

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
DAVID H. LEWIS,	:	LS0210302APP
RESPONDENT.	:	

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

David H. Lewis
1633 N. 56th St.
Milwaukee, WI 53208

Bureau of Business and Design Professions
Real Estate Appraisers Board
P.O Box 8935
Madison, WI 5308 8935

Department of Regulation and 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 matter, 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 30th day of October, 2002.

La Marr Franklin

Board Chair

STATE OF WISCONSIN

BEFORE THE REAL ESTATE APPRAISERS BOARD

IN THE MATTER OF THE DISCIPLINARY :

PROCEEDINGS AGAINST :

: STIPULATION

DAVID H. LEWIS, :

00 APP 013

RESPONDENT. :

Respondent David H. Lewis (Lewis), and Complaint's Attorney, Henry E. Sanders, Division of Enforcement, having reached agreement for disposition of the captioned matter, stipulate and agree as follows:

1. Respondent Lewis of 1633 N. 56th Street, Milwaukee, WI 53208, is and was at all time material to the complaint, licensed and issued a certificate of licensure as a licensed appraiser, and had been so licensed/certified under the provisions of ch. 458, Wis. Stats., since May 7, 1998.

2. This Stipulation shall be submitted to the Real Estate Appraisers Board (Board) for approval and disposition of the matter. 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 Investigative Complaint #00 APP 013.

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

4. The Department received a complaint against Respondent from another appraiser, regarding an appraisal that Respondent had performed on March 9, 2000.

5. The complaint complained and alleged that:

"The attached appraisal report is felt to be misleading in the following manner:

The zoning is listed as residential. This is incorrect. The actual zoning, per the planning department, is R1 residential 1. The closing date for sale #1 was 8/25/99, per the MLS service. The appraiser stated public records were used as the data source. I called the township assessor's for each of the comparables. The information they provided varied greatly from the appraiser's information. They said they recently had not received any calls on the comparables used. Therefore, it is my assumption that the appraiser made up the information provided. Due to the made up information provided by the appraiser, my assumption is everything in the report may be fraudulent.

	<u>Actual</u>	<u>Shown by Appraiser</u>
<u>Sale #1:</u>		
Sales Date:	8/25/99 per MLS	07/99
Site Size:	2.49 Acres per Assessor	2 acres
Square Footage:	1.536 per Assessor	1.200
Finished Basement:	1.029 + .75 Bath per Assessor	2 rooms + bath
Exposed Basement:	Yes per MLS	Did not comment
<u>Sale #2</u>		
Site Size:	1.516 Acres - 66.037 sf per Assessor	35,000 sq. ft.
Square Footage:	1.268	900
<u>Sale #3</u>		
Site Size:	2.205 Acres per Township Assessor	3 Acres
Square Footage:	1.898 per Township Assessor	1.350
Baths:	2.5 per Township Assessor	3
Enclosed Porch:	14' x 16' per MLS	None
Finished Basement:	+1/-1, 100 per Listing Agent	2 rooms + ½ bath
<u>Sale #4</u>		
Site Size:	9.55 Acres per Assessor	4 Acres
Square Footage:	1.847 per Township Assessor	1.262
Finished Basement:	400 per Township Assessor	2 rooms + bath
<u>Sale #5</u>		
Square Footage:	1.524 per Township Assessor	1.100
Finished Basement:	736 per MLS	2 rooms + bath
Baths:	1.75	2

There are numerous errors and omissions of data throughout the report that impact the estimated value of the subject."

6. Respondent was confronted with the complaint and allegations and was allowed to respond.

7. Ultimately, the case advisor assigned to the complaint, who reviewed all of the investigative materials and subject appraisal, for compliance with USPAP, opined and concluded in pertinent part that:

"I have reviewed the case summary and related documentation regarding the complaint ... I have

thoroughly reviewed his appraisal ...

Listing the subject's zoning as residential rather than R 12 (Resid. One family) does not appear to be significant. The incorrect sales data for Comp #1 was off by only one month and did not affect the outcome. The finished basement description for the Comps were not inaccurate. Although the appraiser did not list the square footage finished, he did list the # of rooms finished. The exposed basement for Comp #1 was not omitted. An adjustment of \$3,000 was made. The # of baths listed for the Comps was not inaccurate, although it was somewhat misleading. The appraiser only listed the above grade baths in the bathroom count. The basement baths were listed in the basement section. The enclosed porch for Comp #3 was not listed. It appears that it may have been inaccurately listed as a deck or included in the building square footage. The above mentioned items were not significant enough to affect the outcome.

The errors in the site sizes and the building square footage are of great concern and did significantly affect the outcome. The Complainant stated that he used the MLS listings and called the local assessors for the actual comparable sales data. The Respondent stated that he also used the MLS listings and called the local assessors offices or the county offices for the same data. No public documents from the assessors offices or the county was provided by either party to confirm this data. Therefore, I also called these offices ... in order to confirm this data.

