

South Carolina Real Estate Appraisers Board
Regular Meeting/Hearings
August 11, 2005
10:00 AM

Members attending: Herb Sass, Chairman; Charles Stone, Vice Chairman; Rhonwen Newton, Secretary; Chris Cochran; and Carlton Segars.

Absent: Nancy Johnson

Staff attending: Robert L. Selman, ADD, POL, Labor, Licensing and Regulation; Jay Pitts, Administrator; Ed Coleman, OIE; Ann Parris; Administrative Assistant; Laura Smith, OIE; Beau Tiller, Education; and Rick Wilson, LLR Advice Counsel

Call to Order – Freedom of Information Statement

Chairman Sass called the meeting to order at 10:15 AM and read into the record the following Freedom of Information statement. Public notice of this meeting was properly posted at the South Carolina Real Estate Appraisers Board office, Synergy Business Park, Kingstree Building, Columbia, South Carolina, and provided to all requesting persons, organizations, and news media in compliance with Section 30-4-80 of the South Carolina Freedom of Information Act. A quorum was present at all times.

Chairman Sass introduced himself, members of the Board, and staff. He welcomed the new member, Chris Cochran, to the Board. Mr. Cochran stated he looked forward to working with the staff and Board.

Chairman Sass stated that barring objections, he would like to reorder the agenda to move the application hearing of Richard L. Rigdon forward following the report of Mr. Pitts. There were no objections.

Approval of Minutes – February 10, 2005

Motion: Mr. Segars moved to approve the minutes of the September 29, 2004, meeting as written. Motion was seconded by Mr. Stone and unanimously carried.

Management Update – Jay Pitts, Administrator

Renewal update - 3,001 active licensees renewed (753 opted to use the online renewal system) 294 that have not renewed

AAAO Conference – October 8 – 11, 2005 Washington, DC
LLR policy on attendance: 2 Board members; 1 staff member

Next meeting date – November 10, 2005 – Kingstree Building, Columbia, SC

The AQB will hold a meeting and Criteria Implementation Workshop in Charleston, February 8-10, 2006. The AQB is holding meetings and implementation workshops in various states to assist in the understanding of the Criteria changes that will take effect January 1, 2008. Mr. Pitts stated that Beau Tiller was instrumental in getting the AQB to come to Charleston. Board members unanimously approved the suggestion to hold the regularly scheduled board meeting in conjunction with the AQB events. The meeting date would be Thursday, February 9, 2006.

Ed Coleman reported on the AQB meeting/implementation seminar he attended in Omaha, Nebraska.

License Application

Richard L. Rigdon, applicant

Mr. Rigdon appeared before the Board to request that he be reinstated as a certified residential appraiser. He was disciplined by the Board on February 15, 1997, and was reduced to the status of a licensed appraiser. The Board Order stipulated that Mr. Rigdon must appear before the Board before he would be allowed to upgrade back to certified residential status. Mr. Rigdon was not represented by attorney and did not have any witnesses.

Executive Session: When testimony was completed, the Board went into executive session for deliberation. Motion: Mr. Stone moved and Mr. Segars seconded. Motion carried. 10:40 A.M.

Motion: Mr. Segars moved to come out of executive session and Mr. Stone seconded the motion. It unanimously carried. 10:50 A.M.

Motion: Mr. Stone moved that the Board allow Mr. Rigdon to sit for the Certified Residential examination and upon passing the examination the reinstatement of his license. Mr. Segars seconded the motion and it unanimously carried.

Unfinished Business – H3796 Appraisers Act Revisions – Beau Tiller

Mr. Tiller reported that H3796 was introduced in the Legislature last session and made it through the House and to the Senate Subcommittee (where it is now). He distributed a copy of the amendment (copy attached) to the Bill which states that all registered appraisers who were reclassified as apprentice appraisers pursuant to subsection B, automatically must be reclassified as certified general appraisers if the individuals meet the following requirements:

- completed 180 classroom hours;
- passed the CG examination;
- graduated from an accredited college or University with a four year degree and provide copy of diploma; and
- has held a license as a SC real estate broker for ten years prior to the date of reclassification.

Mr. Tiller stated education is not the issue here; it is the lack of experience. He said people are working to get this amendment removed. Mr. Tiller stated the Appraisal Subcommittee heard about the amendment and contacted Mr. Selman about it. Mr. Selman stated it might be necessary for Board members to testify at Subcommittee meetings regarding this matter.

Chairman Sass asked if the staff monitors education providers/instructors who conducts classes. He said several people had called him to tell him they were unhappy with the instructor and the content that was offered in some classes in the Columbia area. Mr. Tiller stated he rarely received a complaint but if he received a complaint, it would be investigated by staff to find out what needed to be done to correct the situation. He said staff works very hard on the front end with the approval procedures that are in place to ensure that providers and instructors are qualified and meet the Board requirements.

