

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO**

ROBERT RUDOLPH RUCKSTUHL,	:	OPINION
Appellant,	:	
- vs -	:	CASE NO. 2008-G-2873
OHIO DEPARTMENT OF COMMERCE,	:	
Appellee.	:	

Administrative Appeal from the Court of Common Pleas, Case No. 08 A 000603.

Judgment: Affirmed.

Robert Rudolph Ruckstuhl, pro se, 14060 Country River Lane, Newbury, OH 44065 (Appellant).

Richard Cordray, Attorney General, and *Walter J. McNamara, IV*, Assistant Attorney General, State Office Tower, 26th Floor, 30 East Broad Street, Columbus, OH 43215-3428 (For Appellee).

MARY JANE TRAPP, P.J.

{¶1} Mr. Robert Rudolph Ruckstuhl appeals from the judgment of the Geauga County Court of Common Pleas, which affirmed the Adjudication Order of the Ohio Real Estate Appraiser Board (“Board”).

{¶2} The Board revoked Mr. Ruckstuhl’s residential real estate appraiser license after he failed to disclose his affiliation or interest with the lender, his wife, the sole owner and operator of Residential Mortgage Group. The Board further determined that he issued a misleading appraisal report riddled with numerous and substantial

errors, and that he rendered appraisal services in a negligent manner. After a full hearing on the matter, the hearing examiner recommended to the Board that it conclude Mr. Ruckstuhl committed all nine violations as charged.

{¶3} The Board ultimately agreed with the hearing examiner, and revoked Mr. Ruckstuhl's license for committing all nine violations as charged in that he failed to follow the procedures as set forth in R.C. 4763.11 and the 2004 Uniform Standards of Professional Appraisal Practice Rules (USPAP) as incorporated by R.C. 4763.13(A).

{¶4} The trial court denied his appeal of the Board's Adjudication Order finding his arguments asserting a lack of jurisdiction, due process, and that the order was not supported by a preponderance of the evidence were without merit. Mr. Ruckstuhl raises the same arguments on appeal.

{¶5} We agree with the trial court that the complainant's use of a "Real Estate" complaint form rather than an "Appraiser" complaint form, filed with the Ohio Department of Commerce Division of Real Estate and Professional Licensing, does not divest the Appraiser Board of jurisdiction. We further agree with the trial court that Mr. Ruckstuhl's right to due process was not violated as he was given ample notice, time to prepare a defense, a full hearing, and the opportunity to file objections and an appeal. Finally, a review of the record reveals not only a negligently and carelessly made report that is riddled with substantial errors, but a false certification that the appraiser has no personal interest in the transaction, affecting the credibility of the report as a whole. Thus, the trial court did not abuse its discretion in determining the Board's order rested upon reliable, probative, and substantial evidence, and that the order was in accordance with the law.

{¶6} Substantive and Procedural History

{¶7} In September of 2006, Mr. Saeed Mahmoud, a residential real estate buyer, filed a complaint alleging that Mr. Ruckstuhl failed to disclose his affiliation with Mr. Mahmoud's lender, Residential Mortgage Group, a company owned and operated by Mr. Ruckstuhl's wife; and that Mr. Ruckstuhl fraudulently signed Mr. Mahmoud's name on the disclosure form three months after the appraisal report was completed and the transaction closed. Mr. Mahmoud further alleged in his complaint that Mr. Ruckstuhl failed to accurately appraise the residential real estate located at 1332 Mattingly Road, Hinckley, Ohio 44233, in October of 2004.

{¶8} The Division of Real Estate and Professional Licensing is split into two departments, the real estate investigation department and the appraiser investigation department. Mr. Mahmoud initially filed his complaint, utilizing a "Real Estate" complaint form. The real estate investigation department forwarded the complaint to the appraiser investigation department upon determination that Mr. Ruckstuhl's appraisal report contained numerous violations pursuant to R.C. Chapter 4763 and USPAP, as incorporated by R.C. 4763.13(A).

{¶9} An investigation ensued, and upon finding the appraisal contained nine violations, a notice was sent to Mr. Ruckstuhl informing him of the violations and his right to a hearing. Mr. Ruckstuhl requested an informal hearing, but alleged he was not correctly notified of the hearing by mail; thus, apparently he chose not to attend the informal hearing and it went forward without his appearance.

