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3. Mr. Miller does business as Miller Land and Livestock Co. LLC.

Appraisal of Property at 712 Cornelia Street in Janesville, Wisconsin - Informal Complaint 05 APP 044

4. An informal complaint was received by the Department on July 8, 2005 and given a Division of Enforcement case number of 05 APP 044. The complainant was Benjamin Duke of Oak Street Mortgage in St. Louis, Missouri. The complaint related to an appraisal report for property at 712 Cornelia Street in Janesville, Wisconsin, signed by Ray K. Miller on June 21, 2005.

5. Mr. Miller admitted that his report had auto fill problems which were pointed out to him by the client, and corrected.

6. Marketing time for the subject property was indicated as being more than 6 months but the report later stated it was 30-60 days; as of the effective date of the report the marketing time was 90 days. One section of the report was stating an average and one section was stating a range, and the two types of statements are not inconsistent.

7. The site size was incorrect. It was listed as equivalent to 6,970 square feet. The city assessor's records list the site as 7,980 square feet.

8. The zoning was incorrectly listed as single family residential rather than R-2 limited general residential listed in the assessor's records.

9. The report is wrong in describing the foundation and exterior as concrete foundation and brick exterior, versus a block foundation and wood exterior.

10. The report erroneously indicates the subject property has a small patio and deck that are not included in the sales comparison grid.

11. The comparable sales were incorrect because they were based on an incorrect site size, incorrect age, and the omission of the patio and deck.

12. One comparable sale was adjusted based on actual age while two other comparable sales were based on effective age.

13. The sales history for the subject property was inconsistent. Sales in 2003 and 2004 were noted but they were not the subject property.

Appraisal of Property at 223 West Limit Road in Lyndon Station, Wisconsin - Informal Complaint 06 APP 062

14. An informal complaint was received by the Department on April 24, 2006 from an anonymous complainant, and given a Division of Enforcement case number of 06 APP 062. The complaint related to an appraisal report for property at 223 West Limit Road in Lyndon Station, Wisconsin, signed by Ray K. Miller on March 30, 2006.

15. The appraisal report mis-identifies that the neighborhood is best described as the entire township of Viroqua when in reality it's not in that township at all; rather Viroqua is in an entirely different county, Vernon.

16. The appraisal report inconsistently stated the area had a low unemployment rate and an expected growth in jobs that would increase the demand for known, existing houses, versus, the statement, "No appreciation in the demand of supplies and balance."

17. In the appraisal report, the foundation was described as slab and partial basement yet elsewhere a checkbox for "basement" is left blank.

18. In the improvements section of the appraisal report, central air conditioning is not indicated yet elsewhere it is.

19. The effective age of the home is shown as 20 years in the improvement section and 16 years in the sales comparison analysis.

20. The appraisal report indicates modest appreciation of about 1 percent per month on page 3 versus stable on page 5.

Appraisal of Property at 900 Whispering Way, Unit A, in Cottage Grove, Wisconsin - Informal Complaint 06 APP 084

21. An informal complaint was received by the Department on June 19, 2006, and given a Division of Enforcement case number of 06 APP 084. The complainant was Shawn Thomas Norris, Senior Credit Manager at Secured Funding Corporation in Costa Mesa, California. The complaint related to an appraisal report for property at 900 Whispering Way, Unit A, in Cottage Grove, Wisconsin, signed by Ray K. Miller on June 5, 2006.

22. The prosecution failed to present a credible prima facie case of violations of the Uniform Standards of Professional Appraisal Practice. (USPAP)

Appraisal of Property at 14876 County Hwy A in Viola, Wisconsin - Informal Complaint 06 APP 102

23. An informal complaint was received by the Department on July 28, 2006, and given a Division of Enforcement case number of 06 APP 102. The complainant was Eric Mir, at All American Mortgage in Madison, Wisconsin. The complaint related to an appraisal report for property at 14876 County Hwy A in Viola, Wisconsin, signed by Ray K. Miller on April 18, 2006.

