

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

FILED-3

2017 JUL 11 AM 11:25

DEBORAH BROWN
CLERK OF THE CIRCUIT COURT
CHANCERY DEPARTMENT

ILLINOIS STATE BAR ASSOCIATION,)
)
Plaintiff,)
)
v.) Case No.
)
ILLINOIS DEPARTMENT OF FINANCIAL)
AND PROFESSIONAL REGULATION;)
BRYAN A. SCHNEIDER, in his official)
capacity as Secretary of the Illinois)
Department of Financial and Professional)
Regulation; and KREG T. ALLISON, in his)
official capacity as Director of the Division of)
Real Estate of the Illinois Department of)
Financial and Professional Regulation,)
)
Defendants.)

2017CH0941B
CALENDAR/ROOM 02
TIME 00:00
Injunction

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
AND FOR WRIT OF PROHIBITION**

Plaintiff Illinois State Bar Association ("ISBA"), by its attorneys, Neal, Gerber & Eisenberg, LLP, alleges as follows:

Introduction

1. This lawsuit challenges the efforts of the Illinois Department of Financial and Professional Regulation (the "Department") to prosecute Illinois licensed lawyers for activities in connection with real estate tax assessment proceedings that constitute the practice of law. The Department has recently commenced separate prosecutions against two lawyers, claiming that briefs the lawyers submitted in support of their position regarding the proper assessed value of their client's property constituted the development of an appraisal without a license in violation of the Real Estate Appraiser Licensing Act of 2002, 225 ILCS 458/Art. 1 (the "Appraisal Act").

2. In reality, the activities of the lawyers in question, which are typical of the activities routinely conducted by property tax lawyers, do not constitute the actions of an appraiser or the development of an appraisal, and do not violate the Appraisal Act. The lawyers neither purported to act as an appraiser, conduct an appraisal, nor prepare or submit a document entitled an “appraisal.”

3. All the lawyers did (the “challenged activities”) was advocate on behalf of their clients by presenting legal argument in briefs on the basis of relevant information, much of it publicly available, urging a government body to reduce the assessed value of their clients’ properties. As a matter of law, advocacy by lawyers on behalf of their clients does not constitute the development or rendering of an appraisal.

4. The Department lacks any authority to prosecute lawyers for engaging in conduct, like the challenged activities, that does not entail the development or rendering of an appraisal.

5. The Department also lacks any authority to prosecute, discipline, or sanction lawyers for engaging—or otherwise interfere with or chill lawyers’ ability to engage—in conduct, like the challenged activities, that constitutes the practice of law.

6. The ISBA brings this lawsuit to prevent the Department from prosecuting any licensed Illinois attorneys for engaging in the challenged activities. The ISBA seeks a declaratory judgment, injunctive relief, and a writ of prohibition based on two separate and independent grounds for the Department’s lack of authority to initiate or maintain such prosecutions: first, because the challenged activities do not violate the prohibition in Section 5-5(a) of the Appraisal Act against “develop[ing] a real estate appraisal” without a license, 225 ILCS 458/5-5(a); and second, because the challenged activities

constitute the practice of law and therefore can be regulated only by the Illinois Supreme Court.

The Parties

7. Plaintiff Illinois State Bar Association is an Illinois not-for-profit corporation with its principal place of business in Springfield, Illinois. It also has an office and conducts substantial business in Chicago, Illinois.

8. The ISBA is a voluntary association of approximately 30,000 members, mostly lawyers and judges, from every county in Illinois. A primary purpose of the ISBA, as reflected in its Charter and bylaws, is to maintain the standards, dignity, and integrity of the legal system and to promote the interests of attorneys and the public with respect to matters relating to the administration of justice. The ISBA frequently advocates in court for the interests of its members and the public.

9. The ISBA has a State and Local Tax Section consisting of approximately 400 members whose legal practice concentrates on state and local tax issues, including property tax matters. In addition, the ISBA's general membership includes many other lawyers who regularly practice in the area of real estate tax assessment matters and appeals before county and state taxing authorities and tribunals.