{¶10} In August of 2007, Mr. Ruckstuhl was sent a Notice of Opportunity for Hearing, pursuant to R.C. Chapter 119, containing the investigator's findings of

violations of the Ohio Revised Code. Mr. Ruckstuhl timely requested a hearing, which was held before an administrative hearing examiner in March of 2008.

{¶11} The hearing examiner found Mr. Ruckstuhl had committed all nine violations as charged: (1) Mr. Ruckstuhl failed to report a “present or prospective personal interest/bias with one of the parties in the underlying mortgage transaction” (his wife);¹ (2) the appraisal report failed to summarize any information that led to his opinion that the estimated market rent was \$1,200, with a gross rent multiplier of \$260;² (3) the report failed to document that comparable sale #1 was in a different school district and thus, failed to adjust for a difference or sufficiently summarize why no adjustment was necessary;³ (4) the report incorrectly reported comparable sale #2 had not sold in the past 36 months, when it had actually been sold twice, once in December of 2003, and then again in July of 2004;⁴ (5) the report failed to analyze two prior sales of the subject property that occurred on the same day, May 29, 2003, and further failed to reconcile these prior sales with his conclusion that the property was worth \$300,000;⁵ (6) the appraisal report failed to properly identify the correct zoning classification, instead listing a land use code;⁶ (7) the substantial errors of omission/commission

1. The first charge was in violation of R.C. 4763.11(G)(5) and (G)(6), as those sections incorporate the 2004 USPAP Standards Rule 1-1(A) by operation of R.C. 4763.13(A).

2. The second charge was in violation of R.C. 4763.11(G)(5) and (G)(6), as those sections incorporate the 2004 USPAP Standards Rules 1-4(c), 2-1, 2-2(b)(ix), as well as the record keeping section of the ethics rule for 2004 USPAP by operation of R.C. 4763.13(A).

3. The third charge was in violation of R.C. 4763.11(G)(5) and (G)(6), as those sections incorporate the 2004 USPAP Standards Rules 1-1(a), 1-4(a), 2-1, and 2-2(b)(ix).

4. The fourth charge was in violation of R.C. 4763.11(G)(5) and (G)(6), as those sections incorporate 2004 USPAP Standards Rules 1-1(a), 1-6(a), and 2-1.

5. The fifth charge was in violation of R.C. 4763.11(G)(5) and (G)(6), as those sections incorporate 2004 USPAP Standards Rules 1-1(a), 1-5(b), 2-1, and 2-2(b)(ix).

6. The sixth charge was in violation of R.C. 4763.11(G)(5) and (G)(6), as those sections incorporate 2004 USPAP Standards Rules 1-1(a), 1-2(e), 201, and 202(b)(ix).

significantly affected the report;⁷ (8) the appraisal was conducted in such a negligent or careless manner that it affected the credibility of the report;⁸ and lastly, (9) the report was misleading as a whole of the subject property.⁹

{¶12} Mr. Ruckstuhl timely filed his objections, which the Board overruled, adopting the Hearing Examiner's Recommendations and revoking Mr. Ruckstuhl's license.

{¶13} The trial court affirmed the Board's revocation of his license on appeal. Specifically, the court found that the substance of the complaint rather than the complaint form is determinative as to jurisdiction. Furthermore, although the time deadlines and required procedures as delineated by R.C. 4763.11 were not followed, the error did not deny Mr. Ruckstuhl due process as the time limits in this type of case are merely "directory in nature." Most fundamentally, the trial court found that Mr. Ruckstuhl failed to allege any prejudice from the delay. Finally, the court found that both the Hearing Examiner's Report and the Board's order are supported by a preponderance of the evidence. Thus, the court concluded that the Board's order of revocation should be upheld.

{¶14} Mr. Ruckstuhl timely appealed and raises the following three assignments of error:

{¶15} "[1.] The trial court erred to the prejudice of the Appellant by determining that the Complainant and Appellee had jurisdiction as processed.

7. The seventh charge was in violation of R.C. 4763.11(G)(5) and (G)(6), as those sections incorporate 2004 USPAP Standards Rule 1-1(b).

