

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN

BEFORE THE REAL ESTATE APPRAISERS BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
HARRY N. DEVITT,	:	LS0208283APP
RESPONDENT.	:	

The parties to this action for the purpose of Wis. Stats. 227.3 are:

Harry N. Devitt
129 West Center Street
Whitewater, WI 53190

Bureau of Business & Design Professions
Real Estate Appraisers Board
P.O. Box 8935
Madison, WI 53708 8935

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

The State of Wisconsin Real Estate Appraisers Board, having considered the stipulation agreement annexed hereto of the parties, in resolution of the captioned matters makes the following:

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
Board Chairperson, or Designee
Real Estate Appraisers Board

STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN THE MATTER OF THE DISCIPLINARY	:		
PROCEEDINGS AGAINST	:		
	:		STIPULATION
HARRY N. DEVITT,	:		
RESPONDENT.	:		

(94 APP 048 & 98 APP 003)

Respondent Harry N. 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:

1. Respondent Devitt of 129 West Center Street, Whitewater, WI 53190, is and was at all time material to the complaints, licensed/certified as a Certified Residential Appraiser (#676 9), and has been so licensed under the provisions of Chapter 458, Wis. Stats., since June 10, 1993.

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. The stipulation is dispositive of informal complaints #94 APP 048 and 98 APP 003.

3. Respondent has been advised of his right to public hearings on each and every allegation of the complaints, but hereby freely and voluntarily waives 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 appeal(s) of the Board's Final Decision and Order Adopting the Stipulation Agreement.

94 APP 048

4. The Department received the complaint against Respondent from consumers who complained that Respondent's appraisal caused them to lose out on a refinance application.

5. Pursuant to an investigation into the matters, Respondent was requested to provide a roster of appraisals performed by him from the time of his licensure/certification, up to the point of the subject complaint, for a random sample selection to review for conformity with USPAP.

a. The basis of the subject complaint was subsequently found to be without merit.

6. Respondent provided a roster of his appraisals as requested, and was requested to provide complete copies of specified appraisals for specific years.

a. One of the subject appraisals listed on Respondent's roster, was an appraisal claimed by his father as appraisal experience, and was also the subject of a complaint against Respondent's father (94 APP 003).

7. Respondent responded verbatim to the Department request, the following:

"You have requested five of the appraisals in my 1993 log, and three in my 1994 log.

Please note that the appraisals in my 1993 log was charted and kept for payment purposes, as I was paid for those appraisals that I participated in as a learning situation. In 1993 I went on the road with the senior appraiser, my father, Harry M. Devitt. With my father's permission, I have included here those appraisals you requested although they are my dad's. You would not have however 3199 in this package as you already have Mr. . . . appraisal in a request package you did of my dad last year.

In the package I have enclosed the three of 1994 that are my appraisals . . ."

8. Thusly, it was determined that Respondent had claimed appraisal experience for work actually performed by others, and was also involved in complaint 94 APP 003, involving his father.

98 APP 003

9. The complaint was filed by an appraiser against Respondent Devitt regarding a 1999 appraisal, who complained and alleged in pertinent part that:

"Enclosed, please find a copy of an appraisal brought to my attention. . . . I have reviewed the report and

discovered numerous errors. Enclosed, please find MLS sheets of the comparable properties and assessors data. Error I noted include:

Assessor parcel number is incorrect.

Census tract number is incorrect.

Subject lot dimensions are not reported.

Flood plain data is incorrect.

Comparable sales grid errors include:

Comp #1

Lot size indicated larger than actual.

Actual age incorrect.

Actual building square footage is 1882, not 1690.

Central air is not disclosed.

Comparable has no fireplace.

Comp #2

Lot size indicated is smaller than actual.

Actual building square footage is 2576, not 1709.

Comparable has no fireplace.

Comp #3

Comp is mostly brick, not wood as reported.

Actual building square footage is 2032, not 1400.

Comp has a 2 car garage, not 5 car.

Furthermore, appraiser failed to report that comparable #1 sold for \$7,500.00 over the asking price.

Based upon my observation, it appears that the appraiser has deliberately manipulated data to deceive the lender/customer into a higher estimate of value than would probably be realistically possible in an open market . . ."

10. Respondent was contacted regarding the allegations, and the Department received his responses.

11. The case advisor assigned to the complaint, reviewed all of the investigative documentation and subject appraisal report, and concluded succinctly, and in pertinent part that:

"Several violations have occurred. Standards Rule 1 1(c). In developing a real property appraisal, an appraiser must: (c) not render appraisal services in a careless or negligent manner, such as a series of errors that, considered individually, may not significantly affect the results of an appraisal, but which, when considered in the aggregate, would be misleading (Departure is not permitted). The irregular lot size is not mentioned and the wrong flood map number was used.

Standards Rule 1 4(b)(iii). In developing a real property appraisal, an appraiser must observe the following specific appraisal guidelines, when applicable:

(iii) Such comparable sales data, adequately identified and described, as are available to indicate a value conclusion.

(All comparable sales building sizes were understated which affects the final estimate of value.)

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 (Departure is not permitted).

Respondent did not disclose that Comp #1 sales price is over the list price.

12. In addition to the above enumerated violations, Respondent is also deemed to have violated secs. 458.26(3)(a)(c)(e), Wis. Stats. (a) Made a material misstatement in an application for the certificate of renewal of the certificate, or in any other information furnished to the Board or Department; (c) Engaged in conduct while practicing as an appraiser which evidences a lack of knowledge or ability to apply professional principles or skills, and (e) Advertised in a manner that is false, deceptive or misleading; violated secs. RL 86.01(1) (2), (6), Wis. Adm. Code. (1) (2), all appraisals shall comply with USPAP, and (6) . . . appraisers shall not offer to perform, nor perform services which he/she is not competent to perform through education or experience, all not inclusive.

13. Based upon the above and in settlement of these matters, Respondent Devitt hereby consents, accepts and agrees to take and successfully complete 40 hours of USPAP training, to be completed within six months of the effective date of the Board's order adopting the stipulation agreement, which shall not count or be credited towards Respondent's required continuing education; and to pay the amount of \$1,000.00 costs.

a. The effective date of the Board's order is the date signed by the Board's chairperson or his designee.

14. Proof of successful completion of the ordered education shall be submitted to the Department's monitor, hereinafter. If Respondent should fail to complete the education as ordered, or fails to get a written extension from the Board to complete same, then he shall be considered to be in violation of the Board's order, and may be subjected to further discipline.

15. The \$1,000.00 assessment of cost shall be payable by cashier's check or money order, made payable to the Department of Regulation and Licensing, and paid within 30 days of the effective date of the Board's order; and shall be submitted to (put case #'s on check or money order and "costs"):

Marlene Meyer
Monitor
Division of Enforcement
P.O. Box 8935
Madison, WI 53708

16. Respondent agrees that this stipulation agreement may be incorporated into the Board's Final Decision and Order Adopting the Stipulation Agreement.

17. Respondent further agrees that Complainant attorney Sanders may appear at any closed deliberative meeting of the Board with respect to the stipulation, but any such appearance will be limited solely to clarification, justification, and to statements in support of the stipulation and for no other purpose.

Harry N. Devitt

8-28-02

Respondent

Date

Henry E. Sanders

8-28-02

Complainant's Attorney

Date