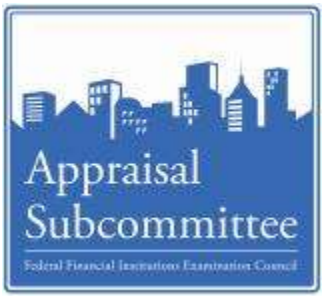
Closed Session Cover Page

March 9, 2016



Appraisal Subcommittee
Federal Financial Institutions Examination Council

Agenda

Date: **March 9, 2016**
Time: **Immediately Following the Open Session**
Location: **FRB, International Square**
1850 K Street, NW
Washington, DC 20006

Closed Session

- **State Preliminary Investigation** **A. Ritter**

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December 30, 2015

VIA FEDEX OVERNIGHT AND EMAIL (jim@asc.gov, alice@asc.gov, dan@asc.gov)

Jim Park, Executive Director
Alice Ritter, General Counsel
Dan Rhoads, Attorney-Advisor
2000 K Street NW
Suite 310
Washington, D.C. 20006

Re: ***Marshall Jones v. Georgia Real Estate Appraiser Board and Applied Measurement Professionals, Inc.***
Docket No. _____
Appraisal Subcommittee

Dear Mr. Park, Ms. Ritter, and Mr. Rhoads:

Enclosed, please find a Complaint filed under 12 C.F.R. § 1102, *et seq.* against the Georgia Real Estate Appraiser Board and Applied Measurement Professionals, Inc. My client requests that a proceeding be conducted regarding the matters alleged.

If you have any questions, please contact me.

Best regards,

Jon David W. Huffman
Attorney for Complainant

Enclosures

cc: William L. Rogers, Jr., Georgia Real Estate Commissioner (via certified mail)
Applied Measurement Professionals, Inc. (via certified mail)

APPRAISAL SUBCOMMITEE
FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

MARSHALL JONES,	)	
	)	
Complainant,	)	Docket No.
	)	
v.	)	_____
	)	
GEORGIA REAL ESTATE APPRAISER BOARD and APPLIED MEASUREMENT PROFESSIONALS, INC.,	)	
	)	
Respondents.	)	

COMPLAINT UNDER 12 C.F.R. 1102, *et seq.*

Complainant Marshall Jones shows the Appraisal Subcommittee ("ASC") as follows:

Jurisdiction and Venue

1. As a member of the public and Georgia licensed appraiser, Marshall Jones states that the Georgia Real Estate Appraiser Board (the "Board") and Applied Measurement Professionals, Inc. ("AMP"), have violated Title XI of FIRREA, or the rules or regulations thereunder. *See* 12 C.F.R. § 1102.38.

2. In Georgia, the licensing agency for appraisers is the Board. *See* O.C.G.A. § 43-39a-1 *et seq.*

3. AMP is the only company which administers the appraiser examinations for the Board in Georgia.

4. By the filing of this Complaint, ASC staff may begin an inquiry into Jones's allegations. *See* 12 C.F. R. § 1102.38.

5. The ASC has jurisdiction over this Complaint, as this Complaint is being registered against the Board, and its agent, AMP.

6. The ASC is empowered to monitor each State appraiser certifying and licensing agency. 12 U.S.C. § 3347.

7. As the ASC has jurisdiction over the Board it may, within its discretion, commence a formal investigation. 12 C.F.R. §1102.38(a).

8. Jones requests the ASC commence a formal investigation or proceeding, as further defined by 5 U.S.C. § 551(12), and in doing so, the Secretary should open a public file for the formal investigation or proceeding, and should place in the public file a memorandum naming the person or persons subject to the investigation and the statutory basis for the investigation. *See* 12 C.F.R. § 1102.38(a).

9. The Board and its agent AMP, have violated 12 U.S.C. § 3347 by failing to maintain policies, practices, and procedures consistent with FIRREA, has failed to process complaints and complete investigations in a reasonable time period, and has failed to maintain an effective regulatory program.

10. Jones requests that the parties in interest to this case be advised they may submit a written statement to the Secretary setting forth their interests, positions, or views regarding the subject matter of the investigation. *See* 12 C.F.R. § 1102.38(c).

