

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE COMPLEX
1511 PONTIAC AVENUE
CRANSTON, RI 02920**

IN THE MATTER OF:	:	
	:	
	:	
Sheena McGurn,	:	DBR No.: 14AP006
	:	
Respondent.	:	

DECISION

I. INTRODUCTION

The above-entitled matter came before the Department of Business Regulation (“Department”) pursuant to a Notice of Hearing and Appointment of Hearing Officer issued to Sheena McGurn (“Respondent”) on December 22, 2014. A hearing was held before the undersigned¹ on June 24, 2015. Both parties were represented by counsel who rested on the record.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 5-20.7-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

III. ISSUE

Whether the Respondent’s application for a certified residential appraiser license should be granted or denied pursuant to R.I. Gen. Laws § 5-20.7-1 *et seq.*

IV. MATERIAL FACTS AND TESTIMONY

The undisputed facts are as follows:

1. There are four (4) classes of residential appraiser licenses:

¹ Pursuant to a delegation of authority by the Director of the Department.

- a. trainee license
 - b. licensed residential appraiser
 - c. certified residential appraiser
 - d. certified general appraiser
2. Respondent is licensed as a residential appraiser.
 3. Respondent does not hold a bachelor's degree.

Deanna Daniels (“Daniels”), Licensing Aide, testified on behalf of the Department. Daniels testified that she is the Department employee responsible for the implementation of the real estate appraiser licensing scheme. She testified that appraisal licenses are controlled by United States Title XI, the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (“FIRREA”),² the Appraiser Qualification Board (“AQB”) which arises out of FIRREA, R.I. Gen. Laws § 5-20.7-1 *et seq.*, and *Commercial Licensing Regulation 10 Real Estate Appraisers* (“CLR10”). She testified that the AQB is the explanatory document of FIRREA and provides the minimum education, experience, and examination requirements needed to obtain real property appraiser licenses and establishes that states cannot have less stringent requirements than required by the AQB. See Department’s Exhibit Two (2) (AQB booklet). She testified that every two (2) years, the AQB sub-committee audits the Department to ensure compliance with FIRREA and if the Department does not pass the audit, Rhode Island could be decertified from licensing appraisers. She testified that the audit ensures the State complies with FIRREA and the AQB.

² 12 U.S.C. § 3331 *et seq.*

Daniels testified that no experience is required to obtain a trainee appraisal license,³ but that Rhode Island is a mandatory licensing state, which requires a person conducting appraisals in Rhode Island be licensed. She testified that in Respondent's initial application for licensing as a trainee, the Respondent indicated that she had one (1) year of experience performing appraisals prior to obtaining her training license so that she engaged in appraising without a license. See Department's Exhibit One (1) (Respondent's initial trainee appraiser application). In response to that initial application, Daniels testified that the Respondent was issued a trainee license on March 13, 2013 and that license was valid for two (2) years. *Id.* Daniels testified that in order to obtain a certified residential appraiser license, an applicant needs to complete at least 2,500 hours of experience in no fewer than 24 months of experience to upgrade from a trainee appraiser. She testified that experience may be cumulative but the required 24 months must be met. See Department's Exhibit Two (2) (AQB Booklet - tab C).

Daniels testified that Respondent submitted a request dated August 8, 2014 to become a certified residential appraiser. See Department's Exhibit Three (3). Daniels testified that Respondent did not meet the time period because Respondent had less than 24 months of experience and Respondent did not meet the required 2,500 hours of experience. She testified that the Respondent had 2,343 hours between August 9, 2012 and August 12, 2014. See Department's Exhibit Three (3) (log of experience hours). She testified that the Respondent performed appraisals while unlicensed prior to March 13, 2013 and she believed those hours totaled 340 hours, however, those hours could not be counted toward the hourly requirement. *Id.*

³ See Department's Exhibit Two (2) (AQB Booklet – tab B).

Daniels testified that on October 20, 2014, she issued a denial letter to the Respondent in response to her application for a certified residential appraiser. See Department's Exhibit Four (4). She testified that she did speak to the Respondent, and told Respondent that she would be able to be licensed as a residential appraiser rather than a certified residential appraiser.⁴ She testified that Respondent passed the exam for a license as a residential appraiser and Respondent now holds a residential appraiser license. See Department's Exhibit Five (5) (copy of said license).

