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No. 13-3781

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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IN THE MATTER OF TAGGART v GMAC MORTGAGE, LLC, et al.

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Appeal from Memorandum Orders dated November 26, 2012 & August 12,  
2013 Entered by the United States District Court for the Eastern District of  
Pennsylvania (J. William Ditter Jr.) at Magistrate No. 12-CV-415

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**BRIEF OF *AMICIS CURIAE* THE NATIONAL ASSOCIATION OF  
APPRAISERS IN *SUPPORT OF REVERSAL* OF THE DISTRICT  
COURT**

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Ted Whitmer CRE CCIM MAI Attorney  
AQB Certified USPAP Instructor  
2508 Merrimac Ct.  
College Station, TX 77845  
979.690.9465  
979.987.2530 (F)  
ted@tedwhitmer.com

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## STATEMENT OF INTEREST

Amicus is a real estate appraisal organization which boasts over 400 members within the United States. This case is of particular interest to our organization which currently has members who are licensed FHA appraisers, as well as other members who may be interested in becoming FHA licensed appraisers in the future. Our organization is concerned that The Department of Housing and Urban Development (HUD), by its own admission, was removing appraisers from their roster from 2001 until 2012 with no “due process whatsoever. HUD only started “due process” of removing its appraisers after appellant filed a lawsuit in Federal Court in 2012.

The National Association of Appraisers also takes the position, in support of appellant. Even when due process is provided under 24 C.F.R. § 200.204(a)(2), it is in violation an appraisers rights of “Due Process” under the United States Constitution. It has is well settled law pursuant to the United States Supreme Court that the government must provide at minimum “ a hearing” when removing a license, or property from a person. The current statute provides appraisers merely “an informal conference” during a removal process. The fundamental question at hand is whether appraisers are entitled to a minimum “Due Process” of “at least a hearing”. It is our opinion that this question has already been addressed by The United States Supreme Court.

## SUMMARY OF ARGUMENT

By HUD's own admission they failed to provide any "Due Process" to appellant from January 2010 until April 2012 when he was simply deleted from HUD's approved list of appraisers in January 2010. The District Court omitted from its opinion an explanation for the lack of any "Due Process" provided to appellant from January 2010 until April 2012. Depriving an appraiser of his FHA license can be devastating to his livelihood.

Additionally, HUD reinstated Appellant in April 2012 and simultaneously notified him of their intent to remove him and offered appellant "Due Process" required under HUD regulation 24 C.F.R. § 200.204(a)(2). *Regulation 24 C.F.R. § 200.204(a)(2) only allows for an "Informal Conference" to be provided to an appraiser.*

HUD's procedure to remove an appraiser's license from their approved list is required by Statute 24 C.F.R. § 200.204(a)(2) is in violation of the 5<sup>th</sup> Amendment & 14<sup>th</sup> Amendment to the United States Constitution. Two cases from the United States Supreme Court support this argument. 1. The Supreme Court ruled that you cannot even take even a driver's license without due process (at least a hearing) BELL v. BURSON, 402 U.S. 535(1971) . 2. "A Hearing is needed" when life, liberty or property are taken. Goldberg v. Kelly, 397 U.S. 254 (1970).

## **ARGUMENT**

### **I. THE DISTRICT COURT OMITTED “THE LACK OF DUE PROCESS FOR OVER 2 YEARS” IN ITS OPINION**

The district court concluded that there were undisputed facts pertaining to the lack of any “Due Process” provided to Appellant from January 2010 to April 2012. HUD additionally provided to the court that it never followed its own regulation from its time of inception in the year 2000. Prior to this, HUD simply removed appraisers from their list by just deleting them with no notification or “Due Process”. Despite these undisputed facts, the court erroneously entered judgment in the favor HUD. Appellant, as well as an undisclosed number of other appraisers, have been removed without “Due Process”, and have suffered damages as a result of HUD’s failure to even comply with its own rules.

