

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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**STATE OF WISCONSIN  
BEFORE THE REAL ESTATE APPRAISERS BOARD**

**IN THE MATTER OF  
DISCIPLINARY PROCEEDINGS AGAINST :**

**: Final Decision  
: and Order  
:  
: Case No. LS 0507272 APP  
: 04 APP 006  
: 04 APP 063  
: 05 APP 011**

**LARRY B. FORT,  
RESPONDENT**

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The parties to this action for purposes of Wis. Stats. § 227.53 are:

Larry B. Fort                      Larry Fort Appraisal Service  
P.O. Box 240303                  4270 N. 28th St.  
Milwaukee, WI 53224            Milwaukee, WI 53212

Department of Regulation & Licensing  
John N. Schweitzer  
Division of Enforcement  
P.O. Box 8935  
Madison, WI 53708

Wisconsin Real Estate Appraisers Board  
Department of Regulation & Licensing  
P. O. Box 8935  
Madison, WI 53708-8935

**Procedural History**

An evidentiary hearing in the above-captioned matter was held on March 23, 2006. The Division of Enforcement appeared by Attorney John Schweitzer. The respondent, Larry B. Fort, appeared pro se.

**Findings of Fact**

1. At all times relevant to these facts the respondent held real estate appraiser's license number 4-734 issued by the Wisconsin Department of Regulation and Licensing. The respondent's last-known address on file with the Department of Regulation and Licensing is P.O. Box 240303, Milwaukee, WI 53224. The physical address of Larry Fort Appraisal Service is 4270 N. 28th St., Milwaukee, WI 53212.

**Appraisal of 1815 Portland Avenue, Beloit, Wisconsin**

2. An informal complaint was received by the Department on February 12, 2004. The complainant was Daniel McHugh, Jr., the city appraiser for Beloit, Wisconsin. The complaint related to an appraisal of property at 1815 Portland Avenue in Beloit, prepared by USA Appraisals. The appraised value of the property was \$106,000. The complainant stated that the appraised value was unrealistically high, and he listed 15 specific problem areas in the appraisal.

3. The appraisal was signed on February 1, 2004, by Jerhonda V. Lee as appraiser. Jerhonda V. Lee does not hold an appraiser's license. Mr. Fort's signature and license number were placed on the appraisal, under "Supervisory Appraiser", following the Appraiser's Certification Section of the appraisal. Mr. Fort did not sign the appraisal, and did not authorize anyone else to sign his name or place his license number on the appraisal report.

4. As a part of its investigation, the Division of Enforcement asked Mr. Fort for a response on May 14, 2004, August

24, 2004 and February 10, 2005 to the informal complaint filed by Daniel McHugh, Jr. When Mr. Fort received the letter from the Division of Enforcement, he took it to Jerhonda Lee to respond to because he did not have a record of the appraisal in his database. At some point in time, Ms. Lee sent a letter to the Division of Enforcement in response to Mr. Hugh's complaint. In the letter, which is dated February 27, 2005, she responded to 3 of the 15 problem areas identified in Mr. McHugh's complaint. The letter, which consists of 3 pages, includes a letterhead with the words "Larry Fort", printed at the top of the first page, along with the following information: P.O. Box 18715, Milwaukee, WI 53218, 414-975-4508, 1-800-768-6332. [usaappraisal1@aol.com](mailto:usaappraisal1@aol.com). At the end of the third page of the letter, the word, "Sincerely" is typed, followed by a signature (indicating Larry B. Fort) and the words "Larry Fort". Mr. Fort did not prepare, sign or submit the letter to the Division of Enforcement. Mr. Fort did not respond to the Division's three requests for information relating to the complaint filed by Mr. McHugh.

### **Appraisal of 1918 North 13<sup>th</sup> Street, Milwaukee, Wisconsin**

5. On November 19, 2004, an appraisal report for a property located at 1918 North 13th Street, Milwaukee, Wisconsin, was signed by Jerhonda V. Lee as appraiser, who does not hold an appraiser's license. Mr. Fort's signature and license number were placed on the appraisal, under "Supervisory Appraiser", following the Appraiser's Certification Section of the appraisal. Mr. Fort did not sign the appraisal, and did not authorize anyone else to sign his name or place his license number on the appraisal.

6. In the appraisal report for the property located at 1918 North 13th Street, Milwaukee, Wisconsin the appraised value was \$165,000, but sold previously for \$10,000.

