

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO

2016 OCT 27 PM 4 03

JEANNE M. STEPHEN
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS

TUSCARAWAS COUNTY, OHIO

GENERAL TRIAL DIVISION

CHARLES SNYDER,

APPELLANT

vs.

**OHIO REAL ESTATE APPRAISER
BOARD,**

APPELLEE

: CASE NO. 2016 AA 03 0177

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JUDGE

EDWARD EMMETT O'FARRELL

JUDGMENT ENTRY - FURTHER NON-
ORAL CONSIDERATION CONDUCTED ON
10/25/2016 PERTAINING TO APPELLANT'S
3/16/2016 NOTICE OF APPEAL -
ADJUDICATION ORDER ISSUED BY THE
OHIO REAL ESTATE APPRAISER BOARD
AFFIRMED - ORDERS ENTERED

This matter was further considered by Edward Emmett O'Farrell, Judge, Court of
Common Pleas, Tuscarawas County, Ohio, General Trial Division, on 10/25/2016 on a **Non-Oral**
basis relative to the following:

- ◆ **Adjudication Order** issued by the Ohio Real Estate Appraiser Board, Ohio Division of Real Estate and Professional Licensing, journalized on 2/25/2016, issued 3/2/2016, and mailed 3/3/2016
- ◆ **Notice of Appeal** filed by Appellant Charles Snyder on 3/16/2016

- ◆ 4/12/2016 Certification under R.C. 119.12 that complete record of the proceedings in the case had been filed by the Appellee agency and the **Record of Administrative Proceedings**
- ◆ **Appellant Charles Snyder's Appellant's Brief** filed 6/24/2016
- ◆ **Brief of Appellee Ohio Real Estate Appraiser Board** filed 8/5/2016
- ◆ **Appellant Charles Snyder's Reply Brief** filed 8/26/2016
- ◆ 9/6/2016 **Oral Hearing**
- ◆ **Brief Commentary of Appellee Ohio Real Estate Appraiser Board on Appellant Charles Snyder's Supplemental Case Authority** filed 9/14/2016
- ◆ **Appellant Charles Snyder's Notice of Supplemental Authority** filed 9/22/2016

The Court

FINDS that Appellant, Charles Snyder, issued an appraisal report on 6/4/2010 involving a church facility in Knox County, Ohio, situated on a 4.263 acre tract of land, and located at 1481 Yauger Road, Mount Vernon, Ohio (hereafter "Subject Property"). Snyder observed the property on 5/28/2010, which is the effective date of the appraisal.

FINDS that Robert F. Smith, Assistant Chief Legal Counsel for Dave Yost, Auditor of State, sent a letter to the State of Ohio, Department of Commerce, Division of Real Estate and Professional

Licensing (hereafter "Division") on 3/19/2014, requesting that the Division review the appraisal performed by Snyder on the Subject Property.

FINDS that the Division issued a Notice of Opportunity for Hearing to Charles Snyder on 3/31/2015 and again on 4/7/2015, in Case No. 2014-204, notifying Snyder that the Division had conducted an investigation of him in response to a complaint filed by Robert F. Smith. The notice further stated that as a result of that investigation, the Superintendent had determined that Snyder violated provisions of Revised Code Chapter 4763 or the Administrative rules adopted thereunder. Schedule A, which was attached to the notice, listed 11 specific violations. The notice advised Snyder of his opportunity for a hearing upon request.

FINDS that an administrative hearing was conducted in Case No. 2014-204 on 7/9/2015. The Hearing Examiner, Richard D. Brown, issued Findings of Fact and Conclusions of Law on 8/10/2015 concluding that the evidence presented failed to demonstrate, by a preponderance of the evidence, that Charles Snyder's actions or his appraisal report violated the relevant Uniform Standards of Professional Appraisal Practice (hereafter "USPAP") Standards.

FINDS that the Division filed Objections to the Hearing Examiner's Findings of Fact and Conclusions of Law.

FINDS that this matter was presented to the Ohio Real Estate Appraiser Board (hereafter "Board") at its 11/19/2015 meeting for review of the Hearing Officer's report. The Board continued its deliberations on this case pending a legal opinion from the Attorney General's office and eventually reviewed this matter at its 2/25/2016 meeting.