11. Jones requests that the ASC, upon opening a formal investigation or proceeding, instruct the Secretary or other designated officer of the ASC to publish in the Federal Register a Notice of Intention to Commence a Proceeding ("Notice of Intention"). *See* 12 C.F.R. § 1102.32.

12. Upon the filing of the Notice of Intention, Jones will make an offer of settlement. *See* 12 C.F.R. § 1102.35.

13. Jones does not object to the offer of settlement being placed in the public file. *See id.*

14. If the offer of settlement is rejected for any reason, Jones, through his attorney Jon David W. Huffman, requests an opportunity to make an oral presentation to the ASC under 12 C.F.R. 1102.36(a).

15. Huffman is permitted to practice before the ASC as he is an attorney in good standing with the Supreme Court of Georgia. *See* 12 C.F.R. § 1102.22(a).

Facts

16. Jones became a Georgia Registered Appraiser in January 2008.

17. His license number with the Board is 329870.

18. As a Registered Appraiser he is unable to perform appraisals in federally related residential loans.

19. Jones spent 2013 and 2014 working towards completing the requirements necessary to become a Georgia Certified Residential Appraiser, which would allow him to perform appraisals in federally related residential loans.

20. Jones's goal was to sit for the qualifying exam ("Exam") in 2014, when the requirements were 2,500 experience hours over a 24 month period, and the successful completion of 21 hours of college credits.

21. In 2014, Jones completed the experience requirements through work with Kevin Howe, a Certified Residential Appraiser.

22. In 2014, Jones completed the educational requirements through Athens Technical College.

23. Jones worked with AMP to ensure they knew he would be registering for the Exam in December 2014 and to ensure he could timely apply for the exam.

24. AMP stated throughout these communications that he would have the opportunity to take the exam.

25. Due to AMP's failures and the Board's oversight failures, Jones was unable to sit for the Exam in December 2014 because he was told there were no available seats to take the exam.

26. On April 1, 2015, Jones was informed by the Board that it had contacted AMP and that there were actually at least forty-nine seats available throughout Georgia. AMP did not inform Jones of this, and in fact stated the opposite.

27. Before the January 1, 2015 deadline, Jones contacted several individuals, including members of the Board and AMP, in an attempt to find a way to take the Exam, but no one was able to help him.

28. The January 1, 2015 deadline was extremely important because the Appraisal Board Foundation and the Appraisal Subcommittee had mandated that the education requirements for a Certified Residential Appraiser be modified to require the equivalent of a four-year college degree.

29. Jones contacted the Board in an attempt to find some accommodation for the denial to sit for the Exam, but was told the Board no authority to grant an exception without ASC approval.

Failures of the Board and its Agent, AMP

30. Marshall Jones successfully completed all the requirements necessary to sit for the Exam in December 2014.

31. He diligently followed every instruction given to him by AMP and reasonably relied on AMP and the Board to allow him to sit for the exam upon following their instructions and meeting the requirements.

32. However, through the Board's and AMP's failure to implement adequate policies, practices, and procedures, Jones was unable to sit for the Exam when he was fully qualified and ready to take the examination.

33. As a result, Jones is unable to meet the current requirements to sit for the Exam and is thus barred from participating in any federally related residential appraisals.

34. AMP failed to provide sufficient seating for the December 2014 Exam and failed to ensure that all people eligible to sit for the exam had an available seat.

35. AMP was aware that Jones was attempting to sit for the exam and that Jones was willing to take the Exam at any testing facility in Georgia.

36. AMP also failed to promptly process Jones's application materials by failing to process his official transcript when it was first provided.

37. The Board failed to properly monitor AMP to ensure that the requirements dictated by the Appraisal Board Foundation and Appraisal Subcommittee were followed.

38. The Board's failure represents an ineffective regulatory program as it was unable to timely assist Jones or to rectify AMP's failures.

Argument

39. The ASC is empowered to hold hearings to carry out FIRREA in accordance with the Administrative Procedures Act. 12 U.S.C. § 3335.

40. The regulations of the ASC enable it to issue enforcement actions. *Id.*

41. An agency proceeding includes such actions as adjudications, which means an agency process for the formulation of an order. 5 U.S.C. § 551(7).

42. An agency order is further defined as the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making. 5 U.S.C. § 551(6).

43. An agency may, in its sound discretion, issue a declaratory order to terminate a controversy or remove uncertainty. 5 U.S.C. § 554(e).

