

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Appraisal Management
Company License of JVI Appraisal
Division, LLC

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for a Prehearing Conference before Administrative Law Judge Barbara L. Neilson on January 10, 2013. Oliver J. Larson, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department). There was no appearance by or on behalf of JVI Appraisal Division, LLC (Respondent).

On February 5, 2013, the Administrative Law Judge received a motion from the Department requesting that a default recommendation be made pursuant to Minn. R. 1400.6000 because there was no appearance by Respondent at the Prehearing Conference. The OAH record remained open until February 27, 2013, for receipt of a response to the motion from the Respondent. No response was received from the Respondent as of that time or by the date of this Report.

STATEMENT OF THE ISSUES

The overall issue in this case is whether or not disciplinary action should be taken against the Respondent under Minn. Stat. §§ 45.027, 82C.03, and 82C.16. Specifically, the issues posed are:

1. Whether the Respondent failed to act in a financially responsible manner on at least 71 occasions by failing to pay for appraisals it ordered, in violation of Minn. Stat. § 45.027, subd. 7(4), and Minn. Stat. § 82C.16, subd. 1(2)(v).
2. Whether Respondent failed to respond to requests for information from the Department, in violation of Minn. Stat. §§ 45.027, subd. 1a, and 82C.16, subd. 1(2)(ix).
3. Whether Respondent misrepresented that it would pay past due invoices in order to induce appraisers to perform additional work, in violation of Minn. Stat. §§ 45.027, subds. 1(2)(iv) and (v) and 7(4).
4. Whether Respondent has operated as an appraisal management company without a license since September 1, 2012, in violation of Minn. Stat. § 82C.03.

Based on the record in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On November 29, 2012, a Notice and Order for Prehearing Conference in this matter was mailed to Respondent at its last known address.¹

2. The Notice and Order for Prehearing Conference indicated that a Prehearing Conference would be held in this matter on January 10, 2013, at 1:30 p.m., at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota.²

3. The Notice and Order for Prehearing Conference requires that any party intending to “appear at the prehearing conference and hearing must file a Notice of Appearance form and return it to the Administrative Law Judge within 20 days of the date of service” of the Notice and Order for Hearing.³

4. The Notice and Order for Prehearing Conference also included the following notice:

Respondent’s failure to appear at the prehearing conference, settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in a finding that the Respondent is in default, that the Department’s allegations contained in the Statement of Charges may be accepted as true, and that Respondent may be subject to discipline by the Commissioner, including revocation, suspension, censure, or the imposition of civil penalties.

If any party has good cause for requesting a delay of the prehearing conference or hearing, the request must be made in writing to the Administrative Law Judge at least five days prior to the prehearing conference or hearing. A copy of the request must be served on the other party.⁴

5. There was no appearance by or on behalf of the Respondent at the January 10, 2013, Prehearing Conference. The Respondent did not file a Notice of Appearance with the Administrative Law Judge or contact the Administrative Law Judge to request a continuance prior to the January 10, 2013, Prehearing Conference.

6. Because the Respondent failed to appear for the Prehearing Conference or make other arrangements with the Administrative Law Judge, it is in default.

7. Pursuant to Minn. R. 1400.6000, the allegations set forth in the Notice and Order for Prehearing Conference are deemed proved without further evidence, and they are hereby incorporated into these Findings by reference.

¹ See Affidavit of Kay L. Schroeder(Nov. 29, 2012).

² Notice and Order for Prehearing Conference at 1.

³ *Id.* at 4.

⁴ *Id.*

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Commerce and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027 and 82C.16.

2. The Respondent received timely and proper notice of the Prehearing Conference in this matter when the Department sent the Notice and Order for Prehearing Conference to its last known address.

3. The Department has complied with all relevant procedural requirements of statute and rule.

4. Under Minn. R. 1400.6000, the Respondent is in default as a result of its failure to appear at the scheduled Prehearing Conference.

5. Under Minn. R. 1400.6000, when a party defaults by failing to appear at a prehearing conference without the prior consent of the judge, the allegations and the issues set out in the Notice and Order for Prehearing Conference may be taken as true and deemed proved. The Administrative Law Judge therefore deems the allegations to be true.

6. Minn. Stat. § 45.027, subd. 1a, specifies that persons subject to the jurisdiction of the Commissioner shall comply with requests for information, documents, or other requests from the Department and shall appear before the Commissioner and bring all requested documents or materials.

7. Minn. Stat. § 45.027, subd. 7(4), authorizes the Commissioner to deny, suspend, or revoke the authority or license of a person, or censure a person if “the person has engaged in an act or practice, whether or not the act or practice directly involves the business for which the person is licensed or authorized, which demonstrates that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the commissioner.”

8. Minn. Stat. § 82C.03, subd. 1, states that it is unlawful for a person, corporation, or other business entity “to directly or indirectly engage or attempt to engage in business as an appraisal management company, to directly or indirectly engage or attempt to perform appraisal management services, or to advertise or hold itself out as engaging in or conducting business as an appraisal management company without first obtaining a license” from the Commissioner.

9. Minn. Stat. § 82C.16, subd. 1(b)(2), authorizes the Commissioner to take disciplinary action if an officer, partner, employee, agent, controlling person, or person performing similar functions has:

* * *

- iv. violated a standard of conduct or engaged in a fraudulent, coercive, deceptive, or dishonest act or practice, whether or not the act or practice involves the appraisal management company;
- v. engaged in an act or practice, whether or not the act or practice involves the business of appraisal management, appraisal assignments, or real estate mortgage related practices, that demonstrates untrustworthiness, financial irresponsibility, or incompetence; [or]

* * *

- ix. refused to cooperate with an investigation or examination by the commissioner

10. Based on the facts set forth in the Notice and Order for Prehearing Conference, the Department has grounds to take disciplinary action against the Respondent under Minn. Stat. §§ 45.027, subds. 1a and 7(4), 82C.03, and 82C.16, subds. 1(b)(2)(iv), (v), and (ix), because the Respondent continued to operate as an appraisal management company after its license expired on September 1, 2012; has acted in a financially irresponsible manner by failing to pay for appraisals it ordered; has acted in an untrustworthy manner by misrepresenting that it would pay past due invoices in order to induce appraisers to perform additional work; and has failed to respond to requests for information from the Department regarding its failure to pay appraisal fees.

11. An order by the Department taking disciplinary action against the Respondent is in the public interest.

Based upon the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Department take appropriate disciplinary action against Respondent JVI Appraisal Division, LLC.

Dated: March 29, 2013

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

Reported: Digitally Recorded

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Commerce (Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Michael Rothman, Commissioner, Department of Commerce, Attn: Melissa Knoepfler, Suite 500, 85 Seventh Place East, St. Paul, MN 55101, (651) 296-2715, to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.