

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	:	FINAL DECISION
	:	AND ORDER
HEATHER LYNCH-FOWLER,	:	LS0703092APP
RESPONDENT.	:	

Division of Enforcement Case Nos. 06APP004, 06APP005, 06APP076, 06APP105

The State of Wisconsin, Real Estate Appraisers Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Real Estate Appraisers Board.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 11th day of July, 2007.

Mark P. Kowbel
Member of the Board
Real Estate Appraisers Board

STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

HEATHER LYNCH-FOWLER,
RESPONDENT.

:
:
:
: PROPOSED DECISION
AND ORDER
:
: Case No. LS0703092APP
:
:

[DOE Case File #06APP004; 06APP005; 06APP076; 06APP105]

The parties to this action for purposes of §227.53, Wis. Stats., are:

Ms. Heather Lynch-Fowler
3606 Turning Leaf Drive
Madison, WI 53719

Real Estate Appraisers Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

A hearing in the above-captioned matter was held on May 23, 2007, before Administrative Law Judge Jacquelynn B. Rothstein. The Division of Enforcement appeared by Attorney Mark A. Herman. Ms. Lynch-Fowler did not appear.

Based on the entire record in this case, the undersigned administrative law judge recommends that the Real Estate Board adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Heather Lynch-Fowler (dob 8/1/68) has a certificate of licensure and a certification to practice as a licensed real estate appraiser (License #4-1353). Her credential was first granted on March 30, 2001. Ms. Lynch-Fowler's most recent address on file with the Department of Regulation and Licensing is 3606 Turning Leaf Drive in Madison, Wisconsin.
2. On February 28, 2007, the Wisconsin Real Estate Appraisers Board (Board) issued an Order of Summary Suspension in which it summarily revoked Ms. Lynch-Fowler's license as a real estate appraiser.
3. On January 9, 2006, the Division of Enforcement received a complaint concerning an appraisal conducted by Ms. Lynch-Fowler. That complaint was assigned Case Number 06 APP 004 and forwarded to the Board's screening panel for its consideration.
4. On January 9, 2006, the Division of Enforcement received a second complaint concerning an appraisal conducted by the Ms. Lynch-Fowler. That complaint was assigned Case Number 06 APP 005 and forwarded to the screening panel for its consideration.
5. On February 28, 2006, the screening panel sent letters to Ms. Lynch-Fowler's last known address via first class mail.

The letters indicated that there had been two complaints filed against her. 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 those initial letters.

6. On March 28, 2006, the screening panel again 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.
7. On April 19, 2006, Ms. Lynch-Fowler contacted Marlene K. Meyer within the Division of Enforcement by telephone and requested additional time to respond to the complaints. Ms. Lynch-Fowler indicated that she could provide the responses within a week. Ms. Meyer granted Ms. Lynch-Fowler until April 26, 2006, to provide the responses. Ms. Lynch-Fowler did not respond by April 26, 2006, nor did she provide her working files. Consequently, both cases were opened by the screening panel for investigation.
8. On June 26, 2006, Investigator Willie E. Garrette contacted Ms. Lynch-Fowler via electronic mail in which he again repeated the request of the screening panel. Specifically, Mr. Garrette asked Ms. Lynch-Fowler to “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.
9. On August 2, 2006, Mr. Garrette again sent his electronic mail message of June 26, 2006, to Ms. Lynch-Fowler. Mr. Garrette further advised Ms. Lynch-Fowler of § RL 86.01 (10), Wis. Admin. Code, and noted that she was in violation of it and also advised her 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.
10. On December 19, 2006, Mr. Garrette personally served Ms. Lynch-Fowler with a subpoena. The subpoena related to the aforementioned complaints. The subpoena also requested material about two newer cases that were opened against Ms. Lynch-Fowler. 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 asking Ms. Lynch-Fowler why she had failed to comply with § RL 86.01(10), Wis. Admin. Code. The return date for the subpoena was January 17, 2007.
11. On January 12, 2007, Ms. Lynch-Fowler contacted Attorney Mark A. Herman via electronic mail and asked him to call her regarding the subpoena. In response, Mr. Garrette sent Ms. Lynch-Fowler an electronic mail message on January 16, 2007, in which he reminded 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.
12. On March 1, 2006, the Board issued an Order as part of a stipulation entered into with Ms. Lynch. Under the terms of the Order, Ms. Lynch-Fowler was required to pay costs of \$700.00 by December 1, 2006. She was also required to complete three specific appraisal courses by January 1, 2007, and submit proof of their completion by February 25, 2007.
13. Ms. Lynch-Fowler has not timely complied with the terms of the Order. She did not pay the costs until December 28, 2006. She has only completed two of the required courses and did not submit evidence of completion until after the deadline date.

