

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

PUMYCAEZ

No. 15 CH 10905

v.

Calendar 14

ILL. DEPT. OF FINANCE
PROF. REG., et al.

ORDER SETTING MOTION FOR HEARING

This cause coming to be heard on Plaintiff's/Defendant's motion for to Dismiss Court II
of one amended Complaint.

IT IS HEREBY ORDERED:

The Court also takes the motion to dismiss Court II under
advisement.

- The Motion is set for hearing on MARCH 18, 2016 at 11:00 (a.m.) p.m.
- The Movant's Brief in support shall be filed on or before February 2, 2016; 4234
Supplemental
Respondent's *Supplemental* Response Brief shall be filed on or before February 16, 2016; 4234
- Movant's Reply Brief shall be filed on or before _____ 4234
- Movant shall furnish the Court (Chambers 2301) with courtesy copies of all briefs and relevant pleadings on or before March 4, 2016 (7 days before the hearing date). 4253
- All filings are limited to no more than 15 pages.

5. The Plaintiff's motion for a stay is granted. On stay of judgment of the
trial is allowed and the Department is to remove
substantive and ratification of the disciplinary process in
finality in all respects, pending review.

Atty No. 33069
Atty Name: Black
Firm Name: Law Office of Robert L. Black
Atty for: Plaintiff
Address: 300 E. Fifth Ave
City: NAPERVILLE IL
Telephone: 630 527-1440

ENTERED
JUDGE SOPHIA H. HALL-0162
JAN 12 2016
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

ENTERED _____
Judge Sophia H. Hall



E-Notice

2015-CH-10905

CALENDAR: 14

To: Robert Gerald Black
rblack@rgb-law.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

POMYKACZ MARK vs. DEPARTMENT FINANCIAL
2015-CH-10905

The transmission was received on 10/16/2015 at 2:43 PM and was ACCEPTED with the Clerk of the Circuit Court of Cook County on 10/16/2015 at 3:35 PM.

STAY ADMINISTRATIVE ORDER(SET FOR MOTION HEARING) (File motion for stay)

Filer's Email: rblack@rgb-law.com
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Notice Date: 10/16/2015 3:35:40 PM
Total Pages: 5

DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
COOK COUNTY
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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 COUNTY DEPARTMENT - CHANCERY DIVISION

MARK POMYKACZ,)	
)	
Plaintiff,)	
)	Case No. 15 CH 10905
v.)	
)	The Honorable Judge Sophia Hall
ILLINOIS DEPARTMENT OF FINANCIAL)	Calendar 14
AND PROFESSIONAL REGULATION,)	
)	
Defendant.)	

MOTION FOR STAY

NOW COMES Plaintiff MARK POMYKACZ, by his attorneys, the Law Offices of Mark C. Metzger, the Law Offices of Robert G. Black, P.C., of counsel, and for his motion pursuant to section 3-111(a) of the Illinois Administrative Review Law to stay the decision of the administrative agency against him until final disposition of these administrative review proceedings, states in support as follows:

1. Plaintiff Mark Pomykacz is a resident of the State of New Jersey and a licensed real property appraiser in many states, including up to now in Illinois. He is engaged in appraising complex industrial properties for purposes of *ad valorem* property taxation, and is frequently engaged as an expert witness throughout the country for this work.

2. Defendant the Illinois Department of Financial and Professional Regulation (the Department, or IDFPF), filed an amended complaint against plaintiff, stemming from an appraisal plaintiff prepared in November 2012 concerning the Marquis ethanol production facility located in Hennepin, Illinois.

3. Following a formal hearing, a report and recommendation by the administrative law judge hearing the matter, and after the report and recommendations of the Real Estate Appraisal Administration and Disciplinary Board, the Secretary of the Department issued an order dated June 2, 2015, that plaintiff be reprimanded and fined in the amount of \$10,000.

4. Plaintiff brought this action seeking administrative review of the findings and determination against him, including the fine for \$10,000.

5. Plaintiff by this action contests the finding and fine against him, including as wrongly damaging his professional reputation and wrongly impoverishing him through imposition of an improper fine. Plaintiff also raises Due Process claims, in that plaintiff performed the appraisal work here in *ad valorem* property tax proceedings in Putnam County before the Property Tax Appeal Board, and as that work was not performed in connection with a federally-related transaction, the Department had no authority to proceed and no jurisdiction to discipline the plaintiff.

6. The \$10,000 fine therefore remains unpaid, pending final resolution and disposition of this administrative review action.

7. Plaintiff in mid-August of 2015 completed the online renewal process for his General Certified Real Estate Appraisal license in Illinois, and received a completed renewal authorization approval.

8. However, by the end of September 2015, plaintiff still had not received his renewed license in Illinois.

9. In inquiring further with the Department, plaintiff was advised that all appeared in order, except for an indication that a fine had not yet been paid, even though the fine against him has been appealed by way of administrative review and is not yet subject to a final disposition.