44. The ASC may impose sanctions against a State agency that fails to have an effective appraiser regulatory program, or in the alternative, impose interim actions against State agency. 12 U.S.C. § 3347(a).

45. Jones reserves the right to supplement and amend any documents required or provided of him.

WHEREFORE Marshall Jones seeks an order from ASC requiring the Board to grant a one-time allowance for the purpose of retroactively applying the 2014 standard to Jones and allowing him to sit for the Exam based on the 2014 requirements.

Respectfully submitted this 30th day of December, 2015.

POOLE HUFFMAN, LLC

Jon David W. Huffman
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Attorney for Complainant

APPRAISAL SUBCOMMITEE
FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

MARSHALL JONES,	)	
	)	
Complainant,	)	Docket No.
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	)	
Respondents.	)	

NOTICE OF APPEARANCE AND REQUEST FOR NOTICES

Notice is hereby given of the entry of the undersigned as counsel for Complainant Marshall Jones in the above-titled action. Under 12 C.F.R. § 1102.22, the undersigned states that he is licensed to practice law in the State of Georgia and is in good standing with the Supreme Court of Georgia. All further notices and copies of pleadings, papers, and other material relevant to this action should be directed to and served upon:

Jon David W. Huffman
315 W. Ponce de Leon Ave.
Suite 344
Decatur, GA 30030
(404) 373-4008
Facsimile: 888-709-5723
jondavid@poolehuffman.com

Respectfully submitted this 30th day of December, 2015

POOLE HUFFMAN, LLC

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Attorney for Complainant

CERTIFICATE OF COMPLIANCE WITH 12 C.F.R. § 1102.23

I hereby certify that the Complaint and the Notice of Appearance was prepared double-spaced and printed on 8 ½" x 11" paper, with a caption as required by 12 C.F.R. § 1102.23.

Jon David W. Huffman

CERTIFICATE OF SERVICE

I hereby certify that on this date, I served the (1) **COMPLAINT UNDER 12 C.F.R. § 1102 *et seq.*** and (2) **NOTICE OF APPEARANCE** by sending a true and correct copy via certified mail to the following:

William L. Rogers, Jr.
Real Estate Commissioner
Georgia Real Estate Appraisers Board
229 Peachtree Street, N.E.
International Tower, Suite 1000
Atlanta, Georgia 30303

Applied Measurement Professionals, Inc.
c/o Capitol Corporate Services, Inc.
3675 Crestwood Parkway
Suite 350
Duluth, Georgia 30096

Respectfully submitted this 30th day of December, 2015

POOLE HUFFMAN, LLC

Jon David W. Huffman
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Attorney for Complainant

Appraisal Subcommittee

Federal Financial Institutions Examination Council

*****CONFIDENTIAL*****

TO: Appraisal Subcommittee

FROM: Alice Ritter, General Counsel

DATE: January 6, 2016

RE: ASC Staff Recommendation on Request for Formal Investigation

ASC *Rules of Practice for Proceedings*, § 1102.38

§ 1102.38 *Compliance Activities* provides, among other things, that if a complaint is received by the ASC of alleged violations of Title XI, the ASC staff may commence an informal preliminary inquiry into the matter. If upon inquiry, it appears allegations are within the ASC's jurisdiction, then the ASC, in its discretion, may determine to commence a formal investigation. § 1102.38 further provides that where ASC staff has concluded its inquiry and has determined that it will not recommend commencement of a formal investigation, the staff shall advise that its inquiry has been terminated.

Request for Formal Investigation

On December 31, 2015, ASC staff received the attached complaint against the Georgia appraiser regulatory agency (GREAB) and the company used by GREAB to administer its AQB-approved qualifying exams (AMP). The basis for the complaint is that the complainant, a licensed appraiser seeking to upgrade to a certified credential, though approved to sit for the AQB-approved qualifying exam on December 23, 2014, did not meet the January 1, 2015 deadline to take and pass (or successfully complete) the exam. As a result, he is now subject to the new AQB Criteria, which requires a college degree for a certified credential.

The complaint includes a request that the ASC open a formal investigation pursuant to § 1102.38. The complaint also seeks an order from the ASC requiring GREAB to grant a one-time exception "retroactively applying the 2014 standard to [the complainant] and allowing him to sit for the Exam based on the 2014 requirements."