FINDS that the Board issued an Adjudication Order, which was journalized on 2/25/2016, issued 3/2/2016, and mailed 3/3/2016 (hereafter "Adjudication Order"). The Board adopted in part and rejected in part the Findings of Fact and Conclusions of Law of the Hearing Officer. The Board adopted the Hearing Officer's report for Charges #1 through 8. However, the Board rejected the Hearing Officer's report for Charges #9, 10, and 11, and determined that Snyder was in violation of USPAP standards, as follows:

9. In your appraisal report for the subject property, you did the following: you failed to sufficiently summarize your analysis of the subject property's sales contract of \$1,500,000. Accordingly, you violated Ohio Revised Code Section 4763.11(G)(5), 4763.11(G)(6) and/or 4763.11(G)(7) as those sections incorporate 2010-2011 USPAP Standards Rule 1-1(a), 2010-2011 USPAP Standards Rule 1-5(a), 2010-2011 USPAP Standards Rule 2-1(a), 2010-2011 USPAP Standards Rule 2-1(b) and/or 2010-2011 USPAP Standards Rule 2-2(b)(viii) by operation of Ohio Revised Code Section 4763.13(A).
10. In your appraisal report for the subject property, you stated you made some extraordinary assumptions but you failed to clearly or conspicuously state their use might have affected your assignment results. Accordingly, you violated Ohio Revised Code Section 4763.11(G)(5), 4763.11(G)(6) and/or 4763.11(G)(7) as those sections incorporate 2010-2011 USPAP Standards Rule 2-1(a) and/or 2010-2011 USPAP Standards Rule 2-2(b)(x) by operation of Ohio Revised Code Section 4763.13(A).
11. In your appraisal report for the Subject property, you committed substantial errors of omission or commission that significantly affected the credibility of the appraisal.

report, or in the alternative, you rendered appraisal services in a negligent or careless manner by making a series of errors that affected the credibility of the appraisal report. Accordingly, you violated Ohio Revised Code Section 4763.11(G)(5), 4763.11(G)(6) and/or 4763.11(G)(7) as those sections incorporate 2010-2011 USPAP Standards Rule 1-1(b) or 2010-2011 USPAP Standards Rule 1-1(c) by operation of Ohio Revised Code Section 4763.13(A).”

FINDS that the Board Ordered that:

“For charge #9 in case number 2014-204: Charles Snyder is issued a public reprimand and is ordered to pay a civil penalty of five hundred dollars (\$500.00).

For charge #10 in case number 2014-204: Charles Snyder is issued a public reprimand and is ordered to pay a civil penalty of five hundred dollars (\$500.00).

For charge #11 in case number 2014-204: Charles Snyder is issued a public reprimand and Charles Snyder’s Ohio general real estate appraiser certificate is suspended (20) days.”

FINDS that Appellant Charles Snyder (hereafter “Snyder”) filed a Notice of Appeal in this Court on 3/16/2016, appealing from the Adjudication Order. Snyder appealed on the following grounds:

(1) The Adjudication Order is not supported by reliable, probative, and substantial evidence and is not in accordance with law; (2) The Ohio Real Estate Appraiser Board improperly substituted its own opinion as evidence in lieu of that which was adduced at the administrative hearing held pursuant to R.C. 119.09; and (3) The Ohio Real Estate Appraiser Board failed to consider the contradictory evidence in the record when it rejected the hearing officer’s recommendation of no violation.

FINDS that Snyder argues that the Adjudication Order must be reversed. Snyder argues that the Board's decision is contrary to law, and the Board has not met its burden of presenting reliable, probative and substantial evidence that Snyder engaged in the actions set forth in the Notice of Hearing. Snyder argues that there is no evidence in the record of any violation of USPAP. Snyder argues that the Adjudication Order reflects the Board's abuse of its power, which has resulted in violation of Snyder's due process rights and the evisceration of the investigation and hearing procedures set forth in R.C. Chapters 4763 and 119. Snyder argues that the Board improperly substituted its own opinion as evidence in lieu of that which was adduced at the administrative hearing. Snyder argues that the Board failed to provide sufficient grounds for its rejection of the Hearing Officer's finding of no violations. Snyder further argues that he sufficiently summarized the oral offer to purchase the Subject Property in the appraisal report. Snyder argues that the appraisal report does not contain extraordinary assumptions that would require the clear and conspicuous statement that their use might affect the assignment. Snyder argues that the appraisal report sets forth an accurate and credible valuation of the Subject Property.

