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IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
ORDER : FINAL DECISION AND
HARRY M. DEVITT, : LS0208282APP

□ □

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED pursuant to jurisdiction and authority granted to the Board that the Stipulation Agreement annexed hereto, filed by Complainant's Attorney, shall be and hereby is incorporated, made and ordered the Final Decision and Order of the state of Wisconsin, Real Estate Appraisers Board.

Let a copy of this Order be served on Respondent by certified mail.

Dated this 28th day of August, 2002

LaMarr Franklin

STATE OF WISCONSIN

BEFORE THE REAL ESTATE APPRAISERS BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
HARRY M. DEVITT,	:	94 APP 003

RESPONDENT.
98 APP 019

Respondent Harry M. Devitt (Devitt), and Complainant's Attorney, Henry E. Sanders, Division of Enforcement, having reached agreement for disposition of the captioned matters, stipulate and agree as follows:

- Respondent Devitt of N7100 Brown Road, Whitewater, WI 53190, was at all time material to the complaints, licensed/certified as a certified residential appraiser (#78 9), and had been so

licensed/certified under the provisions of ch. 458, Wis. Stats., since September 10, 1991.

- a. Respondent's appraiser's licenses/certificates are presently expired, but because he has a right of renewal, the department still retains jurisdiction over him.

2. This Stipulation shall be submitted to the Real Estate Appraisers Board (Board) for approval and disposition of the matters. If the terms of the Stipulation are not acceptable to the Board, then the parties shall not be bound by any of the provisions of the Stipulation.

- a. This Stipulation is dispositive of informal complaint #s 94 APP 003, and 98 APP 019.

3. Respondent has been advised of his right to public hearings on each and every allegation of the complaints, but hereby freely and voluntarily waive his right to hearings in these matters on the condition that all provisions of this Stipulation be acceptable to and approved by the Board.

- a. Respondent further agrees to waive any appeals of the Board's Final Decision and Order adopting the Stipulation Agreement.

94 APP 003

4. The Department received the complaint from a consumer, who complained that they were attempting to refinance their residence for the purpose of refinancing the purchase of other real estate, and that they had hired Respondent to perform the required residential appraisal of the residence located in Fort Atkinson, Wisconsin.

5. Respondent completed his appraisal of the subject property with an estimate of market value of \$80,000. Upon receipt of the subject appraisal, Complainant's rejected Respondent's estimate of market value as being too low, and not reflective of the actual value of the subject property.

6. Complainant's complained in pertinent part of several inaccuracies in the subject appraisal; Topography description was wrong; acreage size description was not typical for area; wrong age of home and addition; basement sq. footage and description wrong; insulation and basement identification wrong; comparables locations and distances wrong, and inappropriate comparables selection; reproduction costs did not seem to include a well, septic or two sheds, insufficient credit for driveway and landscaping, and that generally, they did not understand Respondent's adjustments.

7. Complainants complained and indicated further that they went and visually viewed the properties Respondent listed as comparables, using the information he provided, and determined that the comparable locations shown on Respondent's map were wrong, and were different than the actual locations found; and that the pictures of the comparable houses used by Respondent, are not the actual houses located at those addresses.

a. The comparables "proximity of the subject" were significantly wrong, were at a greater distance from the subject property, and were all located in Edgerton, Wisconsin.

8. Another appraisal of Complainant's subject residence by a different appraiser about 1-1/2 months after Respondent's appraisal, had an estimate of market value of \$120,000.

9. Subsequently, the investigator assigned to the complaint personally investigated the comparables used by Respondent, took photographs of the subject comparables, and determined succinctly/and in pertinent part that; the comparable addresses used by Respondent were not the houses that were actually located at the addresses; and the comparables used by Respondent were actually located at a greater distance from the subject than Respondent indicated in his subject appraisal report.

10. Subsequent contact was made with Cliff Swann, assessor, Fulton Township, who personally viewed the subject comparables listed by Respondent, and reviewed other relevant documentation, who indicated in pertinent part that:

...the sale price for comparable #1 is correct, but the picture and description is not the home actually located there. It has 884 sq. ft. of gross living area, not 1200 sq. ft. The picture shows a detached garage ... but the house actually located there does not.