10. Lawyers, including ISBA members, whose practice include property tax assessment matters ("Property Tax Lawyers") regularly engage in the challenged activities.

11. Defendant Illinois Department of Financial & Professional Regulation is an administrative agency of the State of Illinois, organized and operating under the authority of the executive branch, with principal offices in Springfield and Chicago. The

Department has the statutory authority to regulate a number of professions, including real estate appraisers.

12. Defendant Bryan A Schneider is sued in his official capacity as Secretary of the Department. In that capacity, Mr. Schneider is responsible for overseeing the activities of the Department, including its prosecution of individuals for violating statutes that the Department has the responsibility to enforce.

13. Defendant Kreg T. Allison is sued in his official capacity as Director of the Department's Division of Real Estate (the "Real Estate Division"). In that capacity, Mr. Allison is responsible for overseeing the Real Estate Division's activities, which include its prosecution of individuals for violating statutes relating to real estate, including the Appraisal Act, that the Department has the responsibility to enforce. On information and belief, Mr. Allison is the individual who, following hearings conducted by the Department, issues the Department's decision in prosecutions brought by the Real Estate Division for alleged violations of, *inter alia*, the Appraisal Act.

Background Facts

I. Facts Pertaining to Complaint Against G. Terence Nader

14. On April 3, 2017, the Real Estate Division filed a Complaint against G. Terence Nader, an Illinois licensed lawyer, alleging that he engaged in the unlicensed practice of real estate appraisal by filing a brief in support of an appeal to the Property Tax Appeal Board ("PTAB") that "contained an analysis of comparable sales and opinion

of value for the subject property.” (A copy of the Complaint against Mr. Nader (the “Nader Complaint”) is attached as Exhibit A.)¹

15. Mr. Nader engaged in the activities that are the subject of the Nader Complaint as counsel for a client who owned the property whose valuation was at issue in the PTAB appeal. Specifically, Mr. Nader was retained to act as an advocate, on behalf of his client, in seeking a reduction in the assessed value of the client’s property for tax year 2015.

16. Mr. Nader’s submission to PTAB included a residential appeal form prescribed by PTAB and a “Brief in Support of Appeal.” (A copy of the materials submitted by Mr. Nader to PTAB is attached as Exhibit B.)

17. Mr. Nader’s transmittal letter to PTAB was on his law firm’s letterhead and referenced the inclusion of a “legal brief,” among other materials. (Exh. B at 1.) Mr. Nader was also identified, in Section I of the PTAB residential appeal form, as “Attorney for Appellant.” (*Id.* at 2.)

18. Section V of the PTAB residential appeal form allows, but does not require, the submission of an appraisal in support of the appeal. (*See id.* at 4 (“An appraisal *may* be submitted for completion of this section”) (emphasis added).)

19. Although the PTAB appeal form does not require submission of an appraisal, it does require the appellant to “[p]rovide at least three comparables. All comparables should be similar to the subject in size, design, age, amenities, and location.” (*Id.*) In accordance with that instruction, Mr. Nader used publicly available

¹ The Nader Complaint alleged that the brief was filed with the “McHenry County Property Tax Appeal Board.” (Exh. A, ¶ 3.) There is no such entity. Mr. Nader filed the brief with the State of Illinois’ Property Tax Appeal Board.

data to provide the information required by the PTAB appeal form for seven comparable properties. Among that information was the age of the home, the square footage of both the property and the dwelling, the sale price (if any) per square foot, the assessed value of the land and the improvement, and the improvement assessment per square foot. (Exh. B at 4-5.)

20. The Brief in Support of Appeal submitted by Mr. Nader included a discussion of the facts contained in the PTAB appeal form concerning three of the comparable properties. Each comparable was discussed in a paragraph that contained facts regarding that property (*e.g.*, sales price per square foot) and objective differences between the comparable property and the property that was the subject of the appeal (the “subject property”) in terms of features like square footage and the number of fireplaces and bathrooms. (*Id.* at 10-11.) The discussion of each comparable property concluded with an assertion that the sale of that property “supports a valuation of the Subject Property of” a specified amount. (*Id.*)

21. Mr. Nader’s brief contained the following Conclusion:

“The Subject Property should be assessed uniformly with comparable properties by reducing the assessed value to 101,920, which corresponds to a market value of \$305,760.

