

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
HEATHER LYNCH FOWLER and	:	
LINDA M. LYNCH,	:	LS0603015APP
	:	
RESPONDENTS.	:	

Division of Enforcement Case No.s 03 APP 037 and 05 APP 025

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

Heather Lynch Fowler
3606 Turning Leaf Drive
Madison, WI 53719

Linda M. Lynch
3638 Serenity Trail
Madison, WI 53719

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 matters, 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 Heather Lynch Fowler ("Fowler"), whose date of birth is August 1, 1968, and whose last known address of record with the Department of Regulation and Licensing ("Department") is 3606 Turning Leaf Drive, Madison, Wisconsin 53719, holds a license and certificate as a licensed appraiser (#4-1353). Fowler was first granted the license and certificate on March 30, 2001, pursuant to Wis. Stat. ch. 458. The license and certification will expire on December 14, 2007.

2. Respondent Linda M. Lynch ("Lynch"), whose date of birth is October 19, 1944, and whose last known address of record with the Department is 363 Serenity Trail, Madison, Wisconsin 53719, holds a license and certificate as a licensed appraiser (#4-1499). Lynch was first granted the license and certificate on December 5, 2002, pursuant to Wis. Stat. ch. 458. The license and certification will expire on December 14, 2007.

Count I: Failure to Timely Respond to Requests for Information and Failure to Maintain Records

3. On or about November 17, 2003, an informal complaint against Fowler and Lynch was received by the Department. On or about December 19, 2003, a request for information was sent to Fowler by Melinda Drabek of the Division of Enforcement's intake team on behalf of the Board. Fowler did not respond. On or about April 5, 2004, a second request for information was sent to Fowler by Ms. Drabek. Fowler again did not respond. On June 9, 2004, the Real Estate Appraiser Board's screening panel determined to open an investigation in this matter, due to perceived errors by Fowler, and due to Fowler's failure to respond to requests for information.

4. On or about August 9, 2004, Investigator Willie Garrette of the Division of Enforcement sent a letter to Fowler requesting information via certified mail, return receipt requested, on behalf of the Board. Specifically, Mr. Garrette requested that Fowler provide copies of the appraisal files for appraisals performed by Fowler and Lynch for: 601 East

Holum Street, DeForest, Wisconsin, dated December 26, 2002; and by Fowler for: 5453 Quarry Hill Road, Fitchburg, Wisconsin, dated September 25, 2002. Fowler received the letter on August 10, 2004. Additionally, Mr. Garrette placed telephone calls to the home and business numbers of the Fowler on August 8, 2004, and August 9, 2004. Fowler never returned Mr. Garrette's calls.

5. On May 20, 2005, Attorney Mark Herman of the Division of Enforcement personally spoke with Fowler by telephone, and sent her a follow-up letter requesting the same two appraisals referenced in paragraph 3, above, on behalf of the Board. Fowler provided a written response in September of 2005, but has been unable to provide all of the documents requested.

6. Per Wis. Stat. § 458.26(3)(b), "the board may limit, suspend or revoke any certificate under this chapter or reprimand or impose additional continuing education" where "the holder of the certificate... has done any of the following: ... (b) Engaged in unprofessional or unethical conduct in violation of rules promulgated under s. 458.24."

7. Per Wis. Admin. Code § RL 86.01(10), "After a request for information by the board, failing to cooperate in a timely manner with the board's investigation of complaints filed against the licensed or certified appraiser. There is a rebuttable presumption that a licensed or certified appraiser who takes longer than 30 calendar days to respond to a request for information by the board has not acted in a timely manner under this subsection."

8. Per Wis. Admin. Code § RL 86.01(8), "All certified and licensed appraisers shall maintain records as required in s. 458.18, Stats. (five years)..."

Count II: Series of Errors in Appraisal of 601 E. Holum St., DeForest, WI

9. Respondents Lynch and Fowler each signed the report for an appraisal of 601 E. Holum St., DeForest, WI, with a value as of December 5, 2002, including a certification statement.

10. The appraisal reported the list price where the appraisal report should have contained the sale price for each comparable property. The effects on the values of the comparable properties were \$4,900.00, \$0.00, and \$24,900.00, respectively. The range of adjusted values for the comparable properties per the appraisal report was \$192,305-\$216,300. The correct range of the adjusted values for the comparables properties would have been \$187,500-\$200,275. The appraisal report stated that the value indicated by the sales comparison approach was \$198,000.

11. Per 2002 Uniform Standards of Professional Appraisal Practice ("USPAP") Standards Rule 1-1, "In developing a real property appraisal, an appraiser must: ... (c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually may not significantly affect the results of an appraisal, in the aggregate affect the credibility of those results."

12. Per Wis. Admin. Code § RL 86.01(2), "All appraisals... shall conform to the uniform standards of professional appraisal practice..."

13. Per 2002 USPAP Standards Rule 2-3, lines 1088-89, "Any appraiser(s) who signs a certification accepts full responsibility for all elements of the certification, for the assignment results, and for the contents of the appraisal report."

