

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
	:	
BARBARA J. VOGELER,	:	
	:	LS06101827APP
	:	
RESPONDENT.	:	

Division of Enforcement Case No.s 05 APP 038, 06 APP 055 and 06 APP 111

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

Barbara J. Vogeler
W238 N6964 Gale Drive
Sussex, WI 53089

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

PROCEDURAL HISTORY

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 Board. The Board has reviewed the attached Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Respondent Barbara J. Vogeler (“Vogeler”), whose last known address of record with the Department of Regulation and Licensing (“Department”) is W238 N6964 Gale Drive, Sussex, Wisconsin 53089, and whose date of birth is October 16, 1954, possesses a certificate of licensure and a certificate of certification to practice as a licensed appraiser (#4-1311). The license was first granted on June 16, 2000, and expires on December 14, 2007. Ms. Vogeler does business as “Value Appraisal,” located in Sussex, Wisconsin.

Count I: 05 APP 038 - Pre-determined Opinion

2. On November 1, 2004, Ms. Vogeler completed an appraisal report of real property located at 1310 Rosedale Avenue, Madison, Wisconsin.

3. The appraisal report failed to comply with several rules of the 2004 Uniform Standards of Professional Appraisal Practice (“USPAP”) including, but not limited to, the following:

a. USPAP Ethics Rule, which states that an appraiser, “must not accept an assignment that includes the reporting of predetermined opinions and conclusions.” Respondent violated this rule by accepting an assignment where the client stated, “Need 300K,” by incorrectly employing the methods of appraisal practice as set forth below

to arrive at an opinion of market value of \$300,000, and by giving an opinion of market value of \$300,000.

b. USPAP Standards Rule 1-1(a), which requires an appraiser to, “be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;” and USPAP Standards Rule 1-4(a), which states that, “an appraiser must analyze such comparable sales data as are available to indicate a value conclusion...” by incorrectly employing the comparable sales approach to valuation to select as comparable sales as follows: (i) selected as comparable sales three properties from neighborhoods with stronger values, including comparable #3, which is located adjacent to the Maple Bluff Golf Course; (ii) omitting the following additional features of the comparable sales, per the MLS listings: (a) Sale #1 – wood floors, custom built-ins, updated electrical system, newer porch and roof, solid surface counter-tops w/breakfast bar in kitchen; (b) Sale #2 – two full remodeled bathrooms, maple floors throughout, newer mechanicals and roof, screened porch; (c) Sale #3 – wood floors, new kitchen with stainless steel appliances, new bathrooms, new corner whirlpool bath in master bathroom, new tiled floors and carpet, professionally decorated; (iii) concluding that the subject was in equal condition to Sale #3, and making adjustments in favor of the subject property in amounts of \$10,000 and \$20,000 as opposed to Sale #1 and Sale #2, respectively; (iv) adjusting for differences in size between Sale #3 and the subject by only \$10.00 per square foot of above-grade gross living area, and \$2.00 per finished square foot of below-grade gross living area.

c. USPAP Standards Rule 1-2(a), which requires an appraiser to, “identify the client and other intended users;” by failing to identify the intended user(s) of the report.

d. USPAP Standards Rule 1-2(b), which requires an appraiser to, “identify the intended use of the appraiser’s opinions and conclusions;” by failing to identify the intended use of the report.

e. USPAP Standards Rule 1-2(c), which requires an appraiser to, “develop an opinion of reasonable exposure time linked to the value opinion” when, “the purpose of the assignment is to develop an opinion of market value...” by failing to develop an opinion of reasonable exposure time linked to the value opinion.

f. USPAP Standards Rule 1-2(e), which requires an appraiser to, “identify the characteristics of the property that are relevant to the purpose and intended use of the appraisal, including: (i) its location and physical... attributes;” by identifying the subject as having 1,674 square feet of above-grade gross living area when, in fact, it had 1,368 feet of above grade gross living area.

g. USPAP Standards Rule 1-2(f), which requires an appraiser to, “identify the scope of work necessary to complete the assignment;” by failing to identify the scope of work necessary to complete the assignment.

h. USPAP Standards Rule 2-1(a), which requires and appraiser to: “clearly and accurately set forth the appraisal in a manner that will not be misleading,” by creating a report that is grossly inaccurate and inherently misleading.

i. USPAP Standards Rule 2-2, which requires each appraisal report to, “prominently state which (reporting) option is used...” by failing to identify the report as a Self-Contained Appraisal Report, a Summary Appraisal Report, or a Restricted Use Appraisal Report.

j. USPAP Standards Rule 2-3, which states that, “Each written real property appraisal report must contain a signed certification...” by failing to include a certification statement with the report.

