

BEFORE THE REAL ESTATE APPRAISERS BOARD
OF THE STATE OF NEW MEXICO

IN THE MATTER OF:

Ray Griego,
License No. 02357-R,
Respondent.

Case No. REA 19-03-COM

FINAL DECISION AND ORDER

This matter came before a quorum of the New Mexico Real Estate Appraisers Board (the “Board”) at an open meeting held August 24, 2020, upon a complaint filed against Ray Griego (hereinafter “Respondent”) alleging possible violations of the Real Estate Appraisers Act, NMSA 1978, Sections 61-30-1 through -24 (1990, as amended through 2017) (the “Act”). A formal evidentiary hearing in this matter was held on June 26, 2020, and presided over by designated Hearing Officer and Board Chair, Dean Zantow, pursuant to the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 through -35 (1957, as amended through 2020) (the “ULA”), the Act, and the Board’s rules. The Board, having familiarized itself with the whole record, including the Hearing Officer’s Report, voted to adopt the Hearing Officer’s Proposed Findings of Fact, find the Respondent to have violated the Act and the Board’s rules, and revoke the Respondent’s license to practice as a residential certified appraiser, License No. 02357-R. This discipline is based on the following:

FINDINGS OF FACT

The Board hereby adopts the Hearing Officer’s Proposed Findings of Fact, numbered 1 through 28, and incorporates them into this Final Decision and Order as if stated herein.

CONCLUSIONS OF LAW

1. Respondent is subject to the jurisdiction of the Board.

2. Pursuant to Section 61-1-3, Section 61-30-15, and 16.62.13.14 NMAC, the Board held an evidentiary hearing on this matter and previously provided Respondent with proper notice of the general nature of the allegations and evidence against him.
3. Respondent was provided timely notice of the hearing and advised of his rights.
4. The Board has complied with all notice and other procedural and due process requirements of the Act, the ULA, and the Board's rules. Respondent has further not alleged that the Board has failed to comply with any such procedural or due process requirements.
5. NMSA 1978, Section 61-30-10(A) of the Act states, "It is unlawful for any person in this state to engage or attempt to engage in the business of developing or communicating real estate appraisals or appraisal reports without first registering as a real estate appraiser trainee or obtaining a license or certificate from the board under the provisions of the Real Estate Appraisers Act."
6. It is a violation of the Board's rules to "obtain[...] or attempt[...] to obtain any fee through fraud, misrepresentation, or other dishonesty." 16.62.13.14(B)(1) NMAC.
7. Pursuant to Section 61-30-16 and 16.62.1.8 NMAC, all those licensed by the Board under the Real Estate Appraisers Act are subject to the standards and requirements of the Uniform Standards of Professional Appraisal Practice ("USPAP"). "The purpose of the *Uniform Standards of Professional Appraisal Practice* (USPAP) is to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers." USPAP, 2018-2019 Ed., p. 1.
8. Under USPAP, whether an individual is engaged in the business of an appraiser depends largely on "[i]ntended user expectations." USPAP, 2018-2019 Ed., p. 118, Advisory Opinion 21.

- a. USPAP defines the word “appraiser” as “one who is *expected* to perform valuation services competently and in a manner that is independent, impartial, and objective.” USPAP, 2018-2019 Ed., p. 3 (emphasis added).
 - b. USPAP further defines the term “appraisal practice” as “valuation services performed by an individual acting as an appraiser, including but not limited to appraisal and appraisal review.” USPAP, 2018-2019 Ed., p. 3.
 - c. “[E]xpectation is the basis for determining when an individual providing a valuation service is acting as an appraiser. Because of the need to preserve public trust and confidence in appraisal practice, the expectations of the client and other intended users for ethical and competent performance create an obligation to comply with USPAP.” USPAP, 2018-2019 Ed., p. 118, Advisory Opinion 21.
 - d. “An individual’s identification as an appraiser in a given valuation service establishes a justifiable expectation that the valuation service will be performed in compliance with USPAP.” USPAP, 2018-2019 Ed., p. 118, Advisory Opinion 21.
9. Respondent was suspended for a period of one year by an order of the Board dated May 15, 2019. He was suspended during the month of June 2019.
10. Based on the testimony and evidence introduced at the evidentiary hearing in this case, a preponderance of the evidence supports the finding that Respondent engaged in the business of developing or communicating real estate appraisals or appraisal reports while his license was suspended by the Board and while he did not possess a valid and current license.
- a. Respondent acknowledged visiting the client’s property on or about June 17, 2019, to give an opinion on the condition of the roof and photograph the roof itself, both

of which are consistent with the business of developing real estate appraisals or appraisal reports.