24. The prosecution failed to present a credible prima facie case of violations of the Uniform Standards of Professional Appraisal Practice. (USPAP)

Appraisal of Property at N1095 Arbor Lake North in Lyndon Station, Wisconsin - Informal Complaint 06 APP 119

25. An informal complaint was received by the Department on October 13, 2006, and given a Division of Enforcement case number of 06 APP 119. The complainant was Tiffany Spieles, and the complaint related to an appraisal report for her property at N1095 Arbor Lake North in Lyndon Station, Wisconsin, signed by Ray K. Miller on July 25, 2006.

26. The appraisal report incorrectly indicated the subject property was in a rural township, and the rural box was checked in the neighborhood grid; but later the report stated that the built-up rate was over 75 percent, and the present land use was over 98 percent built up.

27. The "comments" section of the appraisal report incorrectly indicates the subject was in the town of Viroqua when it was actually in the town of Lyndon Station.

28. The appraisal report contained the inconsistency where it was stated, "Low unemployment rate and an expected growth in jobs will increase the demand for new and existing houses," but then indicated, "No appreciation in the demand and supply -- is in balance."

29. The appraisal report in one location indicated, "patio and deck" but "none" was typed directly alongside indicating neither.

30. The sales comparison analysis for the comparable sales listed in the appraisal report was incorrect with concessions and no explanations and inconsistent age adjustments with no comment.

Failure to Timely Cooperate

31. A letter was sent to Miller's attorney, Gard Strother dated July 3rd, 2007 containing a notification that an informal

complaint, 7-APP-070, had been received.

32. The department requested a response from Mr. Miller through Attorney Strother to several questions and requested copies of all Mr. Miller's records that pertained to the appraisal complained about in complaint 7- APP- 070.

33. A response was requested by July 18, 2007 but none was forthcoming.

34. On July 27th, 2007, a department investigator attempted to contact Strother, called his office and left a message asking him to call. Sometime after that, Strother called the investigator and after some discussion, the investigator granted Strother until August 10, 2007 for a response.

35. No response was provided by August 10, and on August 27, Miller called the same department investigator directly indicating there had been some delay in Strother forwarding the department's letter to Miller, but that Miller would be submitting a response.

36. As alleged in the formal complaint, paragraph 11, on September 13, correspondence from the prosecutor, attorney Schweitzer was written to Attorney Gard Strother, copied to Miller saying if no response was received from Miller by September 26, 2007, Schweitzer would file a complaint for a non timely response. The September 13 correspondence was not placed into evidence.

37. On October 22, 2007, a partial response was received by the department from Miller comprised of the appraisal report and indicating the work file would be forwarded under separate cover.

38. The prosecuting attorney filed a complaint on October 2, 2007 for Miller's failure to respond timely to the department's July 27th correspondence.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Appraisers Board has jurisdiction of this matter pursuant to Wis. Stat. § 458.26.

2. For the appraisal report for the subject property at 712 Cornelia Street in Janesville, Wisconsin, the facts, as set forth in Findings of Fact 7-11 and 13 herein, constitute a violation of the Uniform Standards of Professional Appraisal Practice (USPAP) SR 2-1 (a) and Wis. Admin. Code §§ RL 86.01 (1) and (2).

3. For the appraisal report for the subject property at 223 West Limit Road in Lyndon Station, Wisconsin, the facts, as set forth in Findings of Fact 15 herein, constitute a violation of USPAP, SR 1-1 (a); 1-1 (c); 1-2 (e)-(i); 2-1 (a); 2-1 (b), and Wis. Admin. Code §§ RL 86.01 (1) and (2).

4. For the appraisal report for the subject property at 900 Whispering Way, Unit A, in Cottage Grove, Wisconsin, the facts evidence adduced by Findings of Fact 21 and 22 does not establish that the respondent failed to comply with USPAP Standards Rules such that discipline should result for a violation of Wis. Admin. Code §§ RL 86.01 (1) or (2).

5. For the appraisal report for the subject property at 14876 County Hwy A in Viola, Wisconsin, the evidence adduced by Findings of Fact 23 and 24 does not establish that the respondent failed to comply with USPAP Standards Rules such that discipline should result for a violation of Wis. Admin. Code §§ RL 86.01 (1) or (2).

6. For the appraisal report for the subject property at N1095 Arbor Lake North in Lyndon Station, Wisconsin, the facts, as set forth in Findings of Fact 27 and 30 herein, constitute a violation of USPAP, SR 1-1 (a) (b) and (c); 1-2 (e)-(i); 2-1 (a) and (b), and Wis. Admin. Code §§ RL 86.01 (1) and (2).

