

JUDGE NEIL H. COHEN
CIRCUIT COURT OF COOK COUNTY
CHANCERY DIVISION
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FACSIMILE TRANSMITTAL SHEET

DATE:	November 6, 2018	FROM:	Chambers of Judge Neil H. Cohen
TO:	Craig Capilla	FAX NUMBER:	847-716-2390
RE:	18-CH-7186 Walsh v. IDFPR	NUMBER OF PAGES (INCLUDING COVER PAGE):	6

URGENT FOR REVIEW PLEASE COMMENT PLEASE CONFIRM PLEASE RECYCLE

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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

CHARLES T. WALSH,)	
)	
Plaintiff,)	
)	
v.)	18 CH 7186
)	
ILLINOIS DEPARTMENT OF)	
FINANCIAL AND PROFESSIONAL)	
REGULATION,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

Plaintiff Charles T. Walsh has filed a Complaint for Administrative Review. The parties have filed briefs in support of, and in opposition to, the Complaint.

I. Background

Plaintiff Charles T. Walsh is a real estate appraiser licensed in the State of Illinois. (R. 4). In 2012, Plaintiff entered into agreements with six different clients to prepare and submit a complete residential appraisal and submit all necessary documents for the clients' real estate tax appeals to the Cook County Board of Review. (R. 486-495).

As part of the tax appeal process, Plaintiff submitted a Real Estate Assessed Valuation Complaint to the Tax Board of Review for each client's property. (R. 487-495). Each complaint required the signature of the tax appellant or his or her attorney under penalty of perjury. (Id.).

On March 4, 2016, the Department of Financial and Professional Regulation ("the Department") filed a complaint against Plaintiff. (R. 4). The Department alleged that Plaintiff had provided the six clients services beyond the scope of his license as an appraiser and that each complaint he had submitted to the Tax Board of Review contained the forged signature of the client. (Id.).

The Department asserted that Plaintiff's conduct violated various sections of the Real Estate Appraiser License Act of 2002 ("the Act"), 225 ILCS 458/1-5 *et seq.*, and the Ethics Rules of the Uniform Standards of Profession Appraisal Practice ("USPAP"). (R. 4-12). The Department further asserted that Plaintiff had violated the Act and the Record Keeping Rule of the USPAP by failing to respond to the Department's 2015 request for appraisal records in connection with the Department's investigation of Plaintiff's conduct. (R. 13).

A hearing was held before an administrative law judge ("ALJ"). (R. 76). At the hearing, three of Plaintiff's clients testified that they did not sign the complaints submitted by Plaintiff to the Tax Board of Review and did not give Plaintiff permission to sign their names. (R. 322,

336, 346, 348). The clients further testified that they never had the opportunity to review the complaint and Plaintiff failed to respond to their attempts to contact him. (R. 322-27, 336-40, 346, 349-50).

Plaintiff testified that he had signed his clients' names to the tax appeal complaints without their explicit permission. (R. 376). Plaintiff stated that he assumed he had implied consent and wished that he had not signed the names. (*Id.*). Plaintiff further acknowledged that he did not provide the records requested by the Department. (R. 374-75).

On December 6, 2017, the ALJ issued a Report and Recommendation. (R. 75-111). The ALJ concluded that Plaintiff violated the Act and the implementing rules of USPAP by: (1) participating in advocacy as an appraiser; (2) signing his clients' names to the tax appeal complaints without their consent thereby committing forgery; and (3) violating the Record Keeping Rules of USPAP. The ALJ recommended that Plaintiff's license be indefinitely suspended for a minimum period of twelve months and that Plaintiff be fined \$9,000.

On January 9, 2018, the Department's board issued its Findings of Fact, Conclusions of Law and Recommendation to the Director adopting the ALJ's findings, conclusions and recommendation.

Plaintiff subsequently filed a Motion for Rehearing and Reconsideration. (R. 114). That motion asserted that the Department had no authority to discipline Plaintiff for any of his conduct in connection with the filing of the tax appeals because: (1) the Department had no authority to discipline Walsh for the unauthorized practice of law; and (2) the Act only regulated real estate appraisals made in connection with a federally related transaction and tax appeals did not involve a federally related transaction. Plaintiff further argued that even if the Department had the authority to discipline him, the Department failed to produce a USPAP Standard 3 Review as required by the Department's own administrative rules.

On May 2, 2018, the Department's Director issued an Order denying Plaintiff's Motion for Rehearing and ordering that Walsh be indefinitely suspended for a minimum period of twelve months and that Plaintiff be fined \$9,000. On June 6, 2018, Plaintiff filed his Complaint for Administrative Review.

II. Complaint for Administrative Review

On administrative review, the standard of review applied by the trial court depends upon the issue presented. Questions of law are reviewed *de novo*. Knight v. Village of Bartlett, 338 Ill. App. 3d 892 (1st Dist. 2003). Mixed questions of law and fact are subject to the "clearly erroneous" standard of review. Marconi v. Chicago Heights Police Pension Board, 361 Ill. App. 3d 1, 16 (1st Dist. 2005). Questions of fact are subject to the "manifest weight of the evidence" standard of review. O'Boyle v. Personnel Board of Chicago, 119 Ill. App. 3d 648, 653 (1st Dist. 1983).

A. *Whether the Department Possessed the Authority to Discipline Plaintiff*

Plaintiff contends that the Department lacked the authority to discipline him for his actions in connection with the subject tax appeals. The Department contends that the Act applies to Plaintiff's conduct and he was subject to discipline under the Act and the Department's rules promulgated pursuant to the Act.

