

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**
NEIL K. SCHWARTZ, :
 : **LS0707118APP**
 :
RESPONDENT. :

Division of Enforcement Case No. 06 APP 012 and 06 APP 101

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

Neil K. Schwartz
801 Crestview Drive S
Saint Paul, MN 55119

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 the matter, 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 Neil K. Schwartz (“Schwartz”), whose last known address of record with the Department of Regulation and Licensing (“Department”) is 801 Crestview Drive S, Saint Paul, MN 55119, and whose date of birth is September 20, 1957, possesses a certificate of licensure and a certificate of certification to practice as a certified residential appraiser (#9-1119). The certificate was first granted on July 9, 1998, and will expire on December 14, 2007. Mr. Schwartz also holds a license from the State of Minnesota.

Count I: 06 APP 012 USPAP Violations

2. On January 24, 2005, Mr. Schwartz signed an appraisal report and certification statement for an appraisal of real property located at 602 South 16th Street, La Crosse, WI 547601 (“La Crosse report” and “La Crosse subject property,” respectively). Also signing the report was Andy Tillman, an employee of Mr. Schwartz. Mr. Tillman does not hold a license or certification from the State of Wisconsin, but is licensed as an appraiser by the State of Minnesota, with a license number of 20404353.

3. A review of the La Crosse report shows USPAP violations including, but not limited to, the following:

a. USPAP Standards Rule 1-1(a), which requires appraisers to, “be aware of, understand and correctly employ those recognized methods and techniques necessary to produce a credible appraisal” by failing to employ a recognized method of measuring square footage for a 1.5 story home, which resulted in an overstatement of the gross living area of the La Crosse subject property, and by using incorrect or outdated inputs from Marshall & Swift in employing the cost approach to valuation;

b. USPAP Standards Rule 1-1(c) which requires an appraiser to, “not render appraisal services in a careless or

negligent manner, such as by making a series of errors...” by providing an incomplete legal description, inappropriate neighborhood boundaries, failing to properly analyze and adjust for the location of the La Crosse subject property, failing to correctly report the lot dimensions, reporting the site as “irregular” when it is not, designating the La Crosse subject property as a “2 story” when it is not, by reporting the age as “50+” when it is known that the property was built in 1921, and by incorrectly reporting the zoning classification;

- c. USPAP Standards Rule 1-2(a), which requires an appraiser to, “identify the client and other intended users” by failing to explicitly do so;
- d. USPAP Standards Rule 1-2(e), which requires an appraiser to, “identify the characteristics of the property,” by failing to correctly do so, as noted in sub-paragraph b, above; and
- e. USPAP Competency Rule, which requires an appraiser to, “have the knowledge and experience to complete the assignment accurately and competently; or alternatively, must: ...describe the lack of knowledge and/or experience and the steps taken to complete the assignment competently in the report...” by failing to have the requisite competency in the La Crosse market and geographic area, and failing to take necessary remedial steps and/or to disclose same in the La Crosse report.

4. Per Wis. Stat. § 458.26(3), “... the board may limit, suspend or revoke any certificate under this chapter... if the... board finds that the... holder of the certificate has done any of the following: (b) Engaged in unprofessional... conduct in violation of rules promulgated under s. 458.24.

5. 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.”

Count II: Failure to Retain Records and Material Misstatement of Information

6. On July 26, 2006, the Department received a copy of the Weston report from the complainant. The report as received from the complainant was signed by both Henjum and Schwartz on February 7, 2005, identified the location of the Weston property as Schofield, identified the above-grade gross living area of the Weston property as 1,152 sq. ft., reported a market value of \$175,000, contained a statement that the property was constructed in 2004 and included a certification statement signed on January 24, 2005 by Henjum.

7. On October 16, 2006, the Department received a copy of the Weston report from the homeowner that was identical in all material respects to the copy received from the complainant. The homeowner received their copy of the Weston report from Mr. Schwartz’s client, Ameriquist Mortgage Company.

8. On November 3, 2006, the Department received a letter from Mr. Schwartz and Mr. Henjum which included a copy of what was purported to be the “correct appraisal (finished product).” The appraisal report submitted by Mr. Schwartz and Mr. Henjum differed from the copies of the appraisals received from the complainant and the homeowner in several respects, including but not limited to: identifying the above-grade gross living area as 1,344 sq. ft., reporting the market value as \$171,000, not containing the statement that the property was constructed in 2004, and containing a certification statement signed on February 7, 2005 by Henjum.

