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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION & LICENSING

IN THE MATTER OF THE APPLICATION :
TO BECOME APPRAISER : FINAL DECISION AND
QUALIFICATIONS BOARD COMPLIANT : ORDER DENYING PETITION
OF : FOR REHEARING
: Case No. LS 0702091-APP
:
STEVEN H. LOEHRKE, :
APPLICANT. :

(Division of Enforcement Case File # 06 APP 131)

The parties in this matter under § 227.44, Stats., and for purposes of review under § 227.53, Stats., are:

Steven H. Loehrke
W1638 Aniwa Road
Weyauwega, WI 54983

Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

A hearing was held in the above-captioned matter on April 27, 2007. Mr. Loehrke appeared without legal counsel. The Division of Enforcement appeared on behalf of the State of Wisconsin. The Administrative Law Judge issued his proposed decision on June 4, 2007. Objections to the proposed decision were filed by June 22, 2007. The Department's Final Decision and Order, dated November 15, 2007, was served on Mr. Loehrke on November 16, 2007. Mr. Loehrke's Petition for Rehearing was filed on December 5, 2007 (refer to Attachment A, which is attached hereto and incorporated by reference herein). The Division of Enforcement filed its reply to the Petition for Rehearing on December 21, 2007.

DECISION

I. Petitions for Rehearing - In General

Petitions for rehearing in contested cases are governed by Wis. Stats., § 227.49 (3), which reads, in part, as follows:

227.49 Petitions for rehearing in contested cases.

(3) Rehearing will be granted only on the basis of:

- (a) Some material error of law.
- (b) Some material error of fact.
- (c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

II. Mr. Loehrke's Petition for Rehearing

Mr. Loehrke's Petition for Rehearing was filed on December 5, 2007 (refer to Attachment A, which is attached hereto and incorporated by reference herein). The Division of Enforcement filed its reply to the Petition for Rehearing on December 21, 2007.

A. Material Error of Law

Mr. Loehrke states in paragraph O of his Request for Rehearing that Conclusions of Law 2, which is found in the Department's Final Decision and Order, dated November 15, 2007, contains a material error of law. That Conclusion reads as follows:

2. The real estate appraisal reports that Mr. Loehrke submitted to the Department for experience review, as described in Findings of Fact 4-9 and 11 herein, do not comply with the Uniform Standards of Professional Appraisal Practice (USPAP), as required in Wis. Adm. Code § RL 83.01 (3) (a).

Mr. Loehrke states that multiple reports were not an issue at the hearing and that the hearing only dealt with the appraisal of the property located at 207 East Main Street, Weyauwega. The Department found in Findings of Fact 11 that the appraisal reports submitted by Mr. Loehrke for experience review, relating to the properties located at 7704 Peters Road, Fremont, WI and 418 West Main Street, Weyauwega, WI, and 207 East Main Street, Weyauwega, Wisconsin, do not comply with USPAP. In its Explanation of Variance, which is found on pages 5-7, the Department discussed the USPAP violations relating to the various properties. The USPAP violations relating to the 7704 Peters Road property are contained in Hearing Exhibit 3. The USPAP violations relating to the 418 West Main Street property are contained in Hearing Exhibit 4. The USPAP violations relating to the 207 East Main Street property are contained in Hearing Exhibits 8, 10 and 20. All of these Exhibits were received into evidence at the hearing.

Mr. Loehrke further states in paragraph U of his Request for Rehearing that, at the hearing, he was not allowed to submit Affidavits from three additional expert licensed and/or certified appraiser witnesses even though the attorney from the Department of Regulation and Licensing, Lara Herman, had told him prior to the hearing that he could bring Affidavits from other appraisers if the witnesses were not available to travel to Madison. In addition, Mr. Loehrke states that he offered to call the other witnesses, but according to the Administrative Law Judge, a speaker phone was not available in the courtroom.

