

MAINE BOARD OF REAL ESTATE APPRAISERS

IN RE: James S. Shaw
Complaint No. 2007-REA-3566

) DISCIPLINARY ACTION
) DECISION AND ORDER

I. PROCEDURAL HISTORY

Pursuant to the authority found in 32 M.R.S.A. Secs. 14014 (13)(14), *et seq.*, 5 M.R.S.A. Sec. 9051, *et seq.*, and 10 M.R.S.A. Sec. 8003(5), *et seq.*, the Maine Board of Real Estate Appraisers (Board) met in public session at 9:00 a.m. on October 10, 2007 at its hearing room located at the Department of Professional and Financial Regulation, Gardiner Annex, Gardiner, Maine. The purpose of the meeting was to hold an adjudicatory hearing to determine whether grounds exist for the Board to take disciplinary action against the registered appraiser trainee's license of James S. Shaw. A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Chairman Kenneth Charest, James Murphy, Bruce W. Bell, public member, Walter Bowditch, and William Dobrowolski, public member. Joseph Herlihy was recused since he was the complaint officer in this matter. Assistant Attorney General Andrew Black presented the State's case. The Respondent was present and was not represented by legal counsel. James E. Smith, Esq. served as Presiding Officer.

The Board convened the hearing and first determined that there were no conflicts of interest or bias on behalf of any Board member. The Board then admitted into evidence State's Exhibits 1-12 and Respondent's 1 and took official notice of its statutes and Rules. Following the State's opening statement, taking of testimony, submission of exhibits, and closing arguments, the Board deliberated and made the following findings of fact by a preponderance of the credible evidence regarding the violations alleged in the Complaint.

II. FINDINGS OF FACT

James Shaw was first issued a Maine registered appraiser trainee's license on May 4, 2006 which expires on May 4, 2008. In his initial license application to the Board dated April 28, 2006, James Shaw was asked whether he had been convicted "of a crime by any court." He

answered “No.” In making the application, Mr. Shaw specifically acknowledged that any omission, inaccuracy, or failure to make full disclosures may be deemed sufficient reason for the Board to suspend or revoke his license. Additionally, Mr. Shaw affirmed in the presence of a notary public that all information in the application was true to the best of his knowledge and belief. The Board, unaware of any convictions, granted his license the following week. The State Bureau of Investigation (SBI) was then requested to provide Mr. Shaw’s criminal history which did not reveal any convictions.

In January 2007, James Shaw applied to be licensed as a Notary Public in the state of New Hampshire. In connection therewith, the state of New Hampshire Department of Safety conducted a criminal history search which revealed that:

1. Following a hearing on or about April 17, 1998, the Rochester District Court in Rochester, New Hampshire issued a Domestic Violence Final Order against James Shaw barring him from having contact with Rachel Phillips.
2. On or about April 20, 1998, Mr. Shaw was arrested in New Hampshire and charged with the crime of stalking pursuant to N.H. Rev. Stat. Ann. § 633:3-A as a result of contact he had, on or about April 18, 1998, with Ms. Phillips, the woman protected by the Domestic Violence Final Order.
3. On or about October 23, 1998, Mr. Shaw was convicted in the Rochester District Court, Rochester, New Hampshire of knowingly violating the Domestic Violence Final Order pursuant to N.H. Rev. Stat. Ann. § 173-B:9. The Court sentenced Mr. Shaw to pay a fine of \$ 1000.00 with all but \$250.00 suspended on the condition that he commit no further violations of the protective order and have no contact with the victim for a period of two years.

James Shaw testified at this hearing that he didn’t reveal his criminal history on the subject application because he believed that he was pleading to a violation rather than a crime and his attorney advised him that “it will all go away.” Mr. Shaw then stated that he had “blanked it out completely” regarding the Maine application until he monitored a Board meeting on March 14, 2007 during which the Board discussed another applicant’s failure to reveal their criminal history. Mr. Shaw then informed the Board by letter dated March 17, 2007 of the above crime with his explanations for his actions.

III.

CONCLUSIONS OF LAW AND SANCTIONS

The Board concludes, by a vote of 4-2, that James S. Shaw violated the provisions of 32 M.R.S.A. Sec. 14014(1)(A) by procuring a license with the Board by knowingly making a false statement, submitting false information, or making a material misrepresentation in an application filed with the Board. The majority reasoned that it was not credible for Mr. Shaw to have forgotten about his conviction and to believe that the matter would “all go away.” Therefore, there are grounds based upon the allegations found in the Complaint to take disciplinary action against the license of James Shaw. Accordingly, the Board orders by a vote of 5-1¹ that:

1. James Shaw shall receive a **letter of REPRIMAND** for the above violation.
2. James Shaw shall **pay a fine of \$100** by December 13, 2007. That sum shall be payable by certified check or money order to the State of Maine and forwarded to Cathy Neumann, Complaint Coordinator, 35 State House Station, Augusta, Maine 04333-0035. The amount of the fine is less than the maximum \$1,500 authorized by statute and less than the usual fine assessed by the Board in similar matters. The fine was reduced since Mr. Shaw self-reported his criminal violation.

SO ORDERED.

Dated: November 13, 2007



Kenneth Charest, Chairman
Maine Board of Real Estate Appraisers

IV.

APPEAL RIGHTS

Pursuant to the provisions of 5 M.R.S.A. Sec. 10051.3 and 10 M.R.S.A. Sec. 8003, any party that appeals this Decision and Order must file a Petition for Review in the Maine Superior Court within 30 days of receipt of this Order.

¹ The dissent was of the opinion that the sanctions were too lenient.

The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested upon the Maine Board of Real Estate Appraisers, all parties to the agency proceedings and the Attorney General.