

Before the  
New Hampshire Board of Real Estate Appraisers  
Concord, New Hampshire 03301

In The Matter Of:

Docket No.: 13.03

Gary Harwood  
License No.: NHCG-410  
(Adjudicatory/Disciplinary Proceeding)

FINAL DECISION AND ORDER

Before the New Hampshire Board of Real Estate Appraisers (“Board”) is an adjudicatory/disciplinary proceeding in the Matter of Gary E. Harwood (“Respondent” or “Mr. Harwood”) in Docket Number 13.03.

Background Information:

On or about March 26, 2103, a complaint was filed with the Board’s office. The grievance involved an appraisal written by the Respondent on a property located at 19 River Street, Berlin, New Hampshire, 03570. Subsequent to an investigation, on September 12, 2013, the Board issued a Notice of Hearing scheduled for November 1, 2013 at 10:00 a.m. On September 26, 2013 the Board received a request for continuance from Board council to change the hearing date to December 20, 2013. On September 27, 2013 an Amendment to Notice of Hearing was issued changing the date of the hearing to December 20, 2013 at 10:00 a.m. On November 6, 2013 the Board received a request for continuance from Board council to change the hearing date to January 10, 2014. On November 6, 2013 an Amendment to Notice of Hearing was issued changing the date of the hearing to January 10, 2014 at 9:30a.m. On January 7, 2014 the Board received a request for continuance from Board council to change the hearing date to April 4, 2014. On January 7, 2014 an Amendment to Notice of Hearing was issued changing the date of the hearing to April 4, 2014 at 10:30 a.m. At the January 10, 2014 Board meeting the Board was notified by council that the respondent had reported that he would be out of the

country. Therefore a motion was made to reschedule the hearing to March 14, 2014 at 10:00 a.m. the motion was seconded and voted unanimously to change the hearing date. On January 13, 2014 respondent was notified that the hearing was rescheduled to March 14, 2014 at 10:00 a.m. On February 13, 2014 the Board received a request for continuance from respondent to change the hearing date to April 4, 2014. On February 24, 2014 an Amendment to Notice of Hearing was issued changing the date of the hearing to April 4, 2014 at 10:30 a.m. This hearing indeed occurred on April 4, 2014.

On Friday, April 4, 2014, at 9:55 a.m., the Board commenced with the adjudicatory/disciplinary hearing in the above captioned matter. Board members present<sup>1</sup> were:

Patricia Sherman, Chairperson, Presiding Officer

Kimothy Griffin, Banking Commissioner Designee Member

Cynthia Baron, Banking Member

Douglas Martin, Appraiser Member (Certified Residential Appraiser)

The Complaint Officer was Board Member Mark Correnti (Real Estate Appraiser) was not present for the hearing. The Respondent, Attorney David Conley and witness Peggy Gallus were present.

The following exhibits were introduced into evidence and accepted into the record:

- Hearing Counsel's exhibits: I – Complaint
  - II – Review Appraisal Report
  - III – Respondent's Work File
  - IV. – Record of Respondent's Two Prior Disciplinary Matters.

#### Findings of Fact:

The Board heard testimony from Peggy Gallus, an investigator who had been assigned to the case. Ms. Gallus submitted an Appraisal Review Report ("ARR") to the Board on or about May 16, 2013. This ARR was the basis for the Board to issue the Notice of Hearing and is incorporated within the Notice of Hearing as the allegations. The Board finds Ms. Gallus' testimony at the hearing was professional, forthright and credible.

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<sup>1</sup> These same Board members also deliberated and voted on this Final Decision and Order.

The Board also heard testimony from the Respondent Gary Harwood.

In light of the testimony and exhibits, the Board finds the following facts:

1. The Respondent was granted a certificate to complete general appraisals in the State of New Hampshire on May 1, 1994. The Respondent's license status is current.
2. On June 7, 2007, the Respondent appraised a property located at 19 River Street, Berlin, New Hampshire, 03570.
3. There were four major violations of the Uniform Standards of Professional Appraisal Practice (USPAP). They are as follows:

Conduct

- a. An appraiser must not communicate assignment results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report or knowingly permit an employee or other person to communicate a misleading or fraudulent report.
- b. SR1-1(b) not commit a substantial error of omission or commission that significantly affects an appraisal: improperly reporting gross living area, reported incorrect sales price;  
SR1-1(c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results: improperly reporting gross living area, reported incorrect sales price;
- c. SR1-4(b) When a cost approach is necessary for credible assignment results, an appraiser must: (ii) analyze such comparable cost data as are available to estimate the cost new of the improvements (if any); No support for the Cost Approach Calculations.
- d. SR2-1 Each written or oral real property appraisal report must:
  - (a) clearly and accurately set forth the appraisal in a manner that will not be misleading; improperly reporting gross living area, reported incorrect sales price.
  - (b) contain sufficient information to enable the intended users of the appraisal to understand the report properly; No support for the Cost Approach Calculations.

Rulings of Law:

Applicable Laws:

RSA 310-B:18 Disciplinary Proceedings states in pertinent part:

The board may revoke or suspend a licensure or certification; may assess a fine of not more than \$2,000 per violation or, in the case of a continuing violation, \$100 for each day the violation

continues, whichever would be greater; may require mandatory completion of continuing education; or may take any combination of the preceding actions, relating to any real estate appraiser, in accordance with the provisions of this chapter, upon any of the grounds set forth in this section for any of the following acts or omissions:

...