### **II. HUD’S REMOVAL PROCESS PROVIDED BY 24 C.F.R. 02.204(a)(2) VIOLATES DUE PROCESS UNDER THE UNITED STATES CONSTITUTION, 5<sup>TH</sup> & 14<sup>TH</sup> AMENDMENTS**

#### **A. HUD/FHA Licensed Appraiser Constitutes a Professional License & Property**

A professional license is considered property, In O'Brien v. O'Brien, 66 NY 2d 576 (1985) professional licenses were found to be marital property.

**B. Goldberg v. Kelly, 397 U.S. 254 (1970) The United States Supreme Court has already decided the minimum “Due Process required Under the 14<sup>th</sup> Amendment is at a minimum “A Hearing is needed” when life, liberty or property yare taken**

Goldberg specifically states that at a minimum “A Hearing is needed” when life, liberty or property yare taken. HUD has determined the fate of plaintiff’s liberty, and property interests without any hearing at all. Specific procedures in Goldberg are: *notice, right to counsel, pre-hearing disclosure and discovery, cross examination, burden of proof, neutral decision maker, delay, and statement of decision*. None of these procedures were followed.

**1. HUD has failed on every required procedure under Goldberg.**

*Notice.* HUD failed to notice Taggart for over 2 years removing his license, then HUD did not provide enough information to respond to the 2<sup>nd</sup> removal. HUD merely stated “Taggart was on the CAIVRS List and in default on his mortgage”. HUD did not specify how he was allegedly “in default”

*Right to Counsel.* HUD failed to notify Taggart of his right to counsel. HUD failed to disclose to Taggart that he had a right to counsel.

*Pre-Hearing Disclosure.* HUD denied plaintiff of Disclosure and Discovery. HUD clearly stated that there would be no discovery and disclosure.

*Cross Examination.* HUD denied Plaintiff and cross examination during the removal process, nor the right to subpoena witnesses or evidence.

*Burden of Proof.* HUD clearly did not meet the burden of proof when removing plaintiff from the professional FHA licensed appraiser list. HUD merely relied on hearsay evidence and failed to even investigate claims and counter-claims by Taggart in at least 2 cases being litigated in court. No court has even adjudicated the issue of default as of the date of the conference or as of the effective date of this memorandum.

*Neutral Decision Maker.* HUD clearly had a representative from HUD make the determination when rendering a decision to remove plaintiff from the professional FHA licensed appraiser list. A designated HUD representative is clearly not a neutral party. This is notwithstanding plaintiff's assertion that HUD and the government are not a neutral party due to HUD owning a majority of the stock in GMAC Mortgage, LLC, the own who alleged "a default" in this case.

*Delay.* HUD delayed having any type of due process at all for over 2 years. When their purported "Due Process" allegedly took place it was over 2 years after plaintiff was first removed without notice.

*Statement of Decision.* Plaintiff is entitled to the reasons for the decision. HUD alleges lack of payment as a default, but lack of payment when a mortgage company refuses payment does not constitute a default.

**C. The Supreme Court ruled that you cannot even take even a driver's license without due process (at least a hearing) BELL v. BURSON, 402 U.S. 535(1971).**

The supreme court ruled that you cannot even take a driver's license without due process (at least a hearing) BELL v. BURSON, 402 U.S. 535(1971). Courts have ruled that the minimum due process shall include at least "A Hearing" to Constitute "Due Process". A professional license is considered property, In O'Brien v. O'Brien, 66 NY 2d 576 (1985) professional licenses were found to be marital property.



## CONCLUSION

In addition to the Constitutional issues related to due process, it is bad policy to allow a governmental agency the right to “cure” their lack of due process that was ignored for two years. Certainly other license holders would expect to be treated differently including members of the bar.

Also, it is bad for the public to allow the removal of appraisers without the needed due process. An appraiser, as of the early 1990s must be licensed or certified by the state. This was a Federal mandate that was implemented through FIRREA (Federal Institutions Reform, Recovery, and Enforcement Act). The appraiser being removed continues to have the certification from the state and is legally able to appraise in the state where the certification is procured by the appraiser even though removed from the HUD list. HUD often files complaints against appraisers and the appraiser is afforded due process through the Administrative Law courts and has a right to be heard before being disciplined, which may include suspension or revocation. HUD’s policies circumvent this due process that is in place in every state. The court should understand that HUD regularly works with these state agencies for the regulation of appraisers.

