

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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**STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD**

IN RE DISCIPLINARY PROCEEDINGS	:	
AGAINST	:	
	:	FINAL DECISION AND ORDER
JOHN R. METTNER and ALVIN L.	:	
COUNARD,	:	
	:	LS06101819APP
RESPONDENTS.	:	

Division of Enforcement Case No.s 04 APP 037, 05 APP 004 and 05 APP 020

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

Alvin L. Counard
2767 Newberry Avenue
Green Bay, WI 54302

John R. Mettner
3790 Misty Meadow Lane
De Pere, WI 54115

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. 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 Alvin L. Counard ("Counard"), whose last known address of record with the Department of Regulation and Licensing ("Department") is 2767 Newberry Avenue, Green Bay, WI 54302, and whose date of birth is June 13, 1943, possesses a certificate of licensure and a certificate of certification to practice as a certified residential real estate appraiser (#9-1310). The license and certificate were first granted on November 19, 2003, and will expire on December 14, 2007. Mr. Counard also possessed a certificate of certification and certificate of licensure as a licensed appraiser (#4-1234). The latter license and certificate were first granted on August 18, 1999, and expired on December 31, 2005.

2. Respondent John R. Mettner ("Mettner"), whose last known address of record with the Department of Regulation and Licensing ("Department") is 3790 Misty Meadow Lane, De Pere, WI 54115, and whose date of birth is November 6, 1962, possesses a certificate of licensure and a certificate of certification to practice as a licensed appraiser (#4-1262). The license and certificate were first granted on December 6, 1999, and will expire on December 14, 2007.

04 APP 037

3. On December 17, 2002, Mr. Mettner signed a real estate appraisal report for a property located at 5160 Sunset Drive, Rhinelander, WI, with an effective date of December 12, 2002.

4. In developing the appraisal, Mr. Mettner claims that he relied upon an appraisal preformed by Mr. Counard of the same property signed March 8, 2002, and with an effective date of February 21, 2002. Specifically, Mr. Mettner used the same properties as comparable sales as found in Mr. Counard's report, used substantially the same data regarding the comparable sales as found in Mr. Counard's report (with slight variations), and made substantially similar adjustments to the comparable sales in arriving at an opinion of value (again, with slight variations). Mr. Mettner agrees that he did not inspect

the interior of the subject property (contrary to his statement on the appraisal report), and agrees that he did not conduct his own research for the appraisal report, beyond looking at Mr. Counard's report, another report, and his own internal files. Mr. Mettner agrees that none of these actions constituted a minimally competent search for comparable sales available as of the date of Mr. Mettner's report.

5. Mr. Counard claims that he did not develop the report containing his digital signature. Mr. Counard notes that both he and Mr. Mettner were sued civilly regarding the appraisal of this property, which resulted in a settlement. Under the terms of the settlement, Mr. Counard and Mr. Mettner were required to pay damages. However, Mr. Counard agrees that the presence of his digital signature and license number on the report, coupled with the claims of Mr. Mettner, meets the Department of Regulation and Licensing's burden of proof that he did, in fact, complete the report.

6. Both Mr. Mettner's report and Mr. Counard's report contain substantial factual errors. Specifically, with respect to comparable sale #1, the property was sold between family members, and was not an arms-length transaction. With respect to comparable sale #2, contrary to the appraisal report, the property was not sold on November 26, 2001. Instead, the property was refinanced on that date, with the last previous sale of the property occurring no more recently than 1996. Additionally, the data regarding comparable sale #3 was incorrect as to the date of sale, the sales price, and various data regarding the physical characteristics of the property.

7. Per the 2002 Uniform Standards of Professional Appraisal Practice ("2002 USPAP"), Ethics Rule, line 269-270, "An appraiser must not use or communicate a misleading or fraudulent report..."

8. Per 2002 USPAP Standards Rule 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..."

9. Per Wis. Admin. Code § RL 86.01(1), "Certified and licensed 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 Appendix I. A violation of any provision in this chapter may result in disciplinary action under s. 458.26, Stats."

10. Per Wis. Admin. Code § RL 86.01(2), "All appraisals performed in conjunction with federally related transactions and non-federally related transactions shall conform to the uniform standards of professional appraisal practice set forth in Appendix I."

11. Per Wis. Stat. § 458.26(3), "...the board may limit, suspend or revoke any certificate under this chapter or reprimand or impose additional continuing education requirements on the holder of a certificate under this chapter, if the... board finds that 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. (c) Engaged in conduct while practicing as an appraiser which evidences a lack of knowledge or ability to apply professional principles or skills."

05 APP 004

12. On January 5, 2005, Mr. Mettner signed a real estate appraisal report for a property located at 3365 Whittier Drive, Green Bay, WI, with an effective date of January 5, 2005.

13. Per the appraisal report, Mr. Mettner's data regarding the comparable sales was drawn from the specific MLS listings for each of the comparable properties. However, Mr. Mettner was not a member of the MLS at the time of the appraisal, so it is not clear how he obtained the specific MLS listings. Further, some of the data for the comparable properties (e.g. number of bathrooms and view of property) differ from the properties' MLS listings, or do not fully reflect the amenities of the property as found in the properties' MLS listings (e.g. decks).