10. Section 3–111(a)(1) of the Administrative Review Law provides that:

(a) The Circuit Court has power:

(1) with or without requiring bond (except if otherwise provided in the particular statute under authority of which the administrative decision was entered), and before or after answer filed, upon notice to the agency and good cause shown, to stay the decision of the administrative agency in whole or in part pending the final disposition of the case. For the purpose of this subsection, ‘good cause’ requires the applicant to show (I) that an immediate stay is required in order to preserve the status quo without endangering the public, (ii) that it is not contrary to public policy, and (iii) that there exists a reasonable likelihood of success on the merits[.]

735 ILCS 5/3–111(a)(1); see also, *Moore v. Mankowitz*, 127 Ill.App.3d 1050, 1055 (1984).

11. Further, this court has broad discretion to stay an administrative decision pending review. *Marsh v. Illinois Racing Board*, 179 Ill.2d 488, 498 (1997); *Parikh v. Div. of Prof'l Regulation of Dept. of Fin. & Prof'l Regulation*, 2012 IL App (1st) 121226, ¶ 24.

12. By this motion, plaintiff asks that the decision of the Department, including for payment of the \$10,000 fine, be stayed during the pendency of this matter until final disposition, and that plaintiff be provided his renewed Illinois license now apparently being kept from him only due to non-payment of the fine in dispute. Plaintiff further asks that the Department not be permitted to publish the results of its finding against plaintiff, pending resolution of this action.

13. The refusal to renew plaintiff’s license in Illinois relates to plaintiff not paying the fine that is the subject of this action for administrative review, and for no other discernible reason. Plaintiff had received notice of his completed renewal application. Thus the “good cause shown” in this matter sufficient to support a stay is the negative impact on plaintiff’s ability to earn his livelihood as an appraiser in Illinois while he contests the determination against him.

14. This refusal to renew plaintiff’s license has a significant prejudicial and detrimental effect on the plaintiff, being tantamount to suspending his license while he seeks review of the

agency determination. To the contrary, the State suffers no prejudice if the fine is stayed and plaintiff is allowed to renew his license, as even if its determination is upheld the Department's determination did not call for a suspension.

15. Additionally, plaintiff is being unduly subjected to unfounded damage to his reputation in other licensing states due to the Department prematurely reporting its determination before any final decision.

16. An immediate stay is therefore necessary to preserve the status quo, that is, plaintiff's licensure to perform appraisals in Illinois, which is being withheld from him merely for nonpayment of the same fine being contested here. There would be no danger to the public, as there has been no finding or indication of any endangerment to the public in plaintiff's appraisal work.

17. Staying the Department's decision here and allowing the renewal of plaintiff's license in Illinois would not be contrary to any discernable public policy.

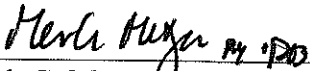
18. Plaintiff also stands a strong likelihood of success on the merits in the administrative review of this matter, including for the reasons articulated in paragraph 13 of count I of the plaintiff's first amended complaint, and in paragraphs 32-34 of count II of the first amended complaint.

19. More specifically, without excluding other grounds for reversal, the Department: failed to engage a competent evaluator or expert for the appraisal at issue; adjudged an incorrect standard for the compliance of plaintiff's appraisal report in question; promulgated an illegal review process in which licensed professionals in Illinois can give testimony to exclude a non-resident competitor like the plaintiff from obtaining lucrative work in Illinois; and, had no authority or jurisdiction to discipline the plaintiff.

For the foregoing reasons, all of the factors under section 3-111(a)(1) of the Illinois Administrative Review Law have been met, and the decision of the Department now under administrative review should within this court's discretion be stayed pending the final disposition of this case, including any requirement to pay a fine, and that the Department be ordered to issue plaintiff's renewed licence accordingly. The Department should also be ordered as part of that stay to retract any notification or publishing of its decision until final disposition here.

Respectfully submitted,

LAW OFFICE OF MARK C. METZGER

By: 
Mark C. Metzger

LAW OFFICES OF ROBERT G. BLACK, P.C.

By: 
Robert G. Black

Dated: October 16, 2015

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Chancery DIVISION

Litigant List

Printed on 10/16/2015

Case Number: 2015-CH-10905

Page 1 of 1

Plaintiffs

Plaintiffs Name	Plaintiffs Address	State	Zip	Unit #
POMYKACZ MARK			0000	

Total Plaintiffs: 1

Defendants

Defendant Name	Defendant Address	State	Unit #	Service By
DEPARTMENT FINANCIAL			0000	
PROFESSIONAL REGUALTION			0000	
STATE ILLINOIS			0000	

Total Defendants: 3