

FILED 6/16/10 (Date)
Iowa Real Estate Appraiser Exam. Board

BEFORE THE REAL ESTATE APPRAISER EXAMINING BOARD
OF THE STATE OF IOWA

[Redacted Signature]
Signature, Executive Officer

IN THE MATTER OF:)	CASE NO. 10-12
)	DIA NO. 10DOCREA003
RONALD D. KERR)	
)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
RESPONDENT)	DECISION AND ORDER

On April 15, 2010, the Iowa Real Estate Appraiser Examining Board (Board) found probable cause to file a Notice of Hearing and Statement of Charges against Ronald D. Kerr (Respondent). Respondent was charged with:

- a. Failure to comply with a disciplinary order, in violation of Iowa Code section 272C.3(2)(a)(2009).
- b. Practicing on an inactive and surrendered certificate, in violation of Iowa Code sections 543D.15(1), 543D.21(4) and 193F IAC 7.3(3)(h);
- c. Practice harmful and detrimental to the public, and misleading, deceptive, untrue and fraudulent practices, in violation of Iowa Code section 272C.10(3); and
- d. Willful disregard for the Board's disciplinary order and laws, in violation of Iowa Code section 543D.17(1)(g).

A telephone prehearing conference was held on May 14, 2010. The hearing was held on May 18, 2010 at 11:20 a.m. Assistant Attorney General Pamela Griebel represented the state of Iowa. Respondent appeared and was self-represented. The following Board members presided at the hearing: Michael Lara, Appraiser, Chairperson; Gregory Morehead, Appraiser; James Kesterson, Appraiser; Amy Thorne, Appraiser; Judy Zwanziger, Appraiser; and Maxine Moore Ballard, Public Member. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(2009) and 193 IAC 7.25(2). After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2009), to

deliberate its decision. The Board instructed the administrative law judge to prepare Findings of Fact, Conclusions of Law, Decision and Order for their review, in conformance with their deliberations.

THE RECORD

The record includes the State's Prehearing Conference Report, the testimony of Respondent, and the State Exhibits, pp. 1-104.

FINDINGS OF FACT

1. Respondent was initially issued certificate CR01936 as a residential real estate appraiser in the state of Iowa on August 19, 1996. On August 13, 2008, Respondent and the Board entered into a Combined Statement of Charges and Consent Order in Case No. 08-01. Respondent was later charged with failing to comply with the terms of the Consent Order. On September 4, 2009, Respondent signed an Agreed Amendment to Order in Case No. 08-01 to resolve the pending charges. Respondent agreed that his real estate appraiser certificate would be placed on inactive status upon execution of the Amendment to Consent Order. Respondent further agreed to voluntarily surrender his Iowa certificate and that he would not renew it when it expired on June 30, 2010. (State Exhibits, pp. 1, 5-6)

2. On September 16, 2009, the Board notified Respondent that it had approved the Agreed Amendment to Consent Order in Case No. 08-01 and that the terms of the Order were in effect. (State Exhibit, p. 6)

3. On December 4, 2009, a review appraiser with the United States Department of Agriculture (USDA) notified the Board that Respondent had prepared an appraisal as a certified appraiser for the USDA Rural Development Agency after he surrendered his certificate. (State Exhibit, pp. 12-14)

On March 26, 2010, the USDA review appraiser filed a complaint against Respondent and attached a copy of the appraisal report that Respondent prepared for the USDA. Respondent verbally accepted the assignment to perform the appraisal on November 4, 2009 and represented himself as a licensed residential real estate appraiser in the state of Iowa. The appraisal was to be used by the USDA for a foreclosure action and the purpose of the appraisal was to provide an opinion of the property's value in "as is" condition. Respondent signed the appraisal report on November 17, 2009 and provided a value for the property as of November 10, 2009. (State Exhibit, p. 85) Respondent

provided his former state certification number (CRO-1936) with his signature on the appraisal report and indicated that his certificate expired on June 30, 2010. (State Exhibit, pp. 72-104)

4. On March 17, 2010, appraiser Dennis Judkins sent the Board two appraisal reports signed by Respondent on February 24, 2010 and prepared for American State Bank. (State Exhibit, pp. 17-71) On both appraisal reports, Respondent stated that the bank was the intended client and user of the appraisal and that the intended use was to provide an opinion of Market Value for mortgage financing. On both appraisal reports, Respondent represented himself to be a certified appraiser, provided his former state certification number (CRO-1936), and provided an expiration date of June 30, 2010 for his certification. (State Exhibit, pp. 45, 71)

5. American State Bank later confirmed that Respondent prepared a total of four appraisal reports for the bank after September 15, 2009 and was paid for all four reports. Two of the appraisals had to be redone by another appraiser. (State Exhibit, pp. 15-16)

CONCLUSIONS OF LAW

The Board is authorized to revoke or suspend a license upon failure of the licensee to comply with a decision of the board imposing licensee discipline.¹ The preponderance of the evidence established that Respondent failed to comply with a disciplinary order of the Board issued on September 15, 2009 (Agreed Amendment to Order in Case No. 08-01). Respondent continued to perform appraisals while representing himself to be an Iowa certified residential real estate appraiser after he voluntarily surrendered his certification.