7. The evidence adduced by the Complainant in Findings of Fact 31 through 38 does not establish 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 that the Real Estate Appraiser License (#4-1520) of Ray K. Miller, Jr., be, and hereby is, Limited for an indefinite period of time subject to compliance with the following conditions and limitations:

1. Mr. Miller may not complete more than five (5) appraisals per week.
2. Within one year from the effective date of this Order, Mr. Miller shall complete the following educational coursework:
 - Residential Report Writing (7 hours) and Cool tools: New Technology for Real Estate Appraiser (7 hours).
 - Both courses must be pre-approved by the Board or its designee.
 - The course work may not be used towards biennial continuing education requirements.
3. Mr. Miller may request removal of the limitations from his license after two (2) years. In conjunction with his request to remove the limitations from his license, Mr. Miller shall submit an appraisal log of appraisals conducted after the effective date of this Order, but before the date of his request to remove the limitations. The Board will request, and Mr. Miller shall submit, three (3) appraisal reports from the appraisal log for the Board's review to determine compliance with USPAP.

IT IS FURTHER ORDERED that Mr. Miller shall pay the full cost of this proceeding to the Department of Regulation and Licensing.

This Order is effective on the date it is signed by a designee of the Board.

EXPLANATION OF VARIANCE

The Board accepts the proposed Findings of Fact recommended by the Administrative Law Judge. The Board modifies the Administrative Law Judge's proposed Conclusions of Law and Order as follow:

I. 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.

(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.

The Uniform Standards of Professional Appraisal Practice. ("USPAP Standards"), promulgated by the Appraisal Standards Board of the Appraisal Foundation (2005).

Standards Rule 1-1 In developing a real property appraisal, an appraiser must:

- (a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal.
- (b) not commit a substantial error of omission or commission that significantly affects an appraisal; and

Comment:

In performing appraisal services, an appraiser must be certain that the gathering of factual information is conducted in a manner that is sufficiently diligent, given the scope of work as identified according to Standards Rule 1-2(f), to ensure that conclusions are identified and, where necessary, analyzed. Further, an appraiser must use sufficient care in analyzing such data to avoid errors that would significantly affect his or her opinions and conclusions. [Effective January 1, 2005]

An appraiser must use sufficient care to avoid errors that would significantly affect his or her opinions and conclusions. Diligence is required to identify and analyze the factors, conditions, data, and other information that would have a significant effect on the credibility of the assignment results. [Effective July 1, 2006]

- (c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.

Comment:

“Perfection is impossible to attain, and competence does not require perfection. However, an appraiser must not render appraisal services in a careless or negligent manner. This Standards Rule requires an appraiser to use due diligence and due care.”

Standards Rule 1-2 In developing a real property appraisal, an appraiser must:

- (e) identify the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal, including: (i) its location and physical, legal, and economic attributes;

Standards Rule 2-1

Each written or oral real property appraisal report must:

- (a) clearly and accurately set forth the appraisal in a manner that will not be misleading;
- (b) contain sufficient information to enable the intended users of the appraisal to understand the report properly; and

II. Conclusions of Law

The Administrative Law Judge recommended that the Board accept the Conclusions of Law as set forth in his Proposed Final Decision and Order. The Board accepts Conclusions of Law 1, 4 and 5, and modifies Conclusions of Law 2, 3 and 6.

Conclusions of Law 2

Appraisal of Property at 712 Cornelia Street in Janesville, Wisconsin - Informal Complaint 05 APP 044

The Administrative Law Judge stated in paragraph 2 of his proposed Conclusions of Law that the evidence adduced by Findings of Fact 4 through 13 does not establish that Mr. Miller failed to comply with USPAP such that discipline should result for a violation of Wis. Admin. Code §§ RL 86.01 (1) or (2).

Findings of Fact 7-11 and 13 read as follow:

Findings of Fact 7. The site size was incorrect. It was listed as equivalent to 6,970 square feet. The city assessor's records list the site as 7,980 square feet.

Findings of Fact 8. The zoning was incorrectly listed as single family residential rather than R-2 limited general residential listed in the assessor's records.

