

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA09-1187

ARKANSAS APPRAISER LICENSING
and CERTIFICATION BOARD
APPELLANT

V.

STEVE QUAST
APPELLEE

Opinion Delivered June 23, 2010

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[NO. CV-08-1210-2]

HONORABLE VICKI SHAW COOK,
JUDGE

BOARD REVERSED; CIRCUIT COURT
AFFIRMED

LARRY D. VAUGHT, Chief Judge

The Arkansas Appraiser Licensing and Certification Board (the “Board”) appeals from an August 25, 2009 decision of the Garland County Circuit Court. The trial court concluded that the Board’s decision—finding that appellee Steve Quast had violated several Uniform Standards of Professional Appraisal Practice—was not supported by substantial evidence because the Board’s findings of fact did not correlate with its conclusions of law. The Board responds that its decision was supported by substantial evidence and was neither arbitrary nor capricious. We disagree with the Board’s position and affirm the decision of the circuit court.

The genesis of the complaint lodged against Quast was a valuation report he prepared for litigation purposes. Quast was retained by Hot Springs attorney Burt Newell to create a “Summary Appraisal Report” on real property that was located in Hot Springs, Arkansas. This

July 25, 2007 report was needed in relation to a matter Newell was handling for a client who had overlooked the tax statement on a vacant-lot property. Because of the oversight, the vacant lot was sold at a tax sale. The client was unaware of the sale and began construction on the lot; the client learned of the sale after the construction was ninety percent complete.

Newell requested that Quast prepare valuations of the property in “as is condition,” “as complete” value and the lot value “as if vacant.” After the reports were prepared, Newell (the intended user) was completely satisfied with the appraisal in all respects. However, Mary Lou Brainerd (a board investigator) received a complaint pertaining to the appraisal from Robin Roberts on January 18, 2008. Roberts’s interest in the matter was completely unknown.

The complaint alleged numerous errors pertaining to hypothetical conditions, the status of the plumbing permit, the existence of a building ban, and the appropriateness of the comparative real estate used for valuation purposes. Brainerd requested a copy of Quast’s file and began an investigation. The file referenced (but did not actually include) some of the information that Quast considered in his appraisal formula. Following the investigation, the Executive Director of the Appraisal Board issued an “Order and Notice of Hearing,” which alleged that Quast had violated seven provisions of the Uniform Standards of Professional Appraisal Practice (the “Standards”).

The matter came before the Board for hearing on August 26, 2008. Brainerd testified in support of the charges, the focus of which was her view of Quast’s appraisal in relation to the Standards. Quast testified on his own behalf. He claimed that his report and methods were in compliance with the Standards, were grounded by appropriate factual information, and were

carried out in a professional manner. Further, in support of his assertions, Quast offered affidavits from three licensed appraisers (who volunteered to testify in front of the Board if requested to do so). The three affidavits stated that the appraisal did in fact follow the Standards of their profession.

After hearing the testimony, the Board went into executive session for deliberation. Following the executive session, the Board amended four of the charges, determined that six of the seven charges were proven, and made several factual findings. Specifically, the Board found that Quast concluded that “[i]t is my understanding (from the subject property owner) that no building permits will be issued for the remaining vacant lots until the private sewer system is upgraded,” However, (from the Board’s perspective) “[t]here is nothing in the file or the addenda of the Report to substantiate the statement.” The Board also concluded that the work file did not include anything to support Quast’s estimated cost to complete the home, which he set in the range of \$12,500 (including contractor’s profit). Finally, the findings of fact noted that Quast’s “comparable sales” were only represented by photos and were not placed on a grid for comparison and that there was “no discussion in the report as to the scarcity of new home sales.”

Based on these errors and omissions in Quast’s report, the Board concluded that he had failed to adhere to the following Standards:

Rule 2-1 Each written or oral real property appraisal report must:

(c) clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions and limiting conditions used in the assignment.

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Rule 2-2(b) The content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:

(x) clearly and conspicuously:

State all extraordinary assumptions and hypothetical conditions; and
State that their use might have affected the assignment results.

Rule 1-4 In developing a real property appraisal, an appraiser must collect, verify, and analyze all information necessary for credible assignment results:

(B) when a cost approach is necessary for credible assignment results an appraiser must:

(iii) analyze such comparable data as are available to estimate the difference between the cost new and the present worth of the improvements (accrued depreciation).

