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BEFORE THE REAL ESTATE APPRAISERS BOARD

PROCEEDINGS AGAINST:

FINAL DECISION AND ORDER

RESPONDENT

Eagle River, WI 54521-1028

Madison, WI 53708-8935

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 that 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 January, 2002.

Real Estate Appraisers Board

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST:

GARY M. KUEHLING,

STIPULATION

RESPONDENT

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

1. Respondent Kuehling of P.O. Box 1028, Eagle River, Wisconsin 54521, was at all time material to the complaint, granted a certificate of licensure and certificate of certification as a Certified General Appraiser, and had been so licensed/certified under the provisions of ch. 458, Wis. Stats., since November 28, 1992.

a. Respondent's appraisal's certification is presently expired. However, because he has a right of renewal, the Board still retains jurisdiction of him.

2. This Stipulation shall be submitted to the Real Estate Appraisers Board (Board) for approval and disposition(s) 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 provision of the Stipulation.

a. This Stipulation is dispositive of Investigative Complaint #s 99 APP 023 & 99 APP 031.

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 the Stipulation be acceptable to and approved by the Board.

a. Respondent further agrees to wave any appeal(s) of the Board's Final Decision and Order adopting the Stipulation Agreement.

4. By Final Decision and Order of the Real Estate Appraisers Board dated November 19, 1997, Exhibit "A" attached hereto, regarding Complaints #s 94 APP 002 & 94 APP 015, Respondent was previously disciplined by the Board.

5. Further, the Department received Complaint # 97 APP 037 against Respondent in 1997, from a consumer who complained that he had been appointed by a court as executor of his father's estate to settle the father's estate, that the consumer was ordered to obtain an appraisal of a vacant lot owned by the father.

The consumer hired Respondent to perform the subject appraisal, with Respondent agreeing to perform the appraisal immediately if the consumer would forward a cashier's check to him, which the consumer did.

Thereafter, more than three (3) months after Respondent had been hired and paid by the consumer, and after repeated telephone calls to Respondent – which were not returned – Respondent had not performed the subject appraisal report. The consumer ultimately received the subject appraisal report more than three (3) months after Respondent was hired to perform it.

Prior to the subject complaint being opened as Investigative Complaint # 97 APP 037 against Respondent, the subject complaint was reviewed by the Appraisers' Board Screening Panel, which mailed a "10-day letter" to Respondent requesting a detailed written response to the allegations of the complaint within 10 days of receipt of the letter, and copies of relevant documents.

Respondent never responded to the 10-day letter, and Complaint # 97 APP 037 was opened against Respondent, and the allegations were investigated.

The investigation concluded with conclusions by the Board that Respondent had violated various appraisal related statutes and or administrative rules, but chose to close the investigative complaint on the basis of "Prosecutorial Discretion," and the sending of "Letter of Concern" to Respondent, Exhibit "B" attached hereto, which provided in pertinent part:

"The Real Estate Appraisers Board is concerned that you may be taking on too much of a backlog if you cannot get your reports out to the client in a timely manner and by not allowing the client to seek another appraiser if your timeframes for completing the reports are unacceptable to the client."

6. Thereafter, the Department received a complaint against Respondent from a consumer, alleging that Respondent was hired on about July 5-6, 1999, by a lender to perform an appraisal of the consumer's resident pursuant to the consumer's refinance application. Respondent was informed that time was of the essence regarding completing the appraisal report.

7. Respondent went to the consumers residence on July 7, 1999, and inspected the subject property inside and outside. Respondent was contacted by the lender on July 8, 1999, regarding Respondent's appraisal's value conclusions.

8. Respondent orally informed the lender that the value of the subject residence had come in at about \$189,000.00. The lender informed Respondent that he needed the appraisal report immediately.

9. However and subsequently, notwithstanding several telephone calls to Respondent from the Consumer, his wife, and the lender, as of the date of the lender filing this subject complaint on August 25, 1999, Respondent never completed and or submitted an appraisal report to the consumer or the lender.

10. Ultimately, the lender and the consumer was required to have a different appraiser perform an appraisal of the subject property. Interest rates had increased which adversely affected the consumer's refinance application.

