BEFORE THE MISSOURI
STATE REAL ESTATE APPRAISERS COMMISSION

MISSOURI REAL ESTATE APPRAISERS COMMISSION,	)	
Petitioner,	)	
v.	)	No. 11-1793 RA
KEVIN W. WHITE,	)	
and	)	
MATTHEW T. BERRY,	)	
Respondents.	)	

FINDINGS OF FACT, CONSCLUSIONS OF LAW AND DISCIPLINARY ORDER

I.

Statement of the Case

On or about November 21, 2011, the Administrative Hearing Commission entered its Default Decision, pursuant to § 621.100.2, RSMo Cum Supp 2011, in the case of *Missouri Real Estate Appraisers Commission v. Matthew T. Berry and Kevin W. White,* Case No. 11-1793 RA. The Administrative Hearing Commission certified the records of its proceedings and its Default Decision in *Missouri Real Estate Appraisers Commission v. Matthew T. Berry and Kevin W. White,* Case No. 11-1793 RA, to the Missouri Real Estate Appraiser Commission (the "MREAC") on approximately December 28, 2011. In its Default Decision, the Administrative Hearing Commission found that Respondents Berry and White's certifications as state certified residential real estate appraisers were subject to disciplinary action by the MREAC pursuant to § 339.532.2(5), (6), (7), (8), (9), (10), and (14), RSMo 2011 Cum Supp.

On or about December 5, 2011, Respondents filed a Motion to set aside the default decision with the Administrative Hearing Commission. Due to a clerical mistake by the Administrative Hearing Commission, Respondents' motion was not properly recorded which resulted in the Administrative Hearing Commission erroneously certifying the record in the case to the MREAC on December 28, 2011 without having ruled on Respondents' motion. On January 10, 2012, Respondents filed a motion to acknowledge their previous motion and to issue a ruling on that motion. On January 18, 2012, the MREAC filed a response to the motion. On January 24, 2012, the Administrative Hearing Commission granted the motion to acknowledge the timely filing of Respondents' motion to set aside default decision but denied the motion to set aside. The Administrative Hearing Commission then ordered the entire record to be prepared and transferred to the MREAC.

The MREAC has received and reviewed the record of the proceedings before the Administrative Hearing Commission and the Default Decision. The Default Decision of the Administrative Hearing Commission is hereby adopted and incorporated herein by reference.

Pursuant to notice and § 621.110 and § 339.532.3, RSMo, the MREAC held a hearing on February 28, 2012, at approximately 2:45 p.m. at the Missouri Council of School Administrators Building, 3530 Amazonas Drive, Jefferson City, Missouri, for the purpose of determining the appropriate disciplinary action against Respondents' certifications. The MREAC was represented by Assistant Attorney General Kevin Hall. Respondents were present for the hearing and were represented by counsel Christopher Kespohl. After being present and considering all of the evidence presented during the hearing, the MREAC issues the following Findings of Facts, Conclusions of Law and Order.

II.

Findings of Fact

1. Respondent Kevin W. White holds a certification as a state certified residential real estate appraiser from the MREAC (certification # 2004035441). Respondent White's certification is currently inactive.

2. Respondent Matthew T. Berry holds a certification as a state certified residential real estate appraiser from the MREAC (certification # 2007014733). Respondent Berry's certification is current and active.

3. The MREAC hereby adopts and incorporates herein the Default Decision of the Administrative Hearing Commission and the record in *Missouri Real Estate Appraisers Commission v. Kevin W. White and Matthew T. Berry,* Case No. 11-1793 RA.

4. In its November 21, 2011, Default Decision, the Administrative Hearing Commission found the MREAC has grounds to discipline Respondents' certifications pursuant to § 339.532.2(5), (6), (7), (8), (9), (10), and (14), RSMo 2011 Cum Supp.

5. As set out the MREAC's complaint filed before the Administrative Hearing Commission on September 7, 2010 which was before the Administrative Hearing Commission in issuing its Default Decision, Respondents' completed two appraisals – Virginia Avenue and Shirley Avenue – in violation of the Uniform Standards of Professional Appraisal Practice, 2006 edition (USPAP) Standards 1 and 2 and Standards Rules 1-1(a), (b) and (c), 1-4(a) and (b), 1-5(a) and (b), 2-1(a), 2-2(viii) and the USPAP Ethics Rule. Violation of USPAP constituted cause for discipline pursuant to §§ 339.532.2(5), (6), (7), (8), (9), (10), and (14), RSMo.

6. The MREAC set this matter for disciplinary hearing and served notice of the disciplinary hearing upon Respondents in a proper and timely fashion. Respondents both

appeared by counsel. Each testified during the discipline hearing before the MREAC as to current work, changes made since the complaint that led to this matter being filed at the AHC to improve their work, and continuing education completed.

III.

CONCLUSIONS OF LAW

7. The MREAC has jurisdiction over this proceeding pursuant to § 621.110 and § 339.532.3, RSMo.

8. The MREAC expressly adopts and incorporates by reference the Default Decision of the Administrative Hearing Commission and the record in *Missouri Real Estate Appraisers Commission v. Kevin W. White and Matthew T. Berry,* Case No. 11-1793 RA, finding cause to discipline Respondents' certifications as certified residential real estate appraisers pursuant to § 339.532.2(5), (6), (7), (8), (9), (10), and (14), RSMo 2011 Cum Supp.