7. At the evidentiary hearing Mr. Fort admitted the appraisal was, "...very, very wrong." (RT p. 29)

### **Appraisal of 4409 W. Garfield in Milwaukee, Wisconsin**

8. An informal complaint was received by the Department on February 22, 2005. The complainant was the same complainant as in 04 APP 063, a review appraiser at Mid-State Appraisal Services who requested anonymity. The complaint related to an appraisal of property at 4409 W. Garfield in Milwaukee, Wisconsin, signed by Larry B. Fort as appraiser. The appraised value of the property was \$76,200.

9. On June 24, 2005, the Division of Enforcement asked Mr. Fort for a response to the informal complaint regarding the appraisal of the 4409 W. Garfield property, to be made by July 8, 2005. No response was received by the Division.

### **CONCLUSIONS OF LAW**

1. The evidence adduced by the Complainant in these proceedings does not establish that the respondent, "knowingly," omitted, understated, misrepresented or concealed material facts in his appraisal reports in violation of Wis. Admin. Code § RL 86.01 (5).

2. For the appraisal reports for 1815 Portland Avenue, Beloit, Wisconsin, and 1918 North 13<sup>th</sup> Street, Milwaukee, Wisconsin, the evidence adduced by the Complainant in these proceedings does not establish that the respondent failed to comply with 2004 USPAP Standards rules 1-1 (a), (b), or (c), or that the respondent is responsible for the contents of the appraisal reports at issue for purposes of discipline pursuant to 2004 USPAP Standards Rule 2-3, *Comment*, in violation of Wis. Admin. Code §§ RL 86.01 (1) or (2).

3. For the appraisal report for 4409 W. Garfield in Milwaukee, Wisconsin, the evidence adduced by the Complainant in these proceedings does not establish that the respondent failed to comply with 2005 USPAP Standards rules 1-1 (a), (b), or (c), or violated 2005 USPAP Standards Rule 2-3, by failing to state the name of each individual providing significant professional assistance in the preparation of the appraisal report in violation of Wis. Admin. Code §§ RL 86.01 (1) or (2).

4. The evidence presented in these proceedings, as described in Findings of Fact 4 and 9 above, establishes that the respondent failed to cooperate in a timely manner with the board's investigation, in violation of Wis. Admin. Code § RL 86.01 (10).

### **ORDER**

**IT IS HEREBY ORDERED:** The respondent, Larry B. Fort, be and hereby is, **REPRIMANDED.**

**IT IS FURTHER ORDERED that:** 1. The summary suspension of Larry B. Fort is **TERMINATED**, and Mr. Fort

is restored to active unlimited practice.

2. The respondent shall pay 25% of the cost of the proceedings to the Department of Regulation and Licensing.

This order is effective on the day that it is signed by a designee of the Board.

### **Applicable Law**

#### **Wis. Stats. § 458.26 Disciplinary proceedings and actions.**

(3) Disciplinary proceedings shall be conducted by the board according to the rules promulgated under s. 440.03 (1). The department may deny any certificate under this chapter, and the board may limit, suspend or revoke any certificate under this chapter or reprimand or impose additional continuing education requirements on the holder of a certificate under this chapter, if the department or board finds that the applicant for or holder of the certificate has done any of the following:

(b) Engaged in unprofessional or unethical conduct in violation of rules promulgated under s. 458.24.

(c) Engaged in conduct while practicing as an appraiser which evidences a lack of knowledge or ability to apply professional principles or skills.

#### **Wis. Admin. Code § RL 86.01 Standards.**

(1) Certified and licensed appraisers shall comply with the standards of practice established by ch. 458, Stats., and chs. RL 80 to 86 and the standards set forth in Appendix I. A violation of any provision in this chapter may result in disciplinary action under s. 458.26, Stats.

(2) All appraisals performed in conjunction with federally related transactions and non-federally related transactions shall conform to the uniform standards of professional appraisal practice set forth in Appendix I.

(5) Certified and licensed appraisers shall not knowingly omit, understate, misrepresent or conceal material facts in their appraisals.

(10) After a request for information made by the board, failing to cooperate in a timely manner with the board's investigation of complaints filed against the licensed or certified appraiser. There is a rebuttable presumption that a licensed or certified appraiser who takes longer than 30 calendar days to respond to a request for information by the board has not acted in a timely manner under this subsection.