FINDS that Appellee argues that Snyder's testimony coupled with his report constitute reliable, probative, and substantial evidence of the charged USPAP violations, and the Court should affirm the Board's decision. Appellee argues that Snyder violated standard practices when he disclosed a purchase agreement in the report but failed to summarize or analyze it any further. Appellee argues that Snyder violated standard practices when he disclosed extraordinary assumptions but failed to state that they could affect his value conclusion. Appellee argues that Snyder violated standard

practices by committing substantial and careless errors that significantly affected the report. Appellee argues that, based upon the record adduced at hearing, the Board properly relied on its own expertise in finding that Snyder violated the specific USPAP provisions. Appellee argues that Snyder violated codified Ohio statutes, that incorporate specific practice standards, which govern his report. Appellee argues that the practice standards mandate analysis and explanation that Snyder simply did not produce in his report. Appellee further argues that the Board sufficiently set forth its reasoning for the decision.

FINDS that the Court has reviewed the complete Record of the Administrative Proceedings, consisting of 1,101 pages, filed in this matter.

FINDS that the Division has requested the Court to order that \$1,620.10, which was the cost incurred in preparing and certifying to this Court the Record of Administrative Proceedings filed in this matter, be made a part of the costs of this appeal under R.C. 119.12.

FINDS that R.C. 119.12(A)(1) generally provides that “[a]ny party adversely affected by any order of an agency issued pursuant to an adjudication denying an applicant admission to an examination, or denying the issuance or renewal of a license or registration of a licensee, or revoking or suspending a license, or allowing the payment of a forfeiture under section 4301.252 of the Revised Code may appeal from the order of the agency to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident.”

FINDS that R.C. 119.12(I) provides, in relevant part, that the expense of the record of the proceedings in the case “shall be taxed as a part of the costs on the appeal.”

FINDS that R.C. 119.12(M) provides that “[t]he court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and any additional evidence the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of this finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. The court shall award compensation for fees in accordance with section 2335.39 of the Revised Code to a prevailing party, other than an agency, in an appeal filed pursuant to this section.”

FINDS that “[t]he evidence required by R.C. 119.12 can be defined as follows: (1) “Reliable” evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) “Probative” evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) “Substantial” evidence is evidence with some weight; it must have importance and value.” *Our Place, Inc. v. Ohio Liquor Control Comm.*, 63 Ohio St.3d 570, 571, 589 N.E.2d 1303 (1992).

FINDS that “[w]here the court, in its appraisal of the evidence, determines that there exist legally significant reasons for discrediting certain evidence relied upon by the administrative body, and

necessary to its determination, the court may reverse, vacate, or modify the administrative order.”
Ohio Historical Soc. v. State Emp. Relations Bd., 66 Ohio St.3d 466, 470-471, 613 N.E.2d 591
(1993).

FINDS that R.C. 119.09 provides, in relevant part, that [t]he recommendation of the referee or examiner may be approved, modified, or disapproved by the agency, and the order of the agency based on such report, recommendation, transcript of testimony and evidence, or objections of the parties, and additional testimony and evidence shall have the same effect as if such hearing had been conducted by the agency. No such recommendation shall be final until confirmed and approved by the agency as indicated by the order entered on its record of proceedings, and if the agency modifies or disapproves the recommendations of the referee or examiner it shall include in the record of its proceedings the reasons for such modification or disapproval.”

FINDS that R.C. 4763.11(D) provides, in relevant part, that “* * *[i]f a formal hearing is conducted, the hearing examiner shall file a report of findings of fact and conclusions of law with the superintendent, the board, the complainant and the certificate holder, licensee, or registrant after the conclusion of the formal hearing. Within ten calendar days of receipt of the copy of the hearing examiner’s findings of fact and conclusions of law, the certificate holder, licensee, or registrant or the division may file with the board written objections to the hearing examiner’s report, which shall be considered by the board before approving, modifying, or rejecting the hearing examiner’s report.

* * *”

FINDS that R.C. 4763.11(E) provides that “[t]he board shall review the referee’s or hearing examiner’s report and the evidence at the next regularly scheduled board meeting held at least fifteen business days after receipt of the referee’s or examiner’s report. The board may hear the testimony of the complainant, certificate holder, registrant, or licensee upon request. If the complainant is the Ohio civil rights commission, the board shall review the complaint.”