Findings of Fact 9. The report is wrong in describing the foundation and exterior as concrete foundation and brick exterior, versus a block foundation and wood exterior.

Findings of Fact 10. The report erroneously indicates the subject property has a small patio and deck that are not included in the sales comparison grid.

Findings of Fact 11. The comparable sales were incorrect because they were based on an incorrect site size, incorrect age, and the omission of the patio and deck.

Findings of Fact 13. The sales history for the subject property was inconsistent. Sales in 2003 and 2004 were noted but they were not the subject property.

The Board concluded that Mr. Miller's conduct, as set forth in Findings of Fact 7-11 and 13 constitute a violation of the Uniform Standards of Professional Appraisal Practice (USPAP) SR 2-1 (a) and Wis. Admin. Code §§ RL 86.01 (1) and (2).

Mr. Miller's conduct, as described in Findings of Fact 7-11 and 13, establishes that he failed to clearly and accurately set forth the appraisal in a manner that is not misleading, in violation of USPAP SR 2-1 (a) and Wis. Admin. Code §§ RL 86.01 (1) and (2).

Conclusions of Law 3

Appraisal of Property at 223 West Limit Road in Lyndon Station, Wisconsin - Informal Complaint 06 APP 062

The Administrative Law Judge stated in paragraph 3 of his proposed Conclusions of Law that the evidence adduced by Findings of Fact 14 through 20 does not establish that Mr. Miller failed to comply with USPAP such that discipline should result for a violation of Wis. Admin. Code §§ RL 86.01 (1) or (2).

Findings of Fact 15 read as follow:

15. The appraisal report mis-identifies that the neighborhood is best described as the entire township of Viroqua when in reality it's not in that township at all; rather Viroqua is in an entirely different county, Vernon.

The Board concluded that Mr. Miller's conduct, as set forth in Findings of Fact 15, constitutes a violation of USPAP, SR 1-1 (a); 1-1 (c); 1-2 (e) (i); 2-1 (a) and (b); and Wis. Admin. Code §§ RL 86.01 (1) and (2) in the following manner:

Mr. Miller's conduct reflects that he was not aware of, did not understand or employ those recognized methods and techniques that are necessary to produce a credible appraisal; that he rendered appraisal services in a careless and negligent manner; that he failed to identify the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal, including its location and physical, legal, and economic attributes; failed to clearly and accurately set forth the appraisal in a manner that is not misleading, and failed to include sufficient information in the appraisal to enable the intended users of the appraisal to understand the report properly.

Conclusions of Law 6

Appraisal of Property at N1095 Arbor Lake North in Lyndon Station, Wisconsin - Informal Complaint 06 APP 119

The Administrative Law Judge stated in paragraph 6 of his proposed Conclusions of Law that the evidence adduced by Findings of Fact 25 through 30 does not establish that Mr. Miller failed to comply with USPAP such that discipline should result for in a violation of Wis. Admin. Code §§ RL 86.01 (1) or (2).

Findings of Fact 27 and 30 read as follow:

27. The "comments" section of the appraisal report incorrectly indicates the subject was in the town of Viroqua when

it was actually in the town of Lyndon Station.

30. The sales comparison analysis for the comparable sales listed in the appraisal report was incorrect with concessions and no explanations and inconsistent age adjustments with no comment.

The Board concluded that Mr. Miller's conduct, as set forth in Findings of Fact 27 and 30 constitute a violation of USPAP SR 1-1 (a) (b) and (c); 1-2 (e) (i); 2-1 (a) and (b) and Wis. Admin. Code §§ RL 86.01 (1) and (2) in the following manner.

Mr. Miller's conduct reflects that he was not aware of, did not understand or employ those recognized methods and techniques that are necessary to produce a credible appraisal; that he committed a substantial error of omission or commission that significantly affected his appraisal; that he rendered appraisal services in a careless and negligent manner; that he failed to identify the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal, including its location and physical, legal, and economic attributes; failed to clearly and accurately set forth the appraisal in a manner that is not misleading, and failed to include sufficient information in the appraisal to enable the intended users of the appraisal to understand the report properly.

III. Order

A. Discipline

The Administrative Law Judge recommended in his proposed Order that this matter be dismissed.

