

BEFORE THE WEST VIRGINIA REAL ESTATE APPRAISER  
LICENSING AND CERTIFICATION BOARD

WEST VIRGINIA REAL ESTATE APPRAISER  
LICENSING AND CERTIFICATION BOARD,

Complainant,

v.

Case No. 01-020

BARBARA McCracken,

Respondent.

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ORDER

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Now Comes the West Virginia Real Estate Appraiser Licensing and Certification Board (hereinafter "Board"), and hereby adopts the "Hearing Examiner's Recommended Decision," by Hearing Examiner Jack McClung, dated May 26, 2005, in its entirety, as if fully set forth herein.

Accordingly, the Board Orders as follows:

1. Effective immediately, the real estate appraiser license of Barbara McCracken (hereinafter "Respondent"), License No. 0471, is hereby SUSPENDED for a period of one (1) year. Respondent shall not engage in the business of real estate appraising whatsoever, either directly or indirectly, in the State of West Virginia during such period of SUSPENSION.

2. Respondent shall take, complete, and successfully pass examinations for, a fifteen (15) hour Board approved real estate appraiser course in sales comparison, and a fifteen (15) hour course in highest and best use, within six (6) months of entry of this Order. Respondent shall provide the Board with completion certificates of such courses, and all

proper documentation reflecting that Respondent successfully passed both course examinations. Such courses shall not count toward any continuing educational requirements for licensure renewal.

3. Respondent shall pay to the Board the amount of Seventeen Thousand Two Hundred Ninety Five Dollars (\$17,295.00). Such payment by Respondent shall represent the costs incurred by the Board associated with the investigation and prosecution of Complaint Number 01-020, and the subsequent reimbursement to the Board thereof. Such payment shall additionally be paid to the Board in full within six (6) months of the date of entry of the instant Order.

4. The real estate appraiser license of Respondent shall remain SUSPENDED until such time Respondent has complied with all terms of the instant Order as provided for herein.

**ENTERED into the records of the Board this:**

6th day of June, 2005.

**WEST VIRGINIA REAL ESTATE APPRAISER  
LICENSING AND CERTIFICATION BOARD**

By: Sharron Knotts  
**SHARRON L. KNOTTS**  
**EXECUTIVE DIRECTOR**

June 6, 2005  
**DATE**

CERTIFICATE OF SERVICE

I, Sharron Knotts, Executive Director of the West Virginia Real Estate Appraiser Licensing and Certification Board, do hereby certify that a true and exact copy of the foregoing "Order" was served upon the following by depositing the same, postage prepaid, in the United States mail, this 6th day of June, 2005 addressed as follows:

Henry E. Wood, III  
Wood Law Office, L.C.  
P.O. Box 4448  
3818 MacCorkle Avenue  
Charleston, WV 25364

Barbara McCracken  
Post Office Box 2854  
Clarksburg, WV 26302-2854

  
Sharron Knotts

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

BARBARA McCracken,

Appellant,

v.

WEST VIRGINIA REAL ESTATE APPRAISER  
LICENSING AND CERTIFICATION BOARD,

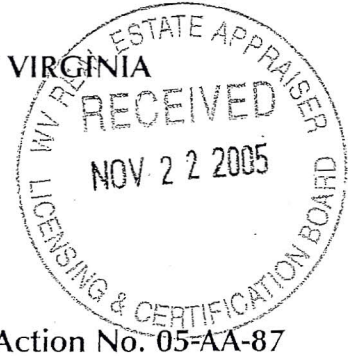
Appellee.

FINAL ORDER

Pending before the Court is the "Petition for Review" (hereinafter "Appeal"), filed by the self-represented appellant, Barbara McCracken (hereinafter "McCracken"). Said Appeal seeks judicial review of the "Order" issued by the West Virginia Real Estate Appraiser Licensing and Certification Board ("Board") on June 6, 2005. The Board's Order suspended McCracken's real estate appraiser's license for a period of one year and adopted the "Hearing Examiner's Recommended Decision" (hereinafter "Decision"), issued on May 26, 2005 by State Hearing Examiner Jack McClung (hereinafter "Hearing Examiner"). McCracken appeals from that Decision and Order pursuant to the Administrative Procedures Act found in *West Virginia Code*, §29A-5-4.

