

ARIZONA BOARD OF APPRAISAL

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September 15, 1997

Mr. Herbert S. Yolles, Chairman
Appraisal Subcommittee
Federal Financial Institutions Examination Council
2100 Pennsylvania Avenue, NW, Suite 200
Washington, D.C. 20037

Re: Audit Closing Letter

Dear Mr. Yolles:

We are in receipt of your letter dated September 3, 1997 regarding the closing of the November, 1996 audit by the Appraisal Subcommittee ("Subcommittee"). Although we acknowledge the closing of the audit, we feel several statements in your audit closing letter ("closing letter") deserve greater clarification and correction. Further, we feel your copying the correspondence to the Arizona Attorney General's Office and the Governor compels us to respond to avoid any potential misperceptions which may result from the inaccuracies contained in your correspondence.

In an audit letter dated December 20, 1996, the Subcommittee expressed concerns that the Board had not treated all complaints equitably and consistently. You raised specific concerns regarding Inquiry 300 filed against [redaction] the. As you know, the current Board did not decide Inquiry [redaction]. Inquiry [redaction] involved a complaint filed in 1994 against [redaction] and disposed of in March, 1995. You "recommended" the Board reopen Inquiry [redaction] to determine if [redaction] was afforded preferential treatment. You claim the Board has not complied with your December 20, 1996 audit letter of recommendation.

The Board respectfully disagrees and asserts it has scrutinized and deliberated the matter at great length and complied with your request in every way. In compliance with your recommendation, the current Board and its Disciplinary Committee ("Committee") reviewed the matter thoroughly. The Board considered your request on or about February 24, 1997 and after receiving advice from counsel and deliberating, voted to refer the matter to the Committee for further investigation. The Committee reviewed the matter on March 11, 1997. They determined Inquiry [redaction] was closed on recommendation of the prior Committee after a "meet and confer" session between the Respondent and its members. The current Committee decided to investigate- the matter further by interviewing prior Committee and Board members, reviewing Inquiry [redaction] and researching the methods by which other matters were decided during the same time period.

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The Committee met again on April 1, 1997. They reviewed, with the assistance of staff, at least (27) matters decided by the prior Board during the relevant time period. The members determined that despite the existence of investigative reports alleging potential violations, most all of the (27) matters were resolved by a "meet and confer" session between the prior Committee and the Respondents. The Committee interviewed all of the members of the prior Committee and confirmed, at the time of Inquiry [redaction] the prior Committee utilized "meet and confer" sessions and felt that the method of resolving complaints was legally permissible. The prior members felt that the newness of the Board prevented them from taking more stringent punitive action if educational meetings sufficed. The Committee also heard testimony from [redaction] and the prior Committee members indicating that [redaction] took no part in the prior proceedings other than to answer questions of the prior Committee at the "meet and confer" session.

Based on the foregoing, the Committee determined Inquiry [redaction] was disposed of in the same manner as others decided in the same time period. The Committee concluded [redaction] was not afforded any preferential treatment. The Board reviewed and adopted the Committee's determination on or about April 11, 1997 and advised you accordingly on May 5, 1997.

The Board, in making its determination, in no way ratified the procedures of the prior Committee or Board. As you know and have been advised, the current Board does not resolve matters by a "meet and confer" session. Nor do they dismiss cases in which violations are found. All current investigations have been handled appropriately by order or consent with full documentation on the record of any violations regardless of how minor. Further, the Board records all meetings and hearings on audio tape, maintains minutes and reports of all committee recommendations and places closing summaries in the files. Although Inquiry [redaction] would be processed differently by the current Board, we cannot conclude that the file was given preferential treatment by the prior Board.

Based on the foregoing, the Board complied in every way with your December 20, 1996 request. Any assertion to the contrary is inaccurate and misleading. Believing we had complied with your December 20, 1996 request, we were greatly confused by your June 2, 1997 correspondence seeking additional information. You requested the Board compile:

A listing that provides the appraiser's name, type of alleged violations, volunteer investigator used, summary of the investigator's findings, and the Disciplinary Committee's disposition for the 27 files the Board reviewed and compared against complaint number [redaction]; and

A copy of the Board meeting transcript for the meeting in which complaint number [redaction] was discussed.

