

**STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE**

In re **KENNETH TUBBS**

National Producer No. 2295643

Docket No. INS-09-216

] **DECISION AND ORDER**
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The staff of the Bureau of Insurance has requested that the application of Kenneth R. Tubbs for an individual insurance producer's license be denied. As discussed more fully below, the Superintendent finds that Mr. Tubbs has engaged in fraudulent and dishonest practices and has otherwise demonstrated untrustworthiness in the conduct of business of the State of Maine and, therefore, denies the license application.

Background and Procedural History

On November 7, 2009, Kenneth R. Tubbs ("Tubbs") filed an application with the Maine Bureau of Insurance (the "Bureau") for an individual insurance producer's license. Bureau staff filed a petition dated December 9, 2009, requesting that the Superintendent deny Mr. Tubbs' application on allegations that he had engaged in fraudulent and dishonest practices and that he had demonstrated incompetence and untrustworthiness in the conduct of business in Maine as a real estate appraiser and appraiser trainee. Attached to the petition as "Exhibit A" was a "Disciplinary Action Decision and Order" ("Order") of the Maine Board of Real Estate Appraisers (the "Board of Appraisers"), dated February 3, 2009.¹

On January 12, 2010, the Superintendent received a letter from Mr. Tubbs requesting a hearing on the petition for denial. A public hearing was held on April 13, 2010 for the purpose of determining whether the application should be denied, with Bureau Staff appearing as a party pursuant to 5 M.R.S.A. § 9054(5).

Findings of Fact

From June 9, 1990 until October 26, 2000, Mr. Tubbs was licensed by the Bureau under Producer License No. PRR27541. The license lapsed in 2000 when Tubbs changed occupations and became a real estate agent. Subsequently, Tubbs became licensed by the Maine Board of Real Estate Appraisers as a residential real property appraiser trainee and, eventually as a residential real property appraiser in 2006.

In February 3, 2009, the Board of Appraisers revoked Tubbs' residential real estate trainee and residential real estate appraisal licenses and imposed monetary sanctions in an Order finding that Tubbs was deceitful and incompetent, and that he had demonstrated a disregard for performing his appraisals professionally. The Board's Order also found that Tubbs' actions constituted a serious threat of harm to the public if he were allowed to practice his profession.

The Board's Order contains the following specific findings of fact which are particularly relevant to the current licensing proceeding:

1. That Mr. Tubbs was required to submit 50 appraisals for Board review that were certified by a real estate appraiser in order to obtain a real estate appraiser's license. (*Order, page 2*);²
2. That a list of 50 appraisals was submitted to the Board by Tubbs on August 11, 2006 containing a certification from a licensed appraiser that he had "personally accompanied [Tubbs] to each of the properties listed . . . as well as any comparables that were visited or other such locations." Tubbs admitted that the certification was fraudulent and that the licensed appraiser, with Tubbs' knowledge, reviewed no more than two of the appraisals and merely signed off on the others. (*Order, page 2*);
3. That a number of these appraisals were not adequately substantiated and contained significant inaccuracies. (*Order, pages 3-7*). For example, one appraisal valued the property at \$329,000 as of June 13, 2006, when the property had been sold on April 4, 2006 for \$180,000. The report also failed to disclose that a principal in the mortgage broker for the property was also both the selling agent and a joint owner of the property, omitted additional material facts, and relied on comparisons with sales of properties that were not properly comparable. (*Order, pages 3-4*)
4. That Mr. Tubbs was apparently unconcerned about the submission of the fraudulent certification since "no one [was] going to find out about it." (*Order, page 2*); and
5. That, after receipt of the Board of Appraisers' allegations, Tubbs and a co-respondent in that proceeding concocted e-mails which were backdated to misrepresent to the Board of Appraisers that due diligence had been performed regarding some comparable sales. Additionally, some handwritten notes were added, post-appraisal, for the same reason. (*Order, page 7*).

During this proceeding, Mr. Tubbs acknowledged that he engaged in the conduct described in that Order. (*Tr. 22*) Mr. Tubbs' defense is that he had an unblemished disciplinary record many years ago when he was licensed as an insurance producer, and that his fitness to appraise real estate is, in his view, irrelevant to his fitness to sell insurance. (*Tr. 17-18*) Mr. Tubbs acknowledged, however, that an insurance producer does need to be honest, trustworthy, and reliable. (*Tr. 19*) The Maine Legislature has incorporated the same requirement into the Insurance Code. 24-A M.R.S.A. § 1420-K(I)(H).

Conclusions of Law

Pursuant to 24-A M.R.S.A. §§ 1417(1) and 1420-K(I)(H), the Superintendent may, after notice and opportunity for hearing, deny a producer's license where the applicant has engaged in fraudulent, coercive or dishonest practices, or has demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business. Based on the evidence in the record, I find that Mr. Tubbs has used fraudulent and dishonest practices, and has demonstrated a pattern of incompetent, untrustworthy, and dishonest conduct in both his practice as a residential real estate appraiser trainee and his actions in the course of his disciplinary proceedings before the Board of Appraisers. Moreover, the record also shows that Mr. Tubbs did not provide an honest account of the disciplinary proceeding in his recent discussions with a prospective employer. (*Tr.* 65, 69-70) This pattern of conduct leads to the conclusion that Mr. Tubbs cannot be entrusted with a license to deal with the public as an insurance producer at this time.

Order and Notice of Appeal Rights

It is therefore *ORDERED* that the Petition for Enforcement is *GRANTED*, and the resident producer license application of Kenneth R. Tubbs is hereby *DENIED*.

This Decision and Order is a final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedure Act. It is appealable to the Superior Court in the manner provided in 24-A M.R.S.A. § 236 and M.R. Civ. P. 80C. Any party to the hearing may initiate an appeal within thirty days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by this Decision and Order may initiate an appeal on or before June 22, 2010. There is no automatic stay pending appeal; application for stay may be made in the manner provided in 5 M.R.S.A. § 11004.

¹ Pursuant to 5 M.R.S. § 9058, the Superintendent takes official notice of the Board of Appraisers' Order and of the Findings of Fact and Conclusions of Law contained therein.

² Citations to the record, abbreviated as follows, are to the February 3, 2009 Order of the Board of Real Estate Appraisers (*Order*) and to the hearing transcript (*Tr.*).

MAY 13, 2010

MILA KOFMAN, Superintendent of

Insurance