After full consideration of the parties' briefs, the underlying administrative record, and applicable law, the Court does hereby enter this **FINAL ORDER**, based on the following findings of fact and conclusions of law.

FILED  
2005 NOV 18 11:34  
CATHY KANAWHA COUNTY CLERK  
CIRCUIT COURT



Civil Action No. 05-AA-87



## FINDINGS OF FACT

1. The Board is the state entity vested with the authority to regulate the licensing of West Virginia real estate appraisers. *W.Va. Code*, §30-38-1 et seq.
2. McCracken is licensed by the Board as a real estate appraiser.
3. McCracken preformed a real estate appraisal in February of 1999 on residential property located at 1128 Shaffer Lane, in Fairmont, West Virginia (hereinafter "property" or "property in question").
4. In preforming the appraisal, McCracken reviewed both the interior and exterior of the home located on the property and appraised the property at \$169,000.
5. Linda York (hereinafter "York"), a certified general appraiser, conducted a retroactive appraisal of the property in August of 2000. York did not have access to the interior of the home at that time, but determined that the value of the property, as of February 1999, was \$67,500. The Court finds as fact that the difference between York's and McCracken's appraisals is \$101,500.
6. York sent a letter to the Board, dated October 19, 2001, which suggested that the Board should investigate McCracken's appraisal of the property because York felt that McCracken inflated numbers and used inappropriate comparables.
7. Subsequently, the Board investigated the matter and determined that probable cause existed to believe that McCracken violated her duties as an appraiser, as imposed by state law.

8. The Board issued a statement of charges which include the following allegations<sup>1</sup>:

(1) McCracken violated Competency Provision 1 of the *Uniform Standards of Professional Appraisal Practice*<sup>2</sup> (hereinafter "USPAP"), by failing to disclose her lack of knowledge of the geographic area or experience.

(2) McCracken violated Competency Provision 2 of the USPAP by failing to make adequate adjustments for location, failing to appropriately identify the quality of the home's construction, and failing to select appropriate comparables;

(3) McCracken violated Competency Provision 3 of the USPAP by failing to disclose her lack of knowledge or experience in the geographic market, resulting in an inaccurate appraisal;

(4) McCracken violated Standard 1-1(a) of the USPAP for failing to understand and employ the recognized method and techniques necessary to produce a credible report, evidenced by failing to make adequate adjustments for location, failing to appropriately identify the quality of construction, and failing to select appropriate comparables;

(5) McCracken violated Standard 1-1(b) of the USPAP by committing several errors or omissions that significantly affected the appraisal, including failing to make adequate adjustments for location, failing to appropriately identify the quality of construction, and failing to select appropriate comparables;

(6) McCracken violated Standard 1-1(c) of the USPAP by conducting an appraisal in a careless, negligent, and misleading manner by failing to make adequate adjustments for location, failing to appropriately identify the quality of construction, and failing to select appropriate comparables; and

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<sup>1</sup> All seven charges reference a violation of *West Virginia Code*, §37-14-23, which was part of the *Real Estate Appraiser Licensing and Certification Act*. That act was repealed and replaced in 2001 by *West Virginia Code*, §30-38-1 et seq.. Both the old and new Act require that appraisers conform to the *Uniform Standards of Professional Appraisal Practice*. See *W.Va. Code*, §30-38-17.

<sup>2</sup> The USPAP are produced by the Appraisal Standards Board of The Appraisal Foundation. The Administrative Record contains the 1993 edition of the standards.