14. Per 2005 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 affects the credibility of those results."

05 APP 020

15. An anonymous complaint was filed against Mr. Mettner concerning an appraisal report bearing his electronic signature. The address of the property was 1915 Riverside Drive, Unit E, Suamico, WI. The effective date of the appraisal was March 2, 2005, and the date of signing was allegedly October 20, 2004.

16. Mr. Mettner provided a copy of the appraisal report to the Department of Regulation and Licensing, with an effective appraisal date of March 2, 2005, and with the report being signed on March 4, 2005. Also included were the appraisal request form and a copy of the invoice.

17. Mr. Mettner does not recall inspecting the property or developing the appraisal report. Mr. Mettner claims that the report was fabricated and that his digital signature was added to the report. Mr. Mettner believes that a former employee may have fabricated the report, and claims that two former employees engaged in fraudulent and unethical

practices. Mr. Mettner states that the contents of the appraisal are “indefensible.” However, Mr. Mettner admits that the evidence is sufficient to meet the Department of Regulation and Licensing’s burden of proof that he signed the appraisal report.

18. One issue with the appraisal report was that the property was subject to a then-current listing agreement, with a listing price of \$109,900. Despite this, the property was appraised for the amount of \$141,500, and no analysis of the difference between the listing agreement price and the appraised value of the property was provided.

19. Another issue with the appraisal report was the selection of comparable properties. Although the comparables properties used in the report are facially acceptable, a review of the MLS data available shows that there were several other sales which were more similar to the subject property than the comparable sales selected. One potential comparable was identical to the subject property in all material respects; sold for \$109,900, which was the listing price for the subject property; and had a date of sale which was more recent than two of the three comparable sales used in the appraisal report. Therefore, the comparable sales selected were not the “best available,” contrary to certification statement included with the appraisal report.

20. During the course of the investigation Mr. Mettner did not timely respond to requests for information. For example, on July 29, 2005, the assigned investigator sent a letter to Mr. Mettner requesting certain specific information. The same letter was re-sent to Mr. Mettner on October 4, 2005, with a note that, “This is a final request for the information you promised to send to me when I last talked to you on July 29th.” Mr. Mettner responded to the investigator’s letters verbally on October 28, 2005, stating that he had completed his response to the complaint. However, on February 12, 2006, the investigator contacted Mr. Mettner because he had not received the response. Mr. Mettner claimed that the response had previously been sent. The response was finally received on February 27, 2006.

21. Per 2004 USPAP Standards Rule 1-5, “In developing a real property appraisal... an appraiser must...: (a) analyze all agreements of sale, options, or listing of the subject property current as of the date of the appraisal;”

22. Per Wis. Admin. Code § RL 86.01(10), “After a request for information is made 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.”

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).

3. By signing an appraisal report containing incorrect information, as noted above in paragraph six (6) of the Findings of Fact, Respondent **Alvin L. Counard** committed one or more errors of commission contrary to 2002 USPAP Standards Rule 1-1(b), thereby subjecting himself to discipline per Wis. Admin. Code § RL 86.01(1),(2) and Wis. Stat. § 458.26(3)(b).

4. By relying solely upon previously completed appraisals in developing an appraisal report, and by failing to independently gather and review data for potential comparable sales, as described above in paragraph four (4), Respondent **John R. Mettner** committed one or more failures to employ recognized techniques necessary to produce a credible appraisal, contrary to 2002 USPAP Standards Rule 1-1(a); and by representing that he had performed such work in the appraisal certification, Respondent **John R. Mettner** committed one or more violations of 2002 USPAP Ethics Rule; thereby subjecting himself to discipline per Wis. Admin. Code § RL 86.01(1),(2) and Wis. Stat. § 458.26(3)(b).

5. By producing an appraisal report based upon information regarding comparable sales as found in MLS data sheets, yet failing to accurately reflect the information contained in those MLS data sheets, as described above in paragraphs 12-13 of the Findings of Fact, Respondent **John R. Mettner** committed a violation of 2005 USPAP Standards Rule 1-1(c), thereby subjecting himself to discipline per Wis. Admin. Code § RL 86.01(1),(2) and Wis. Stat. § 458.26(3)(b).

6. By failing to analyze the difference between the listing price of the subject property, as described above in paragraph 18, Respondent **John R. Mettner** committed a violation of 2005 USPAP Standards Rule 1-5(a), thereby subjecting himself to discipline per Wis. Admin. Code § RL 86.01(1),(2) and Wis. Stat. § 458.26(3)(b).

7. By failing to select the best comparable sales available at the time of the appraisal, as described above in

paragraph 19, Respondent **John R. Mettner** committed a violation of 2005 USPAP Standards Rule 1-1(a), thereby subjecting himself to discipline per Wis. Admin. Code § RL 86.01(1),(2) and Wis. Stat. § 458.26(3)(b).