Rule 2-2(b) The content of a Summary Appraisal Report must be consistent with the intended use and the appraisal and, at a minimum:

(viii) summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusion.

Rule 1-4 In developing a real property appraisal, an appraiser must collect, verify, and analyze all information necessary for credible assignment results:

(a) When a sales comparison approach is necessary for credible assignment results, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.

Rule 2-2(b) The content of the Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:

(iii) summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions; exclusion of the sales comparison approach, cost approach, or income approach must be explained.

Quast appealed the Board's decision to the circuit court, which reversed. The circuit court found that there was not substantial evidence to support the decision; that the decision

was arbitrary and capricious; that there was not a correlation between the Board's findings of fact and its conclusions of law; and that the Board's findings of fact did not recognize who was misled or about what they were misled. The Board then appealed to our court.¹

We direct our review not toward the circuit court but toward the decision of the agency. That is so because administrative agencies are better equipped by specialization, insight through experience, and more flexible procedures than courts, to determine and analyze legal issues affecting their agencies. *McQuay v. Ark. State Bd. of Architects*, 337 Ark. 339, 989 S.W.2d 499 (1999). Our review of administrative decisions is limited in scope. Such decisions will be upheld if they are supported by substantial evidence and are not arbitrary, capricious, or characterized by an abuse of discretion. *In re Sugarloaf Mining Co.*, 310 Ark. 772, 840 S.W.2d 172 (1992).

These standards are consistent with the provisions of the Administrative Procedure Act, Ark. Code Ann. §§ 25-15-201–214 (Repl. 2002), which require that the scope of appellate review under the Act be limited. According to the Act, it is not the role of the circuit courts or the appellate courts to conduct a de novo review of the record; rather, review is limited to ascertaining whether there is substantial evidence to support the agency's decision or whether the agency's decision runs afoul of one of the other criteria set out in section 25-15-212(h). *Ark. Bd. of Exam'rs v. Carlson*, 334 Ark. 614, 976 S.W.2d 934 (1998). We review the entire record in making this determination. *Id.* We also recognize that in reviewing the record, the evidence is given its strongest probative force in favor of the agency's ruling. *Ark. Health Servs. Agency v.*

¹Appellee attempts to argue an issue in his reply brief regarding the Board's amendment of the charges against him after all the evidence was presented. However, we can not address his argument because he did not cross appeal from the circuit court's order.

Desiderata, Inc., 331 Ark. 144, 958 S.W.2d 7 (1998). The Administrative Procedure Act states:

(g) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony may be taken before the court. The court shall, upon request, hear oral argument and receive written briefs.

(h) The court may affirm the decision of the agency or remand the case for further proceedings. It may reverse or modify the decision if the substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the agency's statutory authority;
- (3) Made upon unlawful procedure;
- (4) Affected by other error or law;
- (5) Not supported by substantial evidence of record; or
- (6) Arbitrary, capricious, or characterized by abuse of discretion.

Ark. Code Ann. § 25-15-212.

The threshold question governing our review of an agency determination is whether the agency has provided concise and explicit findings of fact and conclusions of law separately stated in the order. *Olsten Health Servs., Inc. v. Ark. Health Servs. Comm'n*, 69 Ark. App. 313, 125 S.W.3d 656 (2000). These findings should be sufficient to resolve material issues or those raised by evidence relevant to the decision. *Bryant v. Ark. Public Serv. Comm'n*, 54 Ark. App. 157, 924 S.W.2d 472 (1996). The agency must make findings of fact in sufficient detail that the reviewing court may perform its function to determine whether the agency's findings as to the existence (or nonexistence) of essential facts are supported by the evidence. *Mosley v. McGhee School Dist.*, 30 Ark. App. 131, 783 S.W.2d 871 (1990).

The Board's findings of fact are inconsequential because they do not correlate to the

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Board's conclusions of law relating to the professional Standards it found that Quast had violated. Where there is no apparent correlation, a synthesis of fact and law cannot occur, and we are left without the means to conduct a review of the evidence to weigh whether the evidence is sufficiently substantial to support the Board's determination. Simply put, because the Board's conclusions of law are without adequate corresponding factual support, they lack substantial evidence and are arbitrary and capricious. As such, the Board's findings are not conclusive and require reversal. *See Ark. Midland R.R. v. Director*, 87 Ark. App. 311, 191 S.W.3d 544 (2004).

Board reversed; circuit court affirmed.

HART and GRUBER, JJ., agree.