

STATE OF FLORIDA
DEPARTMENT OF PROFESSIONAL REGULATION
FLORIDA REAL ESTATE APPRAISAL BOARD

IN RE: THE PETITION OF
TIMOTHY A. JOHNSON, ESQUIRE,
on behalf of
HUNNICUTT-ARNOLD, INC.

Case No: FREAB-DS-92-01

FILED

Department of Professional Regulation

FLORIDA REAL ESTATE APPRAISAL BOARD

SIGNED Timothy A. Johnson

FINAL ORDER DATE 9-10-92

On September 2, 1992 in Orlando, Florida, this matter came before the Florida Real Estate Appraisal Board pursuant to s.120.565, Florida Statutes, and Chapter 28-4, Florida Administrative Code, for the purpose of considering the Petition for Declaratory Statement filed by Timothy A. Johnson, Esquire, on behalf of Hunnicutt-Arnold, Inc.

Having considered the Petition and being otherwise fully advised in the premises, the Board makes the following findings and conclusions.

FINDINGS OF FACT

1. The Petitioner is an attorney representing individuals who are real estate appraisers, licensed or certified under Chapter 475, Part II, Florida Statutes.

2. In a Petition for Declaratory Statement dated July 16, 1992, Petitioner requested an interpretation by the Board of Sections 475.611(1)(a) and 475.624(17), Florida Statutes. The Petition was received by the Board on July 21, 1992.

3. The Petitioner specifically asked:

a) whether an appraiser who prepares an appraisal for an ad valorem tax challenge may be compensated based upon a percentage of the savings; and

b) whether an appraiser who prepares an appraisal acting as a disinterested third party and is compensated on a regular (non-contingent) fee basis may subsequently represent the client in an ad valorem tax challenge with the compensation for this additional work being based upon a percentage of the savings.

4. The Board published notice of its receipt of the Petition in the August 7, 1992 issue of the Florida Administrative Weekly, Vol. 18, No. 32, Page 4475. The Petition was discussed by the Board at its meeting on September 2, 1992 in Orlando, Florida.

5. The Petitioner appeared (via James Lewis, Esquire) and offered oral testimony.

6. Section 475.624(17), Florida Statutes, provides that it is a violation for a registrant, licensee or certificate holder to accept

"an appraisal assignment if the employment itself is contingent upon the appraiser reporting a predetermined result, analysis, or opinion, or if the fee to be paid for the performance of the appraisal assignment is contingent upon the opinion, conclusion, or valuation reached upon the consequences resulting from the appraisal assignment." (emphasis supplied)

7. Section 475.611(1)(a) 1, Florida Statutes, defines the term "appraisal assignment" as

"an engagement for which a person is employed or retained to act, or could be perceived by third parties or the public as acting, as an agent or a disinterested third party in rendering an unbiased analysis, opinion, review, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real property."

8. Section 475.611(1)(a) 2, Florida Statutes, defines the term "analysis assignment" as

"appraisal services that relate to the employer's or client's individual needs or investment objectives and includes specialized marketing, financing, and feasibility studies as well as analyses, opinions, and conclusions given in connection with activities such as real estate brokerage, mortgage banking, or real estate counseling."

9. The services provided by an appraiser at an ad valorem tax challenge are that of an advocate for a client and does not constitute an opinion, review, conclusion or analysis of a disinterested third party. Consequently, the appraiser in such a situation as described in the Petition is not viewed as unbiased.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter, pursuant to s.120.565, Florida Statutes, and Chapter 28-4, Florida Administrative code.

2. The Petitioner has requested this Declaratory Statement due to the uncertainty of the Board's interpretation of s.475.624(17), Florida Statutes. The proposed activities of the Petitioner's client are not unique in the appraisal industry and the Board's interpretation will affect a class of appraisers beyond the Petitioner's client.

3. Section 475.624(17), Florida Statutes, clearly prohibits an appraiser under Part II of Chapter 475, Florida Statutes, from accepting a contingency fee when engaged in an appraisal assignment. An appraiser who accepts a contingency fee in an

appraisal assignment faces disciplinary action by the Board with the range of penalties being from a reprimand and/or a fine up to a \$1000.00 to revocation of the certificate, license or registration.

4. An appraisal assignment, as defined in s.475.611(1)(a), Florida Statutes, and as stated above, is an engagement wherein the appraiser is rendering an unbiased analysis, opinion, review or conclusion in the capacity of a disinterested third party.

5. At an ad valorem tax challenge the appraiser typically is not acting in the role of a disinterested third party. Instead, the appraiser is an advocate for the challenger and the analysis, opinion, review or conclusion is not deemed as unbiased.

6. The activities of an appraiser at an ad valorem tax challenge do not fall within the definition of an appraisal assignment as found in s.475.611(1)(a) 1, Florida Statutes, but are within the definition of an analysis assignment as found in s.475.611 (1)(a) 2, Florida Statutes.

7. The Board concludes that an appraiser engaging in an ad valorem tax challenge as described in the Petition is bound by Standards 1, 2 and 4 of the Uniform Standards of Professional Appraisal Practice (USPAP) and other applicable sections of Part II, Chapter 475, Florida Statutes. Failure to abide by the above standards of USPAP and Part II, Chapter 475, Florida Statutes, when engaging in the described activities will subject the appraiser to disciplinary action.

8. The Board further concludes, based upon the USPAP and the appropriate interpretation of Part II, Chapter 475, Florida Statutes, that full disclosure of the appraiser's role as an

advocate as defined in s.475.611(1)(a) 2, Florida Statutes, is required as well and as disclosure of the fact the appraiser is being compensated on a contingency fee basis. Failure to make such disclosure will subject the appraiser to disciplinary action.

WHEREFORE, it is the opinion of the Florida Real Estate Appraisal Board that an appraiser registered, licensed or certified under Part II, Chapter 475, Florida Statutes, may engage in the activities as described in paragraph 3 of the Findings of Fact without being in violation of s.475.624(17), Florida Statutes or any other applicable law provided the appraiser adheres to Standards 1, 2 and 4 of the USPAP, and Part II, Chapter 475, Florida Statutes, and makes full disclosure of the appraiser's role as an advocate and the fact the compensation is on a contingent fee basis.

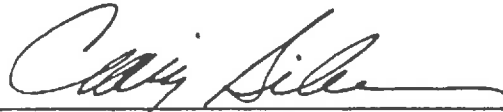
This Declaratory Statement constitutes final agency action. A party who is adversely affected by this order may seek judicial review pursuant to s.120.68, Florida Statutes. Proceedings for judicial review are commenced by filing a Notice of Appeal, pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Department of Professional Regulation, and by filing a copy of the Notice of Appeal, accompanied by the applicable filing fees, with the appropriate District Court of Appeal. The Notice of Appeal must be filed within thirty (30) days of the date upon which this Declaratory Statement is filed with the Clerk of the Department of Professional Regulation.

DONE AND ORDERED this 2ND day of September 1992 in Orlando,
Florida.



Craig Sikes, Executive Director
Florida Real Estate Appraisal Board

I HEREBY CERTIFY that a true copy of the foregoing was sent by
U.S. Mail to Timothy A. Johnson, Jr., Esquire and James G. Lewis,
Esquire, Johnson, Blakely, Pope, et al, Post Office Box 1368,
Clearwater, Florida 34617-1368; and to James R. Mitchell, Assistant
Attorney General, Suite S107, 400 West Robinson Street, Orlando,
Florida 32801, this 10th day of September, 1992.



Executive Director

JRM/pb