8. The eighth charge was in violation of R.C. 4763.11(G)(5) and (G)(6), as those sections incorporate USPAP Standards Rule 1-1(c).

9. The ninth charge was in violation of R.C. 4763.11(G)(5) and (G)(6), as those sections incorporate 2004 USPAP Standards Rule 2-1 and the Ethics Rule for 2004 USPAP.

{¶16} “[2.] The trial court erred to the prejudice of the Appellant by determining that Appellee properly and fully complied with mandatory law and Appellant’s due process rights.

{¶17} “[3.] The trial court erred to the prejudice of the Appellant by upholding the finding of violations and penalty of permanent disbarment from an appraiser’s license.”

{¶18} Administrative Appeal Standard of Review

{¶19} “R.C. 119.12 sets forth a specific standard of review for administrative appeals; namely, a court of common pleas must affirm the decision of an administrative agency when that decision is supported by reliable, probative, and substantial evidence and is in accordance with the law.” *Lomaz v. Ohio Dept. of Commerce*, 11th Dist. Nos. 2004-P-0071 & 2004-P-0072, 2005-Ohio-7052, ¶17, quoting R.C. 119.12; see, also, *Lewis v. Ohio Dept. of Human Services* (2000), 137 Ohio App.3d 458, 464.

{¶20} “The Supreme Court of Ohio has commented on the quality and quantity of evidence required to sustain an administrative decision pursuant to R.C. 119.12:

{¶21} “(1) ‘Reliable’ evidence is dependable; that is it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) ‘Probative’ evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) ‘Substantial’ evidence is evidence with some weight; it must have importance and value.” (Footnotes omitted.) *Id.* at ¶18-19, quoting *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571.

{¶22} “We review the court of common pleas decision for an abuse of discretion.” *Id.* at ¶20, citing *Kennedy v. Marion Correctional Inst.* (1994), 69 Ohio St.3d 20, 22. Where issues of law are involved, however, “we exercise a plenary power of

review.” Id., quoting *Lewis* at 464. “That is, issues of law require an ‘independent determination of the law to be applied to the facts found by the agency and held by the common pleas court to be supported by reliable, probative and substantial evidence.’” Id., quoting *Franklin Cty. Bd. of Commrs. v. State Emp. Relations Bd.* (1993), 92 Ohio App.3d 585, 588.

{¶23} Jurisdiction

{¶24} Mr. Ruckstuhl first challenges the Appraiser Board’s jurisdiction to hear the complaint because Mr. Mahmoud filed a “Real Estate” complaint form. He argues that this form only regulates real estate brokers and sales persons with similar licenses pursuant to R.C. Chapter 4735. Although Mr. Ruckstuhl admits that Mr. Mahmoud correctly identified him as an appraiser, he contends that the complaint does not contain charges against him personally in his capacity as an appraiser. Thus, he contends that the Appraiser Board acted in violation of the prohibitions and/or requirements pursuant to R.C. Chapter 4763, which regulates appraisers. Like the trial court, we find this argument unpersuasive.

{¶25} Specifically, the trial court found that “language in the form is not determinative of the jurisdiction of the [Appraiser] Division.” Mr. Ruckstuhl also raised this issue at the administrative agency hearing before the hearing examiner. The appraiser investigator assigned to the complaint, Mr. Michael Terrigno, explained the process followed when a complainant files a complaint, regardless of the complaint form’s title, in the following colloquy during his cross-examination by Mr. Ruckstuhl:

{¶26} “Mr. Ruckstuhl: *** Is it usually the policy of the Division of Real Estate to investigate complaints for gain or loss?”

{¶27} “***.

{¶28} “Mr. Terrigno: Can I clarify something about the complaint. The complaint is sent to the Real Estate Investigation side. There’s [sic] two different sides to the Division of Real Estate. Appraisal side and Real Estate Investigation. Real Estate Investigators see an appraisal that they deem may have some violations in it. They send that to us.

{¶29} “Hearing Examiner: Ok, and so that’s how you received this complaint?

