

**STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
BOARD OF REAL ESTATE APPRAISERS**

**DEPARTMENT OF LABOR
& ECONOMIC GROWTH,
BUREAU OF COMMERCIAL SERVICES**

**Docket No. 2004-647
Complaint No. 77445**

Complainant,

v

**MICHIGAN INSTITUTE OF REAL ESTATE, INC.
Real Estate Appraiser Education Sponsor
Approval No. 0035**

Respondent.

_____ /

FINAL ORDER

WHEREAS, this matter having come before the Michigan State Board of Real Estate Appraisers, hereafter the "Board," on December 7, 2004;

WHEREAS, the Board having considered the Findings of Fact and Conclusions of Law in the Hearing Report of Gregory Holiday, Administrative Law Judge, dated October 12, 2004, hereafter the "Hearing Report";

WHEREAS, the Board having received the Hearing Report under MCL 339.514 and Michigan Institute of Real Estate, Inc., Approved Real Estate Appraiser Education Sponsor, Approval No. 0035, hereafter "Respondent," having been found in violation of Section 2617(3)(b) of the Michigan Occupational Code, 1980 P.A. 299, as *amended*, hereafter the "Code," MCL 339. 2617(3)(b) and Rule 315(a) of the Michigan State Board of Real Estate Appraisers General Rules, *promulgated hereunder*, being 1996 AACS, R 339.23315(a);

WHEREAS, the Board, after considering the Hearing Report, exercises its authority and discretion pursuant to MCL 339.309 and 339.514, to make its own determination of penalty to be assessed under Article 6, independent of the recommendation of the Administrative Law Judge; 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 Five Thousand Dollars and 00/100 Cents (\$5,000.00). The fine shall be paid to the Department of Labor & Economic Growth within sixty (60) days from the mailing date of this Final Order. Payment shall be made by cashier's check or money order, with Complaint No. 77445**

clearly indicated on the check or money order; payable to the State of Michigan and mailed to the Department of Labor & Economic Growth, Bureau of Commercial Services, Enforcement Division, Office of Audit and Administrative Services, P.O. Box 30185, Lansing, Michigan 48909.

2. Respondent's failure to comply with each and every term and condition of this Final Order set forth above shall suspend the current approval of Michigan Institute of Real Estate, Inc., Approved Real Estate Appraiser Education Sponsor, Approval No. 0035, and result in denial by the Department of any future application(s) for licensure, relicensure, reinstatement or renewal until such time as each and every term and condition of this Final Order has been fully complied with.
3. Respondent shall submit in writing to the Michigan Department of Labor & Economic Growth, Bureau of Commercial Services, Office of Audit and Administrative Services, P.O. Box 30018, Lansing, MI 48909, proof of compliance with each and every requirement of this Final Order, in a form acceptable to the Department.

This Final Order shall not be construed as limiting the Department of Labor & Economic Growth, any other agency of the State of Michigan or any individual as to the use of a lawful method of collection of the payment imposed by this Final Order.

Failure to comply with the provisions of this Final order is a violation of the Code pursuant to Section 604(k) and may result in further disciplinary action.

This Final Order is effective immediately upon its mailing.

Given under my hand at Okemos, Michigan, this ____ day of _____, 2005.

BY: _____
David C. Maturen, Chairperson

Date mailed: _____

Proof of Compliance shall be filed with:

Department of Labor & Economic Growth
Bureau of Commercial Services
Enforcement Division
Office of Audit and Administrative Services
P.O. Box 30018
Lansing, MI 48909

**STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
BUREAU OF HEARINGS**

In the matter of	Docket No.	2004-647
Bureau of Commercial Services, Petitioner	Agency No.	77445
v	Agency:	Bureau of Commercial Services
Michigan Institute of Real Estate, Inc. Real Estate Appraiser Education Sponsor, Respondent	Case Type:	Sanction

**Issued and entered
this 12th day of October, 2004
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 April 20, 2004, 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 for Tuesday, July 13, 2004 at 9:00 a.m., at the Bureau of

Hearings of the Department of Labor & Economic Growth, Cadillac Place, 2nd Floor Annex, Room 2-700, 3026 West Grand Boulevard, Detroit, Michigan, and the same proceeded as scheduled. Gregory Holiday presided as Administrative Law Judge. Michael A. Lockman, Assistant Attorney General, appeared on behalf of the Bureau of Commercial Services' Enforcement Division of the Department of Labor & Economic Growth (Petitioner). Thomas Colborn, Constance Thornsberry, Gary Caddick and Niles Redden testified for Petitioner. John D. Nickola, Esq., appeared on behalf of Michigan Institute of Real Estate, Inc., Real Estate Appraiser Education Sponsor (Respondent or MIRE). Namir George and Andy Magar testified for Respondent.

