BEFORE THE WEST VIRGINIA REAL ESTATE APPRAISER LICENSING AND CERTIFICATION BOARD

IN THE MATTER OF:

DAVID N. POWELL
Licensed Real Estate Appraisal No. LR0560

WV REAL ESTATE APPRAISER LICENSING & CERTIFICATION BOARD
RECEIVED
JUN 23 2011

CONSENT DECREE

Now comes Respondent, David Powell ("Powell"), and the West Virginia Real Estate Appraiser Licensing and Certification Board ("Board"), by Sandy Kerns, its Executive Director, for the purpose of resolving Board Complaint Number 10-028, against Powell. As reflected in this Consent Decree, the parties have reached an agreement in which Powell hereby agrees and stipulates to the Findings of Fact and Conclusions of Law set forth in the instant Consent Decree concerning the proper disposition of this matter, and the Board, having approved such agreement, does hereby find and Order as follows:

FINDINGS OF FACT

1. The Board is a state entity created by W. Va. Code § 30-38-1 *et seq.*, and is empowered to regulate, among other things, the conduct of certified residential appraisers.

2. Powell is a state licensed residential real estate appraiser licensed by the Board, holding license number LR0560.

3. During all times relevant herein, Michael A. Bailes ("Bailes") was a real estate appraiser trainee supervised by Powell.

4. Bailes lived in Bluefield, Virginia, near Bluefield, West Virginia and near the state line. Bailes was licensed as an appraiser trainee in the State of Virginia by the Virginia Real Estate Appraiser Board (the "Virginia Board").

5. However, prior to that, Powell made inquiry of the Virginia Board as to where Bailes would be able to gain hours doing apprentice work once Virginia authorized him to proceed as an appraiser trainee.

6. Upon Powell's inquiry, staff and officials of the Virginia Board informed Powell that Bailes would be able gain hours towards his Virginia appraisers' license by assisting Powell with appraisals conducted in any state where Powell was licensed as an appraiser, including Virginia and West Virginia.

7. Consistent with such inquiry and advice, following the Virginia Board's approval of Bailes' status as a Virginia apprentice trainee, Bailes began working as an apprentice trainee with Powell to to gain apprentice hours on appraisals in both Virginia and West Virginia.

8. At no time has Bailes held a license or permit in the State of West Virginia from the Board.

9. At the direction and supervision of Powell, Bailes assisted in approximately 60 appraisals in the State of West Virginia.

10. Bailes assisted Powell in the appraisals between May, 2009, and August, 2010, in the following locations in West Virginia: Athens, Bluefield, Nemours, and Princeton. These locations are all near the West Virginia state line with Virginia.

11. Bailes was neither authorized by the Board nor by law to assist in appraisals in the State of West Virginia, whether under the supervision of an appraiser licensed by the Board or otherwise.

12. Bailes signed each appraisal report with which he assisted as Powell's real estate appraiser trainee.

13. Consistent with the inquiry and advice referenced in paragraphs 5 and 6, Powell allowed Bailes to assist on the appraisals, but Powell in fact made written changes to the appraisal figures of Bailes in such reports, attached those changes, and initialed those changes in each instance, so that the appraisal figures in the reports were the appraisal figures of Powell in the final analysis.

14. At no time has the Board ever received any complaint from any appraisal customer or user against Powell claiming that the final appraised values were inaccurate in any of these appraisal reports, or in any other appraisal reports issued by Powell.

15. At no time prior to the situation discussed in this Consent Order has there been any disciplinary proceeding before this Board involving Powell.

16. When Board staff contacted him about the situation, Powell voluntarily provided staff copies of the appraisals signed by Bailes.

17. In their discussions with Powell, Board staff indicated that Powell probably should not have Bailes do any further work in West Virginia pending staff review of this situation, and Powell agreed right away not to do so and in fact ceased working with Bailes in West Virginia.

18. Powell misconstrued the statement from the Virginia Real Estate Appraiser Board, referenced in paragraph 5 and 6 above, to mean that Bailes could assist in appraisals in the State of West Virginia, based upon the permit Bailes held in Virginia, and the licenses Powell held in both Virginia and West Virginia.

19. Powell was unaware that the Board required all real estate appraiser apprentices or trainees that assist in appraisals in West Virginia to hold a West Virginia real estate apprentice permit, where the supervising real estate appraiser holds an active real estate appraiser license in West Virginia.

20. On November 9, 2010, the Board conducted a board meeting to determine, among other things, the proper course of action to take against Powell in this matter, if any. Powell was not given notice of the Board meeting, nor was he present at the Board meeting.

21. During such Board meeting, the Board, based upon the review of the above-referenced appraisals, the alleged serious nature of the allegations of the unlawful conduct therein, and the number of appraisals in question, determined that the continued practice of real estate appraising by Powell in the State of West Virginia would constitute a danger to the public, and/or adversely affect the public welfare.

22. On such basis, the Board voted unanimously to summarily suspend Powell's real estate appraiser license in the State of West Virginia, License LR 0560, pending a later hearing.

23. Powell objected to the summary suspension and objected to the procedure used by the Board to effectuate that suspension.