{¶30} “Mr. Terrigno: Correct. So it, if the question of, is it the Division’s stance to investigate loss or gain, that’s not what we were investigating here. We’re the appraisal side.

{¶31} “Hearing Examiner: So you were...

{¶32} “Mr. Ruckstuhl: Was there an appraisal attached to this complaint?

{¶33} “Mr. Terrigno: Yes.

{¶34} “Hearing Examiner: So just to clarify, what you’re investigating is the whole complaint.

{¶35} “Mr. Terrigno: Right.

{¶36} “Hearing Examiner: And what the allegations are listed, that they list in the complaint.

{¶37} “Mr. Terrigno: Right and a lot of time there are no allegations at all. It just says please investigate this report. So.

{¶38} “Hearing Examiner: Alright and so every complaint, there’s a duty by the Division to at least investigate a complaint.

{¶39} “Mr. Terrigno: We have to, yes.”

{¶40} Thus, it is clear that it does not matter which side of the Division of Real Estate and Professional Licensing, real estate or appraiser, receives the initial complaint. Every complaint is investigated, and if there are violations found it is further investigated accordingly. Attached to the complaint was Mr. Ruckstuhl's appraisal report, which even he admitted contained mathematical and clerical errors. Upon further review, more substantial errors were found, affecting the credibility and reliability of the report as a whole. It is no surprise that the real estate side sent the appraisal report to the appraiser side upon their initial review.

{¶41} We find no abuse of discretion in the trial court's determination that "[l]anguage in the form is not determinative of the jurisdiction of the Division." The Appraiser Board operates under the Division of Real Estate and Professional Licensing for the state of Ohio. Further, the trial court found that the Board's findings as to all nine violations of R.C. 4763.11(G)(5) and (6), and the 2004 USPAP Standards Rules, which the Ohio Revised Code incorporated pursuant to 4763.13(A), were supported by substantial and credible evidence. We agree.

{¶42} Mr. Ruckstuhl's first assignment of error is without merit.

{¶43} **Right to Due Process**

{¶44} In his second assignment of error, Mr. Ruckstuhl argues that the trial court erred in its determination that the Board did not violate his rights to due process. He argues that because the Board admittedly did not comply with the notice requirements set forth in R.C. 4763.11, the delay between the receipt of the complaint and the issuance of a notice of the filing of the complaint, as well as the pre-hearing delay, deprived him of a fair and adequate hearing. We find this contention to be without merit

as Mr. Ruckstuhl was given both opportunity and time to be heard, and the delay was not so great as to cause any prejudice.

{¶45} We agree with the trial court's finding that "time limits involved in this type of case are generally no more than directory in nature," and that there "is not even an allegation in this case that any delay prejudiced Appellant." The trial court explained "the issue is one of fairness. To be fair means to give the Appellant adequate notice and an opportunity to be heard in a manner that is appropriate given the type of case."

{¶46} Specifically, the delay between the notification that the Board intended to take disciplinary action and the date of the administrative hearing was only a matter of six months from September of 2007 to March of 2008. Mr. Ruckstuhl maintained his license during that time, and in reality, was afforded more time to prepare his defense.

{¶47} The Ninth District's decision in *Riffe v. Ohio Real Estate Appraiser Bd.* (1998), 130 Ohio App.3d 46, is instructive. That court found no prejudice when the Board failed to act within the time lines provided within R.C. 4763.11(A) through (D). The court determined that, as here, "[a]ppellant was not subject to any pre-hearing deprivation. She was unrestricted in practicing as a real estate appraiser until the day her license was suspended. She was afforded both notice and a fair and adequate hearing before the board suspended her license. As such, we conclude that the trial court did not abuse its discretion by holding that the Board did not deprive Appellant of her license without any due process of law." *Id.* at 8-9. See, also, *Korn v. Ohio State Medical Bd.* (1988), 61 Ohio App.3d 677, 685.

{¶48} Mr. Ruckstuhl's second assignment of error is without merit.

{¶49} **A Review of the Evidence**

{¶50} In his third assignment of error, Mr. Ruckstuhl contends that the trial court erred in upholding the finding of violations and the penalty of revoking his appraiser's license. Mr. Ruckstuhl essentially challenges whether the Board's decision is supported by a preponderance of substantial, reliable, and probative evidence. As the errors contained in the appraisal report are apparent from a plain reading of the report, and as it is equally apparent Mr. Ruckstuhl did not disclose a glaring and disturbing conflict of interest, we find no abuse of discretion in the judgment of the trial court or the Board.

