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BEFORE THE ARIZONA STATE BOARD OF APPRAISAL

IN THE MATTER OF: **JOSHUA HERNANDEZ,** **Licensed Residential Appraiser 10453,** Respondent.	Case No. 07F-2225-BOA **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF REVOCATION**

On May 15, 2008, the Arizona Board of Appraisal met to consider the Administrative Law Judge Decision of Diane Mihalsky in the above-captioned matter. Joshua Hernandez did not appear. The State was represented by Jeanne Galvin, Assistant Attorney General. The Board received independent legal advice from Christopher Munns, Assistant Attorney General from the Solicitor General's Office.

The Board, having reviewed the administrative record and the Administrative Law Judge's Findings of Fact, Conclusions of Law and Order in this matter, and having considered the written and/or oral arguments of the parties and fully deliberating the same, takes the following actions on the recommended decision:

1. The Board hereby accepts the Findings of Fact of the Administrative Law Judge with modifications requested by State to correct typographical errors.

2. The Board hereby accepts the Conclusions of Law of the Administrative Law Judge.

3. The Board hereby accepts the Order of the Administrative Law Judge with modifications requested by State to include the Board's standard language regarding revocation decisions.

4. The Findings of Fact, Conclusions of Law and Order shall read as follows:

FINDINGS OF FACT

1. The Arizona Board of Appraisal ("the Board") has been authorized and entrusted by the Arizona legislature to regulate the appraisal profession in the State of Arizona by issuing licenses, investigating complaints, and disciplining licensees.

2. The Board issued Licensed Residential appraiser Certificate No. 10453 to Respondent Joshua Hernandez. That license is currently scheduled to expire on August 31, 2009.

3. On August 15, 2006, the Board received a complaint that alleged violations of statutes, administrative regulations, and the Uniform Standards of Professional Appraisal Practice governing licensed appraisers. As part of the Board's investigation, it held an informal hearing, which Respondent attended.

4. The Board had received information that Respondent's company may have been involved in the preparation of the appraisal at issue in the complaint.

5. During the informal hearing, Respondent testified that he did not recall whether he had received any money for the appraisal at issue in the complaint.

6. On December 31, 2007, the Board issued a subpoena duces tecum to Respondent pursuant to A.R.S. § 32-3631(C) for "[c]opies of **ANY AND ALL** canceled checks, bank statements, and receipts for payment for the period from April 1, 2006, to and including July 31, 2006, for any and all bank accounts maintained by you." [Emphasis in original.]

7. The Board sent the subpoena via certified and regular mail to Respondent's address of record, 2608 W. Elm St., Phoenix, AZ 85017, with a cover letter informing Respondent that he was required to appear with the requested documents at the Board's office at 9:00 a.m. on January 14, 2008 or could comply with the subpoena, in lieu of a personal appearance, by providing the requested documents to the Board on or before January 11, 2008.

8. The copy of the cover letter and subpoena that had been sent to Respondent via certified mail was returned to the Board as unclaimed on January 22, 2008. The U.S. Post Office notation indicated that Respondent has been notified of the certified mail on January 3, 2008 and January 12, 2008.

9. The copy of the cover letter and subpoena that had been sent to Respondent via regular mail was not returned to the Board as undeliverable. The Board's Executive Director Deborah G. Pearson testified at the hearing that the Board had implemented office procedures to ensure that complaint-related correspondence was delivered to her.

10. The Board referred the matter to the Office of Administrative Hearings for the scheduling of a hearing in due course.

11. On March 10, 2008, the Board issued a Complaint and Notice of Hearing, setting an administrative hearing on April 23, 2008, at 9:00 a.m. and charging Respondent with a violation of A.R.S. § 32-3631(A)(8) in his failure to respond to or comply with the Board's subpoena.

12. The Complaint and Notice of Hearing was sent to Respondent via certified and regular mail to his most recent address of record of 2608 W. Elm St., Phoenix, AZ 85017.

13. On March 11, 2008, one Jose Vallejas sign to acknowledge receipt of the copy of the Complaint and Notice of Hearing sent via certified mail.

14. The copy of the Complaint and Notice of Hearing sent via regular mail was not returned to the Board.

15. Although the beginning of the duly noticed hearing was delayed fifteen minutes to allow Respondent additional travel time, he neither appeared personally or through an attorney, contacted the Office of Administrative Hearings to request a continuance or that the time for the hearing be further delayed, nor presented any evidence to defend his license.

16. The Board presented testimony and evidence to establish the facts set forth above.

17. In addition, as a factor in aggravation of the penalty, the Board had admitted into evidence a copy of the fully executed Consent Agreement and Order in Case No. 0621, in which Respondent had admitted to certain statutory violations and, as a result, had agreed to have his appraiser license suspended and then placed on disciplinary probation.