(7) McCracken violated Standard 2-1(a) of the USPAP by preparing a misleading appraisal by failing to make adequate adjustments for location, failing to appropriately identify the quality of construction, and failing to select appropriate comparables.

9. The factual record reflects that the property in question is a residential, split-level entry house located in a mixed-use, non-zoned area, with commercial and mobile homes in the immediate vicinity. The entry road was gravel, but not paved. The home included an addition, which resulted in inferior functionality. The home included certain interior custom features such as custom cabinetry, tile floors, custom appliances, bathrooms with Jacuzzi tubs, and generally high quality materials used throughout the home. The home also included an outdoor pool.
10. The testimony at the administrative hearing was that the property in question was a unique property, an "over-improvement" for the area, and twice as large as most surrounding homes. Most witnesses acknowledged that due to the uniqueness of the property in terms of the surrounding area, the selection of comparables was difficult.
11. The factual record reflects that the comparable properties that McCracken used in conducting her appraisal were newer in age, did not include any additions, were two and three stories tall, were superior in quality and construction, and were located in subdivisions with paved entry roads. Two of the three comparables were in subdivisions with neighborhood covenants and restrictions on land use.
12. The record reflects that the comparables that McCracken selected were similar in gross living area to the property in question.

13. Lou Anne Cone (hereinafter "Cone"), a licensed appraiser, appraised the property in question in July of 1999, just five months after McCracken's appraisal, but before York's appraisal. Like McCracken, Cone had access to both the interior and exterior of the home. Cone appraised the property at \$91,000. The Court finds as fact that the difference between McCracken's and Cone's appraisals is \$78,000.
14. As noted above, York completed her appraisal in August of 2000, which is more than one year after Cone's appraisal and eighteen months after McCracken's appraisal. York's appraisal is \$23,500 less than Cone's appraisal.
15. The Court finds as fact that Mickey Gene Petitto (hereinafter "Petitto"), a licensed appraiser, testified that between the time when McCracken completed her appraisal and when York completed her appraisal, the property owner moved out of the home, rented the property, and that the home was trashed by the renters.
16. William Yoho (hereinafter "Yoho"), a licensed appraiser, conducted a retroactive appraisal of the property on December 28, 2001 and determined that the property's value, as of February of 1999 was \$108,000. The Court finds as fact that the difference between McCracken's appraisal and Yoho's appraisal is \$61,000. The Court finds as fact that the difference between Yoho's and York's appraisals is \$40,500.
17. When questioned as to why her appraisal was significantly different than Cone's appraisal, York testified that whereas Cone had access to the interior, she did not. As to Cone's explanation of the difference between her appraisal and York's, she explained that the property was unique and thus, two reasonably competent



appraisers may arrive at values outside of the normally accepted 5 percent to 10 percent range.

18. When questioned why her appraisal represents a 26 percent difference from Yoho's appraisal, York admitted that neither she nor Yoho had access to the interior of the home, but stated that she and Yoho must have seen different things. The Court notes that the two appraisals were completed at different times, however, both appraisals were retroactive to the February 1999 time period. Further, Yoho's appraisal occurred after York's appraisal, and after the alleged damage to the home.
19. When questioned as to why her appraisal represented a 17 percent difference from Yoho's appraisal, Cone testified that Yoho's appraisal was competent, but that they simply had different opinions as to the value. Cone admitted that just because two appraisals result in values outside the 5 to 10 percent range does not necessarily mean that one of the appraisers was incompetent.
20. The Court finds as fact that most witnesses acknowledged that appraising is not an exact science, but is more like an art, and that different appraisers arrive at different values, based on what information is available at the time of the appraisal.
21. At the administrative hearing, Jerry Thornton (hereinafter "Thornton"), a Certified General Appraiser, testified as an expert on the USPAP. The Hearing Officer also heard testimony from Petitto, whom McCracken offered as an expert. The Hearing Officer found that Petitto was not qualified as an expert on USPAP and thus, Thornton's testimony was afforded more weight.