ISSUES AND APPLICABLE LAW

The general issue presented is whether Respondent violated the Code, with respect to the operation of a real estate school. The specific issues are whether Respondent violated Administrative Rule 1996 AACCS, R 339.23315(a) and Section 2617(3)(b) of the Code, which provide, in pertinent part:

Rule 315. Rule 315. A person, including a sponsor, may be subject to the penalties of section 602 of the code, including disciplinary action against a course approval, for any of the following reasons:

(a) Failure to comply with the provisions of the code or these rules.

Sec. 2617...(3) Prelicensure courses, being those courses offered as a qualification for licensure, shall meet the following minimum requirements:

(b) Include an examination at the end of the course requiring an individual taking the course to demonstrate mastery of the course content.

EXHIBITS

Petitioner offered no exhibits for consideration at the hearing.

Respondent offered the following exhibits for consideration at the hearing:

<u>Exhibit</u>	<u>Description</u>
1	Memorandum Report of Investigation with Memorandum of Findings, Memoranda of Interview and MIRE Appraisal Course Registration Sheet
2	Text for the RE Appraisal Concepts 2 course
3	Text for the RE Appraisal Concepts 1 course
4	Final Exam for Concepts 1
5	Final Exam for Concepts 2
6	Package of Information faxed to MIRE from former Instructor Magar

FINDINGS OF FACT

Thomas W. Colborn has served as a Regulation Agent for the Bureau of Commercial Services since July 1988. As part of his duties, he investigates complaints filed against licensees. An anonymous e-mail complaint against the MIRE was assigned to him alleging that pre-license appraisal courses were being done without exams at the end of courses. Mr. Colborn attempted, without success, to communicate with the e-mail account from where the complaint originated.

To investigate, Mr. Colborn obtained a recent class roster, tracked down four

students at random (Niles Redden, Constance Thornsberry, Gary Caddick and Layne Lucia) and obtained their statements. When inquiring of each of the four whether they were given exams at the end of their prelicensure real estate appraisal courses, all but one (Redden) said "no". Redden acknowledged having been given an exam for the USPAP course, but not for either of the two Real Estate Appraisal Concepts courses.

As part of the investigation, Mr. Colborn went to the Livonia location on about July 15, 2002 posing as a student interested in taking a prelicensure course, asking Mr. George whether exams were given at the end of the course and was told, "Yes". He also received a brochure, which didn't mention exams.

Later in July 2002, the Bureau of Commercial Services (Enforcement Division) sent a "Notice to Respondent" to MIRE advising of the complaint and seeking a response. Mr. George replied in writing that all Real Estate Appraisal courses were conducted at the Southfield location and that MIRE did give exams. In October 2002, Mr. Colborn conducted an unannounced visit to the Southfield location and asked Eva, the secretary, to allow him to see the exams. Mr. George's wife, who serves as office manager, was not in the office on the day that Mr. Colborn visited the Southfield location. Secretary Eva called Mr. George to obtain permission and Mr. George authorized Eva to fully cooperate with Mr. Colborn. Mr. Colborn was not able to see any of the exams or scoring records and was advised that MIRE did not retain the actual exams completed by the students because the students were permitted to keep the exams, and that the exam scores were retained on MIRE's computer system. Eva displayed exam scores on the computer for Mr. Colborn to view. Eva was unable to locate any documents with exam scores on them.

Mr. Colborn prepared his two-page report of the investigation (See Respondent Exhibit 1, pages 2 and 3) setting forth his investigation findings. As a result of the investigation findings, the Bureau of Commercial Services' Enforcement Division decided to bring formal charges against MIRE.

Andy Magar, a licensed real estate appraiser whose office in Livonia was located near the MIRE offices, arranged with Mr. George to teach appraisal courses for MIRE for about an eight-month period during 2001 and 2002. Mr. Magar taught the 5-day Real Estate Appraisal Concepts 1, the 5-day Real Estate Appraisal Concepts 2, the 3-day USPAP course, all in succession for a total of about 7 or 8 times. Mr. Magar also taught some continuing education courses. Mr. Magar was the course instructor for at least three of the four students contacted by Mr. Colborn. While Mr. Magar insists that he administered an examination at the end of each of the three real estate appraisal preclicensure courses for each of the seven or eight series of courses, it is unlikely that he did so.