9. On January 18, 2007, an investigator with the Department spoke to Mr. Schwartz, and requested a copy of the original appraisal, without corrections. Mr. Schwartz stated to the investigator that he no longer had a copy of the original appraisal because he had made to the appraisal report on the computer, and failed to save the original version of the appraisal report.

10. Per Wis. Admin. Code § RL 86.01(8), “All certified and licensed appraisers shall maintain records as required in s. 458.18, Stats. ...”

11. Per Wis. Stat. § 458.18(1), “a certified or licensed appraiser shall retain for at least 5 years the originals or true copies of each... appraisal report...”

12. Per Wis. Stat. § 458.26(3), “... the board may limit, suspend or revoke any certificate under this chapter... if the... board finds that... the holder of the certificate has done any of the following: (a) Made a material misstatement in... any other information furnished to the board or the department... (i) Violated this chapter or any rule promulgated under this chapter.”

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 performing appraisals and rendering appraisal reports that do not conform to the Uniform Standards of Professional Appraisal Practice, as set forth more fully above in paragraphs 3 and 7 of the Findings of Fact, **Neil K. Schwartz** has violated Wis. Admin. Code § RL 86.01(2), thereby subjecting himself to discipline per Wis. Stat. § 458.26(3)(b).

4. By failing to maintain a true and correct copy of the Weston appraisal report **Neil K. Schwartz** has violated Wis. Admin. Code § 86.01(8) and Wis. Stat. § 458.18(1), thereby subjecting himself to discipline per Wis. Stat. § 458.26(3)(i).

5. By presenting an altered appraisal report to the Department of Regulation and Licensing and by representing to the Department that this was the “finished product,” **Neil K. Schwartz** has made a material misstatement in information provided to the Department, thereby subjecting himself to discipline per Wis. Stat. § 458.26(3)(a).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The **VOLUNTARY SURRENDER** of the license and certification of **Neil K. Schwartz** (license # 9-1119), including the right to renew said license and certification, shall be, and hereby is, **ACCEPTED**. All indicia of licensure shall be submitted to the Department of Regulation and Licensing within twenty (20) days of the date of signing of this Order.

IT IS FURTHER ORDERED that:

2. The offer of **Neil K. Schwartz** to never seek licensure or certification from the Wisconsin Real Estate Appraisal Board, and to never seek temporary privileges as an appraiser from the Wisconsin Department of Regulation and Licensing is **ACCEPTED**.

3. **Neil K. Schwartz's** payment of the costs of this investigation in the amount of nine (\$900.00) dollars, which was received prior to this meeting, is **ACCEPTED**.

4. All submissions required by this Order shall be mailed, faxed, delivered or otherwise transmitted 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 012 is hereby closed.

6. Case Number 06 APP 101 is hereby closed under prosecutorial discretion code P5: "There may have been a violation, but because the person...in question...is no longer actively practicing or does not have a current credential to practice, a decision was made to close the case and place a "GLAF OR HOLD" on the credential in accordance with the Department's 'Hold Status and Flagged Credentials' Policy. In the event that...an application for renewal of the credential is received or the credential is renewed, the case may be re-opened and reconsidered."

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**
NEIL K. SCHWARTZ, :
 : **LS** _____
 :
RESPONDENT. :

Division of Enforcement Case No.s 06 APP 012 and 06 APP 101

It is hereby stipulated and agreed, by and between Neil K. Schwartz, 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 against Respondent's licensure by the Division of Enforcement (06 APP 012 and 06 APP 101). Respondent consents to the resolution of these matters without the issuance of a formal compliant.

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. Respondent denies the findings of fact and conclusions of law as contained in the attached Order, but admits that there is evidence from which the Wisconsin Real Estate Appraisers Board can make the findings of fact, and that the findings are sufficient to support the conclusions of law.

3. Respondent has been provided with the opportunity to obtain 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.

NEIL K. SCHWARTZ

Respondent

801 Crestview Drive S

Saint Paul, MN 55119

Date

MARK A. HERMAN

Attorney, Division of Enforcement

1400 East Washington Avenue

Madison, WI 53708-8935

Date