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STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
DON J. GROGAN, JR.,	:	LS0811141APP
RESPONDENT.	:	

Division of Enforcement Case Nos. 07 APP 049, 07 APP 112,
07 APP 119 and 07 APP 135

The State of Wisconsin, Real Estate Appraisers Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Real Estate Appraisers Board.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 20th day of May, 2009.

Marla Britton
Member
Real Estate Appraisers Board

STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST : PROPOSED DECISION AND ORDER
 :
 :
DON J. GROGAN, JR., :
 :
 :
RESPONDENT. : LS 0811141APP

(Division of Enforcement Cases 07 APP 049, 07 APP 112, 07 APP 119 and 07 APP 135)

PARTIES

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

Don J. Grogan, Jr.
W11030 Riverside Road
Marion, WI 54950

Real Estate Appraisers Board
P.O. Box 8935
Madison, WI 53708

Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
Madison, WI 53708

PROCEDURAL HISTORY

This matter commenced by the filing of a Notice of Hearing and Complaint on November 14, 2008. John Nicolas Schweitzer, an attorney with the Division of Enforcement appeared on behalf of the Department of Regulation and Licensing. The Respondent, Dan J. Grogan did not appear and did not submit an Answer to the Complaint. As a result, the Complainant filed a Notice of Motion and Motion for Default Judgment. The Respondent also failed to submit a response to the Complainant's Motion for Default Judgment.

After the filing of the Complaint and Motions, the case was reassigned to Lara Herman, an attorney with the Division of Enforcement, due to personnel reassignments within the Department. Ms. Herman appeared on behalf of the Complainant on the date scheduled for hearing in this matter and argued the Motion for Default. In the alternative, Ms. Herman made argument and submitted evidence to the record in support of the Complaint and requested formal discipline and costs to be assessed against the Respondent. In addition Ms. Herman filed a Motion to Strike indicating that three paragraphs from the Formal Complaint were to be removed; paragraphs 8, 12, and 16.

Based upon the total record herein, including the motions and supporting information filed therewith, the undersigned Administrative Law Judge recommends that the Real Estate Appraiser Board adopt as its final decision in this matter, the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Don J. Grogan Jr., whose date of birth is January 7, 1949, is licensed in the State of Wisconsin as a appraiser

and certified as a Certified Residential Appraiser, both under license number 9-823, which was first issued on March 15, 1994.

2. Mr. Grogan's most recent address on file with the Department of Regulation and Licensing ("Department") is W11030 Riverside Rd., Marion, WI 54950. Mr. Grogan's surname appears within the Department's licensing records without the reference to the initials "Jr." or "Junior" but does appear with the same license number, date of birth and mailing address as referenced in the Complaint. There is no separate listing in the Department's records for a Don Grogan, Jr.

3. On November 17, 2008, the Department mailed the formal Complaint and Notice of Hearing to the Respondent Grogan's last known address as indicated in the records of the Department: W11030 Riverside Road, Marion, WI 54950. Documents were sent by both regular first class mail and by certified mail. The regular mail was never returned. The certified mail was returned with a post office label indicating that it was not deliverable as addressed and unable to forward.

The allegations contained within the formal Complaint, as amended by the Motion to Strike, are set forth as follows:

Case 07 APP 049

4. On April 24, 2002, Mr. Grogan performed an appraisal of property at C3828 Maryel Drive in Stratford, Wisconsin.

5. An earlier appraisal valued the property at \$265,000. Mr. Grogan valued the property at \$352,000. A later appraisal valued the property at \$212,273.

6. In his appraisal of the C3828 Maryel Drive property, Mr. Grogan's report contained numerous errors:

- a) Mr. Grogan identified the location as suburban when it is rural.
- b) Mr. Grogan stated that the property has a septic system when it is a holding tank.
- c) Mr. Grogan stated that the home is on a poured concrete basement when it was in part a remodeled manufactured home on a wood frame basement.
- d) Mr. Grogan reported that the home has casement windows when they are both casement and slide-by windows.
- e) Mr. Grogan reported that the street is paved when it is gravel.
- f) Mr. Grogan reported that 20% of the basement was finished when it was not finished, and only contained stud walls.
- g) Mr. Grogan did not include the income approach, and he did not explain its omission.