### **Procedural History**

An evidentiary hearing in the above-captioned matter was held on March 23, 2006. The Division of Enforcement appeared by Attorney John Schweitzer. The respondent, Larry B. Fort, appeared pro se. The Administrative Law Judge issued a proposed decision on September 29, 2006, in which he recommended to the Board that the matter be dismissed. The Board considered the matter at its February 28, 2007 and May 16, 2007 meetings.

### **EXPLANATION OF VARIANCE**

The Board accepts the Findings of Fact, Conclusions of Law and Order of the Administrative Law Judge, with the following exceptions:

#### **I. Findings of Fact:**

##### **(A) Findings of Fact 3 and 5.**

The Administrative Law Judge found in Findings of Fact 3 and 5 of his proposed decision that the Portland Avenue and the 13<sup>th</sup> Street appraisal reports were signed by Mr. Fort as supervisor. The Board modifies Findings of Fact 3 and 5 of the proposed decision to state, based upon the evidence, the Portland Avenue and the 13<sup>th</sup> Street appraisal reports were

not signed by Mr. Fort as supervisor, or in any capacity. Mr. Fort testified that the two reports were done without his knowledge; that he did not see the reports before they were submitted to the lenders, and that he did not actually sign the reports. He said that the reports contained his "scanned" signature. Mr. Fort admitted that he had agreed to let Ms. Lee work under him so that she could obtain experience to get a license. He said that he expected Ms. Lee to let him see, review and sign the appraisals before they were submitted to the lenders, but she did not do that. In reference to the 13th Street appraisal, Mr. Fort admitted that he was at the property at the time that Ms. Lee performed the inspection. However, he said Ms. Lee did the report on her own, and that he did not review the report before it was submitted to the lender. Tr. p. 20-29; 32, 39-44; Exhibits 1 and 2.

**(B) Findings of Fact 4.**

The Board modifies Findings of Fact 4 of the proposed decision, to state that Mr. Fort failed to cooperate with the Board's investigation relating to the appraisal of the Portland Avenue property by failing to respond to the Division of Enforcement's request for a response to the informal complaint filed by Daniel McHugh, Jr.

Findings of Fact 4, as proposed by the Administrative Law Judge, reads as follows:

4. As part of its investigation the Division of Enforcement asked Mr. Fort for a response to the informal complaint on February 10, 2005. He responded in writing on February 27, 2005 and stated, "I must agree that there are portions of the Appraisal Report that hold significant errors and omissions ..." (Exhibit 3)<sup>i</sup>

Findings of Fact 4, as modified by the Board, reads:

4. As a part of its investigation, the Division of Enforcement asked Mr. Fort for a response on May 14, 2004, August 24, 2004 and February 10, 2005 to the informal complaint filed by Daniel McHugh, Jr. When Mr. Fort received the letter from the Division of Enforcement, he took it to Jerhonda Lee to respond to because he did not have a record of the appraisal in his database. At some point in time, Ms. Lee sent a letter to the Division of Enforcement in response to Mr. Hugh's complaint. In the letter, which is dated February 27, 2005, she responded to 3 of the 15 problem areas identified in Mr. McHugh's complaint. The letter, which consists of 3 pages, includes a letterhead with the words "Larry Fort", printed at the top of the first page, along with the following information: P.O. Box 18715, Milwaukee, WI 53218, 414-975-4508, 1-800-768-6332. [usaappraisal1@aol.com](mailto:usaappraisal1@aol.com). At the end of the third page of the letter, the word, "Sincerely" is typed, followed by a signature (indicating Larry B. Fort) and the words "Larry Fort". Mr. Fort did not prepare, sign or submit the letter to the Division of Enforcement. Mr. Fort did not respond to the Division's three requests for information relating to the complaint filed by Mr. McHugh.

The Board found from its review of the record that Mr. Fort did not respond "in writing on February 27, 2005". The evidence establishes that the Division of Enforcement did receive a letter with a partial response (3 out of 15 of the issues were addressed) to its request for information, which according to Mr. Fort was prepared by Ms. Lee. Mr. Fort testified that when he received the letter from the Division of Enforcement, he took it to Jerhonda Lee to respond to because he did not have a record of the appraisal in his database. He said that the appraisal was done without his knowledge. Although the response submitted to the Division of Enforcement included what purported to be Mr. Fort's signature, Mr. Fort testified that it was not his signature and that Ms. Lee had submitted the response without his knowledge. The Board concluded that it was Mr. Fort's responsibility to respond to the request for information. Although, Mr. Fort elected to transfer that responsibility to Ms. Lee, it was still his responsibility to make certain that Ms. Lee responded to the request and that she addressed the 15 problem areas, not 3 of the 15 area. By handing the request over to Ms. Lee, Mr. Fort did not relieve himself of the obligation to respond to the Board's request. Tr. p. 32, 39-44. Exhibit 3.