“In the alternative, the assessment of the Subject Property should be reduced to 116,655, which corresponds to a market value of \$350,000, based on an analysis of sales of comparable properties.” (Exh. B at 11.)

22. Mr. Nader’s submission to the PTAB did not purport to be from an appraiser or contain an appraisal of the subject property.

II. Facts Pertaining to Complaint Against David Bass

23. On April 20, 2017, the Real Estate Division filed a Complaint against David Robert Bass, an Illinois licensed lawyer, alleging that he engaged in the unlicensed practice of real estate appraisal by filing a brief in support of an appeal to the DuPage County Board of Review (the "Board") that "contained an analysis of income approach and opinion of value for the subject property." (A copy of the Complaint against Mr. Bass (the "Bass Complaint") is attached as Exhibit C.)

24. Mr. Bass engaged in the activities that are the subject of the Bass Complaint as counsel for a client who owned the property whose valuation was at issue in the matter before the Board. Specifically, Mr. Bass and his law firm, Field and Goldberg, LLC, were retained to act as advocates, on behalf of their client, in filing an assessed valuation complaint with the Board seeking a reduction in the assessed value of the client's property for tax year 2016.

25. Mr. Bass's submission to the Board was entitled a "Brief in Support of Taxpayer's 2016 Assessed Valuation Complaint" (the "Bass Brief"). (A copy of the Bass Brief is attached as Exhibit D.)

26. The Bass Brief identified Mr. Bass as an attorney with the law firm, Field and Goldberg, LLC, that represented the taxpayer in connection with its Assessed Valuation Complaint. (Exh. D at 1, 6.)

27. The Bass Brief contains facts and legal argument, including the citation of cases, in support of the client's Assessed Valuation Complaint. (*See, e.g., id.* at 2.)

28. The Bass Brief did not purport to be from an appraiser or contain an appraisal of the subject property.

III. The Actions of Lawyers on Behalf of Clients in Real Estate Assessment Matters Constitute the Practice of Law and Not the Actions of an Appraiser in Connection with an Appraisal

29. Section 10-10 of the Appraisal Act, 225 ILCS 458/10-10, requires the Department, in connection with its implementation of the Appraisal Act, to “adopt, as part of its rules, the Uniform Standards of Professional Appraisal Practice (USPAP) as published from time to time by the Appraisal Standards Board of the Appraisal Foundation....”

30. Section 1455.240 of the Department’s regulations, 68 Ill. Adm. Code § 1455.240, adopts the 2015 version of USPAP.

31. USPAP defines “appraiser” to mean “one who is expected to perform valuation services competently and *in a manner that is independent, impartial, and objective*” (emphasis added).

32. A lawyer who represents a client in connection with property tax assessment matters is acting as an advocate and is not, and is not reasonably perceived to be, independent, impartial, or objective. To the contrary, as provided in the Preamble to the Illinois Rules of Professional Conduct, “[a]s advocate, a lawyer zealously asserts the client’s position under the rules of the adversary system.” (Preamble, ¶ [1]. *See also id.*, ¶ [9] (lawyer has “obligation zealously to protect and pursue the client’s legitimate interests, within the bounds of the law”).)

33. Lacking, and being ethically required to lack, the independence, impartiality, or objectivity emblematic of an appraiser, a lawyer who represents a client in connection with real estate assessment proceedings does not act as an appraiser.

34. Appraisals are prepared by appraisers. Section 1-10 of the Appraisal Act, 225 ILCS 458/1-10, defines the term “appraiser” to mean “a person who performs real estate or real property appraisals.”

35. Because lawyers act as advocates rather than appraisers in connection with real estate assessment proceedings, their advocacy on behalf of clients does not entail the development or submission of appraisals within the meaning of the Appraisal Act.

36. Lawyers who represent clients in connection with real estate assessment proceedings are engaged in the practice of law.