4. Ms. Vogeler’s violations of USPAP resulted in the over-valuation of the subject property by nearly 50%, enabling the property owner (a self-employed business) to secure debt against the property far in excess of its market value, and making it impractical for the property owner to refinance at more favorable rates.

5. Per Wis. Admin. Code § RL 86.01(1), “Certified and licensed appraisers shall comply with... the standards set forth in Appendix I. A violation of any provision of this chapter may result in disciplinary action under s. 458.26, Stats.

6. 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.”

7. Per Wis. Stat. § 458.26(3)(b), an appraiser is subject to discipline if he or she has, “Engaged in unprofessional or unethical conduct in violation of rules promulgated under s. 458.24.”

8. Per Wis. Stat. § 458.26 (3)(i), an appraiser is subject to discipline if he or she has, “Violated this chapter or any rule promulgated under this chapter.”

Count II: 06 APP 055 - Unsupported Value

9. On January 10, 2002, Respondent completed an appraisal of real property located at 1241 Cleveland Street,

Beloit, Wisconsin, with an effective date of January 8, 2002.

10. The appraisal report failed to comply with several rules of the 2004 Uniform Standards of Professional Appraisal Practice ("USPAP") including, but not limited to, the following:

a. USPAP Standards Rule 1-1(a), which requires an appraiser to, "be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;" and USPAP Standards Rule 1-4(a), which states that, "an appraiser must analyze such comparable sales data as are available to indicate a value conclusion..." by incorrectly employing the comparable sales approach to valuation to select as comparable sales as follows: (i) selected as comparable sales three properties from neighborhoods with stronger values, when sales within the immediate neighborhood of the subject property were available; (ii) failing to adjust for the proximity of the subject property to businesses.

b. USPAP Standards Rule 1-2(a), which requires an appraiser to, "identify the client and other intended users;" by failing to identify the intended user(s) of the report.

11. A review appraiser employed by USA Funding estimates that Ms. Vogeler over-estimated the value of the subject property by over 50%, which resulted in a loss being borne by the secondary market following a default on the loan facilitated by the appraisal.

Count III: 06 APP 111 – Identity Theft

12. In addition to doing business as Value Appraisals, Ms. Vogeler owns an interest in Creative Mortgage Services, Inc., of Elkhorn, Wisconsin.

13. Janet G. Fazen ("Fazen"), whose last known address of record with the Department of Regulation and Licensing ("Department") is S9W31512 Rocky Hill Glen, Delafield, Wisconsin 53018, and whose date of birth is May 5, 1959, possesses a certificate of licensure and a certificate of certification to practice as a licensed appraiser (#4-1666). The license was first granted on December 9, 2003, and expires on December 14, 2007.

14. Prior to December 9, 2003, and during the process of accumulating the experience necessary for licensure, Ms. Fazen contributed to one or more appraisals bearing her signature and/or the signature of Ms. Vogeler. Additionally, following licensure, Ms. Fazen conducted appraisals with Creative Mortgage Services, Inc., as a client.

15. On August 22, 2006, Ms. Fazen was contacted by an employee of Preferred Lending regarding an appraisal of 1201 Monterey Lane, Janesville, Wisconsin, with an appraisal date of May 8, 2006. Ms. Fazen reviewed her files and could not find any documentation showing that she had conducted such an appraisal. Ms. Fazen requested, and received that same day, a copy of the signature page from the appraisal. The signature page contained what appeared to be her signature, and part of her license number. However, the company listed on the appraisal was "Value Appraisal," which is Ms. Vogeler's appraisal company. Documentation obtained from Preferred Lending shows that a fee of \$300 was paid to Value Appraisal.

16. Ms. Fazen contacted the Waukesha County Sheriff's Department regarding possible fraud. Waukesha County Sheriff's Detective Mike Hecht was dispatched to investigate the matter. On August 28, 2006, Detective Hecht interviewed Ms. Vogeler's business partner for Creative Mortgage Services, Inc., John Lynott. During the interview Mr. Lynott stated to Detective Hecht that Ms. Vogeler is a 50% owner of the business, and that Mr. Lynott had received a letter from the Wisconsin Department of Financial Institutions in January of 2006 stating that Ms. Vogeler could no longer perform appraisals for Creative Mortgage Services, Inc., because of her interest in the business.

17. On August 30, 2006, Detective Hecht interviewed Ms. Vogeler regarding the allegations. Ms. Vogeler admitted to Detective Hecht that she had conducted the appraisal of 1201 Monterey Lane, Janesville, Wisconsin, with an appraisal date of May 8, 2006. Ms. Vogeler asserted that the use of Ms. Fazen's signature and license number was an error, and that Ms. Fazen's signature and license number were on her computer due to previous work performed by Ms. Fazen.