On cross-examination, Daniels testified that R.I. Gen. Laws 5-20.7-10(c) refers to upgrades for licenses. She testified that a person needs a trainee license in order to obtain experience, which means that one cannot count any experience prior to receiving a trainee license because the person needs to have a trainee license in order to perform appraisals pursuant to section 1(B) of CLR10. On re-direct, she testified that if a licensed appraiser license expires and that appraiser continues to perform appraisals those appraisals are considered unlicensed activity and the appraiser could be subject to administrative penalties for performing unlicensed appraisals.

The Respondent testified on her behalf. She testified that she trained with Michael Lenihan ("Lenihan") and that she had reviewed R.I. Gen. Laws 5-20.7-10(c) and believed that she only needed 2,500 hours in 24 months and did not believe she needed a trainee license before she started her experience; therefore, she worked with Lenihan's company. She testified that while working with Lenihan, she did not hold herself out as an appraiser and did not collect fees. She testified that she believes her experience between August, 2012 and March, 2014 fulfills the 2,500 hour requirement and that she should be allowed

⁴ Daniels testified that a licensed residential appraiser is required to have 2,000 hours of appraisal experience within 12 months. See Department's Exhibit Two (2).

to be licensed. She testified that she did not think she needed a trainee license to obtain the required experience so that she did answer that she had one (1) year experience appraising on her initial application⁵ but that experience was under Lenihan. She also submitted an affidavit from Lenihan indicating that she trained under him and he supervised her at all times. See Joint Exhibit One (1) (affidavit from Michael Lenihan). On cross-examination, Respondent testified that she works about 20 hours a week for Lenihan, but would work more if she was licensed as a certified residential appraiser because most banks require appraisals be performed by a certified residential appraiser.

The parties agreed that on January 1, 2015, FIRREA changed the requirements needed in order to obtain a certified residential appraiser license so that such a licensee is now required to have a bachelor's degree. The parties also agreed had the requirements not been changed, the Respondent would have been able to become a licensed certified residential appraiser because she would have had time to complete the 2,500 hours and 24 months of experience.

V. DISCUSSION

A. **Relevant Statutes and Regulation**

R.I. Gen. Laws § 5-20.7-10 provides in part as follows:

(a) An original certification as a state certified real estate appraiser or licensing as a state licensed appraiser shall not be issued to any person who does not possess the requisite experience in real property appraisal as required by the appraisal qualifications board of the Appraisal Foundation and supported by adequate written reports or file memoranda. The experience must be acquired within a period of five (5) years immediately preceding the filing of the application for certification. The experience shall be of the type of appraisal for which the applicant is seeking certification/licensing and shall meet the minimum standards of the Appraisal Foundation and/or applicable federal regulations.

⁵ See Department's Exhibit One (1) (question 11 of initial application).

(c) In order for a licensed trainee appraiser to be issued certification as a state certified appraiser or licensing as a state licensed appraiser, the trainee must have completed the requisite experience in real property appraisal as required by the appraisal qualification board and supported by adequate written reports or file memoranda. That experience must be completed under the direct supervision of certified real estate appraisers. The trainee may rely on more than one supervising appraiser in order to complete this experience requirement, and no certified appraiser shall supervise more than three (3) trainees.

R.I. Gen. Laws § 5-20.7-8 provides for the four (4) classes of appraiser licenses as follows:

Classes of certification and licensing – Residential and general. – (a) There are two (2) classes for state certified real estate appraisers and two (2) classes of licensed real estate appraisers.

(1) A state certified residential real estate appraiser is a person who fulfills the requirements for certification for the appraisal of residential real property. For the purposes of this section residential property means property which is used for noncomplex single or multi-family dwellings of 1 – 4 units having no minimum transaction value, or property used for complex 1 – 4 residential units having a transaction value of less than two hundred fifty thousand dollars (\$250,000).

(2)(a) A state certified general real estate appraiser is a person who fulfills the requirements for certification for the appraisal of all types of real property.