The Board forwarded a copy of the transcript for your review on or about June 18, 1997. The Board was unable to comply with your additional request because it was extremely burdensome. Essentially, you requested the Board conduct a self-audit of its files. First, it is the Subcommittee's role to audit the Board. Our files are available for your review at any time you would like to do so. Second, your request would require the Board and staff to set aside limited time and resources for the benefit of

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In our June 18, 1997 correspondence, we advised you we did not fully understand the additional request. We asked for a copy of the minutes of your public meetings in which the matter was discussed to gain the knowledge necessary to proceed. On July 15, 1997, you responded refusing to supply additional clarification citing Freedom of Information Act exemptions and inviting the Board to file a Freedom of Information Act Appeal. To the Board, your response seemed counterproductive to the goals of the auditing process. Regardless, the Board filed a "FOIA" appeal on August 19, 1997 as instructed. *See* Copy of the letter dated August 19, 1997. To date, the Board has not received a response to its appeal, nor have we received the information requested. Your failure to fully discuss these facts in your correspondence to the Governor and Attorney General results in a misrepresentation of the facts and is greatly disturbing. The Board views its relationship with the Subcommittee as a cooperative venture to ensure the quality and performance of our state regulatory agency. In our opinion, your correspondence with the Governor and Attorney General undermines the goal and frankly, misrepresents the current situation.

In the closing letter, you complain that the Board treated Inquiry [redaction] differently from Inquiry. Inquiry [redaction] against [redaction] resulted from a series of complaints of fraud. [redaction] was subsequently prosecuted in a criminal court and incarcerated as a result of the same charges. [redaction] complaint does not reflect any allegation of fraud or criminal wrongdoing. These facts may not be readily discernable to the untrained eye, but certainly to an auditor of the Subcommittee.

You also complain that the Board has dealt with Inquiry [redaction] differently from Inquiry [redaction]. Inquiry [redaction] involved [redaction] a Certified General Appraiser. The subject of the inquiry was [redaction] [redaction] oral appraisal of commercial property in a deficiency action. [redaction] contended he was exempt from the Uniform Standards of Professional Appraisal Practice ("USPAP") under the statutory exemption, A.R.S. § 32-3602(8), because he was providing expert oral testimony. The matter against [redaction] was litigated by a Board installed after March 17, 1995. The Board settled the matter by consent agreement with [redaction] on September 1, 1995. Although the matter was resolved shortly after Inquiry [redaction] the matters were determined by two separate Boards following distinctly different processes.

Further, the nature of the two inquiries is dissimilar. [Redaction] complaint involved her presentation of data and competency to perform an appraisal of subdivided residential lots. [redaction] report was written. At no time did [redaction] dispute the applicability of USPAP standards. [redaction] complaint involved an oral report, a lack of supporting data and his general misunderstanding of the scope and applicability of USPAP. Again, these are facts that have been shared with members of your staff and would be readily discernable from review of the file by an experienced auditor. Your statements regarding this file and Inquiry 93 are both inaccurate and misleading.

You also complain the Board failed to document the prior Committee's decision-making process regarding Inquiry [redaction]. First, the issue was not raised in your audit letter of December 20, 1996. Second, if you had raised the issue, you would have been advised that the current Board does not follow such a process. Shortly after the decision of Inquiry [redaction] a new Board was installed. The new Board began audio recording and maintaining detailed minutes and reports of disciplinary matters. The Board did so on its own accord after being advised by counsel, not as a result of an audit or complaint. The Board constantly reviews its processes and procedures to ensure compliance with laws and regulations. Your closing letter fails to explain or distinguish between past and present procedures. Criticism of the current Board for procedures practiced by a prior Board twice removed, without explanation or clarification is

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misleading and unfair.

We acknowledge your closing of the 1996 Arizona audit. We encourage you to make appropriate corrections to your correspondence and forward the same to any party who received a copy of the original closing letter. While issuance of your closing letter and copying to others without appropriate clarifications is disturbing to us, we hope, with disposition of this matter, we can again refocus our attention on the shared responsibility of promoting quality state regulatory licensing and enforcement. We understand that as a relatively new agency your policies and procedures undergo periodic review. Please consider the concerns we have raised in future discussions regarding your audit process. Last, we would appreciate cooperation in providing information necessary to understand the Subcommittee's requests. To that end, please forward the information previously requested on August 18, 1997 so that we may have it for our files. Thank you for your time and consideration of these matters. We appreciate your cooperation.

If your understanding of the above differs in any way or if you have any questions, please do not hesitate to contact me at 542-1539.

Sincerely,

Shirley L. Berry
Executive Director
Arizona Board of Appraisal

cc: Office of the Governor of Arizona (with attachments)
Office of the Attorney General of Arizona (with attachments)
Diana L. Garmus, Appraisal Subcommittee Member (with attachments)
David Gibbons, Appraisal Subcommittee Member (with attachments)
Cary H. Hiner, Appraisal Subcommittee Member (with attachments)
Mark W. Holman, Appraisal Subcommittee Member (with attachments)
Rhoger Pugh, Appraisal Subcommittee Member (with attachments)
Virginia Gibbs, Alternate Subcommittee Member (with attachments)
Michael McKenna, Alternate Subcommittee Member (with attachments)
Tom Watson, Alternate Subcommittee Member (with attachments)
Ben Henson, Executive Director (with attachments)
Board of Appraisal Members

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