Constance Thornsberry, has been a Real Estate Appraiser since about 2002. She has a Bachelor's degree from Concordia University in Ann Arbor. She took three Appraisal preclicensure courses: the Real Estate Appraisal Concepts 1 and 2 and the USPAP, from MIRE with Andy Magar as the Instructor. Each course was from about 9:00 a.m. until about 5:00 p.m. At the conclusion of the courses, she received a certificate. According to Ms. Thornsberry, there were textbooks for each course (See Respondent Exhibits 4 and 5) but no examination at the end of the courses. In fact, during one of the courses, a student inquired whether an exam would be given and was told by Mr. Magar that there would be no exam. After completing the second of the three courses, Ms. Thornsberry was asked by her co-

worker at Macasty & Associates how she did on the exam, to which Ms. Thornsberry responded that there was no exam. Her co-worker was incensed, having taken the class at another real estate appraisal school with an exam at the end of the course, and became instrumental in the anonymous complaint to the state.

Gary Caddick is self-employed and possesses no state occupational licenses. He has a bachelor's degree. He took three Prelicensure Appraisal courses: the Real Estate Appraisal Concepts 1 and 2 and the USPAP, from MIRE in about fall 2002 at the Southfield Office. According to Mr. Caddick, while there were multiple-choice quizzes at the end of chapters in the book, there was no exam at the end of the course. He did receive a certificate of completion in the closing minutes of the course.

Niles Redden serves as Director of Business Development for Handi-Pro Handyman Services. In 2002, he was interested in state-licensed appraisal and took the three Appraisal Prelicensure courses: Appraisal Concepts 1, Appraisal Concepts 2 and USPAP, at MIRE with Andy Magar as instructor. According to Mr. Redden, while there were no exams given at the end of the Appraisal Concepts courses, there was a multiple-choice exam given on the last day of the USPAP course. Students were handed the exam at the end of the course and filled it out. Afterwards, Mr. Magar gave the answers to the class and students graded themselves to see how they did. Students were not called upon to report their grades to Mr. Magar or to MIRE.

MIRE now has three Appraisal Instructors and had just two during the one-year period of time that Mr. Magar taught.

In this case, Mr. Magar's self-serving testimony that he gave examinations to

participants at the end of each of his real estate appraisal prelicensure courses is given little weight, particularly because of his testimony that his records were lost, and because his testimony is directly contrary to the specific credible testimony and statements of the only four students contacted by the Department who took the classes. In addition, if MIRE's computer system has exam scores for each of the three courses for each of the four students identified in the investigation, then false information was provided to generate the exam scores.

It is also clear from this record that Mr. George was unaware that Mr. Magar did not provide the required examinations at the end of each of the real estate appraisal prelicensure courses and did not condone the failure to provide examinations. Mr. George and MIRE did not take steps to assure that its real estate appraisal instructors were in compliance with the examination requirements for these courses.

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 AACCS, R 339.1763.

Violation of Section 2617(3)(b) of the Code and Rule 1996 AACCS, R 339.23315(a)

By this charge, Petitioner asserts that Respondent failed to include an examination at the end of certain Real Estate Appraisal Concepts 1 and 2 courses conducted in 2002 in violation of Section 2617(3)(b) of the Code. Petitioner also asserts that because of the Code violation, Respondent is subject to disciplinary sanctions under Section 602 of the

Code by virtue of Rule 1996 AACs, R 339.23315(a).

The gist of Respondent's argument is that even if there were courses in which examinations were not given at the end, there was no culpability on the part of MIRE or Namir George because neither MIRE nor Namir George condoned any practice of not giving examinations at the end of courses.

Culpability is not a requirement to establish a violation of Section 2617(3)(b) of the Code, and for good reason. The statute imposes a duty upon a real estate appraisal school licensee to assure that an examination is given at the end of prelicensure appraisal courses, period. If an examination is not given as required, it is a violation. If the Licensee lacks the control and oversight necessary to make that assurance, there is no meaningful way to determine whether the Licensee's students have developed a mastery of the course content. The failure to provide required examinations at the end of the prelicensure appraisal courses a violation of Section 2617(3)(b) of the Code. That violation subjects Respondent to sanctions set forth in Section 602 of the Code by virtue of Rule 339.23315(a).

Accordingly, Petitioner has proven, by a preponderance of the evidence, that Respondent violated Rule 339.23315(a) by violating Section 2617(3)(b) of the Code.

DECISION AND RECOMMENDED SANCTIONS

It is the decision of this Administrative Law Judge that MIRE violated Rule 339.23315(a) by violating Section 2617(3)(b) of the Code as described in this Hearing Report. Petitioner made no recommendation for sanctions.

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

1. Payment of a civil fine in the amount of \$2,000.00.
2. In the event the civil fine has not been paid within 60 days following the issuance of a final order, then all Article 24 licenses should be suspended and no new or renewal licenses should be issued until the civil fine has been paid.

MIRE is encouraged to take steps to assure that (1) examinations are given at the end of all real estate appraisal prelicensure courses as required, and (2) proof of the examinations, perhaps in the form of answer sheets, is maintained for a reasonable period of time by MIRE and not just by its instructors.

Gregory Holiday
Administrative Law Judge