

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS	:	
AGAINST :	:	ORDER OF
	:	SUMMARY SUSPENSION
HEATHER LYNCH FOWLER,	:	
	:	LS07022822APP
RESPONDENT.	:	

DOE case file numbers 06 APP 004, 06 APP 005, 06 APP 076 and 06 APP 105

This matter came before the Real Estate Appraisers Board as scheduled and noticed in the Notice and Petition for Summary Suspension filed on January 18, 2007. Attorney Mark A. Herman appeared for Petitioner, Department of Regulation and Licensing. The Respondent, Heather Lynch Fowler, appeared in person without legal counsel. This Order is based on the statements of Ms. Lynch Fowler during her presentation, the exhibits submitted by the parties, and the allegations in the Petition, which were sworn to by the Petitioner as true upon information and belief.

FINDINGS OF FACT

1. The Respondent is Heather Lynch Fowler. At all times relevant to these facts Ms. Lynch Fowler held real estate appraiser's license number 4-1353 issued by the Wisconsin Department of Regulation and Licensing. Ms. Lynch Fowler's last-known address on file with the Department of Regulation and Licensing is 3606 Turning Leaf Drive, Madison, WI 53719.
2. On January 9, 2006, DOE received a complaint concerning an appraisal conducted by Ms. Lynch Fowler, which was assigned case number 06 APP 004 and forwarded to the Board's Screening Panel ("Screening Panel") for consideration.
3. On January 9, 2006, DOE received a second complaint concerning an appraisal conducted by the Ms. Lynch Fowler, which was assigned case number 06 APP 005 and forwarded to the Screening Panel for consideration.
4. On February 28, 2006, the Screening Panel sent letters to Ms. Lynch Fowler's last known address via first class mail. The letters informed Ms. Lynch Fowler that complaints against her had been received and assigned case numbers 06 APP 004 and 06 APP 005, respectively. Each letter requested a "detailed written response and complete copy of your working file... within 10 days of receipt of this letter." Ms. Lynch Fowler did not respond to these initial letters.
5. On March 28, 2006, the Screening Panel re-sent the letters dated February 28, 2006 to Ms. Lynch Fowler at her last known address via certified mail, return receipt requested. Ms. Lynch Fowler signed for the letters on April 18, 2006.
6. On April 19, 2006, Ms. Lynch Fowler contacted DOE staff member Marlene K. Meyer via telephone, requesting additional time to respond to the complaints. Ms. Lynch Fowler stated that she could provide the responses within a week. Ms. Meyer granted Ms. Lynch Fowler until April 26, 2006 to provide responses. Ms. Lynch Fowler did not respond to case numbers 06 APP 004 and 06 APP 005 by April 26, 2006, nor did she provide her working files. Consequently, both cases were opened by the screening panel for investigation.
7. On June 26, 2006, Investigator Willie E. Garrette contacted Ms. Lynch Fowler via electronic mail. Due to previous cases with the Department, the electronic mail address for Ms. Lynch Fowler was known to Mr. Garrette. Mr. Garrette essentially repeated the request of the screening panel. Specifically, Mr. Garrette asked Ms. Lynch Fowler "submit separate written responses to both complaints and to also provide complete copies of both work files... (by) July 10, 2006." Ms. Lynch Fowler did not respond to Mr. Garrette's request for information by July 10, 2006.

8. On August 2, 2006, Mr. Garrette re-sent his previous electronic mail message to Ms. Lynch Fowler. Mr. Garrette further advised Ms. Lynch Fowler regarding Wis. Admin. Code § RL 86.01(10), opined that she was in violation of the same, and that if no response was received by August 11, 2006, he would forward the matter for disciplinary consideration. Ms. Lynch Fowler responded to Mr. Garrette's electronic mail message on August 8, 2006. Ms. Lynch Fowler stated in her response that she, "will have (her) response completed and returned to (Mr. Garrette) by next Friday (August 18, 2006). Ms. Lynch Fowler did not provide responses by August 18, 2006.

9. On December 19, 2006, Mr. Garrette personally served Ms. Lynch Fowler with a subpoena. The subpoena pertained to the two complaints discussed above (06 APP 004 and 06 APP 005). Additionally, the subpoena pertained to two newer cases that were opened against Ms. Lynch Fowler, 06 APP 076 and 06 APP 105. The subpoena requested complete copies of the appraisals, work files and Multiple Listing Service data sheets for each of the appraisals underlying each of the four complaints, with specific reference to the street address of each property appraised. The subpoena further requested detailed written explanations concerning each appraisal. Finally, the subpoena demanded a written statement explaining why Ms. Lynch Fowler had failed to comply with Wis. Admin. Code § RL 86.01(10). The return date for the subpoena was January 17, 2007.

