

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
BUREAU OF HEARINGS**

In the matter of

Docket No. 2001-500

Bureau of Commercial Services,
Petitioner

Agency No. 12-00-4398-00

v
Amarylli Moss,
Respondent

Agency: Bureau of Commercial
Services

Case Type: Sanction

_____ /

**Issued and entered
this 30th day of August 2002
by Gregory Holiday
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

This proceeding was commenced with the filing of a Notice of Hearing upon a Formal Complaint dated December 28, 2000, charging Respondent with one or more violations of the Occupational Code, 1980 PA 299, as amended (Code), MCL 339.101 *et seq.* Pursuant to Section 92 of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 *et seq.*, Respondent was afforded an opportunity to demonstrate compliance prior to the commencement of formal proceedings. Respondent failed to satisfactorily demonstrate compliance and, as a result, the matter was set and noticed for a formal hearing.

The hearing was scheduled to be held on May 30, 2001, at the Bureau of Hearings of the Department of Consumer and Industry Services, 1200 Sixth Street, Eighth Floor, Detroit, Michigan. At Respondent's request, with no objection from Petitioner, the hearing was postponed to June 27, 2001. At Petitioner's request, with no objection from Respondent, the hearing was postponed to July 27, 2001 at 9:30 a.m., and the same proceeded at about 11:25 a.m. Gregory Holiday presided as Administrative Law Judge. Larry Jensen, Esq., appeared on behalf of the Bureau of Commercial Services' Enforcement Division of the Department of Consumer and Industry Services (Petitioner). No one appeared for Amarylli Moss (Respondent) and her default was recorded on the record¹. At about 12:10 p.m., Respondent reappeared at the Bureau of Hearings and asked that her default be rescinded. On August 2, 2001, a written request to set aside the default was filed by Respondent. With no objection by Petitioner, the default was set aside and the hearing was rescheduled to take place on September 24, 2001 at 9:30 a.m. On September 18, 2001, Petitioner submitted a Request for Dismissal of Request for Hearing which was granted without prejudice by order dated September 19, 2001. On January 3, 2002, Petitioner submitted a Request for Hearing seeking to have the matter placed back on the hearing calendar. On January 17, 2002, a Notice of Remand Hearing was issued which rescheduled a contested case hearing for March 4, 2002 at 9:30 a.m. On February 25, 2002, Respondent filed a request to postpone the March 4, 2002 hearing. With no objection from Petitioner, the

¹ Apparently, Ms. Moss was present at the Bureau of Hearings and spent time negotiating a possible settlement with Petitioner's counsel before she left the area.

hearing was postponed to Tuesday, May 28, 2002 at 9:30 a.m. By order dated April 23, 2002, the location of the hearing was changed to Cadillac Place, 2nd Floor, 3026 West Grand Boulevard, Detroit, Michigan. On May 23, 2002, Respondent submitted an e-mail request to postpone the hearing. Petitioner opposed the request which was denied on the basis that it was untimely and without merit. The hearing proceeded as scheduled on Tuesday, May 28, 2002 at 9:30 a.m. Mr. Jensen again represented Petitioner. Loretta Chmura and Lorne Gold, Esq., testified for Petitioner. Respondent appeared and testified on her own behalf. Daniel Moss also testified for Respondent.

ISSUES AND APPLICABLE LAW

The sole issue presented is whether Respondent violated Section 604(a) of the Code, which provide, in pertinent part:

Sec. 604. A person who violates 1 or more of the provisions of an article which regulates an occupation or who commits 1 or more of the following shall be subject to the penalties prescribed in section 602:

a. Practices fraud or deceit in obtaining a license or registration.

EXHIBITS

Petitioner offered the following exhibits for consideration at the hearing:

<u>Exhibit</u>	<u>Description</u>
1	Affidavits of Daniel K. Frushour, Mark Richards, Marvin Rich and Donna Ziehm
2	Resume' of Amarylli Moss
3-6	Not admitted

7 Limited Real Estate Appraiser License Application of Amarylli Moss filed 2/18/00

Respondent offered no additional exhibits for consideration at the hearing.