- b. Respondent stated in the evidentiary hearing that he had taken measurements of the client's property when visiting it on or about June 17, 2019, which is also consistent with the business of developing real estate appraisals or appraisal reports.
 - c. Respondent accepted payment in the amount of \$450 on or about June 17, 2019, in exchange for an "appraisal," which is also the business of developing or communicating real estate appraisals or appraisal reports.
 - d. A clear preponderance of the evidence in the record supports the finding that the client believed that Respondent was acting as an appraiser and expected him to provide an appraisal after visiting the property and accepting payment.
11. Although Respondent argued that he did not engage in the business of developing or communicating real estate appraisals or appraisal reports because he did not ultimately write an appraisal, this argument fails as a matter of law because he still engaged in the business of developing and communicating real estate appraisals. Even if Respondent did not ultimately write an appraisal, for example, the record contained uncontested evidence that he visited and photographed the client's property so as to provide an opinion as to the condition of the roof, measured the roof, and accepted payment in the amount of \$450 in exchange for an "appraisal."
12. Although Respondent further argued that he had only acted to facilitate the provision of appraisal services by another appraiser at his firm, a preponderance of the evidence supports the finding that he himself acted as an appraiser. Importantly, none of the communications between Respondent and the client indicated that another appraiser would

perform the appraisal. Equally importantly, Respondent's own conduct – visiting, photographing, and measuring the client's property and accepting payment for the appraisal – demonstrates that he was acting as an appraiser, both in substance and in the expectations of the client.

13. A preponderance of the evidence supports the finding that Respondent obtained a fee through misrepresentation. Respondent accepted payment in the amount of \$450 in exchange for an “appraisal” which was never provided to the client. Furthermore, as of the date of the evidentiary hearing, Respondent had still not reimbursed the client.
14. The Board finds that Respondent has engaged and attempted to engage “in the business of developing or communicating real estate appraisals or appraisal reports without first registering as a real estate appraiser trainee or obtaining a license or certificate from the board under the provisions of the Real Estate Appraisers Act.” Section 61-30-10(A).
15. The Board finds that Respondent obtained a fee through misrepresentation in violation of 16.62.13.14(B)(1) NMAC.
16. Upon finding that a licensee has violated the Real Estate Appraisers Act or the Board's rules, the Board is authorized to take disciplinary action. *See* § 61-30-15; *see also* § 61-1-3.
17. It is the duty of the Board to enforce the Act, the Board's rules, and USPAP as part of its mission, as declared by the Legislature, to ensure “the protection of those persons relying upon real estate appraisals.” NMSA 1978, § 61-30-2(B) (1990).
18. An individual who engages in the practice of real estate appraisal while his license is suspended by the Board threatens, at a minimum, the financial well-being of the public.

Similarly, an individual who obtains a fee through misrepresentation also threatens, at a minimum, the financial well-being of the public.

19. Respondent's conduct warrants the imposition of discipline. Based on the totality of circumstances and Respondent's extensive history of noncompliance with the Act, the Board's rules, and USPAP, it is appropriate to revoke his license.

ORDER

Based on these Findings of Fact and Conclusions of Law, a quorum of the Board voted to revoke Respondent's license to practice as a residential certified appraiser, License No. 02357-R.

IT IS THEREFORE ORDERED that Respondent's license to practice as a residential certified appraiser, License No. 02357-R, is hereby REVOKED permanently. This Order constitutes formal disciplinary action by the Board and may be reported to the applicable professional licensing national database, if any.

IT IS ULTIMATELY ORDERED that failure to comply with the terms of this Order may result in further Board action. If Respondent's non-compliance constitutes acts that are prohibited under the Board's statute or rules, the Board may initiate a new disciplinary action and refer that matter for administrative prosecution, seek an injunction in District Court, or pursue other remedies as provided by law.

IT IS SO ORDERED.

/s/ Dean Zantow
Dean Zantow, Chair
New Mexico Real Estate Appraisers Board

9/8/2020
Date

*Email signature executed via email
authorization dated 9/4/2020*

JUDICIAL REVIEW

This Order constitutes a final decision for purposes of initiating any contemplated judicial review pursuant to the provisions of the Uniform Licensing Act, NMSA 1978, Section 61-1-17, and NMSA 1978, Section 39-3-1.1. An aggrieved party has the right to judicial review of this Order by filing a notice of appeal under Rule 1-074 NMRA within thirty (30) days of the date of filing of the final decision. Any pleadings filed with the district court must be served on the Board's counsel, Assistant Attorney General John Kreienkamp, at P.O. Drawer 1508, Santa Fe, NM 87504, jkreienkamp@nmag.gov.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed by certified mail on the date below to:

Ray Griego
P.O. Box 92906
Albuquerque, NM 87199
Certified Mail No. 7019 1640 0000 7892 2798

/s/ Kathleen Roybal
Kathleen Roybal, Compliance Liaison

09/11/2020
Date