*Charge 1: Violation of USPAP, Competency Provision 1*

22. As to charge number 1, Thornton testified by providing the following answers:

Assistant Attorney General, Mr. Koerber:

Based on the selection of [comparables] used by Ms. McCracken, as well as based upon the fact that she made few adjustments to the [comparables], would it be your opinion that she violated [Competency Provision 1]?

Mr. Thornton:

If she knew what the property was certainly before she went and did the appraisal or had an idea what the property was then, yeah, she should disclose that lack of knowledge.

23. The Hearing Officer's decision concludes that "it is apparent that [McCracken's] knowledge of the geographic and market area . . . was limited" and thus she failed to disclose that limited knowledge on the appraisal.
24. The Court finds that the record fails to contain specific evidence that McCracken lacked knowledge of the geographic area. In fact, the evidence was that McCracken worked in the general geographic area in which the property is located.
25. The Court finds that Thornton's expert opinion as to charge one is conditioned on an assumption that was not produced in evidence: that McCracken lacked experience or knowledge of the geographic area.

*Charge 2: Violation of USPAP, Competency Provision 2*

26. As to charge number 2, Thornton testified that based on McCracken's selection of comparables, there is a "problem" with USPAP Competency Provision 2.
27. The Court finds as fact that York, Cone, and Yoho testified that McCracken's selection of comparables was not appropriate, or that she should have adjusted the value of the property in question, based on the superior location, design, and

quality of each of the comparables. All three appraisers determined that McCracken's failure to select more appropriate comparables, and her failure to appropriately adjust the value based on the superior aspects of the comparables, resulted in an inflation of the property's value.

*Charge 3: Violation of USPAP, Competency Provision 3*

28. As to charge number 3, Thornton provided the following testimony:

Mr. Koerber: By selecting the [comparables] that Ms. McCracken used in evaluating the subject property, would it be reasonable to state that her knowledge of the geographic area was limited?

Mr. Thornton: It would certainly appear to be on the basis of looking at these houses.

29. The Court finds as fact that just as with charge number 1, there is no evidence that McCracken lacked the requisite knowledge, and Thornton's opinion was based on an assumption of facts not presented in evidence.

*Charge 4: Violation of USPAP Standard 1-1(a)*

30. As to charge number 4, Thornton opined that based on McCracken's selection of comparables, there is evidence that she did not have the understanding and awareness of the recognized appraisal methods required by USPAP Standard 1-1(a).

*Charge 5: Violation of USPAP Standard 1-1(b)*

31. As to charge number 5, Thornton opined that because McCracken did not make the necessary value adjustments, she committed a substantial error that significantly affected the appraisal, resulting in a violation of USPAP Standard 1-1(b).

*Charge 6 and 7: Violation of USPAP Standards 1-1(c) and 2-1(a)*

32. As to charge number 6, Thornton testified that the selection of comparables and the lack of adjustments "could be" a series of errors evidencing a careless and negligent appraisal, but most certainly make the appraisal misleading and represent a violation of USPAP Standards 1-1(c) and 2-1(a).
33. Based on Thornton's testimony, the Hearing Examiner recommended that the Board find that all seven charges were proven by a preponderance of the evidence, and that the Board discipline McCracken by imposing some sanction.
34. The Board adopted the Hearing Examiner's recommended decision and entered an Order that suspended McCracken's license for a period of one year and required her to take, complete, and successfully pass examinations for a fifteen-hour Board approved real estate appraiser course in sales comparison and a fifteen-hour course in highest and best use. The Board also ordered McCracken to pay \$17,295 for the Board's costs for investigating and prosecuting the complaint. The Board's Order was entered on June 6, 2005.
35. The Court finds as fact that the board has the authority to suspend a license for violating the standards, and/or for violating any rule promulgated in 190 W.Va. C.S.R. 4. See *W.Va. Code*, §§30-38-12 and 30-38-13. Further, the Board has the authority to assess administrative costs. See *W.Va. Code*, §30-1-8.
36. The Court finds as fact that in addition to suspending or revoking an appraiser's license, the Board may also impose a period of probation, require re-examination, require additional professional education, issue a public or private censure,

warning, or reprimand, issue a consent order, impose a fine of not more than \$500.00, or dismiss the pending charges against an appraiser. 190 W.Va. C.S.R. 4.5 and W.Va. Code, 30-38-12.

