

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE REAL ESTATE APPRAISERS BOARD

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IN THE MATTER OF THE DISCIPLINARY :  
  
PROCEEDINGS AGAINST : FINAL DECISION  
:  
AND ORDER  
  
ALBERT H. GAY, : LS0305281APP  
RESPONDENT :

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**Division of Enforcement Case Nos. 95 APP 012 (95 APP 003, and 96 APP 015)**

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

Albert H. Gay  
c/o Attorney Robert J. Lightfoot, II  
Murphy Desmond S.C.  
P.O. Box 2038  
Madison, WI 53701-2038

Division of Business Licensure and Regulation  
Real Estate Appraisers Board  
P.O. Box 8935  
Madison, WI 53708-8935

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

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Real Estate Appraisers Board (Board). The Board has reviewed the Stipulation Agreement annexed to this Final Decision and Order, and considers it acceptable. Accordingly, the Board adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Respondent Albert H. Gay (Gay), of 290 Naples Drive, #2, Naples, FL 34110, is and was at all time material to the complaints, issued a Certificate of Licensure and Certificate of Certification as a Certified Residential Appraiser (#758 09), and has been so certified/licensed under the provisions of ch. 458, Wis. Stats., since November 3, 1993.

2. Complaint No.'s 96 APP 015 and 95 APP 003 were consolidated into this subject complaint #95 APP 012. All three (3) subject complaints involve the same substantive allegations and violations.

95 APP 003

3. This complaint was filed by James Lindow, then city assessor for the City of Clintonville, Wisconsin, regarding Respondent Gay's opinion of market value of Clintonville Commons Ltd. a 40 unit FmHA 515 apartment project, Clintonville, Wisconsin, in the amount of \$475,000.00, dated January 9, 1995.

4. Complainant Lindow raised issues regarding whether or not Respondent Gay's subject "narrative appraisal was in compliance with the guidelines of a Wisconsin Certified Real Estate Appraiser"; indicated that he did not consider the terms (used by Respondent) "assessed value" and "fair market value" synonymous but it appears on page 18 (of subject report) where it is referred to as assessed value, whereas page 1 indicates the estimate as fair market value. Additionally, Complainant wanted to know whether or not Respondent exceeded the scope of certification of a Certified Residential Appraiser, and complained that Respondent's subject appraisal report "should be numbered so as to allow for a referral process."

5. Complainant subsequently raised the issue regarding whether or not Respondent's subject appraisal Certification was in compliance with USPAP's standards rule 2 3, and indicated that Respondent failed to note whether Respondent made a personal inspection of the subject property.

6. Respondent's subject appraisal report "Certificate of Appraisal" indicated:

"To the best of my knowledge and belief that statements contained in the appraisal report are true and the information upon which the opinions expressed herein are based is correct. Subject to the limiting condition here in set forth.

This appraisal has been made in conformity with appropriate Wisconsin statutes, regulations, policies and procedures applicable to appraisal of right of way. That to the best of my knowledge no portion of the value assigned to this property consists of items which are non compensable under Wisconsin law."

7. Complainant also submitted in pertinent part, Respondent's "Certificate of Appraiser" regarding a 1997 appraisal report, which indicated in pertinent part that:

"I have no (or specified) present or prospective interests in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.

My compensation is not contingent upon the reporting of the predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of the stipulated result, or the occurrence of a subsequent event. Should the client request the appraiser to act as an agent at conference, a board of review, or in court proceedings, additional compensation shall be paid for such time as mutually agreeable by the client and the appraiser.

My analysis, opinions, and conclusions were developed, and this report has been prepared, in conformity with the uniform standards of professional appraiser practice, with Judicial Exception."

8. Respondent's signature page for the subject Clintonville appraisal indicated "Certified Appraiser. WI #758. Federal Registered in compliance with National Bank requirements 12 C.F.R.."

9. Respondent Gay responded to the complaint via a letter dated July 6, 1995, along with two (2) separate "Objection for Real Property Assessment" forms, Exhibits attached thereto, and indicated in pertinent part that:

"I am responding to a complaint . . . concerning an appraisal I prepared to give oral testimony at the board of review.

As stated on page 1, the purpose of the appraisal is limited to determining if the assessed value exceeds the market value of the property. To the best of my knowledge, no Certification is required to give this opinion.

While my real estate, business, and appraisal experience helped to determine of market value, my appearance was as a registered agent for the owner to object to the assessment.

Because Mr. . . . assessed value is considerably higher than my estimated value, it is my opinion that he is pursuing a personal grudge to maintain his value. The purpose of the board of review is to determine if there was assessor error, and not to discredit the tax payer or agent. This is a sad excuse for a professional assessor who is expected to maintain an objective fair approach to value property for assessment.

As a property tax consultant, my practice is limited to reviewing assessments. Since the certification process became effective, I have done no fee appraisals."