Case 07 APP 112

7. On December 4, 2005, Mr. Grogan performed an appraisal of property at 1513 Cleveland Avenue in Wausau, Wisconsin.

8. An appraisal performed in 2004 valued the property at \$70,000. Mr. Grogan valued the property at \$117,000. The Request for Appraisal sent to Mr. Grogan by the client contained an "estimated value and loan amount" of \$117,000. In 2006, the City of Wausau assessed the property at \$58,200.

Case 07 APP 119

9. On October 18, 2005, Mr. Grogan performed an appraisal of property at 518 Center Street in Waupaca, Wisconsin.

10. Mr. Grogan's estimate of value was \$119,000. The Request for Appraisal sent to Mr. Grogan by the client suggested a value of \$117,000. A later appraisal valued the property at \$87,000.

11. On October 29, 2006, Mr. Grogan performed an appraisal of property at 2207 Deerfield Drive in West Bend, Wisconsin.

12. An appraisal performed on March 7, 2005 valued the property at \$169,000. The owner stated that he was led to refinance his home by a lender who contacted him and who told him he knew an appraiser who could always get the value out of a home. The Request for Appraisal sent to Mr. Grogan by the client suggested a value of \$220,000. Mr. Grogan's estimate of value was \$226,068. The owner stated that he made no improvements to the home between 3-7-05 and 10-29-06.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Appraisers Board has jurisdiction to act in this matter pursuant to section 458.26 (3) of the Wisconsin Statutes.

2. In his appraisal of the C3828 Maryel Drive property, Mr. Grogan violated the Uniform Standards of Professional Appraisal Practice (USPAP) by failing to correctly identify the location of the property; misrepresenting the structural features and amenities of the property, and failing to include an explanation for omissions or discrepancies in his appraisal report.

3. In his appraisal of the 1513 Cleveland Avenue property, Mr. Grogan violated the USPAP by providing an appraisal that met a predetermined value without adequate research and analysis.

4. In his appraisal of the 518 Center Street property, Mr. Grogan violated the USPAP by providing an appraisal that met a predetermined value without adequate research and analysis.

5. In his appraisal of the 2207 Deerfield Drive property, Mr. Grogan violated the USPAP by providing an appraisal that met a predetermined value without adequate research and analysis.

6. By failing to comply with USPAP in the appraisals and the appraisal reports in the Findings of Fact described in paragraphs 4 through 12 herein, Don J. Grogan, Jr. violated sections RL 86.01 (1) and (2) of the Wisconsin Administrative Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of **DAN J. GROGAN, JR.** to practice as a Real Estate Appraiser and a Certified Residential Appraiser in the state of Wisconsin, (#9-823) shall be, and hereby is **REVOKED** for violating Wis. Admin. Code § RL 86.01 (1) and (2) by failing to comply with the USPAP in the appraisals and appraisal reports described in the Findings of Fact and Conclusions of Law herein.

IT IS FURTHER ORDERED that full assessable costs of this proceeding shall be imposed against the Respondent, pursuant to Wis. Stat., § 440.22.

OPINION

The record shows that the Respondent did not file an Answer to the Complaint in this proceeding. The record shows that numerous attempts were made to contact the Respondent at his last known business addresses on file with the Department in the manner required by law. The Respondent failed to respond to those contacts. If a Respondent does not submit an Answer as required by RL 2.09 or fails to appear at the hearing at the time fixed therefore, the Respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the Complaint and other evidence.^[1]

The purpose of an administrative hearing in a Class 2 disciplinary proceeding is to provide a fair and efficient forum for

the adjudication of allegations of unprofessional conduct against licensees who hold credentials issued by the Department or the regulatory boards. It is the responsibility of a credential holder to maintain his or her current address with the Department so that they may be informed and participate in any proceedings affecting their credentials. By failing to do so, the Respondent thwarted the legal process and forfeited his right to participate in these proceedings and to address the allegations and present exculpatory or mitigating evidence. As a result, the disciplinary authority is allowed to make findings and enter an order on the basis of the allegations in the Complaint which are deemed admitted as true.