IV. Impact of the Prosecutions of Messrs. Nader and Bass

37. The Department’s prosecution of Messrs. Nader and Bass for engaging in activities that are a routine and required aspect of a lawyer’s representation of a client in property tax assessment matters, and the Department’s assertion that the challenged activities violate the Appraisal Act and subject Property Tax Lawyers who engage in those activities to potential criminal liability and administrative fines, is (a) impeding the ability of Property Tax Lawyers to effectively represent their clients, (b) interfering with Property Tax Lawyers’ ability to engage in the practice of law, and (c) interfering with the ability of clients who retain Property Tax Lawyers to receive effective representation.

COUNT I

(Declaratory Judgment That Defendants Lack Authority to Prosecute Licensed Illinois Attorneys for Engaging in the Challenged Activities)

38. ISBA realleges and incorporates by reference paragraphs 1 through 37, above.

39. A real and present controversy has arisen between the Defendants and the ISBA regarding:

- a. Whether the actions by a licensed Illinois attorney on behalf of a client in connection with real estate assessment proceedings entail the development of an appraisal subject to regulation by the Department under the Appraisal Act; and
- b. Whether the Department has the legal authority to prosecute, as the unlawful preparation of an appraisal by someone not licensed as an appraiser, actions by an Illinois licensed attorney on behalf of a client in connection with real estate assessment proceedings notwithstanding the fact that those activities entail the practice of law.

40. The ISBA is entitled to a declaratory judgment, pursuant to Section 2-701 of the Code of Civil Procedure, 735 ILCS 5/2-701, regarding the foregoing controversy.

41. As a matter of law, the actions of a licensed Illinois attorney on behalf of a client in connection with real estate assessment proceedings do not entail the development or submission of an appraisal in violation of Section 5-5(a) of the Appraisal Act, 225 ILCS 458/5-5(a).

42. As a matter of law, the actions of a licensed Illinois attorney on behalf of a client in connection with real estate assessment proceedings do entail the practice of law.

43. The Illinois Supreme Court has the inherent and exclusive authority to regulate the practice of law in Illinois.

44. The Department lacks any authority to prosecute, discipline, or sanction lawyers for engaging—or otherwise interfere with or chill lawyers' ability to engage—in

conduct, such as that on behalf of clients in real estate assessment proceedings, that constitutes the practice of law.

WHEREFORE, Plaintiff Illinois State Bar Association respectfully requests entry of a judgment in its favor, and against Defendants Department of Financial and Professional Regulation, Bryan A. Schneider, and Kreg Allison:

A. Declaring that:

- (1) The actions of a licensed Illinois attorney on behalf of a client in real estate assessment proceedings do not entail the development or submission of an appraisal or constitute the unlicensed practice of Real Estate Appraisal in violation of Section 5-5(a) of the Appraisal Act, 225 ILCS 458/5-5(a);
- (2) The actions of a licensed Illinois attorney on behalf of a client in real estate assessment proceedings entail the practice of law subject to the exclusive regulation by the Illinois Supreme Court;
- (3) If the Appraisal Act were construed to purport to subject Illinois licensed attorneys to liability for violating that Act by engaging in conduct, entailing the representation of clients in real estate assessment proceedings, that constitutes the practice of law, then the Appraisal Act would be unconstitutional as applied to those facts; and
- (4) The Illinois Department of Financial and Professional Regulation and its Real Estate Division lack legal authority to institute or maintain actions against licensed Illinois attorneys for actions on

behalf of clients in connection with real estate assessment proceedings; and

B. Granting such other and further relief as this Court deems just and proper.

COUNT II

(Injunctive Relief Preventing Defendants from Prosecuting Licensed Illinois Attorneys for Engaging in the Challenged Activities)

45. ISBA realleges and incorporates by reference paragraphs 1 through 44, above.

46. Although the ISBA and, on information and belief, other lawyers and bar associations have told the Department that the prosecutions of Messrs. Nader and Bass are neither authorized by the Appraisal Act nor consistent with the Illinois Supreme Court's exclusive authority to regulate the practice of law in Illinois, the Department has declined to terminate those prosecutions. In addition, the Department has insisted that it has the prerogative to bring similar actions against any lawyers who engage in the challenged activities.