10. In a letter to then investigator, Michael Whalen, of the Division of Enforcement dated July 31, 1995, Respondent indicated in pertinent part that:

"As I stated in my letter of July 6, my practice is limited to evaluating assessments and appealing them if they do not conform to the assessment manual or the law. This requires knowledge of assessment practices, valuation techniques, and tax law, but does not require an owner or agent to be a lawyer or certified appraiser . . .

11. Complainant subsequently submitted to the Department, "Parts of a appraisal submitted . . . as public record at the June 25, 1997 Board of Review for the City of Clintonville", which included a letter to a client dated March 26, 1997, in which Respondent related:

"Dear Mr. Weinkauff

Pursuant to your request to review the assessment on this property, I have prepared an ad Valorem appraisal. The purpose of this report is limited to estimate fair market value of the subject property under the existing leased fee estate as of 1/1/97.

The assessment of real property appraisal in Wisconsin is governed by state statute, federal regulations and

accepted appraisal practices. Following these guidelines, I have estimated the market value of the existing encumbered leased fee estate as well as the market value of the unencumbered fee simple estate. Both market value are summarized in the conclusion to value in my report . . .

Market value of the leased fee estate \$443,200

Market value of the fee simply estate \$1,264,283

Assessed fair market value \$1,197,300

Therefore, an objection to assessment is unwarranted."

12. The "Parts of the Appraisal" indicated under Methodology:

"State law and federal regulations stipulate requirements in the valuation of subsidized housing. Therefore, this report complies with the Uniform Standards of Professional Appraisal Practice under the Jurisdiction Exception (emphasis added).

After careful consideration of all facts, my estimate of fair market value as of January 1, 1997 is:

Four Hundred Forty three Thousand Two Hundred Dollars (\$443,200)"

13. Respondent's "Certificate of Appraiser" for another 1997 appraisal, indicated in pertinent part that:

"My analyses, opinions, and conclusions were developed, and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice with Judicial Exception" (emphasis added).

#### 95 APP 012

14. This subject complaint was filed against Respondent Gay by Wayne Ballweg, assessor, City of Reedsburg, Reedsburg, Wisconsin, who provided a copy of a Board of Review minutes transcript, attached thereto, in which Respondent was an agent/witness, and appraiser on behalf a property owner, contesting an assessment of federal subsidized 515 housing.

15. The Complainant raised possible violations by Respondent of USPAP code of ethics provisions, the Management and Conduct sections; USPAP standards rule 2-3 regarding Certification requirements, and prohibition of contingent fees.

16. Respondent had performed a "real estate appraisal", of a 16 unit multi elderly FmHA 515 housing project currently assessed at \$410,000.00; with an estimated market value of \$182,000.00, as of January 1, 1995, dated May 11, 1995.

17. The subject appraisal report did not contain a certification per the requirements of USPAP standards rule 2-3, or standards rule 5-3, 6-8, 8-3, or 10-3 (Departure not permitted).

18. A subsequent Memorandum decision by the State of Wisconsin Circuit Court, Branch III, Sauk County, Wisconsin, case #93 CV 0282, the Honorable Judge, Virginia A. Wolfe presiding, dated February 27, 1995, held that "per earlier stipulation, the \$410,300.00 valuation shall apply to the years 1993 and 1994."

19. An investigation into the matters determined that Respondent Gay had performed similar appraisals with estimates of values exceeding \$250,000.00, without proper Certifications, and involved Respondent receiving contingent fees for his successfully contesting 515 federal subsidized assessments.

20. Respondent had performed a "real estate appraisal evaluation" of Preston Square apartments, Reedsburg, Wisconsin, a 20 unit multi family subsidized housing project, with an estimate of fair market value of \$336,000.00, as of January 1, 1994, and was dated April 14, 1994.

a. The subject project was currently assessed at market value of \$614,700.00.

21. Respondent also performed a "real estate appraisal" of Preston Square apartments, a 20 unit multi elderly FmHA 515 housing project, Reedsburg, Wisconsin, with an estimated market value as of January 1, 1995, with an estimated fair market value of \$196,000.00.

a. The current assessed value at that time was \$591,500.00.

22. Respondent filed an "Objection Form for Rural Property Assessment," regarding the subject Preston Square apartments, Reedsburg, Wisconsin, dated May 9, 1996, which form indicated that the total assessed value was \$591,500.00; with Respondent indicating that his "opinion of the fair market value of the property as of January 1, \_\_\_\_\_ was \$237,000.00,"

#### 96 APP 015

23. This subject complaint was filed against Respondent by Randy Summerfield, Mayor, City of Bloomer, Bloomer, Wisconsin, who was also the presiding officer of the City of Bloomer's Board of Review.

24. The Mayor complained and indicated in pertinent part that, "In the City of Bloomer there is an apartment complex called North Lakeview Apartments, owned by Bloomer Housing Limited, that debt services on the project is subsidized under the Farmers Home Administration (now Rural Development) Section 515 program, with a resulting reduction in rents to eligible tenants.

Most years since the completion of the building in 1990, Mr. Gay has objected to the assessment placed on the building by the assessor of the City of Bloomer. The matter has been hotly litigated, and most assessment years since 1991 are still in conflict.

