

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
	:	
CLARKE J. WINKLER	:	
	:	LS06030114APP
RESPONDENT.	:	

Division of Enforcement Case No. 05 APP 021

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

Clarke J. Winkler
218 North 76th Street
Milwaukee, WI 53213

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 these matters agree to the terms and conditions of the attached Stipulation as the final decision of the matter(s), 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 Clarke J. Winkler (“Respondent”), whose last known address of record with the Department of Regulation and Licensing (“Department”) is 218 North 76th Street, Milwaukee, Wisconsin 53213, holds a certificate of licensure as a certified residential appraiser (#9-157). He was first granted the license and certificate on October 31, 1991, pursuant to Wis. Stat. ch. 458. The license and certification will expire on December 31, 2005.
2. On or about May 21, 2004, Respondent conducted an appraisal of a property located at 4574 North 46th Street, Milwaukee, WI.
3. Due to the use of a form that does not meet the 2004 Uniform Standards of Professional Appraisal Practice (USPAP) Standards, and the failure of Respondent to supplement that form with additional information so that it would meet current USPAP Standards, Respondent violated USPAP in conducting the appraisal referred to in paragraph 2, above, including, but not limited to, the following:
 - (A) USPAP Standards Rule 1-2, due to a failure to state the intended use of the appraisal;
 - (B) USPAP Standards Rule 1-2(e)(ii), due to a failure to identify the real property interest valued;
 - (C) USPAP Standards Rule 1-2(g), due to a failure to indicate the potential effect on value caused by the location of the property in a flood plain, and the possibility of the presence of lead paint;
 - (D) USPAP Standards Rule 1-3(b), due to a failure to state the highest and best use for the property, either as vacant or as improved;
 - (E) USPAP Standards Rules 1-1 and 1-4(a), due to a failure to provide an analysis of the comparables, and due to the use of other appraised values as “comparables,” which is inappropriate;
 - (F) USPAP Standards Rule 1-4(b) and (c), due to failures to comment on the exclusion of the cost and income approaches to value;
 - (G) USPAP Standards Rule 1-5, due to a failure to address the subject listing and sale information; and

(H) USPAP Standards Rule 1-6, due to a failure to provide a reconciliation statement.

4. There is no evidence of intent to create a misleading report, and Respondent has not previously been disciplined by the Wisconsin Real Estate Appraisers Board.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Appraisers Board has jurisdiction to act in these matters pursuant to Wis. Stat. § 458.26.

2. The Wisconsin Real Estate Appraisers Board has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Respondent shall take and successfully complete the following as remedial education, which shall not count toward his continuing education requirements: (a) 2005 or 2006 USPAP Update Course, 15-Hour version, offered by the Appraisal Institute to include the testing component, if offered, to be completed within 180 days of the date of signing of this Order; and (b) Basic Appraisal Principles, offered by the Appraisal Institute, to include the testing component, to be completed within 180 days of the date of signing of this Order.

IT IS FURTHER ORDERED that:

2. Respondent shall pay costs of this proceeding in the amount of nine hundred and fifty (\$950.00) dollars within ninety (90) days of the signing of this Order.

3. Pending the completion of the remedial education as set forth in paragraph 1, above, Respondent's certification licensure shall be LIMITED, and he shall not be permitted to supervise, cosign, or otherwise sign any appraisal report containing the work of another person.

4. All payments and information required by this order to be submitted to the Department Monitor shall be mailed or delivered to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935, Madison, WI 53708-8935
Telephone (608) 267-3817, Fax (608) 266-2264

4. Case number 05 APP 021 is hereby closed.

5. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license and certification. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event that the Respondent fails to timely submit any payment of the partial cost as set forth above, or fails to comply with the ordered continuing education the Respondent's license and certification (9-157) SHALL BE SUSPENDED, without further notice or hearing until Respondent has complied with the terms of this Order.

6. This Order is effective on the date of its signing.

By: Mark P. Kowbel
A Member of the Board

3/1/06
Date

[Limitation, Costs of \$950, Education]

STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
CLARKE J. WINKLER,	:	
	:	
	:	LS _____
RESPONDENT.	:	

Division of Enforcement Case No. 05 APP 021

- It is hereby stipulated and agreed, by and between Clarke J. Winkler, Respondent; and Mark A. Herman, attorney for Complainant, State of Wisconsin, Department of Regulation and Licensing, Division of Enforcement, as follows:
1. This Stipulation resolves a pending investigation relating to Clarke J. Winkler (Respondent), by the Division of Enforcement (05 APP 021). Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
 2. Respondent understands that by signing this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.
 3. Respondent has been provided with the opportunity to obtain legal counsel prior to signing this Stipulation.
 4. Respondent agrees to the adoption of the attached Final Decision and Order by the Real Estate Appraisers Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board’s order, if adopted in the form as attached.
 5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.
 6. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Real Estate Appraisers Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of the Respondent or his attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board’s deliberations on the Stipulation. Additionally, any such Board advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.
 7. Respondent is informed that should the Board adopt this Stipulation, the Board’s final decision and order is a public record and will be published in accordance with standard Department procedure.
 8. The Division of Enforcement joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

CLARKE J. WINKLER

Respondent
218 North 76th Street
Milwaukee, WI 53213

Date

MARK A. HERMAN

Attorney, Division of Enforcement
1400 East Washington Avenue
Madison, WI 53708-8935

Date

[limitation, costs of \$950.; education]