CONCLUSIONS OF LAW

1. The notice of the hearing that the Board mailed to Respondent at his address of record was reasonable and Respondent is deemed to have received notice of the hearing.[1]

2. This matter lies within the Board's jurisdiction.[2]

3. The Board bears the burden of proof and must establish Respondent's statutory violation by a preponderance of the evidence.[3] "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."[4] A preponderance of the evidence is "[t]he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other."[5]

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[1] *See* A.R.S. §§ 41-1092.04; 41-1092.05(D); 41-1061(A).
[2] *See* A.R.S. § 32-3601 *et seq.*
[3] *See* A.R.S. § 41-1092.07(G)(1); A.A.C. R2-19-119; *see also Vazanno v. Superior Court,* 74 Ariz. 369, 372, 249 P.2d 837 (1952).
[4] Morris K. Udall, ARIZONA LAW OF EVIDENCE § 5 (1960).
[5] BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

4. The Board has established that Respondent violated A.R.S. § 32-3631(A)(8)[6] by failing to respond to its subpoena, which was properly issued pursuant to A.R.S. § 32-3631(C).[7]

5. With respect to the appropriate penalty, Respondent has a history of prior discipline against his license. More importantly, his failure either to respond to the subpoena or to keep the Board apprised of his current address indicates that, at this time, he cannot be regulated.

ORDER OF REVOCATION

In issuing this order of discipline, the Board considers its obligations to fairly and consistently administer discipline, its burden to protect the public welfare and safety, as well as all aggravating and mitigating factors presented in the case. Based on the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED:

1. That licensed residential appraiser certificate No. 10453 issued to Mr. Joshua Hernandez to practice as a Licensed Residential Appraiser is revoked as of the effective date of this Order.

2. That Mr. Hernandez shall immediately surrender his license by returning it to the Board office.

3. That Mr. Hernandez may not accept fees for or perform appraisals, appraisal reviews, consulting assignments, or any services governed by the Uniform Standards of Professional Appraisal Practice, A.R.S. § 32-3601, *et seq.*, or the rules promulgated thereunder.

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[6] This statute includes among the grounds for suspension, revocation, or other penalty against an appraiser license or certificate "[w]ilfully disregarding or violating any of the provisions of this chapter or the rules of the board for the administration and enforcement of this chapter.

[7] This statute authorizes the Board to "issue subpoenas for the attendance of witnesses and the production of books, records, documents and other evidence necessary and relevant to an investigation or hearing."

4. That Mr. Hernandez is hereafter subject to the provisions of A.R.S. § 32-3638, which states that any person who is not licensed or certified as an appraiser and performs a real estate appraisal or appraisal review, or uses the designation of licensed or certified appraiser and/or provides false information to the Board is guilty of a Class 1 misdemeanor.

5. That if Mr. Hernandez reapplies for licensing or certification as an appraiser in the State of Arizona in the future, this disciplinary action may be considered as part of the substantive review of any application submitted by Mr. Meier, pursuant to A.R.S. § 32-3611(D).

6. Pursuant to the Board's Substantive Policy Statement #1, the Board considers the violations set forth herein to amount to Level V Violations for disciplinary purposes.

RIGHT TO PETITION FOR REHEARING OR REVIEW

Respondent is hereby notified that he has the right to petition for a rehearing or review. Pursuant to A.R.S. § 41-1092.09, as amended, the petition for rehearing or review must be filed with the Board's Executive Director within 30 days after service of this Order and pursuant to A.A.C. R4-46-303, it must set forth legally sufficient reasons for granting a rehearing or review. Service of this order is effective five days after mailing. If a motion for rehearing or review is not filed, the Board's Order becomes effective 35 days after it is mailed to Respondent.

Respondent is further notified that the filing of a motion for rehearing or review is required to preserve any rights of appeal to the Superior Court.

DATED this 16th day of May, 2008.

ARIZONA STATE BOARD OF APPRAISAL

By: Deborah G. Pearson

Deborah G. Pearson, Executive Director

Copy of the foregoing personally served this 16th day of May, 2008, on:

OFFICE OF ADMINISTRATIVE HEARINGS
1400 WEST WASHINGTON, SUITE 101
PHOENIX, AZ 85007

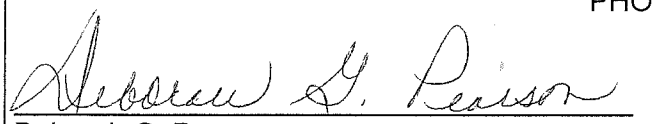
Copy of the foregoing mailed via regular U.S. & Certified Mail #7006 0100 0002 8652 3851 this 16th day of May, 2008, to:

JOSHUA HERNANDEZ
2608 W. ELM ST.
PHOENIX, AZ 85017

Copies of the foregoing sent by interagency this 16th day of May, 2008, to:

JEANNE GALVIN
ASSISTANT ATTORNEY GENERAL
1275 W. WASHINGTON
PHOENIX, AZ 85007

CHRISTOPER MUNNS
ASSISTANT ATTORNEYS GENERAL
SOLICITOR GENERAL'S OFFICE
1275 W. WASHINGTON
PHOENIX, AZ 85007



Deborah G. Pearson