VII. Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal.

VIII. Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal, as determined by the board.

RSA 310-B:18-a Standards for Professional Conduct states:

For purposes of RSA 310-B:18, the Uniform Standards of Professional Appraisal Practice (USPAP) ethical and professional conduct standards in effect at the time of the appraisal assignment shall be the ethical and professional conduct standards to be followed at the time of any violation.

Rab 501.01 Purpose states:

Rab 501.01 Purpose. The purpose of this chapter is to establish a New Hampshire code of ethics in accordance with RSA 310-B:18-a and USPAP by which all licensed and certified real estate appraisers shall abide.

#### Conduct

- i. An appraiser must not communicate assignment results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report or knowingly permit an employee or other person to communicate a misleading or fraudulent report.
- ii. USPAP Standards Rule SR1-1(b) states an appraiser must not commit a substantial error of omission or commission that significantly affects an appraisal: improperly reported gross living area, reported incorrect sales price; USPAP Standards Rule SR1-1(c) states an appraiser must not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results: improperly reporting gross living area, reported incorrect sales price;
- iii. USPAP Standards Rule SR1-4(b) states When a cost approach is necessary for credible assignment results, an appraiser must:
  - (ii) analyze such comparable cost data as are available to estimate the cost new of the improvements (if any); No support for the Cost Approach Calculations
- iv. USPAP Standards Rule SR2-1 states Each written or oral real property appraisal report must:
  - (a) clearly and accurately set forth the appraisal in a manner that will not be misleading; improperly reported gross living area, reported incorrect sales price;

(b) contain sufficient information to enable the intended users of the appraisal to understand the report properly; No support for the Cost Approach Calculations

Rulings:

The Board makes the following findings by a preponderance of the evidence:

1. The Board finds that the respondent has Violated the Conduct section of the Ethics Rule.
2. The Board finds that the respondent has Violated Standards Rules SR1-1 (b) and (c).
3. The Board finds that the respondent has Violated Standards Rule SR1-4 (b)
4. The Board finds that the respondent has Violated Standards Rule SR2-1 (a) (b).

Disciplinary Action:

The Board considered the following aggravating and mitigating circumstances according to Rab 402.02(d)

- a. The appraiser's prior disciplinary record; and
- b. The appraiser does not recognize the efficacy of USPAP;

Based upon the Findings of Facts and Rulings of Law above, the Board has voted to order the following:

IT IS ORDERED that the Respondent is REPRIMANDED.

IT IS FURTHER ORDERED that the Respondent is assessed an ADMINISTRATIVE FINE in the amount of One Thousand Two Hundred dollars (\$1,200.00) due within thirty (30) days of the effective date of this Order. The payment shall be made in the form of a money order, credit card or bank check made payable to "Treasurer, State of New Hampshire" and delivered to the Board's office at the Joint Board, 121 South Fruit Street, Concord, NH 03301.

IT IS FURTHER ORDERED that the Respondent complete a 15 hour USPAP course in a classroom and receive a passing grade on the exam. A 7 hour Cost Approach course in a classroom and receive a passing grade on the exam. A 7 hour Sales Comparison Approach in a classroom and receive a passing grade on the exam. This is due within one hundred and eighty (180) days of the effective date of this order. These courses are in addition to the continuing education required for license renewal. Within fifteen (15) days of completing each course, Respondent shall notify the Board and provide written proof of completion.

IT IS FURTHER ORDERED Within ten (10) days of the effective date of this agreement, as defined further below, Respondent shall furnish a copy of the *Final Decision and Order* to any current employer for whom Respondent performs services as an appraiser or work which requires a appraisal knowledge or directly or indirectly involves appraising, and to any agency or authority which licenses, certifies or credentials appraisers, with which Respondent is presently affiliated.

IT IS FURTHER ORDERED For a continuing period of one (1) year from the effective date of this agreement, Respondent shall furnish a copy of this *Final Decision and Order* to any employer to which Respondent may apply for work as an appraiser or for work in any capacity which requires appraisal knowledge or directly or indirectly involves appraising, and to any agency or authority that licenses, certifies or credentials appraisers, to which Respondent may apply for any such professional privileges or recognition.

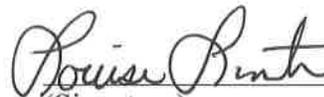
IT IS FURTHER ORDERED that the Respondent's failure to comply with any terms or conditions imposed by this Final Decision and Order shall constitute unprofessional conduct pursuant to RSA 310-B:18 and a separate and sufficient basis for further disciplinary action by the Board against the Respondent.

IT IS FURTHER ORDERED that this Final Decision and Order shall become a permanent part of the Respondent's file, which is maintained by the Board as a public document.

IT IS FURTHER ORDERED that this Final Decision and Order shall take effect as an Order of the Board on the date an authorized representative of the Board signs it.

\*\BY ORDER OF THE NEW HAMPSHIRE BOARD OF REAL ESTATE APPRAISERS

Date: 4/4/14

  
(Signature)

Louise Lavertu, Executive Director  
Authorized Representative of the  
New Hampshire Real Estate Appraisers Board

\*\ Mark Correnti, Board member, recused.