Upon expiration of the applicable 20 day deadline for the filing of an Answer, the Complainant filed a Notice of Motion and Motion for Default. The Complainant's Motions were supported by the testimony of a Department witness who served the Complaint and Notice of Hearing documents to Respondent's last known address via first class mail and certified return receipt mail. The witness testified that the address used for service of the documents was the same as the one at which the Respondent twice signed for certified mail and had been served with a subpoena during the course of the Department's investigation of the four cases. [2]

By law, the allegations in the Complaint deemed true as a result of the Respondent's default involve violations of the standards of professional conduct for real estate appraisers. In plain terms, the effect of Mr. Grogan's was to "hit predetermined values" by erroneously and significantly inflate the value of the various properties; conduct which was detrimental to everyone concerned, the homeowner, the buyer, the lender and the investors. An appraisal which hits predetermined values is, in effect, a form of loan fraud.

III. Appropriate Discipline

The Division of Enforcement requested that the Real Estate Appraiser Board revoke the appraiser license and certification of the Respondent Dan J. Grogan because of the type and number of USPAP violations established by the evidence presented at hearing. The Division also argued that the Respondent's lack of participation in the disciplinary process denigrate the professional demeanor and candor commensurate with the practice of the real estate appraisal profession and demonstrates a lack of interest in rehabilitation. Finally, the Division argued that the Respondent's failure to cooperate with these proceedings makes the imposition of full costs assessed reasonable and appropriate.

The Division's arguments as to the recommended discipline are appropriate. Since the Respondent did not participate in the proceedings it is not possible for this Administrative Law Judge to gauge the rehabilitative effect of a disciplinary recommendation other than revocation. The objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). [3] However, a Respondent cannot be rehabilitated if he does not respond to the allegations against him or cooperate in the Department's investigation. By failing to offer any explanation for his conduct, the only reasonable inference is that the Respondent does not dispute that he rendered predetermined values in his appraisal reports which violates the USPAP ethics rule. The USPAP requires an appraiser to develop fair market value based on information and data gathered, not based upon a predetermined value.

The public needs to be protected from appraisers like Mr. Grogan whose unprofessional conduct undermines the integrity of the appraisal process and threatens the real estate and financial markets. By revoking the Respondent's real estate appraiser license and certification, the Real Estate Appraiser Board will prohibit him from engaging in any real estate appraisal practice whatsoever and thereby protect the public. Additionally, the revocation of Mr. Grogan's license and certification will serve to deter others from engaging in similar conduct. Accordingly, the Division's request for revocation of the credentials is appropriate.

IV. Assessment of Costs

In addition to the discipline to be imposed against the Respondent's credentials, the regulatory authority may assess all or a part of the costs of the proceedings against him. Wis. Stat. § 440.22(2), provides 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.

This Administrative Law Judge recommends that the Real Estate Appraiser Board impose the full costs of the proceeding against the Respondent. This recommendation is based upon the analysis used by the Wisconsin Supreme Court in disciplinary proceedings against disciplined attorneys, *see* Supreme Court Rule 22.24 (1m). The Court's rule lists several factors to be considered, 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.

All charges alleged in the Complaint were proved to the required degree of certainty, a preponderance of the evidence. These violations are serious in nature. The discipline imposed is severe; commensurate with the level necessary in order to protect the public. If there was an explanation for the Respondent's conduct, it was not shown, as he failed to cooperate with the disciplinary process, failed to respond to the hearing notices mailed to his last known address of record and failed to provide his new address to the Department as required by law. Finally, it is relevant that the unprofessional conduct at issue in this proceeding is contrary to the fundamental principles of the real estate appraisal profession; accuracy and honesty in the reporting and valuation of real property. For these reasons, the imposition of full costs is appropriate given the various factors listed above to be considered in determining the assessment of costs.

Accordingly, for all the reasons expressed in this opinion, and based upon the motions and supporting information submitted, the Administrative Law Judge recommends that the Real Estate Appraiser Board adopt as the final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Respectfully submitted this 29th day of April, 2009.

Colleen M. Baird
Administrative Law Judge

[1] The disciplinary authority may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before the disciplinary authority enters an order or within a reasonable time thereafter.

[2] Mr. Grogan signed and accepted certified mail sent to him at the W11030 Riverside Road address on January 14, 2008, and was served with a subpoena by the Shawano County Deputy on February 19, 2008 at the same address. Hrg. TR. at pg. 41, 43; Hrg. Exhibit No. 24

[3] Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*. 41 Wis. 2d 481, 485 (1969).