(b) A state licensed appraiser is a person who fulfills the requirements for licensing for the appraisal of residential property. For purposes of this section, residential property applies to the appraisal of noncomplex 1 – 4 residential units having a transaction value of less than one million dollars (\$1,000,000) and complex 1 – 4 residential units having a transaction value of less than two hundred fifty thousand dollars (\$250,000).

(c) A licensed appraiser trainee is an individual who has successfully completed all requisite core courses as required by the appraisal qualifications board.

R.I. Gen. Laws § 5-20.7-25 provides as follows:

Effect of federal law. – Notwithstanding any provision in this chapter to the contrary, any applicable provisions of title XI of the "Federal Financial Institutions Reform, Recovery & Enforcement Act of 1989 (FIRREA)," 12 U.S.C. § 3331 et seq., as may be amended from time to time, and any federal regulatory standards promulgated thereunder shall supersede any inconsistent provisions of this chapter.

Section 1(B) of CLR10 provides as follows:

As of January 1, 2007, the State of Rhode Island became a “mandatory state” that requires licensure or certification as an appraiser pursuant to R.I. Gen. Laws § 5-20.7-1, *et seq.*, for those persons who issue opinions or analyses of value or use relating to real property in this state. This licensing requirement applies to all opinions or analyses of real estate value or use, whether in the form of a written appraisal, consultant’s report, or expert testimony before a court or an administrative body (such as a local zoning board).

B. Arguments

The Department argued that pursuant to the Federal and State requirements, the Respondent’s application to be licensed as a certified residential appraiser must be denied since the Respondent did not meet the necessary requirements.

The Respondent argued the issue is whether an appraiser trainee must possess a license in order to accumulate the necessary 2,500 hours of experience. The Respondent argued that she relied on the statute and nowhere in the statute, AQB, or CLR10 does it state that a trainee license must be obtained prior to accumulating the 2,500 hours of experience. She argued that if she can utilize her experience prior to obtaining her trainee license, she meets the 2,500 hours experience. The Respondent argued that she performed a significant amount of work to obtain the experience and Lenihan signed off on the experience as required, but she is now up against the change in requirements on January 1, 2015 that require a bachelor’s degree. She argued that except for the bachelor’s degree requirement, she would be able to remedy her application; however, because of the change in the requirements, she cannot remedy the situation.

B. Whether Respondent should be Denied or Granted an Upgrade to Certified Residential Appraiser.

R.I. Gen. Laws § 5-20.7-10(a) provides no state appraiser license shall be issued to any person who does not possess the requisite experience in real property appraisal as required by the AQB. Section 1(B) of CLR10 states that Rhode Island is a “mandatory state” and requires licensure or certification as an appraiser pursuant to R.I. Gen. Laws § 5-20.7-1 *et seq.* Further, R.I. Gen. Laws § 5-20.7-8 and Section 5 of CLR10 sets forth the four (4) classes of appraiser licenses issued by the State including a trainee license. Section 9 of CLR10 sets forth the requirements for a trainee license. These include that prior to starting work as a trainee, a trainee licensee shall inform the Department in writing the identity of any individuals who have agreed to act a “supervising appraiser.” Section 9 also sets forth requirements for the supervising appraiser such as acknowledging in writing to the Department that he or she will perform all the responsibilities set forth in section 9(D)(4). Thus, CLR10 provides that a trainee licensee does not operate as a trainee without permission from the Department since acting as a trainee requires licensing and notification in writing to the Department regarding who will act as the applicant’s supervising appraiser as well as the Department receiving from the supervising appraiser in writing certain information. It is clear from the statutes and regulation that Rhode Island requires licensing to act as a trainee licensee.

The Respondent received her trainee license on March 13, 2013. She applied on August 8, 2014 for her certified residential appraiser license. It is clear that in order to be licensed as an appraiser in Rhode Island, the requirements of FIRREA and the AQB must be met. See R.I. Gen. Laws § 5-20.7-10 and CLR10. The AQB requires 2,500 hours of experience in no less than 24 months. See Department’s Exhibit Two (2) (AQB booklet).

Not only did the Respondent not have the required 2,500 hours of experience when she applied for a certified residential appraiser license, she did not have the 24 months of experience.