47. The Department's ongoing and threatened prosecution of licensed Illinois lawyers for actions entailing the representation of clients in real estate assessment proceedings is unlawful and interferes with (a) the Illinois Supreme Court's exclusive power to regulate the practice of law in Illinois, (b) the ability of property owners to obtain effective legal representation with respect to property tax issues, and (c) the ability of Property Tax Lawyers to practice law in Illinois due to the threatened criminal liability, substantial monetary penalties, and negative impacts on professional reputation associated with continuing to engage in the challenged activities and the associated risk of being prosecuted by the Department.

48. There is no adequate remedy at law for the harms described in the preceding paragraph. As a practical matter, it would be difficult if not impossible to quantify damages attributable to those injuries. Consequently, unless the Defendants are enjoined from prosecuting, or threatening to prosecute, lawyers for engaging in activities involving their representation of clients in real estate assessment proceedings, those lawyers and their clients would suffer irreparable injury.

49. The balance of equities and the public interest strongly favor issuance of injunctive relief, in that the harm to Property Tax Lawyers, their clients, and the regulation of the legal profession by the Illinois Supreme Court vastly outweighs any putative interest of the Department in maintaining prosecutions (or the threat of prosecutions) that the Department lacks legal authority to maintain.

WHEREFORE, Plaintiff Illinois State Bar Association respectfully requests entry of judgment in its favor, and against Defendants Department of Financial and Professional Regulation, Bryan A. Schneider, and Kreg Allison:

- A. Preliminarily and, thereafter, permanently, enjoining the Defendants, their agents, employees, and all persons acting in concert with any of them or on their behalf, from initiating, maintaining, or threatening a prosecution of an attorney licensed to practice in the State of Illinois for activities in connection with the representation of a client in real estate assessment proceedings;
- B. Preliminarily and, thereafter, permanently, enjoining the Defendants, their agents, employees, and all persons acting in concert with any of them or on their behalf, from asserting that an attorney licensed to practice in

Illinois is violating or would violate the Appraisal Act by engaging in any activities in connection with the representation of a client in real estate assessment proceedings; and

C. Granting such other and further relief as this Court deems just and proper.

COUNT III

(Writ of Prohibition Preventing Defendants from Prosecuting Licensed Illinois Attorneys for Engaging in the Challenged Activities)

50. ISBA realleges and incorporates by reference paragraphs 1 through 49, above.

51. The Department's ongoing and threatened prosecution of licensed Illinois lawyers for engaging in the challenged activities is quasi-judicial in nature.

52. The jurisdiction of the Department with respect to the foregoing prosecutions is inferior to that of this Court.

53. The Department lacks jurisdiction and is without legitimate authority to prosecute, or threaten to prosecute, licensed Illinois lawyers for engaging in activities in connection with the representation of a client in real estate assessment proceedings.

54. The ISBA lacks an adequate remedy at law for the conduct of the Department described in the preceding paragraph.

WHEREFORE, Plaintiff Illinois State Bar Association respectfully requests entry of judgment in its favor, and against Defendants Department of Financial and Professional Regulation, Bryan A. Schneider, and Kreg Allison:

A. Issuing a writ of prohibition against the Defendants preventing them from:

- (1) initiating, maintaining, or threatening a prosecution of an attorney licensed to practice in the State of Illinois for engaging in any

activities in connection with the representation of a client in real estate assessment proceedings; or


- (2) asserting that an attorney licensed to practice in Illinois is violating or would violate the Appraisal Act by engaging in any activities in connection with the representation of a client in real estate assessment proceedings; and

B. Granting such other and further relief as this Court deems just and proper.

Dated: July 10, 2017

Respectfully submitted,

ILLINOIS STATE BAR ASSOCIATION

By 
One of its attorneys

Thomas J. McNulty
Steven F. Pflaum
Gregory D. Forfa
NEAL, GERBER & EISENBERG LLP
Two North LaSalle Street, Suite 1700
Chicago, IL 60602-3801
(312) 269-8000
tmcnulty@nge.com
spflaum@nge.com
gforfa@nge.com
Firm ID 13739

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