

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

MICHAEL J. NUNNERLY
a/k/a MICHAEL J. NUNNERLEY
TX-1333596-L

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DOCKETED COMPLAINT NO.
09-097

FINAL ORDER

On this 21st day of May, 2010, the Board considered the above-noted matter.

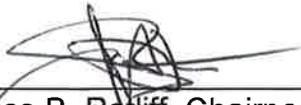
After proper notice was given, the above case was heard by an Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH). The ALJ made and filed a proposal for decision containing findings of fact and conclusions of law. The proposal for decision was properly served on all parties, who were given an opportunity to file exceptions and replies as part of the administrative record, which Petitioner did do. The ALJ reviewed the exceptions and any reply, granted the exceptions and modified her proposal for decision.

The Texas Appraiser Licensing and Certification Board, after review and due consideration of the proposal for decision, attached as Exhibit A hereto, adopts the findings of fact and conclusions of law of the ALJ contained in the proposal for decision and incorporates those findings of fact and conclusions of law into this Final Order as if such were fully set out and separately stated in this Final Order. All proposed findings of fact and conclusions of law submitted by any party that are not specifically adopted in this Final Order are denied.

NOW, THEREFORE, IT IS ORDERED by the Texas Appraiser Licensing and Certification Board that the certification of Michael J. Nunnerly (a/k/a Michael J. Nunnerley) in this matter is hereby **REVOKED**, effective twenty days after the date Michael J. Nunnerly (a/k/a Michael J. Nunnerley) is notified of this Final Order.

If enforcement of this Final Order is restrained or enjoined by an order of a court, this order shall become effective upon a final determination by said court or appellate court in favor of the Texas Appraiser Licensing and Certification Board.

Approved by the Board and Signed this 21st day of May, 2010.



James B. Ratliff, Chairperson
Texas Appraiser Licensing and Certification Board

EXHIBIT A

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

April 15, 2010

Douglas E. Oldmixon
Administrator
Texas Appraiser Licensing and Certification Board
1101 Camino La Costa
Austin, Texas 78752

VIA FACSIMILE NO. 512/465-3910

**RE: Docket No. 329-10-1553.ALC; Texas Appraiser Licensing and Certification Board
v. Michael J. Nunnerly**

Dear Mr. Oldmixon:

I issued the Proposal for Decision (PFD) in this case on March 22, 2010. On March 24, 2010, the staff (Staff) of the Texas Appraiser Licensing and Certification Board (Board) filed exceptions. The exceptions relate to the identification of Mr. Nunnerly's crime as conspiracy to commit wire fraud, rather than wire fraud. Mr. Nunnerly filed no exceptions to the PFD and no replies to Staff's exceptions.

I agree with Staff's exceptions and recommend that the PFD be considered amended to reflect the exceptions. The PFD is now ready for the Board's consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannon Kilgore".

Shannon Kilgore
Administrative Law Judge

SK/ap
Enclosure

xc: Michael J. Nunnerly, 1110 Louetta Rd., Apt. 526, Tomball, TX 77377 - **VIA REGULAR MAIL**
Troy Beaulieu, Attorney, Texas Appraiser Licensing and Certification Board, 1101 Camino La Costa,
Austin, TX 78752 - **VIA-FACSIMILE NO. 512/465-3955**

Post Office Box 13025 ♦ 371 William P. Clements Building ♦ Austin Texas 78711-3025
(512) 475-4993 Docket (512) 475-3445 Fax (512) 475-4994
<http://www.soah.state.tx.us>

SOAH DOCKET NO. 329-10-1553.ALC

TEXAS APPRAISER LICENSING AND
CERTIFICATION BOARD,
Petitioner

V.

MICHAEL NUNNERLY,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Appraiser Licensing and Certification Board (Board) seeks to revoke the license of respondent Michael J. Nunnerly as a real estate appraiser. Mr. Nunnerly was convicted in 2009 of wire fraud in connection with supplying false financial information in support of his application for a home loan. The Administrative Law Judge (ALJ) recommends that Mr. Nunnerly's license be revoked.

I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

There are no contested issues of notice or jurisdiction. Those matters are set out in the findings of fact and conclusions of law without further discussion here.

The hearing on the merits was held on January 19, 2010, before ALJ Shannon Kilgore in Austin, Texas. Staff was represented by Troy Beaulieu, attorney. Mr. Nunnerly appeared and represented himself. The record closed on February 10, 2010, which was the deadline established by the ALJ for Staff to respond to any post-hearing submissions of additional evidence by Mr. Nunnerly.¹

¹ Mr. Nunnerly had until February 3, 2010, to submit the additional evidence. He did not do so.