CONCLUSIONS OF LAW

1. Pursuant to Article 38 of Chapter 30 of the West Virginia Code, the Board is the State entity vested with the power to regulate real estate appraisers in the State of West Virginia.

2. Pursuant to W. Va. Code § 30-38-12(a)(7), the Board may revoke, suspend, refuse to renew, or otherwise discipline the license of an appraiser, or deny an application, for any violation of any section of this article, or rule of the Board.

3. Pursuant to W. Va. Code § 30-38-1(a), in pertinent part, "[i]t is unlawful for any person, for compensation or valuable consideration, to prepare a valuation appraisal or a valuation appraisal report relating to real estate or real property in this state without first being licensed or certified as provided in this article. This section shall not be construed to

apply to persons who do not render significant professional assistance in arriving at a real estate appraisal analysis, opinion or conclusion."

4. In the capacity of Bailes' supervisor, Powell, based upon statements made by the Virginia Real Estate Appraiser Board, where such statements were misconstrued by Powell, directed Bailes to assist him in appraisals in the State of West Virginia, where Bailes did not hold a license or permit through the Board to do so, and where Bailes rendered professional assistance in arriving at a real estate appraisal analysis, opinion or conclusion, in violation of W. Va. Code §§ 30-38-1(a) and 30-38-12(a)(7).

5. Pursuant to 190 C.S.R. §§ 2-11.9 and 2-11.6.a., a licensed or certified appraiser may utilize the assistance of a person who does not hold an apprentice permit or license in the state, where the appraiser directly supervises such assistant, and the assistant does not sign the appraisal report.

6. Powell caused Bailes to render assistance in appraisal services, where Bailes did not hold a license or permit to do so, and where Bailes signed the appraisal reports as Powell's real estate appraiser trainee, in violation of W. Va. Code § 30-38-12(a)(7) and 190 C.S.R. §§ 2-11.9 and 2-11.6.a.

CONSENT

Powell, both in his individual capacity and as a licensed residential real estate appraiser, and the Board, by the execution hereof, agrees to the following:

1. Powell and the Board have had the opportunity to consult with counsel and each party executes this Consent Decree voluntarily, freely, without compulsion or duress and mindful that it has legal consequences. No person or entity has made any promise or given any inducement whatsoever to encourage Powell or the Board to make this settlement other than as set forth herein. Powell and the Board acknowledge that each of them is

aware that the other party may pursue this matter through appropriate legal, administrative and/or court proceedings, and is aware of their legal rights regarding this matter, but intelligently and voluntarily waives such rights.

2. Powell and the Board consent to the entry of the following Order relating to the appraisals signed by Bailes as described above.

ORDER

On the basis of the foregoing, the Board hereby ORDERS as follows:

1. The real estate appraiser license of Powell, License No. LR0560, is hereby SUSPENDED retroactively between the dates of November 10, 2010, through May 10, 2011. Where Powell has not engaged in the practice of real estate appraising in the State of West Virginia, either directly or indirectly, during such time period, the suspension is hereby deemed served, and otherwise completed, in its entirety.

2. Powell shall pay to the State of West Virginia a fine in the amount of one thousand dollars ($1,000.00). Such payment shall be paid to the Board in full within thirty (30) days of the date of entry of the instant Consent Decree.

3. Powell shall pay to the Board the amount of nine-hundred dollars ($900.00). Such payment by Powell shall represent the costs incurred by the Board associated with the investigation and prosecution of Complaint Number 10-028, and the subsequent reimbursement to the Board thereof. Such payment shall be paid to the Board in full within thirty (30) days of the date of entry of the instant Consent Decree.

4. Any deviation from the requirements of the instant Consent Decree, without the prior written consent of the Board, shall constitute a violation of this Order, and result in the immediate suspension of Powell's license. The Board shall immediately notify Powell via certified mail of the specific nature of the charges, and the suspension of Powell's

license. Powell may request reinstatement of his license through renewal of this agreement, or execution of a new agreement, which may contain different or additional terms. The Board is not bound to comply with Powell's request.

In the event Powell contests any such allegations of violation of the Consent Decree, if any, which results in the suspension of Powell's license, Powell may request a hearing to seek reinstatement of his license. Any such hearing shall be scheduled and conducted in accordance with the provisions of West Virginia Code § 30-1-8 and § 30-38-1 et seq.

Further, in the discretion of the Board and in the event Powell violates the provisions of the instant Consent Decree, the Board may schedule a hearing on its own initiative for the purpose of allowing the Board the opportunity to consider further discipline against Powell's license.

Finally, in accordance with federal law, the Board will report to the Appraisal Subcommittee, Federal Institutions Examination Council that the real estate appraiser license of Powell, License No. LR0560 has been reinstated and request that the suspension be taken off of the website ASC. gov.

Upon entry, copies of this consent decree shall be sent to all counsel of record and to David Powell, 1532 Blackwood Drive, Knoxville, TN 37923.

AGREED TO BY:

David Powell

DAVID POWELL, Individually

6/13/2011

DATE

ENTERED into the records of the Board this:

23 day of June, 2011.

WEST VIRGINIA REAL ESTATE APPRAISER
LICENSING AND CERTIFICATION BOARD

By: Sandy Kerns
SANDY KERNS
EXECUTIVE DIRECTOR

06-23-2011
DATE