New Business – Appraisal Reliance Letter – Chairman Sass

Chairman Sass said he would like to discuss the use of appraisal reliance letters. Borrowers who are applying for a mortgage loan may submit to a second lending institution an appraisal that was previously done for another lending institution. Chairman Sass stated that he recently received a letter from a lender asking that he verify the accuracy of the information on an appraisal that was done by Mr. Sass months ago. The Board discussed many concerns about this practice and agreed unanimously that this was a business decision that should be made by each individual appraiser as to whether or not they wished to engage in this practice; therefore, the Board did not take a position on it.

H3781 LLR Engine Bill Revisions – Bob Selman

Mr. Selman stated that a rewrite of the LLR Engine Bill (passed in 1996, which sets parameters as to the boards' responsibilities and the agency's responsibilities) was introduced at the end of this legislative session, but no action was taken. He briefly reviewed some of the changes and asked that members review the copy in their books for discussion at a later time.

Mr. Selman stated as a matter of information, the SC Department of Labor, Licensing and Regulation, Real Estate Appraisers Board has received official notice that the State of South Carolina Supreme Court has reversed and remanded to the Administrative Law Court the matter of James F. Johnston, III, Respondent. (copy attached – opinion # 26015).

Elections: Chairman Sass stated elections would be held to elect a Chairman, Vice Chairman and Secretary. Mr. Stone made a motion to re-elect the current officers by acclamation. Motion was seconded by Chairman Sass. Mr. Segars said he would like to place his name in nomination for the office of Chairman. Mr. Wilson stated action must be taken at this time on the motion that was on the floor. Chairman Sass called for the vote. The motion did not pass. Written ballots were put into use for the offices of Chairman and Vice Chairman. Herb Sass was re-elected Chairman and Charles Stone was re-elected Vice Chairman. Ms. Newton was re-elected Secretary by acclamation on motion of Mr. Stone and second of Chairman Sass.

Mr. Wilson said the Appraisers Board was fortunate to have such a vast amount of capable leadership among their membership. He commented on how professional the members are and the excellent relationship they enjoy. Mr. Wilson said it is a pleasure for him to be involved with this Board.

Chairman Sass called a break at 11:55 a.m. Meeting reconvened at 12:10 a.m. for the matter of the hearing of William Bruce Stillwagon. At the conclusion of this hearing and there being no further business, Mr. Segars moved that the meeting be adjourned. Time: 1:05 p.m.

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

James F. Johnston, III, Respondent,

v.

South Carolina Department of Labor, Licensing,
and Regulation, South Carolina Real Estate
Appraisers Board, Petitioner.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Richland County
G. Thomas Cooper, Jr., Circuit Court Judge

Opinion No. 26015
Heard June 14, 2005 - Filed July 25, 2005

REVERSED

Kenneth P. Woodington, of Davidson, Morrison
and Lindemann, P.A., of Columbia; and Lynne W.
Rogers, of South Carolina Department of Labor,
Licensing and Regulation, of Columbia, for
petitioner.

John S. Nichols, of Bluestein & Nichols, LLC, of
Columbia, for respondent.

JUSTICE MOORE: Following petitioner's (the Board's) issuance of an order fining and suspending respondent, respondent appealed to the Administrative Law Court (ALC). The ALC reversed the Board's order and found the Board's failure to serve written notice within the statutorily-mandated time period divested the Board of subject matter jurisdiction.[1] The circuit court affirmed the ALC and the Court of Appeals affirmed in a 2-1 decision. Johnston v. S.C. Dep't of Labor, Licensing, and Reg., S.C. Real Estate Appraisers Bd., Op. No. 2003-UP-

688 (S.C. Ct. App. filed November 24, 2003). We reverse and remand.

FACTS

Respondent was a licensed real estate appraiser. In April 2000, the Board brought charges against respondent alleging he violated the South Carolina Real Estate Appraisers Registration, Licensing and Certification Act, S.C. Code Ann. §§ 40-60-2, *et seq.*, and violated the 1997 Uniform Standards of Professional Appraisal Practice. The allegations stemmed from a complaint regarding a real estate appraisal done by another appraiser, Kyle Smith, which respondent signed as a supervising appraiser.

After an administrative hearing on the matter, the Board found respondent had committed the alleged violations and imposed a one thousand dollar fine and suspended respondent's license for one year. The written decision was issued on October 23, 2000. Pursuant to statute, the Board was required to serve written notice of its decision on respondent within thirty days of issuing a final order. See S.C. Code Ann. § 40-60-150(C)(3) (Supp. 2004). Two weeks after the Board's written decision was issued, on November 6, 2000, the Board mailed written notice of its decision by certified mail, "Return Receipt Requested," to an address containing an incorrect zip code. An unknown person accepted the letter and signed the name "T. Griffin" to the receipt. This card was returned to the Board with T. Griffin's signature.

On December 7, 2000, respondent learned the Board had posted his name on their website as being under suspension. After respondent's inquiry, a copy of the written decision was given to respondent by a Board employee. While this notice constituted proper service, pursuant to Rule 5(b)(1), SCRCP, on respondent, notice was not served on respondent until two weeks after the statutorily-prescribed time period had expired.