II. DISCUSSION

A. Facts

Mr. Nunnerly has been a certified real estate appraiser for approximately five years. In 2008, he pled guilty to wire fraud, a federal felony. He admitted to supplying a false financial statement in 2007 to a loan officer in connection with Mr. Nunnerly's effort to purchase a home. In 2009, he was sentenced to three months' imprisonment and ordered to pay restitution to Aurora Loan Services in the amount of \$127,000. Upon his release from imprisonment, he was placed on supervised release for three years.² At the time of the hearing in the instant case, Mr. Nunnerly had recently been released from prison. He is presently under supervised release.

Mr. Nunnerly, who is about 37 years old, testified that he had admitted to supplying a loan officer with untrue information about his bank balance. However, he emphasized that he has not committed fraud related to any real estate appraisal he had done in his professional capacity. He said that he had exhibited bad judgment on this one occasion. He has never been in trouble before, and he was just trying to get a house. He stated that, because he is under supervised release, he must stay out of trouble.

Jeff Strawmyer, an appraiser investigator with the Board, testified that real estate appraisers sometimes become engaged in mortgage fraud in their professional work, and they are often under pressure to reach certain property appraisal values in order to facilitate the acquisition of loans. He stated that appraisers interact with loan officers, mortgage brokers, and appraisal management companies. Appraisers, Mr. Strawmyer said, have many opportunities to make false representations.

² See State's Exhibits P1-P3.

B. Applicable Law

Texas real estate appraisers are regulated by the Texas Appraiser Licensing and Certification Act (Act)³ and rules promulgated by the Board.⁴ In addition, chapter 53 of the Texas Occupations Code generally governs how licensing agencies use the criminal activity of applicants and licensees in licensing decisions.⁵

The Board may revoke a license or certification if the licensee has been convicted of a felony.⁶ Chapter 53 of the Texas Occupations Code provides that a licensing authority may suspend or revoke a license on the grounds that the person has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation.⁷ The Board deems offenses involving fraud or misrepresentation and offenses involving moral turpitude to be crimes that are directly related to the occupation of being an appraiser.⁸ In deciding whether to revoke a person's license or certification based on the person's criminal activity, the Board shall consider:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person at the time of the commission of the crime;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person prior to and following the criminal activity;
- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

³ TEX. OCC. CODE ch. 1103.

⁴ 22 TEX. ADMIN. CODE chapters 153, 155, and 157.

⁵ TEX. OCC. CODE ch. 53.

⁶ 22 TEX. ADMIN. CODE § 153.20(a)(1).

⁷ TEX. OCC. CODE § 53.021(a)(1).

⁸ 22 TEX. ADMIN. CODE § 153.19(c)(1) & (5).

(6) other evidence of the person's present fitness including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person . . . and any other persons in contact with the convicted person.⁹

In addition, it is the applicant's responsibility to provide the recommendations and proof that the applicant has maintained a record of steady employment and good conduct and supported his or her dependents.¹⁰

Further, Chapter 53 of the Texas Occupations Code and the Board's rules both provide that a person's license or certification shall be revoked upon the person's imprisonment following a felony conviction.¹¹

C. Analysis and Recommendation

It is undisputed that Mr. Nunnerly has a recent felony conviction for a crime that relates to the real estate appraisal profession, in that the offense involved fraud or misrepresentation and was a crime of moral turpitude. Indeed, Mr. Nunnerly committed the offense in the context of a real estate transaction. That Mr. Nunnerly was the buyer and not the appraiser is not very reassuring; a willingness to engage in fraud in any real estate sale is surely a characteristic that makes a person unfit to be an appraiser. This was not a crime of youthful indiscretion. Further, both the crime and the conviction were so recent that Mr. Nunnerly has had little chance to demonstrate good conduct and rehabilitation. And, since Mr. Nunnerly went to prison for the felony, revocation of his license was actually mandatory under Chapter 53 and the Board's rules, and arguably occurred by operation of law upon his incarceration. For these reasons, the ALJ recommends that his license be revoked.

⁹ 22 TEX. ADMIN. CODE § 153.19(e); TEX. OCC. CODE § 53.023.

¹⁰ 22 TEX. ADMIN. CODE § 153.19(f); TEX. OCC. CODE § 53.023.