Re #2 comparable ... the picture isn't of the house located at that address. The house in the picture has a detached garage with a truck beside it. The house actually located there ... has a detached garage, but it has a tree hedge row beside it and there is no room for a truck ...

Re #3 comparable ... the sale price is correct, but the picture and description isn't the house ... in computing the sq. footage from figures given me by the real estate agent who listed the property, the house has gross living area of 900 sq. ft., not 1,3050 sq. ft.

All "proximity to subject" distances are not correct. With straight line distance, the nearest is 5.5 miles. By road is 15 miles."

98 APP 019

11. This complaint was referred to the Department from Wisconsin Department of Financial Institutions (DFI), which had been referred by the City of Milwaukee, City Attorney's office, involving the City of Milwaukee v. Jeffrey Haehle, et. al. and "Property Flippings," case # 98 CV 002268; and the criminal complaint in case # 98 M 431, the United States v. Saliesh Akkaraju, filed in the United States District Court, Eastern District of Wisconsin.

12. The referral indicated that the subject real estate and loan transactions involved inflated appraisals performed by Respondent Devitt, along with other appraisers.

13. Pursuant to investigations into the matters, the Department was informed by Respondent that, he had sold his appraisal business to his son, he was retired (has not renewed since 12/31/01), and did not have any intention of ever renewing his appraiser's licenses/certificates again.

14. Accordingly, this stipulated resolution(s) of the captioned matters was reached.

15. Regarding complaint # 94 APP 003 supra, the case advisor assigned to the subject complaint, who reviewed the subject complaint and related documentation for compliance with USPAP, Wisconsin Statute and Administrative Code, determined and concluded that:

"There appears to be several areas of concerns and violations.

The actual age of the subject is 26 years with a 7 year old family room addition. The appraisal states the subject is 30 years old and does not show it is estimated. There is a well, septic and shed on site, but no consideration is given in the cost approach. The final reconciliation states that the income approach was given least weight. The report does not show any Income approach.

The report shows there is a full basement under the first floor, whereas there is no basement under the family room addition. The floor plan shows the bathroom in the wrong place.

The comparables are marked wrong on the map. The addresses given on the appraisal report in conjunction with the photos do not match the actual properties located at those addresses upon personal inspection."

16. Accordingly, Respondent is deemed to have violated, not inclusively, secs. 458.26(3)(b) (c), Wis. Stats., (b) engaged in unprofessional or unethical conduct ..., (c) engaged in conduct while practicing as an appraiser which evidences a lack of knowledge or ability to apply professional principles or skills; violated secs. RL 86.01 (1) (2), (5), Wis. Adm. Code, (1) & (2), all appraisals shall comply with USPAP, (5) ... appraisers shall not knowingly omit, understate, misrepresent or conceal material facts in their appraisals;

Violated USPAP's Ethic Provision: Conduct, Management (Advertising for or soliciting appraisal assignments in a manner which is false, misleading or exaggerated is unethical); Violated USPAP Standard Rules 1-4(b), collect, verify, analyze, and reconcile (Comment: This rule covers the three approaches to value. See Standards Rule 2-2(j) for corresponding reporting requirement); violated Standards Rule 2-1(a). 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 (no departure), all not inclusive.

17. Respondent neither admit or deny the allegations, but in resolution of the captioned matters, hereby consents, accepts and agrees to voluntarily surrender all licenses/certificates previously issued to him to engage in the practice of real estate appraising in the state of Wisconsin, or his right to renew same, and agrees to never apply for real estate appraiser's licenses/certifications ever again in the State of Wisconsin.

18. Respondent agrees that this Stipulation Agreement may be incorporated into the Board’s Final Decision and Order adopting the Stipulation Agreement.

19. Respondent further agrees that Complainant’s Attorney Sanders and the case advisor assigned to the complaints, may appear at any closed deliberative meeting of the Board with respect to the Stipulation, but those appearances shall be limited solely to clarification, justification, and to statements in support of the Stipulation and for no other purpose.

Harry M. Devitt	8-23-02
Respondent	Date

Henry E. Sanders	8-26-02
Complainant’s Attorney	Date