ISSUE

Did the Court of Appeals err by finding the Board's failure to serve notice of its decision within the 30-day time period prescribed in S.C. Code Ann. § 40-60-150(C)(3) (Supp. 2004) deprived the Board of subject matter jurisdiction?

DISCUSSION

The Board argues the Court of Appeals erred by finding that because the Board failed to comply with the time frame required by § 40-60-150(C)(3), its inaction deprived the Board of subject matter jurisdiction.

The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the Legislature. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000). When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. Carolina Power & Light Co. v. City of Bennettsville, 314 S.C. 137, 442 S.E.2d 177 (1994).

Section 40-60-150(C)(3) provides: "The board shall render a decision and *shall serve* notice, in writing within thirty days, of the board's decision to the . . . appraiser charged. . . ." (Emphasis added). The language of § 40-60-150(C)(3) clearly and unambiguously requires the Board to serve notice of its decision to the appraiser charged within 30 days of its ruling. The term "shall" in a statute means that the action is mandatory. Wigfall v. Tideland Utils., Inc.,

354 S.C. 100, 580 S.E.2d 100 (2003); Charleston County Parents for Pub. Schools, Inc. v. Moseley, 343 S.C. 509, 541 S.E.2d 533 (2001).

Although the 30-day time requirement is mandatory, it is not jurisdictional. Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong. Dove v. Gold Kist, 314 S.C. 235, 442 S.E.2d 598 (1994). The failure to comply with a mandatory time requirement for serving a written decision does not affect the jurisdiction of the Board to determine the real estate appraiser disciplinary matter.[2]

The failure of the Board to meet the deadline does not render the order a nullity. We conclude the order is valid, but *ineffective*, until it is served upon the appraiser.

There is no indication the Legislature intended for the time limit to prevent the Board from having the ability to discipline an errant appraiser if the Board fails to serve notice of the written decision within the prescribed time period. Instead, the Legislature intended to speed the resolution of appraiser disciplinary cases for the benefit of all parties involved. See, e.g., In re Martino, 644 A.2d 546 (N.H. 1994) (thirty-day time limit intended to speed resolution of workers' compensation cases for benefit of all parties involved; statute's purpose would be frustrated if time limitation was interpreted as jurisdictional requirement).

We note that, although the thirty-day time limit is mandatory, the Legislature has not provided how that mandate is to be enforced. There is no language regarding the consequences if the Board misses the deadline for serving written notice of its decision on the appraiser. Accordingly, we will not assume the Legislature intended the Board to lose its power to act for failing to comply with the statutory time limit. See Brock v. Pierce County, 476 U.S. 253 (1986) (courts should not assume Congress intended agency to lose its power to act; agency does not lose jurisdiction for failing to comply with statutory time limit unless statute expressly sets time limit *and* specifies a consequence).

CONCLUSION

Because the thirty-day time limit for serving notice of the Board's decision is mandatory, but not jurisdictional, we reverse and remand to the ALC for a ruling on the merits of respondent's claims.[3]

REVERSED AND REMANDED.

TOAL, C.J., WALLER, BURNETT and PLEICONES, JJ., concur.

[1] Respondent also appealed the Board's order on the merits; however, the ALC did not address those issues after finding the order was a nullity.

[2] We note that the decisions of South Carolina Dep't of Highways and Pub. Transp. v. Dickinson, 288 S.C. 189, 341 S.E.2d 134 (1986), and Starnes v. South Carolina Dep't of Pub. Safety, 342 S.C. 216, 535 S.E.2d 665 (Ct. App. 2000) are not applicable. Both of these cases involve the failure of the Department to hold a hearing within the statutorily-prescribed time period following the suspension of a driver's license for driving while intoxicated. In these cases, both this Court and the Court of Appeals determined that the failure to hold the

requested hearing deprived the Department of jurisdiction to hold the hearing.

Subsequently, in the case of *In re Matthews*, 345 S.C. 638, 550 S.E.2d 311 (2001), *cert. denied*, 535 U.S. 1062 (2002), we held the failure of the State to conduct a trial to determine whether a person is a sexually violent predator or seek a continuance within the statutorily-required sixty days did *not* divest the court of jurisdiction. We stated that Matthews should have filed a motion to dismiss when the State failed to bring the case to trial within the mandatory sixty days; further, because Matthews did not file the motion to dismiss, he had ~~waived his right to challenge the State's failure to comply with the requisite time period.~~

Matthews is in line with our strict view of subject matter jurisdiction. See, e.g., State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) (finding challenge to sufficiency of indictment does not involve subject matter jurisdiction); Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994) (clarifying the difference between venue and subject matter jurisdiction). Our decision in this case reflects that strict view.

[3]Once respondent brought the failure of service to the Board's attention, the Board promptly gave respondent a copy of the Board's written decision. We find respondent was not prejudiced by the Board's failure to complete service within thirty days of the Board's issuance of its decision.