First, there is no evidence in the record establishing that Mr. Loehrke submitted a witness list prior to the hearing identifying the three appraisers as hearing witnesses; that he submitted a request to the Administrative Law Judge for the issuance of subpoenas under Wis. Stats., § 227.46 (1) (b), to compel the attendance of the witnesses, or that he attempted to depose the witnesses.

Second, there is no evidence in the record that the parties, Mr. Loehrke and Atty. Herman, stipulated to the admissibility of the documents. In fact, Atty. Herman objected to the admissibility of the documents on the basis of her lack of opportunity to cross-examine the witnesses. Tr. p. 119-120.

Third, the Administrative Law Judge ruled that the Affidavits were inadmissible on the basis of hearsay; Atty. Herman's lack of opportunity to cross examine the witnesses, and his inability to determine the credibility of the witnesses. Exhibits 13-16; Tr. p. 119-125.

B. Material Error of Fact

In paragraphs G, H and I of his Request for Rehearing, Mr. Loehrke states that the Department's Final Decision and Order contains a material error of fact. He states that the Administrative Law Judge concluded that the Weyauwega appraisal is USPAP compliant, and that the Final Decision and Order, which was drafted by someone not present for the hearing, states the exact opposite.

First, the Administrative Law Judge opined on page 16 of his Proposed Decision, in the Opinion section, that Mr. Loehrke's appraisal of the Weyauwega property is USPAP compliant. However, the Administrative Law Judge did not make a specific finding in his

Findings of Fact stating that the appraisal report complies with USPAP. The Department found, as stated in Findings of Fact 11, that the appraisal report does not comply with USPAP. The Department's finding is based upon its review of the record of the proceeding, including the hearing record. The Department's rationale for its adoption of Findings of Fact 11 is found on pages 12-25 of its Explanation of Variance, which is contained in its Final Decision and Order, dated November 15, 2007.

Second, in reference to the Final Decision and Order having been drafted by someone not present at the hearing, Mr. Loehrke's statement relates more to a procedural issue than to a factual issue. Wisconsin Statutes § 227.46, sets forth the procedures for the examination of evidence by the Administrative Law Judge and the Department. Subsection (2) states that, except as provided in sub. (2m) and s. 227.47 (2), in any case where a majority of the officials of the agency who are to render the final decision are not present for the hearing, the hearing examiner presiding at the hearing shall prepare a proposed decision, including finding of fact, conclusions of law order and opinion, in a form that may be adopted as the final decision in the case. That subsection further states that if an agency's decision varies in any respect from the decision of the hearing examiner, the agency's decision shall include an explanation of the basis for each variance. In this case, the Administrative Law Judge prepared a proposed decision and the Department issued an explanation of variance in accordance with the procedures set forth in Wis. Stats., § 227.46 (2).

C. Discovery of New Evidence

Mr. Loehrke did not allege or claim the discovery of new evidence in his Request for Rehearing. Based upon a review of his Request for Rehearing, there is no information provided which supports the granting of a rehearing on the basis of discovery of new evidence.

D. Other General Claims of Error

Many of Mr. Loehrke's arguments and/or claims of error are not specifically alleged in his Request for Rehearing to constitute material errors of fact or law. Based upon a review of those arguments and/or claims, the Department concludes that none of them constitute a basis for a rehearing under Wis. Stats., § 227.46 (2).

E. Conclusions

Based upon a review of the arguments and/or claims contained in Mr. Loehrke's Request for Rehearing, the Department concludes that none of those arguments or claims constitute a basis for a rehearing under Wis. Stats., § 227.46 (2). Therefore, Mr. Loehrke's Request for Rehearing is denied.

ORDER

NOW THEREFORE, IT IS HEREBY ORDERED that the Petition for Rehearing filed by Steven H. Loehrke in this matter be, and hereby is, DENIED.

This order is effective on the day it is signed by the Secretary of the Department of Regulation and Licensing or her designee.

Dated this 4th day of January, 2008

Department of Regulation and Licensing

By: Celia M. Jackson, Secretary