HUD is also a part of the Appraisal Subcommittee that is charged with overseeing the State Appraiser Boards and HUD assists in setting policy and suggesting changes to the laws that regulate appraisers. This system was part of the larger system set up to protect the public. As previously state, HUD is circumventing the law set up by the states by the mandate of the Federal Government. The following is from the ASC website.

### **Appraisal Subcommittee**

The Appraisal Subcommittee (ASC) is an independent agency that is a subcommittee of the Federal Financial Institutions Examination Council. The ASC has seven Members,

each designated respectively by the heads of the:

- Office of the Comptroller of the Currency (OCC),
- Board of Governors of the Federal Reserve System (FRB),
- Federal Deposit Insurance Corporation (FDIC),
- National Credit Union Administration (NCUA), collectively, the Federal financial institutions regulatory agencies (Agencies),
- Federal Housing Finance Agency (FHFA),
- Bureau of Consumer Protection Financial Protection (CFPB), and
- the U.S. Department of Housing and Urban Development (HUD).

**The ASC conducts on-site reviews of each State appraiser agency once every two years, with more frequent visits to States with weak enforcement programs. The ASC has the authority to disapprove a State appraiser regulatory program. Disapproval disqualifies the appraisers in that State from conducting appraisals for federally insured institutions. Each State certified or licensed appraiser pays \$40 each year to support the ASC National Registry. This fee funds the ASC's operations and provides a grant to the Appraisal Foundation to be used for Title XI-related activities, such as updating the USPAP.**

An appraiser spends a considerable amount of money obtaining the appraiser certification and considerable expense keeping the certification. The appraiser must take continuing education that includes standards and ethics training.

HUD, under their current policies, can arbitrarily deny an appraiser the right to make a living and can do this going around the legislation that even HUD backed in the late 1980s and early 1990s.

For the forgoing reasons I support the position of the appellant. I urge this Court to reverse the District Court's decision.

Respectfully Submitted,



Ted Whitmer CRE CCIM MAI Attorney  
AQB Certified USPAP Instructor  
2508 Merrimac Ct.  
College Station, TX 77845  
979.690.9465  
979.987.2530 (F)  
ted@tedwhitmer.com

## CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 1,715 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 version 11 in Times New Roman, 14-point font.
3. The text of this brief and hard copies are identical.
4. A virus check was performed on this brief using Sophos Anti-Virus Version 7.7.5.

Dated: June 26, 2014

s/ Ted Whitmer



Ted Whitmer CRE CCIM MAI Attorney  
AQB Certified USPAP Instructor  
2508 Merrimac Ct.  
College Station, TX 77845  
979.690.9465  
979.987.2530 (F)  
ted@tedwhitmer.com

**CERTIFICATE OF SERVICE**

I certify that on this 26<sup>th</sup> day of June 2014, the BRIEF OF AMICUS CURAIE Ted whit IN SUPPORT OF REVERSAL OF THE DISTRICT COURT was served on all parties via electronic filing and that pursuant to Third Circuit Rule of Appellate Procedure 25.1 ten (10) paper copies will be delivered to a third party commercial carrier for delivery to the Clerk of the Court within three calendar days.

Dated: June 26, 2014

s/ Ted Whitmer



Ted Whitmer CRE CCIM MAI Attorney  
AQB Certified USPAP Instructor  
2508 Merrimac Ct.  
College Station, TX 77845  
979.690.9465  
979.987.2530 (F)  
ted@tedwhitmer.com

A copy of the Amicus was served upon Appellant's counsel as well as Appellee's counsel

Appellant

U.S. Attorney's Office,  
Susan Briklin  
Eastern District of Pennsylvania  
615 Chestnut St  
Suite #1250  
Philadelphia, Pa 19106-4404

Appellee

**Weisberg Law**  
7 S. Morton Ave.  
Morton, PA 19070  
W: 610-690-0801  
C: 215-370-7500  
F: 610-690-0880