The Respondent argued that her experience should be counted from when she started performing appraisals prior to receiving her trainee license. Her experience log shows her performing appraisals from August, 2012 up to March 13, 2013 when she received her trainee license. Daniels testified that the total hours performed by the Respondent prior to receiving her trainee license from August 9, 2012 and up to August 12, 2014 [date of application] totaled 2,343 hours so that the Respondent does not have the 2,500 hours of experience even including the hours that cannot be counted as they were from when she did not have a trainee license. See Department's Exhibit Three (3) (log of appraiser experience hours). Additionally, even if the time spent prior to receiving her trainee license is included (which it cannot be) in order for the Appellant to reach the 24 months, the Appellant still does not have 2,500 hours of experience. The evidence was that the Appellant's total hours was 2,343.

The Respondent has not completed the requisite 2,500 hours of experience and had not completed 24 months as a trainee licensee when she applied to be licensed as a certified residential appraiser. Because the FIRREA now requires a bachelor's degree to become a certified residential appraiser, the Respondent is unable to be licensed as such even if she performs more appraisal hours as she does not possess a bachelor's degree.

There is no provision in the statute, regulation, or AQB requirements that allow for an exemption of any of the requirements for appraiser licensing. As section 1(A) of CLR10 states, the purpose of said regulation is to implement the general welfare of the

citizens of Rhode Island by implementing R.I. Gen. Laws § 5-20.7-1 *et seq.* so that the public interest is most effectively served. The statute serves the public interest by ensuring that all licensees meet the same education and experience requirements.

Finally, the Appellant's argument seemed to be that since the Appellant could not remedy her application, she should be allowed to obtain her desired license since she did not understand that she needed a trainee license. (This ignores the fact that she did not meet the 2,500 hours requirement). Regardless of whether it would actually be fair to grant such a license, equitable principles are not applicable to an administrative procedure. See *Nickerson v. Reitsma*, 853 A.2d 1202 (RI 2004) (Supreme Court vacated a Superior Court order that had vacated an agency sanction on so-called inherent equitable powers). Finally, the Department has no authority to waive the applicable licensing law. *Romano v. Retirement Board of the Employees' Retirement System of the State of Rhode Island*, 767 A.2d 35 (R.I. 2001).

VI. FINDINGS OF FACT

1. On or about on December 22, 2014, a Notice of Hearing and Appointment of Hearing Officer was issued by the Department to the Respondent.
2. A hearing on was held on June 24, 2015 with the parties resting on the record.
3. The Respondent is licensed as a residential appraiser.
4. The Respondent has not completed the 2,500 hours of appraisal experience required to obtain a license as a certified residential appraiser.
5. The Respondent has not complied with the 24 month time frame required to obtain a license as a certified residential appraiser.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:


1. The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 5-20.7-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

2. Pursuant to R.I. Gen. Laws § 5-20.7-1 *et seq.*, FIRREA, the AQB, and CLR10, the Department has met its burden in establishing there exists a sufficient basis to deny Respondent's request to upgrade her current license as a residential appraiser to a certified residential appraiser pursuant.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the Respondent's request for upgrade of her license as a residential appraiser to a certified residential appraiser be denied.

Dated: August 12, 2015



Catherine R. Warren
Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

ADOPT
 REJECT
 MODIFY

Dated: 8/14/15


Maeky McCleary
Director

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

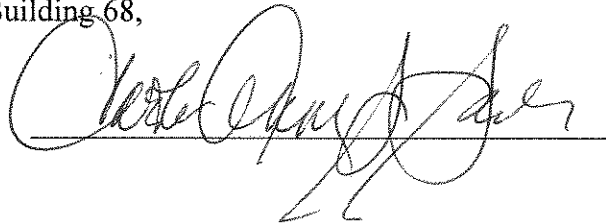
CERTIFICATION

I hereby certify on this 14th day of August, 2015 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail, postage prepaid to –

Margaret L. Steele, Esq.
163 Main Street
Westerly, RI 02891

and by electronic-delivery to –

Ellen R. Balasco, Esquire
Maria D'Alessandro, Deputy Director
William DeLcua, Acting Administrator
Department of Business Regulation
Pastore Complex, 1511 Pontiac Avenue, Building 68,
Cranston, Rhode Island.

A handwritten signature in black ink, appearing to read "William DeLcua", is written over a horizontal line.