FINDS that R.C. 4763.11(G)(5)(6) and (7) provide that “[t]he board shall take any disciplinary action authorized by this section against a certificate holder, registrant, or licensee who is found to have committed any of the following acts, omissions, or violations during the appraiser’s certification, registration, or licensure: * * *(5) Violation of any of the standards for the development, preparation, communication, or reporting of an appraisal report set forth in this chapter and rules of the board; (6) Failure or refusal to exercise reasonable diligence in developing, preparing, or communicating an appraisal report; (7) Negligence or incompetence in developing, preparing, communicating, or reporting an appraisal report; * * *.”

FINDS that R.C. 4763.13(A) provides, in relevant part, that “[a] certificate holder, registrant, and licensee also shall comply with the uniform standards of professional appraisal practice, as adopted by the appraisal standards board of the appraisal foundation and such other standards adopted by the real estate appraiser board, to the extent that those standards do not conflict with applicable federal standards in connection with a particular federally related transaction.”

FINDS that USPAP 2010-2011 Edition, Standards Rule 1-1 provides that “[i]n developing a real property appraisal, an appraiser must: (a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal; (b) not commit a substantial error of omission or commission that significantly affects an appraisal; and (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.”

FINDS that USPAP 2010-2011 Edition, Standards Rule 1-5(a) provides that “[w]hen the value opinion to be developed is market value, an appraiser must, if such information is available to the appraiser in the normal course of business: (a) analyze all agreements of sale, options, and listings of the subject property current as of the effective date of the appraisal; * * *.”

FINDS that USPAP 2010-2011 Edition, Standards Rule 2-1 provides that “[e]ach written or oral real property appraisal report must: (a) clearly and accurately set forth the appraisal in a manner that will not be misleading; (b) contain sufficient information to enable the intended users of the appraisal to understand the report properly; and (c) clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions used in the assignment.”

FINDS that USPAP 2010-2011 Edition, Standards Rule 2-2(b)(viii) and (x) provide that “[e]ach written real property appraisal report must be prepared under one of the following three options and prominently state which option is used: Self-Contained Appraisal Report, Summary Appraisal Report, or Restricted Use Appraisal Report.

* * *

(b) The content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:

* * *

(viii) summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions; exclusion of the sales comparison approach, cost approach, or income approach must be explained;

* * *

(x) clearly and conspicuously:

- state all extraordinary assumptions and hypothetical conditions; and
- state that their use might have affected the assignment results; * * *.”

FINDS that the Tenth District Court of Appeals found that “[i]n a disciplinary action, the [Ohio Real Estate Commission] may rely on its own expertise in deciding whether a licensee engaged in conduct that violates the laws, rules or standards of the real estate industry.” *Boggs v. Ohio Real Estate Commission*, 186 Ohio App.3d 96, 2009-Ohio-6325, 926 N.E.2d 663, ¶33, citing

Richard T. Kiko Agency, Inc. v. Ohio Dept. of Commerce, Div. of Real Estate, 48 Ohio St.3d 74, 77, 549 N.E.2d 509 (1990). Therefore, in *Boggs*, the Tenth District Court of Appeals found that it was appropriate to “accord deference to the commission’s determination that certain conduct is contrary to law or a standard of practice in the industry.” *Boggs*, at ¶33, citing *iNest Realty, Inc. v. Ohio Dept. of Commerce*, 10th Dist. No. 04AP-871, 2005-Ohio-3621, ¶21.

FINDS that, upon review of cases involving the Ohio State Medical Board, the Supreme Court of Ohio found that “expert testimony as to a standard of practice is not mandatory in a license revocation hearing and the board may rely on its own expertise to determine whether a physician failed to conform to minimum standards of care.” *Arlen v. State*, 61 Ohio St.2d 168, 172, 399 N.E.2d 1251 (1980); *See also Demint v. State Med. Bd. of Ohio*, 10th Dist. Franklin No. 15AP-456, 2016-Ohio-3531, ¶18.