Finally, the Administrative Law Judge correctly found in Findings of Fact 9 that Mr. Fort did not respond to the Division's request for information relating to the complaint filed involving the Garfield property. In addition, Mr. Fort admitted in his Answer to the Complaint that he did not respond to the Division's request for information relating to the Garfield

property. *Complaint, par. 20; Answer, par. 20.*

**II. Conclusions of law:** The Board concluded that Mr. Fort's failure to cooperate in a timely manner with the Board's investigations involving the appraisal of the Portland Avenue and Garfield properties, constituted a violation of Wis. Adm. Code § RL 86.01 (10).

**III. Order:** Because the Board concluded that Mr. Fort's failure to cooperate in a timely manner with the Board's investigations involving the appraisal of the Portland Avenue and Garfield properties, constituted a violation of Wis. Adm. Code § RL 86.01 (10), the Board determined that dismissal of the matter is not appropriate and that the issuance of a reprimand is an appropriate disciplinary measure. The Board also ordered Mr. Fort to pay 25% of the cost of the proceedings.

The Real Estate Appraisers Board is authorized under Wis. Stats., § 458.26 (3), to limit, suspend or revoke any certificate granted under the statute or reprimand or impose additional continuing education requirements on the holder of a certificate granted under the statute, if the board finds that the holder of the certificate has done any of the following:

- (b) Engaged in unprofessional or unethical conduct in violation of rules promulgated under s. 458.24.
- (c) Engaged in conduct while practicing as an appraiser which evidences a lack of knowledge or ability to apply professional principles or skills.
- (i) Violated this chapter or any rule promulgated under this chapter.

The purposes of discipline by occupational licensing boards are to protect the public, deter other licensees from engaging in similar misconduct and to promote the rehabilitation of the licensee. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Punishment of the licensee is not a proper consideration. *State v. McIntyre*, 41 Wis. 2d 481 (1969).

The evidence presented establishes that on 4 separate occasions, Mr. Fort received a request for information from the Division of Enforcement in conjunction with its investigation of complaints filed with the Board against him. Mr. Fort did not respond or otherwise provide the information requested by the Division of Enforcement. The Board reprimands Mr. Fort for his failure to cooperate with the Board's investigation. This measure is designed primarily to protect the public and to deter other licensees from engaging in similar misconduct. The Board's ability to timely and thoroughly investigate complaints filed by the public is crucial to its role in protecting the public. Without the ability to require licensees to cooperate with the Board's investigation of complaints, the Board is powerless to provide protection to the public. In addition, it is essential that the Board, by its actions in this case, convey to other licensees that they have a responsibility to cooperate with the Board's investigation of complaints against them.

#### **IV. Costs**

Wis. Stats. § 440.22(2), provides in relevant part as follows:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department.

The presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against the respondent is a discretionary decision on the part of the Board, and that the Board's discretion extends to the decision whether to assess the full costs or only a portion of the costs. The Board's assessment of 25% of the costs of the proceeding in this case is based primarily on fairness to other members of the profession, and the fact that out of the 4 areas of practice alleged in the Complaint (paragraphs 7, 10, 18, 28) to have been violated, the Board found that Mr. Fort violated one area of practice.

The Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions, and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following a full evidentiary hearing, that licensee should bear the costs of the proceeding.

This approach to the imposition of costs is supported by the practice of the Wisconsin Supreme Court, which is granted similar discretionary authority by SCR 22.24 to impose costs in attorney disciplinary hearings. The Court acknowledges the logic of imposing the cost of discipline on the offender rather than on the profession as a whole, and routinely imposes costs on disciplined respondents unless exceptional circumstances exist. In the Matter of Disciplinary Proceedings against M. Joanne Wolf, 165 Wis. 2d 1, 12, 476 N.W. 2d 878 (1991); In the Matter of Disciplinary Proceedings against Willis B. Swartwout, III, 116 Wis. 2d 380, 385, 342 N.W. 2d 406 (1984).

Dated this 11<sup>th</sup> day of July, 2007

By: Roger Roslansky  
Real Estate Appraisers Board