Count III: Failure of Method, Series of Errors, and Failure to Apply Applicable Income Approach to Valuation in Appraisal of 3233 Riverside Dr., Beloit, WI

14. Lynch and Fowler both signed an appraisal of 3233 Riverside Drive, Beloit, WI, with an effective date of April 27, 2004, including a certification statement.

15. The appraisal report contained numerous errors including, but not limited to, the following: (a) the report indicates that the property was owner-occupied, when in fact it was occupied by a tenant; (b) the report states that the site size was 2 acres, when Rock County Land Records System states that the site size is 1.38 acres; (c) the report states that the zoning classification is "A Residential", when the Rock County Zoning classifications for the property are actually R-1, Single Family Residential and B-3, General Business District; (d) the report states that the property is serviced by public sewer and water, when in fact the property is not; (e) the report states that the age of the property is 50 years, when the Town of Beloit Assessor records show that the property was built in 1906; (f) the report fails to note or adjust for an indoor/in ground swimming pool for comparable #1, even though the report states that it relies upon MLS data, and even though the existence of the pool was noted on the MLS data sheet; (g) the report fails to note and adjust for 900 square feet of finished space below grade, or a ¾ bathroom below grade, even though the report states that it relies upon MLS data, and even though the existence of 900 square feet of finished below grade space and the ¾ bathroom below grade is noted on the MLS data sheet; (h) the report notes the date of sale for comparable #3 as "4/03," even though the report states that it relies upon MLS data, and even though the date of sale is noted as "4/10/02" on the MLS data sheet; the report fails to note and adjust for 91 feet of river frontage for comparable #3, even though the report states that it relies upon MLS data, and even though the same is noted on the MLS data sheet; (i) the report fails to note or adjust for the presence of a boat house for comparable #3, even though the report states that it relies upon MLS data, and even though the existence of the boat house was noted on the MLS data sheet; (j) the report fails to note or adjust for the existence of a ½ bathroom below grade, even though the report states that it relies upon MLS data, and even though the existence of a ½ bathroom below grade is noted on the MLS data sheet.

16. Per 2004 USPAP Standards 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 results of an appraisal, in the aggregate affect the credibility of those results.

17. Per 2004 USPAP Standards Rule 1-2: In developing a real property appraisal, an appraiser must: (e) identify the characteristics of the property that are relevant to the purpose and intended use of the appraisal, including: (i) its location and physical, legal and economic attributes; (iv) any... ordinances or other items of a similar nature...

18. Per 2004 USPAP Standards Rule 1-4: "In developing a real property appraisal, an appraiser must collect, verify, and analyze all information applicable to the appraisal problem, given the scope of work identified in accordance with Standards Rule 1-2(f). (a) When a sales comparison approach is applicable, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion. (c) When an income approach is applicable, an appraiser must (five specific actions set forth)..."

CONCLUSIONS OF LAW

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

458.26(3).

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).

3. By failing to be aware of and correctly employ recognized methods and techniques of appraisal, by committing substantial errors of omission, and by rendering appraisal services in a careless or negligent manner, as set forth above in paragraph 15, Respondents committed one or more violations of 2004 USPAP Standards Rule 1-1(a), one or more violations of 1-1(b) and one or more violations of 1-1(c), thereby subjecting themselves to discipline per Wis. Admin. Code § RL 86.01(2) and Wis. Stat. § 458.26(3).

4. By rendering appraisal services in a careless or negligent manner, as set forth above in paragraph 10 Respondents committed one or more violations of 2002 USPAP Standards Rule 1-1(c), thereby subjecting themselves to discipline per Wis. Admin. Code RL § 86.01(2) and Wis. Stat. § 458.26(3).

5. By failing to identify characteristics of the properties appraised, including location, and physical and legal attributes, as well as applicable zoning ordinances, as set forth above in paragraph 15 Respondents committed one or more violations of 2004 USPAP Standards Rule 1-2(e)(i) and one or more violations of 1-2(e)(iv), thereby subjecting themselves to discipline per Wis. Admin. Code § RL 86.01(2) and Wis. Stat. § 458.26(3).

6. By failing to analyze comparable sales data that was available when the comparable sales approach to valuation was applicable, and by failing to analyze data and take other steps required when the income approach to valuation was applicable, as set forth above in paragraph 15, Respondents committed one or more violations of 2004 USPAP Standards Rule 1-4(a) and 1-4(c), thereby subjecting themselves to discipline per Wis. Admin. Code § RL 86.01(2) and Wis. Stat. § 458.26(3).

7. By failing to timely respond to requests for information from the Board, as set forth above in paragraphs 3-5, Respondent Fowler committed one or more violations of Wis. Admin. Code § 86.01(10), thereby subjecting herself to discipline per Wis. Stat. § 458.26(3).

