

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA08-1197

ARKANSAS APPRAISER LICENSING
& CERTIFICATION BOARD,
APPELLANT

V.

PETER EMIG,
APPELLEE**Opinion Delivered** 24 JUNE 2009APPEAL FROM THE UNION
COUNTY CIRCUIT COURT,
[NO. CV-05-273-6]THE HONORABLE DAVID F.
GUTHRIE, JUDGECIRCUIT COURT REVERSED;
BOARD AFFIRMED**D.P. MARSHALL JR., Judge**

The Arkansas Appraiser Licensing and Certification Board disciplined Peter Emig for what the Board concluded was substandard work in a “before and after” appraisal of real property in Camden damaged by leaky gasoline storage tanks. Emig acknowledged an error or two, but otherwise stood by his work. One of Emig’s clients (an experienced lawyer) testified that he was not misled by the appraisal in any way. The lawyer used it to good effect in litigation against the convenience store whose tanks leaked the gasoline. An appraiser hired by the Board to evaluate Emig’s work testified to several deficiencies—errors, omissions, and unexplained assumptions—that violated the Board’s professional standards. Emig’s experts, also appraisers, acknowledged some errors but mostly defended Emig’s efforts as reasonable.

On Emig's petition for judicial review, the circuit court reversed the Board's discipline order for being inconsistent in one respect and arbitrary in several.

The Board's appeal brings the dispute here—not for consideration of the circuit court's decision, but of the Board's. *Tomerlin v. Nickolich*, 342 Ark. 325, 331, 27 S.W.3d 746, 749 (2000); *Mann v. Arkansas Prof'l Bail Bondsman Licensing Bd.*, 88 Ark. App. 393, 399, 199 S.W.3d 84, 88 (2004). Our standard of review is settled and narrow. *Mann, supra*. The questions for this court are whether the Board's findings are backed by substantial evidence, whether the Board acted arbitrarily or capriciously, and whether any other legal error compromised the Board's decision. Ark. Code Ann. § 25-15-212(h) (Repl. 2002); *Mann*, 88 Ark. App. at 399–400, 199 S.W.3d at 88–89.

Attorneys Allen Roberts and Samuel Ledbetter, who were prosecuting a lawsuit on behalf of the owners of the Camden property, retained Emig as an appraiser. The lawsuit concerned environmental contamination affecting the approximately twenty-acre parcel when a nearby convenience store's underground fuel tanks leaked. In order to assess and prove the damage to the property caused by the leak, the attorneys commissioned a “before and after” contamination appraisal.

The Board found that Emig's appraisal of the Camden property violated professional standards as set forth in Arkansas Code Annotated sections 17-14-206(a)(1) and (4) (Supp. 2007), and 17-14-305(a) (Repl. 2001), and the Uniform Standards of Professional Appraisal Practice (USPAP). The Board found the appraisal deficient

because, among other things, it (1) failed to use appropriate comparables, (2) failed to show conspicuously that the property was located in a flood zone, (3) improperly assumed that financing would be unavailable post-contamination, (4) cited an incorrect date of contamination, (5) relied on improper records for the size of the property, (6) made deficient and conflicting determinations about the property's highest and best use, and (7) improperly included another appraiser who had not sufficiently contributed to the report.

Two experts testified on Emig's behalf and one on the Board's. The Board retained its expert, Douglas Hall, to conduct a pre-discipline independent review of Emig's work. Hall testified that he found that Emig's report was "incomplete and did not follow correct methodology." Hall also testified about his extensive experience in conducting and reviewing appraisals, as well as participating in litigation as a third-party investigator. Hall's testimony showed that he had sufficiently familiarized himself with this particular property and the specifics of contamination appraisals.

Emig's experts acknowledged a "little red flag" and "inadequacies" with regard to certain aspects of the appraisal. For example, one of Emig's experts testified that Emig's highest and best use determinations were deficient and confusing. He also said that "it would have been more prudent to have [explanations as to methodology] in the report now in hindsight." But generally both of his experts agreed that Emig's bottom line was "in the ballpark" and did not mislead anyone so as to rise to the level

of a USPAP violation. In Emig’s defense, his experts pointed out that contamination appraisals—because they are rare and extremely market-dependent—constitute a particularly challenging subset of property appraisals.

Emig conceded that his report contained several mistakes that, in hindsight, he would correct. He also admitted to improperly including the other appraiser’s name: “On retrospect I probably should have gone to that template and taken her name out of it because she was not involved in that part.” But he defended almost all of his work and described this project as “very, very difficult.”

Substantial evidence supports the Board’s determination that Emig’s appraisal fell short of the governing standards. *Mann*, 88 Ark. App. at 399–400, 199 S.W.3d at 88–89. This record presents a duel of experts on a specialized matter—the standards and required practices for real estate appraisals. We defer to the Board’s resolution of this competing proof. *Ibid.*

Although we are not reviewing the circuit court’s decision, *Mann*, 88 Ark. App. at 399, 199 S.W.3d at 88, we address its main concern. The circuit court perceived an inconsistency in the Board’s concluding that Emig had not violated the Conduct Section of the Ethics Rule of the USPAP while simultaneously concluding that he had violated the USPAP. Because of this, the circuit court remanded for clarification.

We see no inconsistency. The Conduct Section stacks several requirements of professional competence and integrity. It thus establishes a standard of ethical behavior

beyond competent appraisals. By deeming the Conduct Section charge “not proven,” the Board implicitly concluded that Emig’s work—however deficient—did not render his behavior unethical. That is, the Board’s conclusion that Emig violated the USPAP and not the Conduct Section shows that the Board read that section to address—first and foremost—ethics. And the Board read the Conduct Section to require both a violation of ethics and competence to constitute a violation of the section. There was simply no evidence that Emig acted unethically.

We defer to the Board’s interpretation of its own rules because its interpretation is neither clearly wrong nor arbitrary. *Kale v. Arkansas State Medical Bd.*, 367 Ark. 151, 154–55, 238 S.W.3d 89, 91–92 (2006). Hall’s testimony, Emig’s admissions, and those of his experts constitute substantial evidence supporting the Board’s finding that Emig’s work was deficient and violated Arkansas Code Annotated sections 17-14-206(1) and (4), and 17-14-305(a), and the USPAP. And we see nothing arbitrary, or otherwise contrary to law, in the Board’s decision.

Circuit court reversed; Board affirmed.

HART and GLOVER, JJ., agree.