Whether the Department possessed the Authority to discipline Plaintiff under the Act is a matter of statutory interpretation. An agency's interpretation of a statute is not binding on the courts and, therefore, this court's review is *de novo*. Carson Pirie Scott & Co. v. Ill. Dep't of Employment Sec., 131 Ill. 2d 23, 34 (1989).

"[T]he primary objective . . . in construing the meaning of a statute is to ascertain and give effect to the intention of the legislature." In re Detention of Lieberman, 201 Ill. 2d 300, 307 (2002). "All other rules of statutory construction are subordinate to this cardinal principle. Id. "When the language of a statute is clear and unambiguous, a court must give effect to the plain and ordinary meaning of the language without resort to other tools of statutory construction." Raintree Homes, Inc. v. Village of Long Grove, 209 Ill. 2d 248, 255 (2004).

1. *The History of the Act*

From the Act's passage in 2002 until January 1, 2015, the Act provided as follows:

Section 1-5. Legislative intent. The intent of the General Assembly in enacting this Act is to evaluate the competency of persons engaged in the appraisal of real estate *in connection with a federally related transaction* and to license and regulate those persons for the protection of the public. Additionally, it is the intent of the General Assembly for this Act to be consistent with the provisions of Title XI of the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989.

* * *

"Federally related transaction" means any real estate-related financial transaction in which a federal financial institutions regulatory agency, the Department of Housing and Urban Development, Fannie Mae, Freddie Mae, or the National Credit Union Administration engages in, contracts for, or regulates and requires the services of an appraiser.

225 ILCS 458/1-5 (eff. July 1, 2002)(emphasis added). Effective January 1, 2015, the Act was amended to delete the limiting language "in connection with a federally related transaction" to read as follows:

The intent of the General Assembly in enacting this Act is to evaluate the competency of persons engaged in the appraisal of real estate and to license and regulate those persons

for the protection of the public. Additionally, it is the intent of the General Assembly for this Act to be consistent with the provisions of Title XI of the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 [12 U.S.C. § 3331 et seq.],

225 ILCS 458/1-5 (2015).

2. Construing Section 458/1-5

Plaintiff performed the services at issue in 2012. The version of section 1-5 of the Act in effect at that time clearly and unambiguously stated that it was the intent of the Act to apply only in connection with federally related transactions. Section 1-5 is an operative expression of the legislature's intent, not a preamble.¹ That operative expression of intent was not changed until January 1, 2015.

It is undisputed that the appeals to the Tax Review Board had no connection to any federally related transaction. Under the version of the Act in effect in 2012, application of the Act was expressly limited to evaluating, licensing and regulating appraisals in connection with federally related transactions. Therefore, the Department could only discipline Plaintiff for his actions through retroactive application of the current version of the Act. The current version of the Act cannot be applied retroactively.

Procedural amendments to a statute may be applied retroactively. Thomas v. Weatherguard Constr. Co., 2015 IL App (1st) 142785, ¶65. Substantive amendments cannot be applied retroactively. Id. An amendment is procedural in nature if it changes the “machinery for carrying on the suit, including pleading, process, evidence and practice . . .” Id. at ¶66. An amendment is substantive if “the law establishes, creates or defines rights.” Id.

The deletion of the “in connection with a federally related transaction” language in section 1-5 is a substantive change. The amendment expanded the scope of the Act to govern all transactions involving real estate appraisals and not just federally related transactions. This is not a procedural change, but a substantive one. Therefore, the 2015 amendment cannot be retroactively applied to Plaintiff's conduct which occurred in 2012.

The version of the Act in effect in 2012 applied only to real estate appraisal activity in connection with a federally related transaction. Plaintiff's filing of appeals before the Cook County Tax Review Board in 2012 did not involve any federally related transactions. Therefore, the Act had no application to Plaintiff's activities and the Department had no authority to discipline Plaintiff under the Act or its associated rules.

Plaintiff also argues that his filing of the tax appeals in 2012 did not involve the appraisal of real estate and, therefore, the Board was without authority to discipline him. However, since the tax appeals did not involve any federally related transaction, the Board lacked authority to discipline Plaintiff regardless of whether any appraisal of real estate was involved. Therefore, it is unnecessary to decide this issue.

¹ Section 1-5 is not identified as a preamble, does not contain the signaling word “whereas,” and does not precede the enacting clause of the Act. Atkins v. Deere & Co., 177 Ill. 2d 222, 228 (1997).

The Director's decision indefinitely suspending Plaintiff's real estate appraiser's license and imposing a \$9,000 must be reversed.

B. The Department's Failure to Follow the USPAP Procedures

Plaintiff argues that even if the Department possessed the authority to discipline him under the Act, it failed to follow its own rules and produce a USPAP Standard 3 Review. It is unnecessary to consider this argument as the Department lacked the authority to discipline Plaintiff.

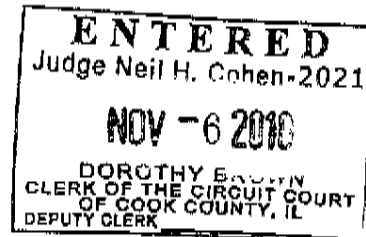
C. Whether Plaintiff's Conduct was Dishonorable, Unethical or Unprofessional

Plaintiff argues that even if the Department possessed the authority to discipline him under the Act, his conduct was not "dishonorable, unethical or unprofessional" as defined by the Department's administrative rules. It is unnecessary to consider this argument as the Department lacked the authority to discipline Plaintiff.

III. Conclusion

The Director's final administrative decision is reversed. The status date of November 14, 2018 is stricken.

Enter: _____



Judge Neil H. Cohen