9. As a result of the foregoing, and as identified in the Default Decision of the Administrative Hearing Commission, Respondents' state certifications as residential real estate appraisers are subject to disciplinary action by the MREAC, pursuant to § 339.532.2(5), (6), (7), (8), (9), (10), and (14), RSMo 2010 Cum Supp.

10. The MREAC has determined that this Order is necessary to ensure the protection of the public.

IV.

Order

11. Having fully considered all the evidence before the MREAC, and giving full weight to the Decision of the Administrative Hearing Commission, it is the **ORDER** of the MREAC, that Respondent White's and Respondent Berry's state certifications as residential real

estate appraisers are each hereby placed on **PROBATION** for a term of **two (2) YEARS**, subject to the following terms and conditions:

A. White and Berry shall be entitled to engage in the practice of real estate appraising as state certified residential real estate appraisers pursuant to §§ 339.500 to 339.549, RSMo, as amended, provided White and Berry adheres to all of the terms and conditions of this Order.

B. During the probationary period, neither White nor Berry shall not supervise any real estate appraisal, as defined by § 339.503(1), RSMo (as amended), of property located in the state of Missouri nor act in any manner as an appraisal supervisor.

C. During the probationary period, White and Berry shall maintain a log of all appraisal assignments completed, including appraisal values. White and Berry shall submit a true and accurate copy of his log to the MREAC every six (6) months after the effective date of this Order. Each log, except for the final log, shall be submitted within 15 days after the end of the respective six month period. White and Berry shall submit the final log 30 days prior to the end of the probationary period. All logs shall comply with rule 20 CSR 2245-2.050.

D. During the probationary period, White and Berry shall submit samples of appraisals as requested by the MREAC for review.

E. During the probationary period, White and Berry shall comply with all applicable provisions of Chapter 339, RSMo, as amended, all applicable MREAC regulations and all applicable federal and state laws. "State" includes the state of Missouri, all other states and territories of the United States, and the ordinances of their political subdivisions. Hicks shall be deemed in violation of this Order and the terms of his probation if he is adjudicated, found guilty of or pleads guilty or nolo contendere to, a criminal offense, whether or not sentence is imposed.

F. White and Berry shall meet in person with the MREAC or its representative at any such time and place as required by the MREAC or its designee upon notification from the MREAC or its designee. Said meetings will be at the MREAC's discretion and may occur periodically during the probationary period.

G. White and Berry shall immediately submit documents showing compliance with the requirements of this Order to the MREAC when requested by the MREAC or its designee.

H. If White or Bery fails to comply with the terms of this order during the probationary period, in any respect, the MREAC may choose to conduct a hearing before it either during the probationary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred. In the event MREAC determines that White or Berry has violated any term or condition of this Order, the MREAC may, in its discretion,

vacate this Order and may impose additional discipline as deemed appropriate by the MREAC, including revocation of the certification, pursuant to § 324.042, RSMo. The MREAC has continuing jurisdiction to hold a hearing to determine if a violation of this Order has occurred.

I. White and Berry shall keep the MREAC apprised of his current home and work addresses and telephone numbers. White and Berry shall inform the MREAC in writing within ten (10) days of any change in this information.

J. During the probationary period, White and Berry shall timely renew his certification, timely pay all fees required for licensure and comply with all other requirements necessary to maintain his certification.

K. During the probationary period, White and Berry shall accept and comply with unannounced visits from the MREAC's representatives to monitor compliance with the terms and conditions of this Order.

L. This Order does not bind the MREAC or restrict the remedies available to the MREAC for any violation of § 339.500 to § 339.549, RSMo, as amended, not specifically mentioned in this document.

M. Upon the expiration of the probationary period, White's or Berry's certification shall be fully restored if all other requirements of law have been satisfied provided, however, that in the event the MREAC determines that White or Berry has violated any term or condition of this Order, the MREAC may, in its discretion, vacate and set aside the probation imposed herein and may impose any other lawful discipline the MREAC shall deem appropriate, including, revocation of said license. No order shall be entered by the MREAC pursuant to this paragraph without any required notice and opportunity for a hearing before the MREAC in accordance with Chapter 536, RSMo, as amended.

N. If the MREAC determines that White or Berry has violated a term or condition of this Order, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the MREAC may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning that violation.

O. If, at any time during the probationary period, White or Berry ceases to reside in the state of Missouri, or ceases to maintain his state residential real estate appraiser certification under the provisions of Chapter 339, RSMo, as amended, or fails to keep MREAC advised of his current places of residence and business, the time of such absence, unlicensed or inactive status, or unknown whereabouts shall not be deemed or taken to satisfy any part of the probationary period.

P. Unless otherwise specified by the MREAC, all reports, documentation, evaluations, notices, or other materials required to be submitted to the MREAC shall be

forwarded to: Missouri Real Estate Appraisers Commission, P.O. Box 1335, Jefferson City, Missouri 65102.

Q. Any failure by White or Berry to comply with any condition of discipline set forth herein constitutes a violation of this Order.

12. The terms of this Order are contractual, legally enforceable, and binding and not mere recitals. Except as otherwise contained herein, neither this Order nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

13. The MREAC will maintain this Order as an open record of the MREAC as provided in Chapters 324, 339, and 610, RSMo, as amended.

SO ORDERED, THIS 5th day of March, 2012.

MISSOURI REAL ESTATE
APPRAISERS COMMISSION

Vanessa Beauchamp

Vanessa Beauchamp,
Executive Director
Missouri Real Estate Appraisers Commission