. . . The Farmers Home Administration allows payment of a commission to persons who successfully obtain reductions of tax assessment on the FmHA 515 projects . . . the real estate taxes on those projects have no impact on tenant rentals and no impact on distribution of cash or tax reduction to the owners. Any deficits, including those remaining after payment of taxes, are made up through the FmHA subsidy.

At a recent appearance before the City of Bloomer Board of Review, Mr. Gay furnished a packet of information, a copy of which is enclosed. Mr. Gay was asked whether he was compensated for the appraisal or his appearance before the Board on a commission basis and he refused to answer the question.

I am writing to you asking you to investigate this matter and, if Mr. Gay has violated Ch. 458, and specifically sec. 458.20, of the Wisconsin Stats. or Ch. RL 86 of the Wis. Adm. Code, especially with respect to the ethics provisions concerning management and standard 4, the application of which as discussed in the third paragraph of the comment thereto.

Mr. Gay has made a distinction between his services as appraiser, in which he conducted the appraisal for Bloomer Housing Limited Partnership, and his services as owner's agent when he advocated acceptance of his appraisal as the correct measure of value of the property for the assessment purposes. The Board of Review cannot accept that distinction since Mr. Gay advocated and defended his appraisal to the Board, appearing to all the world as an appraiser.

If Mr. Gay's compensation for services involving making or advocating his appraisal was contingent upon the result of his advocacy, I believe his client and the Board of Review should have been so informed. Of course, I do not know if it is the measure of his compensation since he refused to answer questions about it. I merely feel that the fact that such compensation is apparently possible, that his conduct is not inconsistent with the expectations of contingent compensation and the fact that he refused to testify about the nature of his compensation raises sufficient questions to warrant an investigation" . . .

25. Respondent Gay performed an "estimate of market cash value on January 1, 1996. Is rounded: \$373,000.00," and signed the subject report on May 15, 1996, as a Licensed and Certified appraiser, WI #758.

- a. Respondent's appraiser report did not contain a Certification per USPAP Standards Rule 2-3, or any other Standards rule.

26. Respondent Gay neither admits nor denies the complainants' allegations, and neither admits nor denies he has violated or engaged in a pattern of violations of any provisions of Chapter 458 of the Wisconsin Statutes, Wisconsin Administrative Codes RL 81-86 or the Uniform Standards of Professional Appraisal Practice (USPAP). However, in the interest of resolving this matter short of hearing, pursuant to the Stipulation, Respondent will allow the Final Decision and Order to be entered.

#### CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Appraisers Board has jurisdiction to act in these matters pursuant to sec. 458.26, Wis. Stats.

2. The Wisconsin Real Estate Appraisers Board is authorized to enter into the attached Stipulation pursuant to sec. 227.44(5), Wis. Stats.

3. Respondent has variously violated, and/or engaged in a pattern of violations of secs. 458.16(1), Stats., Use of certificate number and title; 458.19(1) (2), Stats., Requirements for appraisal reports, and 458.20, Stats.

4. Respondent has variously violated, and/or engaged in a pattern of violations of sec. RL 81.04(2), Wis. Adm. Code.

5. Respondent has variously violated, and/or engaged in a pattern of violations of sec. 458.26(3) (b) (c), (e), (i), Stats.

6. Respondent has variously violated, and/or engaged in a pattern of violations of secs. RL 86.01(1) (3), (5) (6), Wis. Adm. Code—

7. Respondent has variously violated, and/or engaged in a pattern of violations of secs. "Conduct" and "Management" of the Ethic provisions of USPAP:

8. Respondent has variously violated, or engaged in a pattern of violations of USPAP Standards Rules sec. 2 3, or Standards Rules 5 3, 6 8, 8 3, or 10 3, Certification Requirements.

All enumerated violations are not inclusive. See generally, Exhibit "A," Advisory Opinion 21 (AO 21), attached hereto, issued by the Appraisal Standards Board.

#### ORDER

Now, Therefore, It Is Ordered That:

1. Respondent, Albert H. Gay, will voluntarily agree not to renew his Certificate of Licensure, and Certificate of Certification as a Certified Residential Appraiser, upon their expirations on December 31, 2003; Respondent shall not conduct any appraisals in Wisconsin as a Certified Appraiser effective immediately, and shall pay the amount of \$3,000.00, partial assessment of costs.

2. The \$3,000.00 partial assessment of costs shall be payable by cashiers check or money order made payable to the Department of Regulation and Licensing, and paid within thirty (30) days of the date of signing the Final Decision and Order adopting the Stipulation Agreement by the Boards chairperson or its designee (write case number 95 APP 012 and "costs" on cashiers check or money order).

3. The payment of costs shall be submitted to the Department monitor:

Department Monitor

Division of Enforcement

P.O. Box 8935

Madison, WI 53708-8935

a. The Department of Regulation and Licensing, pursuant to sec. 458.26(5) Stats., reserves the right to appeal the Boards Final Decision and Order.



By: La Marr Franklin

10-15-03

On behalf of the Board

Date