11. Again, the Real Estate Appraisers Screening Panel sent Respondent a 10-day letter dated September 15, 1999, regarding the allegations, and requested Respondent to provide a detailed response to the allegations in the complaint within 10-days of receipt of the letter and to provide copies of all relevant documents; while informing Respondent that if it did not receive his response, a decision would be based on the information in the complaint, regarding making a decision to open an investigation or not.

a. Respondent never responded to the letter and the subject complaint was opened for investigation.

12. Respondent was contacted by investigators assigned to the complaint via letters dated October 28, 1999, May 2, 2000, and August 18, 2000, which Respondent failed to respond to.

13. Ultimately, via a letter to Respondent dated August 28, 2000, which threatened to put him into an administrative-disciplinary hearing, Respondent responded erroneously, but failed to provide any relevant documentation.

a. Respondent responded in pertinent part that "since no appraisal work was performed in this case, I do not have a file or further notes or papers to submit."

14. Succinctly, an investigation into the allegations determined credibly that Complainant's allegations were true, that Respondent's responses were not credible: and several other documented instances of Respondent failing to complete appraisal assignments were documented.

99 APP 031

15. The Department also received this complaint against Respondent from a lender, F&M Bank, Woodruff, Wisconsin, in October 1999, which complained the Respondent was hired in June 1999, by Complainant to appraise a subject property, which was the subject of an Offer to Purchase, subject to a financing contingency by the prospective purchaser; that notwithstanding several telephone calls to Respondent from the prospective purchaser and lender, and that on September 5, 1999, Respondent promised to have the appraisal report into the lender's office by September 8, 1999, Respondent has never produced any-promised appraisal report.

16. The subject Offer to Purchase became null and void because the prospective purchaser was not able to remove the financing contingency because Complainant Bank could not commit to a loan without an appraisal.

17. Respondent was contacted regarding the allegations, and Respondent indicated succinctly that, he was hired directly by the borrower to perform the appraisal, who indicated to Respondent that the borrower would be responsible for Respondent's appraisal's fees; that when he arrived to perform the appraisal, he asked the borrower for his check, that the borrower indicated that he could not pay Respondent then, that if Respondent would do the appraisal then, he would pay Respondent later out of the loan proceeds. Respondent purportedly informed the borrower that, that was not acceptable to him and that he could not perform the appraisal on that basis.

a. The lender & prospective purchaser disputes the above assertions.

18. Accordingly, based upon the investigations and the above-enumerated facts, regarding Complaint # 99 APP 023 and Respondent's failure to complete appraisal assignments, Respondent is deemed to have variously violated secs. 458.26(3)(a)-(b),(e), Stats., (a) made a material misstatement ... in information furnished to the Board or Department, (b) Engaged in unprofessional or unethical conduct in violations of rules promulgated

under 458.24, and (e) Advertised in a manner that is false, deceptive or misleading; has, by giving an oral appraisal value without subsequently preparing a written appraisal report, or retaining a work file to support his oral appraisal value, violated Secs. RL 86.01(1)-(2), Wis. Adm. Code, (1) ... 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 USPAP, and (2) ... All appraisals ... shall conform to USPAP; violated USPAP's Ethics Provisions, Conduct; & Competency Provision (2), take all steps necessary or appropriate to complete the assignment competently, and record keeping of related "Work File," thusly, has violated USPAP's Standards Rule 2-4, thusly Standards Rule 2-1,2-2(b), all not inclusive.

19. Regarding Complaint # 99 APP 031, Respondent is deemed to have violated the same violations as are enumerated in paragraph #18 supra, with the exception of violations of oral reports and record keeping.

20. Accordingly, based upon the above and in settlement of these matters, Respondent Kuehling hereby consents, accepts and agrees to voluntarily surrender his certificate of licensure and certificate of certification as a certified general appraiser, and or his right to renew same.

21. Following receipt of the Board's order adopting the Stipulation Agreement, Respondent shall submit all Real Estate Appraisal licenses and or certificates previously issued to him to the attention of Department Monitor:

Marlene Meyer

Monitor

Division of Enforcement

P.O. Box 8935

Madison, WI 53708-8935

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

Gary M. Kuehling	2-8-02
Respondent	Date

Henry E. Sanders	2-11-02
Complainant's Attorney	Date