37. The Court finds as fact that in addition to violating the USPAP, or failing to exercise reasonable diligence or competence in making non-misleading appraisals, appraisers may also be disciplined for any the following:

- (a) Attempting to procure a license by fraud or misrepresentation;
- (b) Paying money to any member or employee of the Board in order to procure a license;
- (c) Committing an act or omission which constitutes dishonestly, fraud, or misrepresentation, with the intent to substantially benefit the licensee or with the intent to substantially injure another person;
- (d) Receiving a criminal or civil judgment for fraud, misrepresentation, or deceit in the course of appraising real estate;
- (e) Being convicted of a crime which is substantially related to the qualifications or duties of a person developing real estate appraisals;
- (f) Violating the confidential nature of governmental records; and
- (g) Accepting a fee that is or was contingent upon the appraiser reporting a predetermined analysis, opinion, or conclusion.

38. Neither the code, nor the rules provide assistance in determining which sanctions are appropriate for the numerous possible violations, thereby leaving the imposition of sanctions to the Board's discretion.

39. The Court finds that in the scheme of all possible violations, violating the USPAP, although serious, is not as serious as some of the other offenses which involve



willful and/or fraudulent misrepresentation. However, the Court finds as fact that the discipline imposed in this case was one of the most severe sanctions, that is, the Board suspended McCracken's license for a period of one year.

40. The Court finds as fact that all seven charges relate to McCracken's completion of one appraisal, on the property described above.
41. The Court finds as fact that there is no evidence in the record that McCracken was ever previously charged with violating her statutory duties as a real estate appraiser, nor was there any evidence that any civil or criminal suits arose from the underlying appraisal.
42. The Court finds as fact that the administrative record is void of any evidence that McCracken intentionally, wilfully, or fraudulently inflated numbers, chose inaccurate comparables, or otherwise completed a misleading appraisal. There is no evidence that McCracken had a motive, improper or otherwise, to complete a misleading appraisal.
43. As there is no evidence of intent, improper motive, or continuing violations, the Court finds as fact that the Board's charges and sanctions are based only on McCracken's selection of comparables in the course of a single appraisal.
44. McCracken's appeal raises several grounds, including the following:
  - (a) The Board's Order is in violation of her constitutional right to due process of law because Mr. Puccio, the chairperson of the investigation, was also a partner of York, the appraiser who complained to the Board;
  - (b) The three and one-half years it took for the Board to enter a final order violated McCracken's due process rights;



(c) The Board's Order was not based on the substantial evidence where the reviewing appraisers' opinions ranged from \$67,400 to \$110,000 and where some of the comparables they used were not available for use when McCracken completed the appraisal;

(d) The Board's Order was not based on substantial evidence where McCracken appraised property in Fairmont since 1993, including twenty appraisals in the Fairmont area in 1998;

(e) The Board's Order was not based on substantial evidence where Ms. Pettito testified that McCracken's appraisal was complete and supported by logical reasoning;

(f) The Board's Order is based on an ambiguous set of uniform standards, which does not address comparables;

(g) The Board's suspension of her license for one year and the imposition of administrative fees is excessive; and

(h) The Board unreasonably denied her request to reopen the case in light of information that the lawyer representing her at the hearings admitted to neglecting his work.

45. The Court finds as fact that three days of administrative hearings were held in the underlying matter: December 9, 2002, January 31, 2003, and November 6, 2003.