The term "certified real estate appraiser" shall only be used to refer to individuals who hold the certificate.² The Board is authorized to impose civil penalties against a person who is not certified or registered under Iowa Code chapter 543D who violates Iowa Code section 543D.15 by using the term "certified real estate appraiser" when not authorized to do so.³ Board rules also authorize the Board to impose discipline against certified real estate property appraisers for deceptive practices. Deceptive practices are defined to include representing oneself as a certified appraiser when one's certificate has been suspended, revoked, surrendered, or placed on inactive status, or has lapsed.⁴

¹ Iowa Code section 272C.3(2)(a)(2009).

² Iowa Code section 543D.15(1)(2009).

³ Iowa Code section 543D.21(4)(2009).

⁴ 193F IAC 7.3(3)(h).

The preponderance of the evidence established that the Board is authorized to impose civil penalties against Respondent because he misrepresented himself to be a certified real estate appraiser at a time when his certificate had been voluntarily surrendered.

The Board is authorized to suspend or revoke a license for a practice that is harmful or detrimental to the public and for misleading, deceptive, untrue and fraudulent practices.⁵ Respondent engaged in a practice that was misleading, deceptive, untrue, and harmful or detrimental to the public when he falsely represented himself to be a certified real estate appraiser after his certificate had been voluntarily surrendered.

The Board may revoke or suspend or otherwise discipline the holder of a certificate as a residential real estate appraiser for willful disregard of the Board's disciplinary order and laws.⁶ Respondent has shown willful disregard for the Board's disciplinary order and the licensing laws by continuing to hold himself out as a certified real estate appraiser after surrendering his certificate.

At hearing, Respondent admitted that he performed appraisals as a certified real estate appraiser after September 15, 2009. Respondent claimed that he mistakenly thought that certification was not necessary if the appraisal was not used for mortgage purposes. He testified that he believed that the residential property appraisal for the USDA was for "inventory" purposes only and that the appraisals for American State Bank were only for in house loans that would not be resold. These explanations were not credible and even if they had been true, they did not mitigate the seriousness of Respondent's violations.

Since Respondent has already surrendered his certificate, the only sanction available to the Board is the imposition of civil penalties, as authorized by Iowa Code section 543D.21(4). Pursuant to Iowa Code section 543D.21(3), the Board is authorized to impose civil penalties in an amount up to one thousand dollars for each violation. The Board has determined that \$3,000 is an appropriate civil penalty in this case, based on the three appraisal reports in the evidentiary record that were prepared and signed by Respondent after the voluntary surrender of his license on September 15, 2009.

⁵ Iowa Code section 272C.10(3)(2009).


⁶ Iowa Code section 543D.17(1)(g)(2009).

DECISION AND ORDER

IT IS THEREFORE ORDERED that Ronald D. Kerr shall pay a total civil penalty of three thousand dollars (\$3,000) within sixty (60) days of the issuance of this Decision and Order.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 193 IAC 7.41, that the Respondent shall pay \$75.00 within thirty (30) days of receipt of this decision for fees associated with conducting the disciplinary hearing.

Dated this ^{16th} day of *June*, 2010.


Michael Lara, Appraiser *Executive Officer*
Chairperson
Iowa Real Estate Appraiser Examining Board

cc: Ronald D. Kerr
9206 Willard Ct.
Urbandale, IA 50322 (Restricted Certified)

Pamela Griebel
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A. 193 IAC 7.37.

FILED July 27 2010 (Date)

BEFORE THE IOWA REAL ESTATE APPRAISER
EXAMINING BOARD

IOWA RE Appr Exam Board / Commission Board

Signature, Executive Officer

Ronald Kerr,)	Case No. 10-12
)	
Respondent.)	Order Regarding Civil Penalty
)	

On this 27th day of July, 2010, the Board considered Respondent's request that the Board withhold collection activity on the civil penalty imposed by prior Board Order following hearing. Respondent described the serious health issues he has faced after the Order was issued, as well as the associated financial distress on his family from medical bills and his inability to work. The Board grants the request as follows.

IT IS THEREFORE ORDERED: The Board shall indefinitely withhold collection activity on the \$3,000 civil penalty imposed **as long as** Respondent complies with the remaining portions of the Order, including the prohibition on practicing real estate appraising as a certified appraiser and payment of the \$75 hearing fee, which shall be due by December 31, 2010. Should Respondent violate the Order, the Board may take such lawful collection steps as are warranted under the circumstances.


 Toni Bright, Executive Officer
 Iowa Real Estate Appraiser
 Examining Board

Copy to: Respondent