted deficiencies. Also, in accordance with your request, I have enclosed a copy of the Notice of Rulemaking Hearing, which was conducted on September 18, 2003; the rules are currently with our Attorney General's office. (Exhibit "B").

(3). Finding: Some complaints were not resolved in a timely manner.

You indicated in your letter that the Commission has a backlog of twenty-five (25) cases that were opened between 1996 and 2001. It is our recollection that those cases were slated for a formal hearing. The Commission, staff and our staff attorney have already addressed this problem by scheduling a formal hearing for each Commission meeting beginning with the February, 2004 meeting. Our staff attorney intends to schedule a formal hearing for each subsequent Commission meeting until they are all resolved. Also, I have enclosed a copy of our list of open cases to demonstrate the progress that we have made in addressing all complaints in a more timely manner. (Exhibit "C"). We will comply with the AQB's request to submit quarterly complaint case logs to update the AQB on the status of each case.

(4). Finding: Some complaints files lacked adequate documentation regarding the Commission's reasons underlying its final decisions.

You indicated in your letter that the Commission's enforcement files lacked documentation about the reasons for the disciplinary action taken by the Commission. As

Pipkin to Fritts Response to AQB Subcommittee Findings

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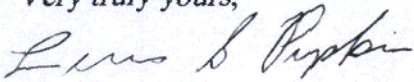
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a result, you requested that the Commission add to each enforcement file documentation supporting the reasons for the disciplinary actions taken, identifying the staff, Commission members involved in the review of the file and/or the decision-making

process. In response to this concern, the Commission staff has already begun the process of adding documentation to the files by stating the allegations, the name of the reviewer, the results of the review and the ultimate outcome and the reason for that outcome by placing a portion of the Commission meeting minutes relative to each particular case, in each case file.

If you have any further questions or concerns or need any additional information, then please do not hesitate to contact the Commission office. Thank you for your attentions and courtesies.

Very truly yours,



Lewis S. Pipkin

Chairman of the Tennessee Real Estate Appraiser Commission

CC: Sandy Moore, Administrative Director of the Tennessee Real Estate Appraiser Commission