The administrative transcripts reflect that York's partner, Mr. Puccio, was not in attendance at the hearings and that the Assistant Attorney General noted on

December 9, 2002 that Mr. Puccio intended to recuse himself from the

"deliberative process of the Board as well as the final vote".

46. The Court finds as fact that McCracken has failed to indicate which statute or rule requires the Board to enter its order within a specified time. The statute and rules provide that the hearing must be held not less than thirty days, nor more than ninety days after notice is given, and that the hearing may be continued for good cause.

See *W.Va. Code*, §30-38-14(a) and 190 *W.Va. C.S.R.* 4-3.7. The record reflects that the December 2002 hearing was continued upon McCracken's motion, and that the January 2003 hearing was continued after testimony continued past 5:00 p.m.

47. The Court finds that McCracken admits that during the course of the administrative proceedings, she retained her real estate appraiser's license.
48. The Court finds as fact that Ms. Petitto testified before the Board that McCracken's choice of comparables was logical and at least one of the appraisers' comparables was "not available" for McCracken to use at the time she completed the appraisal.
49. The Court finds as fact that McCracken's attorney at the hearings was Brad Deel, who was allegedly discharged by McCracken in January of 2004 due to his failure to return her calls. In February of 2004, Mr. Deel responded to an ethics complaint matter by admitting that by October 2003, he was non-functional and neglected his clients and their interests. The Court denied McCracken's motion to reopen the matter for another hearing. McCracken does not state what evidence or testimony she wished to offer at the additional hearing, however, she and her new counsel were given the opportunity to submit proposed findings and conclusions to further argue their position.
50. The appellee argues that McCracken does not have a constitutional right to counsel in a civil matter pending before an administrative board and that the Hearing Examiner specifically found that Mr. Deel's conduct and demeanor during the hearings did not reflect impairment and that he made a spirited defense of McCracken.

## STANDARD OF REVIEW

1. Any party adversely affected by a final order or decision made by the board after a hearing is entitled to judicial review as provided in the West Virginia Administrative Procedures Act. *W.Va. Code*, §30-38-14(f) and 190 *W.Va. C.S.R.* 4-8.1 (2004).
2. Judicial review is instituted by filing a petition within thirty days after receiving notice of the final order. *W.Va. Code*, §29A-5-4(b).
3. A circuit court may reverse an administrative decision if the decision
  - (1) In violation of constitutional or statutory provisions; or
  - (2) In excess of the statutory authority or jurisdiction of the agency; or
  - (3) Made upon unlawful procedures; or
  - (4) Affected by other error of law; or
  - (5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or
  - (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

*W.Va. Code*, §29A-5-4(g).

## CONCLUSIONS OF LAW

1. McCracken filed a timely appeal with this Court on July 5, 2005 as the Board's Order was entered on June 6, 2005.
2. The Court concludes that McCracken has not shown any support for her averment that she was denied due process of law because Mr. Puccio was on the Board. The record indicates that he recused himself from the proceedings and decision.
3. The Court concludes that McCracken has not shown any support for her averment that she was denied due process due to the lengthy administrative process. Although the process was quite lengthy, there is no indication that the matter was not scheduled for hearing according to the statute, and continued for good cause.

4. The Court concludes that McCracken has not shown any support for her averment that the Board erred in not allowing her to reopen the hearing due to Mr. Deel's admissions in a separate matter. McCracken fails to establish what additional evidence or testimony she wished to offer.
5. The Court concludes that McCracken's argument that the USPAP are ambiguous is not supported as the record clearly demonstrates that she and her counsel understood the charges levied against her as well as the recognized methods and techniques of competent appraising referenced by the USPAP.
6. The Court concludes that the administrative record contains sufficient evidence for which the Hearing Examiner and the Board could find that McCracken's choice of comparables, or the failure to adequately adjust the property value based on differences between the property and the comparables, constituted violations of certain USPAP Competency Provisions and Standards. Specifically, the Court concludes that the Hearing Examiner and Board did not commit clear error in determining that McCracken violated Competency Provision 2 and Standards 1-1(a), 1-1(b), 1-1(c), and 2-1(a) of the USPAP, based on testimony that she failed to make adequate adjustments to the property's value, due to the differences between the property in question and the comparables she selected. Therefore, the Hearing Examiner's and Board's decision relating to charges 2,4,5,6,7 is hereby **AFFIRMED**.
7. The Court finds that the portion of the Hearing Examiner's Decision and Board's Order that finds that McCracken violated Competency Provisions 1 and 3 of the USPAP, by failing to disclose her lack of knowledge or experience in the geographic