Background

ASC staff first learned of this situation in March of 2015. We received an email from the complainant describing his unfortunate circumstances. The complainant was seeking some sort of relief from the ASC that would allow GREAB to grant an exception to the 2015 deadline. However, the AQB set a firm deadline of January 1, 2015, for implementation of the 2015 Criteria, and specifically stated in the Criteria that the only exception for implementing the 2015 Criteria was for applicants in the Reserve components called to active duty.

The ASC's Policy Manager currently assigned to Georgia had some knowledge of the situation through her contact with the State. We requested that she conduct further informal preliminary inquiry into the matter. ASC staff acknowledges that the facts as represented vary depending on the source. However, the bottom line for GREAB was set forth in its response to the complainant:

> After a recent inquiry from our office to AMP, they indicated that they tested on December 29 and December 30, 2014, but were closed on the 31st, New Year's Eve. On December 29 and 30, 2014, there were 13 available seats for testing in Lilburn, 11 available seats in Macon, and 15 available seats in Savannah.
>
> . . . .
>
> GREAB has no right to grant an exception to a requirement that was placed on it by the ASC. Also, the ASC has no right to grant an exception to requirements which were imposed on it by the AQB.

GREAB confirmed to the ASC Policy Manager that the complainant knew about the 2015 deadline as early as January 2013.

ASC staff's assessment is that GREAB acted appropriately in enforcing the AQB Criteria, and did not violate Title XI. ASC staff responded to the complainant's email confirming that the ASC does not have the authority to create exceptions to AQB Criteria. The AQB and only the AQB establishes and interprets the AQB Criteria. The States and the ASC enforce the Criteria as written.

The 2015 Criteria was adopted by the AQB after a multi-year process. The AQB issued a number of exposure drafts requesting comment on proposed changes to the Criteria, including increasing the educational requirements for the Certified appraiser credentials from an Associate's degree or 21 hours of specific college education to a Bachelor's degree. This change was adopted in December 2011 and made effective January 1, 2015. After January 1, 2015, an applicant is required to satisfy the revised Criteria.

Implementation of 2015 AQB Criteria and ASC Authority

Some 2015 Compliance Reviews revealed issues in certain States' implementation of the 2015 Criteria. For example, some States mistakenly issued credentials under the 2008 Criteria after the January 1st effective date for the 2015 Criteria. In these cases, the only option for States, once the problem was verified, was to invalidate or downgrade the appraiser credential, depending on the circumstance.

The ASC has historically upheld that States cannot alter the minimum requirements as set by the AQB. Nor can the ASC grant exceptions for State's enforcement of the AQB Criteria, unless such exception is specified in the Criteria itself or by the AQB. A LAG Opinion of June 11, 2002, addressed the AQB's authority and duty to establish minimum criteria, referencing the

AQB's broad discretion to do so, and the ASC's limited authority regarding the AQB Criteria. The LAG Opinion cautioned that "Title XI does not authorize the ASC to establish minimum criteria for the state certification of appraisers and, therefore, [the ASC] should not substitute its judgment for that of the AQB in establishing the criteria." On occasion, the ASC has provided clarification to States on implementation as well as exceptions to the Criteria, but only after written interpretation and verification from the AQB.

Initially as these issues on implementation of the 2015 Criteria by some States came to the surface, there was a miscommunication that had to be remedied. One State was informed by staff at the Appraisal Foundation that "if the [State] is willing to grant an exception based on these circumstances and the ASC is willing to allow it, the exception would not require any type of AQB approval." Unfortunately this advice was contrary to not only the LAG Opinion, but also to Title XI. ASC staff held conference calls with Foundation staff to communicate our concerns and insure such miscommunication would cease. We reiterated that it was the AQB's decision to set a firm deadline of January 1, 2015, for implementation of the 2015 Criteria, and that the only exception established by the AQB for implementing the 2015 Criteria was for applicants in the Reserve components called to active duty. Unless the AQB establishes additional exceptions to implementation of AQB Criteria, there is no regulatory discretion for the States to do otherwise.

ASC Staff's Recommendation

ASC staff's informal preliminary inquiry pursuant to § 1102.38 has been terminated. ASC staff has determined that it will not recommend commencement of a formal investigation.

Attachment