

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**
JAY N. CLARKE, :
 : **LS0707112APP**
 :
RESPONDENT. :

Division of Enforcement Case No. 06 APP 050

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

Jay N. Clarke
419 Mount Zion Drive
P.O. Box 477
Ripon, WI 54971

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 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 Jay N. Clarke (“Respondent”), whose last known address of record with the Department of Regulation and Licensing (“Department”) is 419 Mount Zion Drive, Ripon, WI 54971, and whose date of birth is April 9, 1951, possesses a certificate of licensure and a certificate of certification to practice as a certified residential appraiser (#9-348). The certificate was first granted on January 14, 1992, and will expire on December 14, 2007.
2. On April 7, 2006, the Department denied a certificate of certification and certificate of licensure as a licensed appraiser to Nanette Hanson after reviewing samples of her work as an appraiser and concluded that two of the three appraisal reports reviewed contained substantial violations of the 2005 or applicable Uniform Standards of Professional Appraisal Practice (USPAP). Each appraisal report and certification statement reviewed was signed by Mr. Clarke.
3. Per USPAP Standards Rule 2-3, Comment, “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.”
3. Respondent has violated the following provisions of USPAP:
 - a. Standards Rule 1-1(a), which requires that an appraiser to, “be aware of, understand and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal” by failing to correctly employ the cost approach to valuation;
 - b. Standards Rule 1-1(c), which states that an appraiser must, “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 affects the credibility of those results” by including

inaccurate or incomplete information in the appraisal report;

- c. Standards Rule 1-2(a), which requires an appraiser to, “identify the client and other intended users,” by failing to do so;
- d. Standards Rule 1-2(b), which requires an appraiser to, “identify the intended use of the appraiser’s opinions and conclusions;” by failing to do so;
- e. USPAP Standards Rule 1-2(e), which requires an appraiser to, “identify the characteristics of the property” by providing incorrect and incomplete information regarding the characteristics of the property; and
- f. USPAP Standards Rule 1-4(a) and (b), which require an appraiser to analyze the applicable data when employing the sales comparison and cost approach by failing to do so as demonstrated by the presence of generic language which does not include any substantive analysis in the appraisal report.

5. Per Wis. Admin. Code § RL 86.01(2), “All appraisals... shall conform to the uniform standards of professional appraisal practice...” 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” (Appendix I contains the Uniform Standards of Professional Appraisal Practice).

6. The Department found no evidence of intent to produce a misleading appraisal, and Respondent admits that in recent years most appraisals produced by his company were conducted by a business partner who is now deceased.

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 the 2005 or other applicable Uniform Standards of Professional Appraisal Practice, as set forth in paragraph 4 of the findings of fact, Respondent has subjected himself to discipline per Wis. Stat. § 458.26(3)(b).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The license and certification of Respondent **JAY N. CLARKE** (#9-348) shall be, and hereby is **LIMITED** as follows: Respondent may not rely upon the work of any other person, including, but not limited to, any trainee, clerical staff and/or office assistant regarding the historic facts or description of any subject property or any comparable properties; and (b) Respondent may not provide any training or supervision to any other appraiser or any trainee seeking experience for use in obtaining an appraisal license. Respondent may petition the Board for removal of the limitation no sooner than one year from the date of completion of all remaining education required by this Order.

IT IS FURTHER ORDERED that:

2. Respondent shall take and successfully complete the following courses offered by the Appraisal Institute, to include the testing component: (a) Residential Site Valuation and Cost Approach, offered by the Appraisal Institute; and (b) Appraising the Tough Ones, offered by the Appraisal Institute. Successful completion of these courses shall include the successful completion of any testing component, if available. These courses must be completed within one year of the date of signing of this Order. These courses may not be counted towards Respondent’s continuing education requirements.

3. Respondent shall pay costs of this investigation in the amount of five hundred (\$500.00) dollars within ninety (90) days of the signing of this Order.

4. All payments and proof of completion of education required by this order to be submitted to the Department of Real Estate shall be mailed, faxed 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

5. Case number 06 APP 050 is hereby closed. Any complaint arising out of the denial of Nanette Hanson's application for licensure as an appraiser, dated May 1, 2007, shall be closed as to Jay N. Clarke under prosecutorial discretion code P 7, if it may have been a violation, but the regulatory authority has taken action in regard to this credential holder that addressed the concern and further action is unnecessary."

6. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license and certification (#9-348). The Real Estate Appraisers 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 Respondent fails to timely submit any payment of costs as set forth above, or fails to complete the ordered education the Respondent's license and certification (#9-348) SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

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

REAL ESTATE APPRAISERS BOARD

By: Mark P. Kowbel
A Member of the Board

7/11/07
Date

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

IN RE DISCIPLINARY PROCEEDINGS :
AGAINST :
 : **STIPULATION**
JAY N. CLARKE, :
 : **LS** _____
 :
RESPONDENT. :

Division of Enforcement Case No. 06 APP 050

It is hereby stipulated and agreed, by and between Jay N. Clarke, 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 a pending investigation of Respondent's licensure by the Division of Enforcement (06 APP 050). Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
2. Respondent understands that by signing this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, 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 him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; 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 him 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. Respondent has been provided with the opportunity to obtain 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 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 Respondent or his 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 Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

JAY N. CLARKE

Respondent

419 Mount Zion Drive

P.O. Box 477

Ripon, WI 54971

Date

MARK A. HERMAN

Attorney, Division of Enforcement

1400 East Washington Avenue

Madison, WI 53708-8935

Date