market, is not supported by the substantial evidence produced during the course of the administrative matter. The evidence was that McCracken was a licensed appraiser and practiced in the Fairmont market as early as 1992 or 1993. There was no evidence that McCracken did not have knowledge or experience in the geographic market. The only testimony on these charges was other appraiser's assumption that McCracken lacked experience, simply based on her completion of the appraisal in question. The Court finds that these assumptions do not provide sufficient evidence for which these specific charges are proven. Therefore, the Hearing Examiner and Board's findings that McCracken violated Competence Provisions 1 and 3 of the USPAP is clear error and must be and is hereby

**REVERSED.**

8. In reviewing the sanctions imposed in this matter, and even considering the two charges which this Court has now reversed, the Court finds it simply shocking that the Board imposed one of the most severe sanctions for McCracken's questionable practices on one appraisal, where there was no evidence of improper motive or allegation that McCracken was continuing a practice of violating her duties on appraisals. The consensus among the appraisers that testified at the administrative hearing was that the appraisal business is somewhat of an art, and hardly an exact science. Although McCracken's appraisal of the property in question was significantly higher than any other appraisal, the Court finds it both troubling and telling that the other appraisals were so far apart in their valuations. Obviously, a property's value depends on a variety of factors, one of which is time.



However, the fact that both York's and Yoho's retroactive appraisals, (determining the value as of February 1999), resulted in a \$40,500 difference, demonstrate the difficulty posed in valuing the property in question.

9. The uncontested difficulty in selecting comparables and valuing the property in question, combined with the fact that all the pending charges deal with these tasks, demonstrates that the Board imposed an excessive sanction.
10. Obviously, the requirement of additional educational courses is quite appropriate for the violations alleged and proven in this matter. However, suspending McCracken's license for one year, based on McCracken's appraisal of one property that posed a difficult task, is so manifestly unjust that this Court refuses to defer to the Board on the issue of sanctions. The Court concludes that the imposition of a one year suspension was an absolute abuse of discretion which must be corrected.
11. McCracken's license has been suspended for more than five months, which this Court deems entirely sufficient for the violations charged and proven. Therefore, the Court does hereby **REVERSE** the Board's imposition of the one year suspension. Once McCracken completes the educational courses required by the Board, provides the Board with the proper documentation of such completion, and applies for reinstatement, the Board shall reinstate her license, forthwith.
12. The Court concludes that the decision to not impose a fine, but to require McCracken to pay more than seventeen thousand dollars in administrative costs is equally shocking. Although the Board may certainly impose administrative costs under the statute, the Court finds no evidence in the record to support such a high

cost for due process. Without any indication in the record as to how such costs are substantiated, the Court must and does hereby find that such costs represent an abuse of discretion. Therefore, the requirement that McCracken pay the board the administrative costs assessed in this matter is **REVERSED**.

The objection to the entry of this order is hereby noted and preserved.