8. By failing to timely respond to requests for information from the Department of Regulation and Licensing's investigator, as described above in paragraph 20, Respondent **John R. Mettner** committed a violation of Wis. Admin. Code § RL 86.01(10), thereby subjecting himself to discipline per Wis. Admin. Code § RL 86.01(1) and Wis. Stat. § 458.26(3)(b).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The license and certification of Respondent **Alvin L. Counard** (#4-1234) shall be, and hereby is LIMITED as follows: (a) all appraisal reports prepared by **Alvin L. Counard** shall be supervised by, and bear the signature and license number of William J. Baker (#4-1867). Respondent may petition for removal of this limitation no sooner than one year after the date of signing of this Order, and only if all terms and conditions of this Order applicable to **Alvin L. Counard** have been complied with. At a minimum, Respondent's petition for removal of this limitation shall include: (a) a notarized statement from William J. Baker attesting that the work completed by **Alvin L. Counard** has complied with USPAP in all respects, to specifically include all aspects of USPAP's Ethics Rule.

IT IS FURTHER ORDERED that:

2. The license and certification of Respondent **John R. Mettner** (#4-1262) shall be, and hereby is, SUSPENDED for a period of sixty (60) days, beginning thirty (30) days after the date of signing of this Order. Additionally, the license and certification of Respondent **John R. Mettner** shall be, and hereby is, LIMITED as follows: (a) **John R. Mettner** may not sign any appraisal reports as a supervisory appraiser; (b) **John R. Mettner** may not rely upon substantial appraisal work performed by another; (c) **John R. Mettner** may only sign appraisals of real estate regarding subject properties located within the area of Multiple Listing Service organizations of which he is a member as of the date of signing the appraisal, and where a minimally competent search for comparable properties does not require access to data regarding potential comparables located outside the area of such Multiple Listing Service organizations. The limitations may be removed no sooner than one (1) year after the date of signing of this Order, and only if all terms and conditions of this Order that are applicable to Respondent have been complied with. At a minimum, Respondent's petition for removal of this limitation also include: (a) a copy of Respondent's roster of all appraisals performed since the date of signing of this Order. The limitations shall not be removed until the Board's Monitoring Liaison has reviewed no less than three appraisal reports, which shall be selected at random from Respondent's roster. Respondent shall submit the complete file of any appraisal report requested, to include all notes, sketches, and data gathered regarding comparable sales selected, and comparable sales considered but not selected, within seven (7) days of receiving a request for said appraisal report.

3. Respondent **John R. Mettner** shall take and successfully complete the following as remedial education, which shall not be counted towards Respondent's continuing education requirements, by December 10, 2007: (a) Ethics and Business Practices, conducted by the Appraisal Institute, to include any testing component, if offered; (b) Basic Appraisal Procedures, conducted by the Appraisal Institute, to include any testing component, if offered.

4. Respondent **Alvin L. Counard** shall pay costs in this matter in the amount of \$500.00 within ninety (90) days of the date of signing this Order.

5. Respondent **John R. Mettner** shall pay costs in these matters in the amount of \$1750.00 by December 10, 2007.

6. All payments and proof of completion of education required by this order to be submitted to the Department of Regulation and Licensing shall be mailed, faxed or delivered to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing

7. Case numbers 04 APP 037, 05 APP 004, and 05 APP 020, are hereby closed.

8. 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 license and certification who is in violation of this Order. The Real Estate Appraiser 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 any Respondent fails to timely submit any payment of costs required of him as set forth above, or fails to comply with an order for education, the Respondent's license and certification (#4-1262 and/or #4-123) SHALL BE SUSPENDED, without further notice or hearing, until the affected Respondent has complied with the terms of this Order.

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

REAL ESTATE APPRAISERS BOARD

By: Mark Kowbel
A Member of the Board

10/18/06
Date

STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN RE DISCIPLINARY PROCEEDINGS	:	
AGAINST	:	
	:	STIPULATION
JOHN R. METTNER and ALVIN L.	:	
COUNARD,	:	
	:	LS _____
RESPONDENTS.	:	

Division of Enforcement Case No.s 04 APP 037, 05 APP 004, and 05 APP 020

It is hereby stipulated and agreed, by and between Alvin L. Counard, Respondent; John R. Mettner, Respondent; David D. Brown, Attorney for Respondent Mettner; 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 of Respondents’ licensures and certifications by the Division of Enforcement (04 APP 037, 05 APP 004 and 05 APP 020). Respondents consent to the resolution of these investigations by stipulation and without the issuance of a formal complaint.
2. Respondents understand that by signing this Stipulation they voluntarily and knowingly waive 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 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, the Wisconsin Administrative Code, and any other provisions of state or federal law.
3. Respondents have obtained 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 (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, without the presence of Respondents or their attorney(s), for purposes of speaking in support of this agreement and answering questions that any person 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.

Alvin L. Counard

Respondent

2767 Newberry Avenue

Green Bay, WI 54302

Date

John R. Mettner

Respondent

3790 Misty Meadow Lane

De Pere, WI 54115

Date

David D. Brown

Attorney for Respondent

1002 South Fisk Street, Suite 110

P.O. Box 897

Green Bay, WI 54305-0897

Date

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Attorney, Division of Enforcement

1400 East Washington Avenue

Madison, WI 53708-8935

Date