CONCLUSIONS OF LAW

1. The Real Estate Appraisers Board has jurisdiction in this matter pursuant to § 458.26, Wis. Stats.
2. By having failed to cooperate in a timely manner with the investigation of the Real Estate Appraisers Board, Heather Lynch-Fowler has engaged in unprofessional conduct contrary to § RL 86.01 (10), Wis. Admin. Code and § 458.26 (3) (b), Wis. Stats.
3. By not completing the required continuing education requirement and by failing to pay her costs on time, Heather Lynch-Fowler failed to comply with the Real Estate Appraisers Board Order dated March 1, 2006.
4. By having failed to comply with the Real Estate Appraisers Board Order of March 1, 2006, Ms. Lynch-Fowler engaged in unprofessional conduct contrary to § 458.26 (3), Wis. Stats.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that the credentials of Heather Lynch-Fowler to practice as a real estate appraiser in the State of Wisconsin shall be **REVOKED**.

IT IS FURTHER ORDERED that the assessable costs of this proceeding be imposed upon Heather Lynch-Fowler, pursuant to sec. 440.22, Wis. Stats.

OPINION

Section RL 2.14 of the Wisconsin Administrative Code provides that if a respondent fails to answer a complaint or fails to appear at a hearing, he or she is in default. If found to be in default, the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence against the respondent.

A Notice of Hearing and Complaint were sent to Ms. Lynch-Fowler by certified mail at her last known address on file with the Wisconsin Department of Regulation and Licensing. However, Ms. Lynch-Fowler did not file an answer to the above-captioned complaint, nor did she appear at the scheduled hearing. As a result, Ms. Lynch-Fowler is in default and has effectively admitted all of the allegations contained in the complaint, namely that she engaged in unprofessional conduct by failing to cooperate in a timely manner with the investigation of the Real Estate Appraisers Board (Board) and also by failing to comply with a Board Order.

Because Ms. Lynch-Fowler has effectively admitted all of the allegations contained in the complaint, the question remains as to what the appropriate form of discipline is for her. Revocation of her license has been recommended. It is well established that the objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*. 41 Wis. 2d 481, 485 (1969).

At this time, there is nothing in the record to suggest that imposing any discipline short of revocation would have a rehabilitative effect on Ms. Lynch-Fowler or that she even has an interest in being rehabilitated. Absent some mitigating evidence, imposing anything less than revocation would fail to deter other licensees, and may instead wrongly encourage them to engage in similar conduct. Accordingly, revocation remains the only appropriate way in which to safeguard the public.

In addition, the imposition of costs against Ms. Lynch-Fowler is recommended. Section 440.22(2), Stats., provides in relevant part as follows:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are

payable to the department.

The presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against a respondent is a discretionary decision on the part of the Real Estate Appraisers Board, and that the Board's discretion extends to the decision whether to assess the full costs or only a portion of the costs. The recommendation that the full costs of the proceeding be assessed is based primarily on fairness to other members of the profession.

The Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following a full evidentiary hearing, that licensee should bear the costs of the proceeding.

Dated at Madison, Wisconsin, this 25th day of May, 2007.

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Jacquelynn B. Rothstein
Administrative Law Judge