The Division of Enforcement recommends that Mr. Miller's license be revoked. Mr. Miller recommends that this matter be dismissed.

The Real Estate Appraisers Board is authorized under Wis. Stat. §458.26 (3) (b), to reprimand or impose additional continuing education on the holder of a certificate or limit, suspend or revoke any certificate granted under the statutes, if it finds that the holder of the certificate has engaged in unprofessional conduct or unethical conduct.

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. MacIntyre, 41 Wis. 2d 481 (1969).

The Board, having found that Mr. Miller violated numerous laws relating to the practice of real estate appraising, modifies the Administrative Law Judge's proposed Order to require Mr. Miller to complete certain educational course work pre-approved by the Board and to submit an appraisal log of appraisals conducted after the effective day of this Order from which the Board will select three appraisal reports to determine compliance with USPAP. These measures are designed to insure protection of the public and to deter other licensees from engaging in similar misconduct.

B. Costs

The Board also modifies the Administrative Law Judge's proposed Order by requiring Mr. Miller to pay the full cost of this proceeding.

Wis. Stat. § 440.22 (2) provides in relevant part:

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 Real Estate Appraisers 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 decision as to whether the full costs of the proceeding should be assessed against the credential holder, like the Supreme Court's decision whether to assess the full costs of disciplinary proceedings against disciplined attorneys, *see* Supreme Court Rule 22.24(1m), is based on the consideration of several factors, including:

- 1) The number of counts charged, contested, and proven;
- 2) The nature and seriousness of the misconduct;
- 3) The level of discipline sought by the parties;
- 4) The respondent's cooperation with the disciplinary process;
- 5) Prior discipline, if any;
- 6) Any other relevant circumstances.

Under the circumstances of this case, it is reasonable to assess the full costs of this proceeding to Mr. Miller.

First, in reference to the nature and seriousness of Mr. Miller's misconduct, clients and other intended users of appraisal services rely heavily upon the accuracy and correctness of appraisal reports to make important financial, legal and personal decisions. Part of that reliance is based upon the assumption that appraisals will be prepared in accordance with the requirements set forth in the Uniform Standards of Professional Appraisal Practice (USPAP).

The Preamble in the 2005 Edition of USPAP reads, in part, as follows:

The purpose of the Uniform Standards of Professional Appraisal Practice (USPAP) is to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers. It is essential that appraisers develop and communicate their analyses, opinions, and conclusions to intended users of their services in a manner that is meaningful and not misleading.

The Appraisal Standards Board promulgates USPAP for both appraisers and users of appraisal services. The appraiser's responsibility is to protect the overall public trust and it is the importance of the role of the appraiser that places ethical obligations on those who serve in this capacity. USPAP reflects the current standards of the appraisal profession.

The evidence presented in this case establishes that the appraisal reports prepared by Mr. Miller reflects that he was not aware of, did not understand or employ those recognized methods and techniques that are necessary to produce a credible appraisal; that he committed a substantial error of omission or commission that significantly affected his appraisal; that he rendered appraisal services in a careless and negligent manner; that he failed to identify the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal, including its location and physical, legal, and economic attributes; failed to clearly and accurately set forth the appraisal in a manner that is not misleading, and failed to include sufficient information in the appraisal to enable the intended users of the appraisal to understand the report properly, in violation of numerous provisions of USPAP.

In reference to the number of counts charged, contested and proven, the Division alleged that Mr. Miller violated USPAP during the preparation of 5 appraisals. The Board found that Mr. Miller violated USPAP in 3 out of the 5 appraisals.

Finally, in reference to the level of discipline sought by the parties, the Division seeks revocation of Mr. Miller's license. Mr. Miller seeks dismissal of this matter. The Board determined that, in light of the USPAP violations contained in Mr. Miller's appraisals, dismissal of this matter is not appropriate and would not provide protection to the public. Instead, the Board orders that Mr. Miller's license be limited for an indefinite period of time subject to compliance with certain conditions

and limitations.

Based upon the record herein, the Real Estate Appraisers Board makes the Findings of Facts, Conclusions of Law and Order as set forth herein.

Dated this 20th day of November, 2009.

Sharon R. Fiedler, Vice Chairperson
Real Estate Appraisers Board