FINDINGS OF FACT

Loretta Chmura has owned Middleton Real Estate (Middleton), a company founded by her late mother, since about 1980. Middleton certifies Real Estate Appraisers and provides educational courses for appraisers, builders, home inspectors and real estate licensees and potential licensees. Middleton has about 12 faculty.

Respondent was employed by Middleton as a clerical/receptionist from about March 1999 until about February 2000. All Middleton employees are invited to audit courses on their own time at no charge, though the employee is responsible for the cost of course materials.

On about February 18, 2000, Respondent submitted her Limited Real Estate Appraiser License Application (Petitioner Exhibit 7) to the Department of Consumer and Industry Services with a \$150.00 license application fee. In the application, Respondent cited her completion of the following courses through Middleton:

Course No. 300, Uniform Standards of Appraisal Practice - 15 hours, completed 12/4/99

Course No. 301, Fundamentals of Appraisal - 30 hours, completed 11/29/99

In addition, Respondent answered "NO" to the question, "Have you ever been convicted of a felony or misdemeanor for which you could have gone to jail?" In fact,

Respondent had been convicted of the misdemeanor traffic offense of driving with a suspended license in about 1997. Respondent's testimony was that she didn't read the entire question on the license application, and thought that it was just asking about felony convictions. Presumably, had she known that it was asking about felony and misdemeanor convictions, she would have answered yes. It would have been more believable that Respondent did not understand that she was convicted of a crime in 1996 or 1997. Her admitted testimony makes clear that she knew that both felony and misdemeanor crimes exist. Respondent is not excused from making an "error" on her license application of this magnitude, particularly in light of the other clearly false statements in the application.

Sometime in 2000, Ms. Chmura learned that Respondent had obtained a Limited Real Estate Appraiser license from the Michigan Department of Consumer and Industry Services. She also learned that Respondent claimed that she (Ms. Moss) received her educational training for the license from Middleton. Ms. Chmura, knowing that Respondent had not completed the course work as claimed, questioned her staff of instructors and obtained affidavits (Petitioner Exhibit 1) from the four instructors (Daniel Frushour, Mark Richards, Marvin Rich and Donna Ziehm) who teach in the appraisal courses.

Ms. Chmura also received a copy of Ms. Moss' Resume' (Petitioner Exhibit 2) from another Middleton student which contains an untrue listing of course work completed at Middleton. In fact, Ms. Moss represents in her Resume' that between September 1999 and February 2000, she took and completed a total of 254 hours of course work through Middleton, with 137 of hours completed in January and February 2000. Appended to the

Resume' that Ms. Chmura received was a false copy of a letter of recommendation from Ms. Chmura to Amarylli Moss. The letter was not offered or accepted as evidence.

After Respondent left Middleton's employ in February 2000, Ms. Chmura filed a Police Report for a breaking and entering on about March 15, 2000. Ms. Chmura suspected Respondent because Respondent's Resume' was displayed on one of the computers and some of the building's cleaning staff claimed to have seen Respondent in the building after hours.

Both Respondent and Ms. Chmura sought personal protection orders against each other. In addition, Respondent filed a complaint with the U.S. Equal Opportunity Employment Commission (EEOC). Ms. Chmura filed Statement of Complaint with the Bureau of Commercial Services against Respondent in August 2000.

Respondent and her father, Daniel Moss, concede that in about December 1996, Respondent was stopped by the Dearborn Heights Police, while driving in Dearborn Heights, and arrested for driving on a suspended license. Respondent posted a bond to be released from jail. She ultimately pled guilty to the misdemeanor charge, paid a fine and had her driver license restored. Daniel Moss, though he claims that he knows that Respondent took classes at Middleton after hours, actually has no personal knowledge of what, if any, classes Ms. Moss may have taken or when.