8. By failing to maintain records, as set forth above in paragraph 5, Respondents committed one or more violations of Wis. Admin. Code § 86.01(8), thereby subjecting themselves to discipline per Wis. Stat. § 458.26(3).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The license and certification of Respondent HEATHER LYNCH FOWLER, be, and hereby is LIMITED. During the period of limitation Respondent HEATHER LYNCH FOWLER may not supervise the appraisal work or co-sign an appraisal performed by any other person, and may not rely upon substantial work performed by any other person in completing an appraisal report. Additionally, during the period of limitation and beginning April 1, 2006, Respondent HEATHER LYNCH FOWLER may not perform more than forty three (43) appraisals in any calendar month. Respondent shall, at her own expense, have a statement provided to the Department Monitor from a certified public accountant in good standing stating that in the month examined Respondent HEATHER LYNCH FOWLER did not exceed the number of appraisals permitted by this limitation. Said statement shall be due from the certified public accountant no later than thirty (30) calendar days after the end of each month. Respondent HEATHER LYNCH FOWLER may petition the Board for the removal of this limitation no earlier than April 1, 2007, and the removal of this limitation shall not be granted unless all other terms of this Order that are applicable to her have been met.

2. The license and certification of Respondent LINDA M. LYNCH, be, and hereby is LIMITED. During the period of limitation Respondent LINDA M. LYNCH may not supervise the appraisal work or co-sign an appraisal performed by any other person, and may not rely upon substantial work performed by any other person in completing an appraisal report. Additionally, during the period of limitation and beginning April 1, 2006, Respondent LINDA M. LYNCH may not perform more than twenty (20) appraisals in any calendar month, and all appraisals performed by her must be supervised and co-signed by a licensed and certified appraiser in good standing. Respondent shall, at her own expense, have a statement

provided to the Department Monitor from a certified public accountant in good standing stating that in the month examined Respondent LINDA M. LYNCH did not exceed the number of appraisals permitted by this limitation. Said statement shall be due from the certified public accountant no later than thirty (30) calendar days after the end of each month. In the alternative, Respondent LINDA M. LYNCH may provide a statement to the Department Monitor stating that she has performed no appraisals in the previous calendar month, if provided within ten (10) calendar days of the previous calendar month. Respondent LINDA M. LYNCH may petition the Board for the removal of this limitation no earlier than June 1, 2007, and the removal of this limitation shall not be granted unless all other terms of this Order that are applicable to her have been met.

IT IS FURTHER ORDERED that:

3. Each Respondent shall complete the following courses conducted by the Appraisal Institute, to include the testing component, if any, which may not be counted towards her continuing education requirement, by no later than January 1, 2007: Basic Appraisal Principles; Basic Appraisal Procedures; and Business Practices and Ethics. Proof of completion of all courses must be submitted to the Department Monitor by no later than February 25, 2007.

4. Respondent HEATHER LYNCH FOWLER shall pay a forfeiture of the Department of Regulation and Licensing the amount of \$1,000.00 by no later than March 1, 2007.

5. Each Respondent shall pay costs of the Department of Regulation and Licensing in the amount of \$700.00 per Respondent by December 1, 2006. Respondents shall not be held jointly and severally liable for the payment of costs.

6. All submissions and payments 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) 261-7904, Fax (608) 266-2264

7. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and well-being and may result in a summary suspension of either Respondents' license and certification, as applicable. 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 either Respondent fails to timely submit any payment of the partial cost as set forth above, or fails to timely comply with other applicable terms of this Order, the applicable Respondent's license and certification (4-1499 or 4-1353) SHALL BE SUSPENDED, without further notice or hearing, until the affected Respondent has complied with the terms of this Order.

8. Case Number 05 APP 085 shall be closed for prosecutorial discretion code P7, on the basis that the action of the Board by this Order in case numbers 03 APP 037 and 05 APP 025 has addressed any issues raised by 05 APP 085. 03 APP 037 and 05 APP 025 are hereby closed on the basis of this formal action of the Board.

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

REAL ESTATE APPRAISERS BOARD

By: Mark P. Kowbel
A Member of the Board

3/1/06
Date

STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
HEATHER LYNCH FOWLER and	:	
LINDA M. LYNCH,	:	LS _____ APP
	:	
RESPONDENTS.	:	

Division of Enforcement Case No.s 03 APP 037 and 05 APP 025

- It is hereby stipulated and agreed, by and between Heather Lynch Fowler, Respondent; Linda M. Lynch, 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 pending investigations relating to Respondents licensures by the Division of Enforcement (03 APP 037 and 05 APP 025). Respondents consent to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
 2. Respondents understand that by signing this Stipulation they voluntarily and knowingly waives their rights, including: the right to a hearing on the allegations against them, 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 them; the right to call witnesses on their behalf and to compel their attendance by subpoena; the right to testify themselves; 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 them under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.
 3. Respondents have been provided with the opportunity to obtain legal counsel prior to signing this Stipulation.
 4. Respondents agree 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. Respondents waive 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 Respondents or their 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. Respondents are 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 Respondents in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

HEATHER LYNCH FOWLER

Respondent
3606 Turning Leaf Drive
Madison, WI 53719

Date

LYNDA M. LYNCH

Respondent
3638 Serenity Trail
Madison, WI 53719

Date

MARK A. HERMAN

Attorney, Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
[03 APP 037 and 05 APP 025; \$1,400 costs; \$1,000 forfeiture.]

Date