Per the Rock County property lister office, the site size for Comp #2 is 1.516 acres not 35,000 sq. ft. and for Comp #3 it is 2.205 acres not 3 acres. The site sizes for Comps #1 & #4 are close to what the appraiser listed. Per the township assessors, the above grade square footage (gross living area) for Comp #1 is 1.536 not 1.200; Comp #2 is 1278 not 900; and Comp #3 is 1898 not 1,350, and Comp #5 is 1.524 not 1,100. The assessor's numbers are very similar to those listed on the MLS sheets. Comp #4's square footage is close to what the appraiser listed.

It appears per his notes, that the appraiser calculated the above grade square footage for Comps #1, #2, and #5 by adding up the square footage of each room on the 1st floor listed on the MLS sheets. By doing this he omitted the square footage of entryways, foyers, hallways, bathrooms, 1st floor laundry rooms, stairwells, etc., thereby under reporting the square footage of these Comps by 28-40%. The above grade square footage for Comp #4 was calculated using the total finished square footage (normally based upon exterior dimensions) listed on the MLS sheet less the square footage of the two rooms in the basement that were finished. The subject's square footage was calculated using its exterior dimensions of 23x45 per the appraiser's sketch. Thus the entryways, foyers, hallways, bathroom, 1st floor laundry rooms, stairwells, etc. were included in the above grade square footage for the subject and Comp #4, but not for the four other Comps. This non uniform method created very inaccurate adjustments to Comps. Applying the correct site sizes and building square footages for the Comps lowers the adjusted sales price of the Comps considerably and reduces the estimated value for the subject by as much as \$10,000.

I do believe that the inaccurate site sizes and building square footages for the comparables resulted in an overstatement of value for the subject and that these errors were misleading and violated USPAP. The USPAP violations are as follows:

1. Standard 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
- (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 result of an appraisal, in the aggregate affect the credibility of those results"

The non uniform method used to calculate the above grade square footage (gross living area) for the comparable sales did not produce a credible appraisal. The series of errors in site size and building square footages affected the results of appraisal.

2. Standard 2-1 (a) "Each written or oral real property appraisal report must clearly and accurately set forth the appraisal in a manner that will not be misleading", and

The Ethics Rule on Conduct: "An appraiser must not communicate assignment results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report or knowingly

permit an employee or other person to communicate a misleading or fraudulent report.”

The appraiser reported the comparable sales’ building square footages in a very misleading manner resulting in a misleading report. I don’t believe the appraiser intended to mislead the reader. It resulted from his improper and non uniform method of calculating the square footages.”

8. Accordingly, Respondent is deemed to have violated the above enumerated violations, and additionally, is deemed to have violated sec. 458.26(3)(c), Wis. Stats., engaged in conduct while practicing as an appraiser which evidences a lack of knowledge or ability to apply professional principles or skills; and violated secs. RL 86.01(1) (2),(6), Wis. Adm. Code, (1) (2) All appraisers shall comply with USPAP, and with the Standards of Practice established by Ch. 458, Stats., and Chs. RL 80 86, and (6). A certified or licensed appraiser shall not offer to perform, nor performs, services which he/she is not competent to perform through education or experience.

9. Based upon the above and in settlement of these matters, Respondent Lewis hereby consents, accepts and agrees to take and successfully complete a minimum of twenty (20) hours of education regarding the application of comparable sales, and fifteen (15) hours of USPAP’s Standards and Ethic courses, all Board approved education; and pay the amount of \$300.00 part assessment of costs.

- a. The ordered education shall not count or be credited towards Respondent’s required continuing education.

10. Respondent shall take and complete the ordered education within six (6) months of the effective date of the Boards Final Decision and Order, and if he should fail to take and complete the ordered education within the specified time, and or fails to get written permission from the Board for an extension to complete same, then he shall be deemed to be in violation of the Board’s Order, and may be subjected to further discipline.

- a. The effective date of the Board’s Order shall be the date of signing the Order by the Board’s chair or his designee.

11. The \$300.00 part assessment of costs shall be payable by cashier’s check or money order, at the time of executing this Stipulation, made payable to the Department of Regulation and Licensing, and submitted to the Department’s monitor:

Marlene Meyer

Monitor

Division of Enforcement

P.O. Box 8935

Madison, WI 53708 8935

12. Proof of successful completion of the ordered education shall also be submitted to the Department’s monitor, supra.

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

14. Respondent further agrees that Complainant’s Attorney Sanders, and the case advisor assigned to the complaint, 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.

David H. Lewis	10-29-02
Respondent	Date
Henry E. Sanders	10-29-02
Complainant’s Attorney	Date