¹¹ TEX. OCC. CODE § 53.021(b); 22 TEX. ADMIN. CODE § 153.19(b).

III. FINDINGS OF FACT

1. Michael J. Nunnerly is licensed by the Texas Appraiser Licensing and Certification Board (Board) as a real estate appraiser.
2. On December 15, 2009, a Notice of Hearing and an Original Statement of Charges were issued and mailed to Mr. Nunnerly at: 13050 Champions Park Drive #412, Houston, Texas 77069 and FDC Houston, Federal Detention Center, P.O. Box 526255, Houston, Texas 77052.
3. The Notice of Hearing and Original Statement of Charges contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
4. The hearing on the merits was held on January 19, 2010, before ALJ Shannon Kilgore in Austin, Texas. Staff was represented by Troy Beaulieu, attorney. Mr. Nunnerly appeared and represented himself. The record closed on February 10, 2010.
5. Mr. Nunnerly has been a certified real estate appraiser for approximately five years.
6. On September 25, 2008, Mr. Nunnerly pled guilty to wire fraud, a federal felony.
7. Mr. Nunnerly admitted to supplying a false financial statement to a loan officer in 2007 in connection with Mr. Nunnerly's effort to purchase a home.
8. On July 29, 2009, in the case of *United States of America v. Michael Nunnerly*, case number 4:08CR00323-008, in the United States District Court for the Southern District of Texas, Mr. Nunnerly was sentenced to three months' imprisonment and ordered to pay restitution to Aurora Loan Services in the amount of \$127,000.
9. Upon his release from imprisonment, Mr. Nunnerly was placed on supervised release for three years.
10. At the time of the hearing in the instant case, Mr. Nunnerly had recently been released from prison. He is presently under supervised release.
11. Mr. Nunnerly is about 37 years old.
12. Mr. Nunnerly has no criminal record other than his 2009 wire fraud conviction.
13. Mr. Nunnerly provided no letters of recommendation concerning his conduct and fitness to be licensed.
14. Mr. Nunnerly's crime and the conviction were so recent that he has had little chance to demonstrate good conduct and rehabilitation.

15. Real estate appraisers are often under pressure to reach certain property appraisal values in order to facilitate the acquisition of loans.
16. Real estate appraisers have many opportunities to make false representations.

IV. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. TEX. OCC. CODE ch. 1103.
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to the conduct of a hearing in this matter, including the preparation of a proposal for decision with findings of fact and conclusions of law. TEX. GOV'T CODE ch. 2003; TEX. OCC. CODE § 1103.508.
3. Notice of the hearing was provided. TEX. GOV'T CODE §§ 2001.052, 2001.053; 22 TEX. ADMIN. CODE § 157.9.
4. The Board may revoke a license or certification if the licensee has been convicted of a felony. 22 TEX. ADMIN. CODE § 153.20(a)(1).
5. A licensing authority may suspend or revoke a license on the grounds that the person has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation. TEX. OCC. CODE § 53.021(a)(1).
6. Offenses involving fraud or misrepresentation and offenses involving moral turpitude are directly related to the occupation of being an appraiser trainee. 22 TEX. ADMIN. CODE § 153.19(c)(1) & (5).
7. Federal felony wire fraud is an offense directly related to the real estate appraisal profession.
8. In deciding whether to revoke a person's license or certification based on the person's criminal activity, the Board shall consider:
 - (1) the extent and nature of the person's past criminal activity;
 - (2) the age of the person at the time of the commission of the crime;
 - (3) the amount of time that has elapsed since the person's last criminal activity;
 - (4) the conduct and work activity of the person prior to and following the criminal activity;
 - (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the person's present fitness including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person . . . and any other persons in contact with the convicted person.

22 TEX. ADMIN. CODE § 153.19(e); TEX. OCC. CODE § 53.023.

9. It is the licensee's responsibility to provide the recommendations and proof that the applicant has maintained a record of steady employment and good conduct and supported his or her dependents. 22 TEX. ADMIN. CODE § 153.19(f); TEX. OCC. CODE § 53.023.
10. A person's license or certification shall be revoked upon the person's imprisonment following a felony conviction. TEX. OCC. CODE § 53.021(b); 22 TEX. ADMIN. CODE § 153.19(b).

RECOMMENDATION

Mr. Nunnerly's real estate appraiser license should be revoked.

SIGNED March 22, 2010.



**SHANNON KILGORE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**