

# FEDERAL APPRAISAL



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## PRESS RELEASE

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### JUDGE NULLIFIES IDFPR PROCEEDINGS

Appraiser Mark Pomykacz wins significant appeal against the IDFPR concerning Marquis Ethanol Plant

Cook and Putnam Counties, Illinois (September 7, 2017) – On July 7, 2017, Judge Sophia H. Hall of the Circuit Court of Cook County, Illinois, granted Mark Pomykacz summary judgment against the Illinois Department of Financial and Professional Regulation (“IDFPR”). Further, the Court found that the IDFPR administrative proceedings against Mr. Pomykacz are null and void. The Court vacated both the IDFPR reprimand and the fine. The full ruling is available at <http://federalappraisal.com/pressreleasenuffiedidfprproceedings>. The IDFPR did not appeal the decision. This case began in July 2013.

The ruling means that the IDFPR, the Illinois agency that regulates federally-related real estate appraisals, had no jurisdiction over Mark Pomykacz’s appraisal, which was prepared for the purpose of determining the proper property taxation of the Marquis Energy Ethanol Plant and litigation support. The appraisal included business, personal property, and real estate appraisal opinions. The Circuit Court affirmed that the IDFPR regulatory jurisdiction was limited strictly to federally-related appraisals of real estate, which means appraisals prepared for the purpose of underwriting loans collateralized by real estate made by federally-regulated banks. Appraisals completed for property tax appeal purposes are not federally-related transactions, and business and personal property appraisals are not real estate appraisals.

“This ruling finally brings closure to a case that never should have started and that lasted years longer than it should have,” said Mr. Pomykacz. “Finally, I can begin to reclaim my good reputation. This is a clear example of government overzealousness and overreach, and of the government’s inability to correct its mistakes. The IDFPR simply had no jurisdiction over, and no competence with, this kind of appraisal. Not only has the IDFPR caused substantial harm to me, it has caused substantial harm to my client and to thousands of taxpayers in Putnam County. The total losses caused by the IDFPR amount to millions of dollars”.

The case concerned an expert appraisal prepared by Mr. Pomykacz of the Marquis Energy Ethanol Plant located in Hennepin, Putnam County, Illinois, with value conclusions in 2008 and 2011. Mr. Pomykacz was hired by the Illinois Valley Community College (“IVCC”) as part of their appeal of and litigation concerning the property taxes on the plant. Mr. Pomykacz’ appraisal indicated values of the whole plant of approximately \$140 million and \$169 million and indicated real property values between \$90 million and \$168 million, depending on legal determinations. This is significantly higher than the assessor’s market value of approximately \$56 million for the real property. If the tax assessment was corrected to the values found by Mr. Pomykacz, then it would have led to an increase in tax revenues of millions of dollars. The property owner reportedly spent approximately \$180 million to build the plant, which was new in 2008, and the plant was expanded before 2011. Both the plant owner and the tax assessor were named as defendants in the IVCC appeal litigation. Reportedly the tax assessor filed the complaint with the IDFPR regarding Mr. Pomykacz’ appraisal.

The IDFPR's complaint against Mr. Pomykacz' appraisal included a number of allegations, all of which Mr. Pomykacz says are the results of the IDFPR's incompetence with business and personal property appraisal, and with property tax appraisals, and with appraisals written for litigation. Mr. Pomykacz said "No reasonable person might expect the IDFPR to have such expertise, since their jurisdiction was limited to just real estate appraisals for federally-related transactions. However, the IDFPR believed it had jurisdiction and expertise on many appraisal types and purposes. An objective and properly experienced review appraiser would have recognized that my appraisal meets all appraisal standards applicable to an ethanol refinery appraisal written for business, personal and real property value for property tax appeal and litigation purposes." The IDFPR review of Mr. Pomykacz' appraisal was completed by the appraisal coordinator for the IDFPR, who admitted during testimony that he had never completed an appraisal of an ethanol refinery. The appraisal coordinator possessed no advanced appraisal designations, and had no competency with business or personal property appraisals or with property tax litigation appraisal work concerning complex properties.

The IDFPR prematurely published their action while the case was still under appeal. Mr. Pomykacz was granted a stay against the IDFPR's action in January 2016, but not before the IVCC, in a press release on July 15, 2015, (<https://www.ivcc.edu/board.aspx?id=27016>) announced that they were dropping their property tax appeal against the ethanol refinery, citing unsustainable ongoing litigation costs. They reportedly had invested over \$750,000 in their case up to that point.

If you would like more information about this topic, please visit <http://federalappraisal.com/pressreleasenuffiedidfprproceedings>, or contact Mark Pomykacz at 908-534-3590 or by email at [Mark@FederalAppraisal.com](mailto:Mark@FederalAppraisal.com).