10. On January 12, 2007, Ms. Lynch Fowler contacted Attorney Mark A. Herman via electronic mail and asked him to call her regarding the subpoena. On January 16, 2007, in response Mr. Garrette sent Ms. Lynch Fowler an electronic mail message reminding her that the subpoena return date was the following day. Ms. Lynch Fowler neither provided the written materials demanded in the subpoena, nor did she personally appear at the date, time and place indicated on the subpoena.

11. Ms. Lynch Fowler has previously been disciplined (LS0603015APP, dated March 1, 2006) (Exhibit 2). The allegations in that matter included failing to provide information to the Board in a timely manner, contrary to Wis. Admin. Code § RL 86.01(10). Ms. Lynch Fowler is still subject to the terms of that Order, which include: (a) a limitation on the number of appraisals that she may perform per month, which may not be removed any earlier than April 1, 2007; (b) a \$1,000 forfeiture, to be paid by March 1, 2007; (c) education, which was to be completed by January 1, 2007, with proof of completion to be submitted by February 25, 2007; and (d) costs of \$700, which were due by December 1, 2006, but which were not paid until December 28, 2006.

12. Per Wis. Stat. § 458.26(3)(b), a licensee is subject to discipline if he or she has, "Engaged in unprofessional or unethical conduct in violation of rules promulgated..." by the Department.

13. Per Wis. Admin. Code § RL 86.01(10), it is unprofessional conduct for a licensee to, "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."

14. Per Appraisal Subcommittee Policy Statement 10 and interpretative letters from the Appraisal Subcommittee, final administrative decisions should occur within one year of the date of receipt of a complaint against a licensee, with a possible sanction for failure to comply with the policy statement being de-certification of all appraisers in the State of Wisconsin. De-certification of all appraisers in Wisconsin would prohibit any Wisconsin licensee from conducting an appraisal for a federally related transaction, which would cause great harm to the public welfare.

CONCLUSION OF LAW

1. By repeatedly failing to respond to requests for information from DOE staff, who were acting as representatives of the Board, over the course of 2006 and to date, there is probable cause to believe that Ms. Lynch Fowler has acted in violation

of Wis. Admin. Code § RL 86.01(10).

2. Due to her alleged violations of Wis. Admin. Code § RL 86.01(10) Ms. Lynch Fowler there is probable cause to believe that she both impeded the ability of the Board to protect the public against unprofessional and unethical conduct, and contributed to the inability of the Board to process all complaints to conclusion within one year. Consequently, there is probable cause Ms. Lynch Fowler has engaged in conduct which endangers the public welfare, the continuance of which would increase the risk of great harm to the public welfare. The legal requirements for the summary suspension of the Respondent's Real Estate Appraiser's License have been fulfilled pursuant to Wis. Adm. Code, chapter RL 6.

3. Based upon the foregoing, it is necessary to suspend Ms. Lynch Fowler's license and certification to practice as a licensed real estate appraiser in the State of Wisconsin immediately to protect the public's health, safety or welfare.

ORDER

NOW, THEREFORE, IT IS ORDERED that Real Estate Appraiser's License number 4-1353 issued to Heather Lynch Fowler is **SUSPENDED** as of the date of service under sec. 6.08, Wis. Admin. Code and sec. 801.11, Stats. for the service of summons. The license shall remain suspended until a final decision and order is issued in the disciplinary proceeding, or until further order of the Board. Respondent shall surrender her credentials immediately upon service to the following address:

Department of Regulation and Licensing
Attn: Pamila Majewski, Paralegal
P.O. Box 8935
Madison, WI 53708

IT IS FURTHER ORDERED that Ms. Lynch Fowler may request a hearing to show cause why this suspension order should not be continued, and she may file such request with the Real Estate Appraisers Board at Box 8935, Madison, WI 53708-8935. A hearing on such request shall be scheduled within 20 days of the date the Department receives such request, unless Ms. Lynch Fowler agrees to a later date.

Signed and dated February 28, 2007,

FOR THE REAL ESTATE APPRAISERS BOARD:

Mark Kowbel, Chair

To: Heather Lynch Fowler
3606 Turning Leaf Drive
Madison, WI 53719

NOTICE OF RIGHT TO SHOW CAUSE

PLEASE TAKE NOTICE that you have the right to request a hearing following the issuance of this order to show cause why the order should not be continued until the effective date of a final decision and order. A request to show cause must be filed with the Department of Regulation and Licensing, P.O. Box 8935, Madison, WI 53708. If a hearing to show cause is requested, the hearing shall be scheduled before an Administrative Law Judge on a date within twenty (20) days of the date of receipt by the Department of the request for hearing, unless you request or agree to a later time.

If a hearing to show cause is held, you may testify as well as the petitioner. You and the petitioner may call witnesses and examine and cross-examine them. The petitioner will have the burden to show why the order should be continued. At the conclusion of the hearing, the Administrative Law Judge will make findings of fact and conclusions of law and recommend a final decision and order to the Real Estate Appraiser Board. If it is determined that the summary suspension should not be continued, your license will be restored to you.