FINDS that in *In re Williams*, the Supreme Court of Ohio found that an order of the Ohio State Medical Board was unsupported by substantial evidence and that “[w]hile the board need not, in every case, present expert testimony to support a charge against an accused physician, the charge must be supported by some reliable, probative and substantial evidence.” *In re Williams*, 60 Ohio St.3d 85, 87, 573 N.E.2d 638 (1991); *See also Demint*, at ¶16. Even if the majority of a board’s members have special knowledge, the board is not entitled to exercise unbridled discretion. *In re Williams*, at 88.

FINDS, however, that in *State Medical Board of Ohio v. Murray*, the Supreme Court of Ohio clarified that “[t]he *Williams* court found that the board’s case failed due to a lack of evidence, not because the board failed to present expert testimony.” *State Med. Bd. of Ohio v. Murray*, 66 Ohio St.3d 527, 534, 1993-Ohio-14, 613 N.E.2d 636. The Court further clarified that a lack of expert testimony “does not in any way preclude a conclusion that the board’s findings were supported by reliable, probative, and substantial evidence and that its order is in accordance with law.” *Murray*, at 534.

FINDS that, “when reviewing a board’s order, courts must accord due deference to the board’s interpretation of the technical and ethical requirements of its profession.” *Singer v. Davids*, 5th Dist. Fairfield No. 10-CA-55, 2011-Ohio-4434, ¶17, citing *Arlen v. State*, 61 Ohio St.2d 168, 173, 339 N.E.2d 1251 (1980); *Flynn v. State Med. Bd. of Ohio*, 10th Dist. Franklin No. 16AP-29, 2016-Ohio-5903, ¶42.

FINDS that the cost incurred in preparing and certifying to the Court the Record of the Administrative Proceedings filed in this matter, in the amount of \$1,620.10 should be made a part of the costs of this appeal as provided in R.C. 119.12(I).

FINDS that Exhibit A, which was attached to the Adjudication Order, provides that “[t]he Board determined based on the appraisal document itself and the requirements, there were substantial errors committed relative to Charge #9 and Charge #10.”

FINDS, therefore, that the Board properly explained that the reason it disapproved of the hearing examiner’s findings and conclusions was because the Board determined that Snyder committed substantial errors based upon the appraisal document itself.

FINDS, upon review of the appraisal report and the entire record of the administrative proceedings, that the Board had sufficient reliable, probative and substantial evidence before it to conclude that Snyder committed substantial errors relative to Charges #9, 10, and 11.

FINDS that the Board did not improperly substitute its own opinion as evidence.

FINDS that, since there was reliable, probative and substantial evidence of the relevant charges before the Board, including the appraisal report itself, expert testimony regarding these violations was not necessary for the Board to conclude that Charles Snyder committed the relevant violations.

FINDS, upon review of the entire record of the administrative proceedings, that the Board’s Adjudication Order is supported by reliable, probative, and substantial evidence and is in

accordance with law, and therefore, the Adjudication Order should be affirmed under R.C. 119.12(M).

FINDS that the **Adjudication Order** issued by the Ohio Real Estate Appraiser Board, Ohio Division of Real Estate and Professional Licensing, journalized on 2/25/2016, issued 3/2/2016, and mailed 3/3/2016 should be **Affirmed**.

FINDS, therefore, that the stay of the Adjudication Order should be lifted.

It is therefore

ORDERED that the cost incurred in preparing and certifying to the Court the Record of the Administrative Proceedings filed in this matter, in the amount of \$1,620.10 shall be made a part of the costs of this appeal as provided in R.C. 119.12(I).

ORDERED that the **Adjudication Order** issued by the Ohio Real Estate Appraiser Board, Ohio Division of Real Estate and Professional Licensing, journalized on 2/25/2016, issued 3/2/2016, and mailed 3/3/2016 shall be **Affirmed**.

ORDERED that the **stay** of the **Adjudication Order** is **lifted**.

ORDERED that the Court costs shall be assessed to Appellant, Charles Snyder.

ORDERED that the Clerk of Courts shall close this case file and remove it from the pending docket of the undersigned.



Edward Emmett O'Farrell, Judge

10/27/2016

Date

cc: Court Administrator's Office
Attys. Kristin E. Rosen & Darcy A. Shafer
Atty. Joseph I. Tripodi
Asst. Ohio Attys. General Keith O'Korn & Peter L. Jamison
Clerk of Courts