Respondent repeatedly placed into question Ms. Chmura's credibility, claiming inconsistencies between the Chmura Statement of Complaint and documents from EEOC, from the Circuit Court on the Personal Protection Order (PPO) matters, and from Middleton's

own records that had not been produced. In fact, it is Respondent whose testimony is not credible. Her approach to this case was not to show that she had taken the courses as claimed, but to show that she was being discriminated against. Respondent's demeanor when asked whether documents beared her signature and whether she recalled documents, gave a clear indication of deception. When Respondent was permitted to state a basis for her claims of discrimination, the bases cited were illogical. For example, Respondent claims that this proceeding is based on retaliation. Upon further inquiry, Respondent points out that the Statement of Complaint was filed just days after Ms. Chmura's PPO request was denied. The concept of "retaliation" is inappropriate to describe what occurred. Nevertheless, Respondent would prefer to characterize it as retaliation. Respondent finds it odd that Ms. Chmura waited six months after Respondent's departure before filing Statement of Complaint. In fact, there is no significance to the period between Respondent's departure and the filing of the Statement of Complaint.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's Michigan Pleading & Practice (2d ed) § 60.48, page 230. The burden of proof is upon Petitioner to prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions upon Respondent. 1990 AACRS, R 339.1763.

Violation of Section 604(a) of the Code

By this charge, Petitioner asserts that Respondent practiced fraud or deceit in obtaining a license, in violation of Section 604(a) of the Code.

Because Respondent falsely represented in her license application that she had taken and completed the two appraisal courses through Middleton, and because she falsely represented that she had not been convicted of a misdemeanor, Petitioner has proven, by a preponderance of the evidence, that Respondent practiced fraud and deceit in obtaining a license violation Section 604(a) of the Code.

Accordingly, Petitioner has proven, by a preponderance of the evidence, that Respondent violated Section 604(a) of the Code.

DECISION AND RECOMMENDED SANCTIONS

It is the decision of this Administrative Law Judge that Respondent violated Section 604(a) of the Code as described in this Hearing Report. Petitioner recommended that sanctions include a civil fine of \$10,000.00 and revocation of Respondent's Real Estate Appraiser license.

It is recommended that the Board include the following as sanctions in this matter:

1. Payment of a civil fine in the amount of \$10,000.00.
2. Revocation of any licenses issued under the Code and denial of any license applications until the civil fine is paid and the Bureau of Commercial Services is satisfied, after at least five years, that Respondent should be licensed.

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Gregory Holiday
Administrative Law Judge

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
BOARD OF REAL ESTATE APPRAISERS

In the matter of :

AMARYLLI MOSS
Limited Real Estate Appraiser
License No. 12-01-007974

Docket No. 2001-500
Complaint No. 12-00-4398-00

FINAL ORDER

WHEREAS, this matter having come before the Michigan Board of Real Estate Appraisers, hereafter the "Board", on December 5, 2002; and

WHEREAS, the Board having considered the Findings of Fact and Conclusions of Law in the Hearing Report of Gregory Holiday, Administrative Law Judge, dated August 30, 2002;

WHEREAS, the Board having received the Hearing Report under MCL 339.514, and Amarylli Moss, Limited Real Estate Appraiser, License No. 12-01-007974, hereafter "Respondent", having been found in violation of Section 604(a); of the Michigan Occupational Code, 1980 P.A. 299, *as amended*, hereafter the "Code", MCL 339.604(a) and

WHEREAS, the hearing report being hereby incorporated by reference; now, therefore,

IT IS HEREBY ORDERED, that the following penalties authorized by Section 602 of the Code are hereby imposed:

1. Respondent shall pay a FINE in the amount of Ten Thousand Dollars and 00/100 Cents (\$10,000.00), said fine to be paid to the Department of Consumer & Industry Services within sixty (60) days from the date of mailing of this Final Order. Said fine shall be paid by cashier's check or money order, with Complaint No. 12-00-4398-00 clearly indicated on the check or money order, made payable to the State of Michigan, and sent to the Department of Consumer & Industry Services, Bureau of Commercial Services, Enforcement Division, P.O. Box 30185, Lansing, Michigan 48909.

2. Respondent's Limited Real Estate Appraiser License No. 12-01-007974, and all other licenses or registration renewals issued under the Code, if any, shall be and hereby are REVOKED effective the mailing date of the Final Order in this matter. No application for licensure, relicensure, registration, renewal or reinstatement shall be considered until the Bureau of Commercial Services is satisfied, after at least five years, that Respondent should be licensed and the fine is paid-in-full.