18. On October 2, 2006, Ms. Fazen contacted an employee of the Department of Regulation and Licensing, stating that she had been told that she had been placed on a "watch list" by USA Funding. The employee obtained a copy of the appraisal which triggered the negative action by USA Funding from USA Funding. The appraisal was of property located at N 1681 Washington Avenue, Lake Geneva, Wisconsin. The client was Creative Mortgage Services, Inc. The borrower was Ms. Vogeler. The appraisal contained the signature and license number of Ms. Fazen. Ms. Fazen admitted performing an appraisal of the property, and forwarded a copy of her appraisal to the Department of Regulation and Licensing. A review of the report from Ms. Fazen showed that her report had been altered prior to its submission to USA Funding. Alterations included, but are not limited to, the following: (a) the value indicated in the appraisal had been increased from \$174,000 to \$260,000, (b) the intended use of the appraisal had been changed from pending sale to refinance; (c) the neighborhood boundaries and the comparables sales selected had all been changed; and (d) the effective date of the appraisal had been changed from January 26, 2005 to September 8, 2005.

19. Per Wis. Stat. § 458.26(3)(c), "...the board may limit, suspend or revoke any certificate... if the... Board finds that the holder of the certificate has done any of the following: Engaged in conduct while practicing as an appraiser which

evidences a lack of knowledge or ability to apply professional principles or skills.”

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 failing to comply with USPAP Standards, as set forth above in paragraphs three (3) and ten (10) of the findings of fact, **Barbara J. Vogeler** has committed ten (10) or more violations of Wis. Admin. Code § RL 86.01 (1) and (2), and unethical conduct, thereby subjecting herself to discipline per Wis. Stat. § 458.26(3)(b).
4. By using the signature and license number of another appraiser in order to conduct appraisals that she might otherwise have been prohibited from performing, and by altering an appraisal report signed by another appraiser in order to obtain a personal benefit, as described above in paragraphs 15-18 of the Findings of Fact, **Barbara J. Vogeler** has engaged in conduct while practicing as an appraiser which evidences a lack of ability to apply professional principles, thereby subjecting herself to discipline per Wis. Stat. § 458.26(3)(c).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The licensure and certification of **Barbara J. Vogeler** (#4-1311) shall be, and hereby is **REVOKED**.
2. Within 30 days of the date of this Order all indicia and proof of licensure 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

3. Within three years of the date of signing of this Order, **Barbara J. Vogeler** shall pay costs to the Department of Regulation and Licensing in this matter in the amount of \$2,450.00. Costs shall be paid to the Department Monitor at the address noted in paragraph 2 of this Order.
4. Case numbers 05 APP 038, 06 APP 055 and 06 APP 111 are hereby closed.
5. This Order is effective on the date of its signing.

REAL ESTATE APPRAISERS BOARD

By: Mark P. Kowbel
A Member of the Board

10-18-2006
Date

STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN RE DISCIPLINARY PROCEEDINGS	:	
AGAINST	:	
	:	STIPULATION
BARBARA J. VOGELER	:	
	:	LS _____
	:	
RESPONDENT.	:	

Division of Enforcement Case No.s 05 APP 038, 06 APP 055 and 06 APP 111

It is hereby stipulated and agreed, by and between Barbara J. Vogeler, Respondent; Thomas Santarelli, Attorney for 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 of Respondent’s licensure by the Division of Enforcement (05 APP 038, 06 APP 055 and 06 APP 111). Respondent consents to the resolution of the investigations by stipulation and without the issuance of a formal complaint.
2. Respondent understands that by signing this Stipulation she voluntarily and knowingly waives her rights, including: the right to a hearing on the allegations against her, 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 her; the right to call witnesses on her behalf and to compel their attendance by subpoena; the right to testify herself; 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 her under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law. Respondent neither denies nor admits the allegations contained in the Findings of Fact and Conclusions of Law of the attached Final Decision and Order, but admits that there is evidence from which the Board can make the Findings of Fact and reach the Conclusions of Law as found in the attached Final Decision and Order.
3. Respondent has obtained the advice of 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 (“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 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 Respondent or her attorney, 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. 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 Respondents in recommending the Board adopt this Stipulation and issue the

attached Final Decision and Order.

BARBARA J. VOGELER

Respondent
W238 N6964 Gale Dr.
Sussex, WI 53089

Date

THOMAS M. SANTARELLI

Madrigrano, Aiello and Santarelli, LLC
Attorneys for Respondent
1108 56th Street
Kenosha, WI 53140-3668

Date

MARK A. HERMAN

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

Date