The Clerk is directed to remove this case from the Court's active docket and to send a certified copy of this Order to McCracken, the Board, and counsel for the Board, Mr. Greg G. Skinner, at the following addresses:

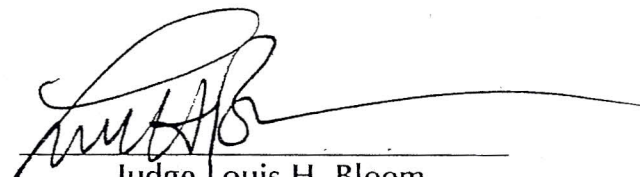
Ms. Barbara McCracken Goodwin  
134 Milford Street  
Clarksburg, WV 26301-3554

Mr. Gregory G. Skinner, Esq.  
Assistant Attorney General  
State Capitol, Room E-26  
Charleston, WV 25305

and

Real Estate Appraiser Licensing and Certification Board  
2110 Kanawha Blvd., East, Suite 101  
Charleston, WV 25311.

ENTER: This 18<sup>th</sup> day of November, 2005.

  
\_\_\_\_\_  
Judge Louis H. Bloom

11/18/05  
Date: \_\_\_\_\_  
Certified copies sent to:  
- court of record  
- parties  
- other (please include) \_\_\_\_\_  
- first class mail  
- delivery  
- interdepartmental  
- other directions accomplished  
m Bulling

STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS  
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY  
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING  
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.  
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 18<sup>th</sup>  
DAY OF November, 2005  
Cathy S. Gatson CLERK  
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED

BARBARA McCracken,

Appellant,

v.

WEST VIRGINIA REAL ESTATE APPRAISER  
LICENSING AND CERTIFICATION BOARD,

Appellee.



2005 DEC -5 AM 10:34  
CATHY GATSON, CLERK  
KANAWHA CO. CIRCUIT COURT

Civil Action No. 05-AA-87

AMENDED ORDER

This Court entered a final order in this matter on or about November 18, 2005. Said final order reversed the West Virginia Real Estate Appraiser Licensing and Certification Board's decision to suspend Barbara McCracken's real estate license for one year, based on charges relating to an appraisal she completed in 1999. After full consideration of the appeal, the Court ordered the Board to reinstate McCracken's license upon her completion of certain educational courses required by the Board's prior decision.

The Court is in receipt of a letter from McCracken, dated November 30, 2005, and addressed to the Board. Said letter indicates that the educational courses that the Board requires her to take are not offered in the near future. Additionally, McCracken indicates that subsequent to completing the appraisal which led to the charges against her, she has completed a two-day course in Highest and Best Use and a course in Supporting Sales Comparison Grid Adjustments.

The Court does hereby determine that McCracken's letter, dated November, 30, 2005, is in the nature of a motion for reconsideration. After consideration of the facts

alleged in her letter, the Court does hereby **AMEND** the previously entered final order to include the following:

The Court does hereby **ORDER** the Board, in determining if McCracken has completed the required educational courses, to consider any and all courses she completed after the date of the appraisal which led to the underlying charges;

The Court does further **ORDER** that if the Board determines that McCracken has not completed the required classes, the Board shall reinstate McCracken's license immediately and allow McCracken a year to complete the required course work; and

The Court does further **ORDER** that this Court's final order shall remain in full force and effect, insofar as such order does not conflict with this Amended Order.

Any objection to the entry of this order is hereby noted and preserved.

The Clerk is directed to remove this case from the Court's active docket and to send a certified copy of this Order to McCracken, the Board, and counsel for the Board, Mr.

Greg G. Skinner, at the following addresses:


Ms. Barbara McCracken Goodwin  
134 Milford Street  
Clarksburg, WV 26301-3554

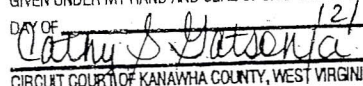
Mr. Gregory G. Skinner, Esq.  
Assistant Attorney General  
State Capitol, Room E-26  
Charleston, WV 25305

and

Real Estate Appraiser Licensing and Certification Board  
2110 Kanawha Blvd., East, Suite 101  
Charleston, WV 25311.

ENTER: This 2<sup>ND</sup> day of December, 2005.

  
Judge Louis H. Bloom

STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS  
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY  
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING  
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.  
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 5  
DAY OF 12/05  
 CLERK  
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA