

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-06-0002-REA REGARDING:

THE PROPOSED DISCIPLINARY)	Case No. 1190-2006
TREATMENT OF THE LICENSE OF)	
PATRICIA L. DAVIS,)	
Licensed Appraiser No. 684.)	

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RECOMMENDED ORDER

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I. INTRODUCTION

On November 22, 2005, the Board of Real Estate Appraisers issued a Notice of Proposed Disciplinary Action and Opportunity for Hearing and a Summary Suspension Order concerning the license of Patricia L. Davis. In a letter dated November 21, 2005, but received by the Department on November 30, 2005, Davis returned her license in accordance with the suspension order but requested a hearing on the proposed discipline.

Anne L. MacIntyre was assigned as Hearing Examiner in the case on December 1, 2005. On December 14, 2005, the Hearing Examiner conducted a pre-hearing conference in this matter and set a hearing for January 9, 2006.

The Hearing Examiner convened the hearing on January 9, 2006. Licensee Patricia L. Davis was present on her own behalf and John P. Atkins represented the Board. When the hearing convened, the parties announced that they had agreed to resolve the case. The Hearing Examiner therefore made a record of the facts and matters agreed to by the parties. Davis and Billie Veerkamp testified. In her testimony, Davis admitted to the allegations contained in the Notice of Proposed Disciplinary Action. Exhibits 1 and 2 were admitted into evidence for demonstrative purposes without objection.

II. ISSUE

The issue in this case is whether disciplinary action should be taken against the license of Patricia L. Davis, under the provisions of Mont. Code Ann. § 37-1-136, and if so, the proper discipline to be taken.

III. FINDINGS OF FACT

1. Based on her admission, Davis committed the violations of the standards of professional practice alleged by the Board in the Notice of Proposed Disciplinary Action issued on November 22, 2005.
2. Davis is a licensed appraiser. As such, her practice is limited to appraising certain residential property, and vacant or unimproved land for which the highest and best use is residential. She is not permitted to perform subdivision analysis, farm and ranch, or commercial appraisal.
3. Davis has consented to the imposition of the following sanctions in this case: (a) a fine in the amount of \$300.00; (b) probation for a period of two years and (c) submission of her appraisal log to the Board every 6 months for the Board's random review of any appraisal or appraisals for compliance with the Uniform Standards of Professional Appraisal Practice (USPAP). Davis has also consented to practice only within the scope of her appraiser license.
4. Immediate rescission of the summary suspension order is appropriate in this case, based upon the agreement of the Department.

IV. DISCUSSION AND ANALYSIS¹

The Board of Real Estate Appraisers licenses appraisers and disciplines licensees who engage in unprofessional conduct. Mont. Code. Ann. §§ 37-1-307 and 37-54-105. The Department of Labor and Industry is charged with providing legal, investigative, and other staff services to the Board. Mont. Code Ann. § 37-1-101.

¹Statements of fact in this discussion and analysis are incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

Mont. Code Ann. § 37-1-316 provides in pertinent part:

The following is unprofessional conduct for a licensee . . . governed by this chapter:

* * *

(18) conduct that does not meet the generally accepted standards of practice.

Mont. Code Ann. § 37-54-403(1) provides in pertinent part:

(1) A licensed or certified real estate appraiser shall comply with generally accepted standards of professional appraisal practice, evidenced by [USPAP]. . . .

The Department has the burden of proof to show by a preponderance of the evidence that the licensee did commit an act or acts of unprofessional conduct. Mont. Code Ann. § 37-3-311; *Ulrich v. State ex rel. Board of Funeral Service*, 1998 MT 196, 289 Mont. 407, 961 P.2d 126.

A regulatory board may impose any sanction authorized pursuant to Mont. Code Ann. Title 37, Chapter 1, upon a finding of unprofessional conduct. Mont. Code Ann. § 37-1-307(f). Among other things, Mont. Code Ann. § 37-1-312 provides that a regulatory board may restrict or limit the practice of the licensee, monitor the practice of the licensee, impose conditions of probation on the licensee for a specified period of time, and levy a fine not to exceed \$1,000.00.

To determine which sanctions are appropriate, the regulatory board must first consider the sanctions necessary to protect the public. Only after this determination has been made can the board then consider and include in the order requirements designed to rehabilitate the licensee. Mont. Code Ann. § 37-1-312(2). In this case, the sanctions agreed to by the parties are appropriate and necessary to protect the public and rehabilitate the licensee.

V. CONCLUSIONS OF LAW

1. The Board of Real Estate Appraisers has jurisdiction of this matter. Mont. Code Ann. §§ 37-3-107 and 37-54-105.

2. As evidenced by her admission, the licensee has committed acts of unprofessional conduct in violation of Mont. Code Ann. §§ 37-1-312 and 37-54-403.

3. The sanctions agreed to by the parties are appropriate.

VI. RECOMMENDED ORDER

Based on the foregoing, the Hearing Examiner recommends that the Board enter its order placing Davis on probation for a period of two years with the terms:

1. That Davis pay a fine of \$300.00;
2. That Davis submit her appraisal log to the Board every 6 months with the understanding that the Board may randomly review any appraisal or appraisals for compliance with USPAP;
3. That Davis practice only within the scope of her license; and
4. That the summary suspension ordered by the Board on November 22, 2005, is rescinded as of January 9, 2006.

DATED this 12th day of January, 2006.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ ANNE L. MACINTYRE
ANNE L. MACINTYRE
Hearing Examiner

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.