{¶51} "The trial court must give due deference to the administrative resolution of evidentiary conflicts and must not substitute its judgment for that of the administrative board or agency." *Carothers v. Ohio Bd. of Speech-Language Pathology and Audiology*, 11th Dist. No. 2004-G-2559, 2004-Ohio-6695, ¶7, citing *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.3d 108, 111. "Appellate review is limited to determining whether the trial court abused its discretion in finding the board's decision was supported by reliable, probative and substantial evidence." *Id.*, citing *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621. "Under this standard of review, we cannot reverse the common pleas court's decision if it contains a mere error in judgment; instead, a reversal can only occur when the lower court's ruling was based upon a 'perversity of will, passion, prejudice, partiality, or moral delinquency.'" *Chlysta v. Ohio State Dental Bd.*, 174 Ohio App.3d 465, 2007-Ohio-7112, ¶27, quoting *Pons* at 621.

{¶52} As noted earlier, the trial court found that Mr. Ruckstuhl admitted to making at least one clerical and/or mathematical error. The court found that all of the

hearing examiner's findings were supported by credible and substantial evidence. We agree with this finding.

{¶53} Specifically, there was evidence in the record that Mr. Ruckstuhl failed to disclose his affiliation or interest with the lender and that the appraisal report was riddled with errors, negligently and carelessly prepared, and was, on the whole, misleading. Evidence as to each specific charge was presented during the hearing. While both sides offered evidence into the record in support of the respective allegations and defenses, and some of the evidence conflicted, we agree with the trial court that “[w]hen there is conflicting testimony of equal weight, the Court will defer to the agency's fact finding, since it had the ability to observe the witnesses and to weigh the credibility of their testimony. Further, the agency is to be accorded some deference in evaluating standards which are within the agency's area of expertise.”

{¶54} “[I]n reviewing the evidence presented to a state board, the common pleas court must show due deference to the board's resolution of any evidentiary conflict.” *Chlysta* at ¶36, citing *Selekman v. Bd. of Mahoning Cty. Commrs.* (Mar. 5, 1996), 7th Dist. No. 95 C.A. 107, 1996 Ohio App. LEXIS 828, 3-4. “Such deference is considered necessary because the board is in the best position to observe the demeanor of all witnesses and assess their credibility.” *Id.*, citing *Sutton v. Ohio Bd. of Pharmacy* (Apr. 30, 2002), 11th Dist. Nos. 2001-T-0030, 2001-T-0031, & 2001-T-0032, 2002 Ohio App. LEXIS 2051, 14.

{¶55} Applying this principle, we conclude that substantial, probative, and reliable evidence was presented as to each of the nine violations, and that each of the

hearing examiner's findings of violations of ethics or standards was amply supported by the evidence.

{¶56} Specifically, Mr. Ruckstuhl failed to explain the procedures and analyses he used to determine an estimated market rent. He failed to report that comparable sale #1 was in a different school district and adjust or explain why no adjustment was necessary. He incorrectly reported that comparable sale #2 has not been sold in the past 36 months, when in fact the property had been sold in December of 2003. He failed to analyze two prior sales of the property, which occurred on the same day for \$147,500 and \$163,010, and then failed to reconcile these sales with his appraised value of \$300,000. Finally, he failed to report a property zoning classification, instead listing a land use code. Thus, the misleading appraisal report was found to have been prepared in a negligent manner affecting the credibility of the report, and to contain substantial errors of omission or commission. Accordingly, there was substantial, credible, and probative evidence to support the finding that Mr. Ruckstuhl committed numerous violations of R.C. 4763.11(G)(5) and (G)(6), and the USPAP ethics and standards rules.

{¶57} Mr. Ruckstuhl's third assignment of error is without merit.

{¶58} The judgment of the Geauga County Court of Common Pleas is affirmed.

DIANE V. GRENDELL, J.,

TIMOTHY P. CANNON, J.,

concur.