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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE APPLICATION:

FOR CERTIFICATION AS A CERTIFIED	:	FINAL DECISION
RESIDENTIAL APPRAISER OF	:	AND ORDER
	:	LS0807071APP
KURT M. STAMMER,	:	
APPLICANT.	:	

Division of Enforcement Case No. 08APP059

The State of Wisconsin, Department of Regulation and Licensing, 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, Department of Regulation and Licensing.

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 16th day of January, 2009.

Celia M. Jackson, Secretary
Department of Regulation and Licensing

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE APPLICATION
FOR CERTIFICATION AS A CERTIFIED
RESIDENTIAL APPRAISER OF

PROPOSED DECISION
AND ORDER
(Class 1 Hearing)

KURT M. STAMMER,
APPLICANT.

LS0807071-APP

Division of Enforcement Case No. 08 APP 059

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PROCEDURAL HISTORY

On July 2, 2008, a Notice of Class 1 Hearing in the above-captioned matter was filed by the Division of Enforcement on behalf of the Department of Regulation and Licensing, (Department). The action was based upon a request for a hearing timely submitted by the applicant, Kurt M. Stammer. The hearing was held before Administrative Law Judge Colleen M. Baird on August 13, 2008. Attorney Nicholas Schweitzer appeared on behalf of the Division of Enforcement. Mr. Stammer appeared *pro per* on his own behalf without legal representation.

FINDINGS OF FACT

1. The applicant, Kurt M. Stammer, date of birth, August 22, 1968, is a licensed appraiser, pursuant to license number 1878-4, which was first granted July 29, 2004.
3. Mr. Stammer's last address reported to the Department of Regulation and Licensing is 1619 Aster Street, Port Washington, WI 53074.
3. On or about November 16, 2007, Mr. Stammer applied to the Department of Regulation and Licensing for certification as a Certified Residential Appraiser.
4. On April 23, 2008 the Department of Regulation and Licensing denied the application of Kurt M. Stammer for certification as a Certified Residential Appraiser.
5. Mr. Stammer's application was denied on the grounds that the work samples which he submitted in support of his

application were not in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP).

6. On May 13, 2008, Mr. Stammer filed a request for a hearing to challenge the denial of his application for certification.
7. As a part of the decision denying Mr. Stammer's application for certification, the Department submitted three of the appraisal reports prepared by the applicant to the Real Estate Appraisal Advisory Committee of the Real Estate Appraisers Board for review. A professional member of the Committee reviewed the reports to determine compliance with USPAP.
8. The Committee member who reviewed Mr. Stammer's reports found that two of the three reports submitted were not USPAP compliant and requested the submission of an additional report to demonstrate whether the applicant was sufficiently qualified to receive certification.
9. Upon reviewing the additional report, the Committee member determined that the fourth report was not USPAP compliance and as a result Mr. Stammer's application for certification was denied for failure to submit evidence satisfactory to the department of qualifying appraisal experience.
10. Mr. Stammer's fourth report was not USPAP compliant because it failed to include a cost approach, inaccurate comparable sales, and contained an inaccurate description of the legal dimensions of the property.
11. At hearing, Mr. Stammer indicated that he did not want to appeal or challenge the decision regarding the first three appraisals reports, but he believed that the fourth appraisal submitted for review was compliant.

CONCLUSIONS OF LAW

1. The Department of Regulation and Licensing has jurisdiction in this matter under Wis. Stat. §§ 458.03 (a) and 458.06(4) and Chapters RL 81 and 83 of the Wisconsin Administrative Code.
2. The evidence of work samples submitted in conjunction with, and support of, the applicant's application for certification are not compliant with the Uniform Standards of Professional Appraisal Practices in effect at the time the appraisals were prepared, and do not constitute satisfactory proof of experience for certification.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the applicant be DENIED his application for certification as a Certified General Appraiser and that this order which affirms the prior decision of the Department denying his application shall be, and hereby is, ADOPTED as the Final Decision and Order in this matter.

APPLICABLE LAW

Wisconsin Statute § 458.03(1) (a)

(1) In addition to the other duties and powers of the department under this chapter, the department shall do all of the following:

- (a) Grant and issue certificates to appraisers.

Wisconsin Statute § 458.06(4)

(4) Residential Appraiser Certification. The department shall grant and issue a residential appraiser certificate to any individual who does all of the following:

(a) Satisfies the conditions in sub. (2).

(b) Submits evidence satisfactory to the department that he or she has successfully completed the applicable educational and experience requirements specified in the rules promulgated under s. 458.085 (1) and (2).

(d) Passes an examination conducted by the department under s. 458.10 to determine fitness as a residential appraiser.

(e) Satisfies any other requirements that the department determines, by rule, are necessary to ensure that a residential appraiser is qualified to perform an appraisal in a federally related transaction.

Wis. Admin. Code § RL 83.01

(2) An applicant seeking licensure as an appraiser shall submit evidence satisfactory to the department that the applicant has at least 2,000 hours of appraisal experience obtained over a period of not less than 12 months.

(3) The work claimed under subs. (1), (1a) and (2) for appraisal experience credit shall be approved by the department and shall accomplish all of the following:

(a) Be in compliance with the uniform standards of professional appraisal Practice, in effect at the time the appraisals were prepared.

(b) Include one or more of the following types of appraisal experience: appraisal, appraisal review, appraisal consulting or mass appraisal.

(c) Include, in the case of general appraisers, no more than 50% residential appraisal experience.

(d) Include, in the case of licensed appraisers and certified residential appraisers, no more than 25% commercial appraisal experience.

(e) Include no more than 20% appraisal experience obtained from the performance of limited appraisals or from the performance of appraisals in which the departure provision of the uniform standards of professional appraisal practice was invoked.

(f) If obtained prior to January 1, 2008, include no more than one-third of appraisal experience gained for appraisal work performed without a client. If obtained after January 1, 2008, include no more than 50% of appraisal experience gained for appraisal work performed without a client. Case studies or practicum courses that are approved by the appraiser qualifications board of the appraisal foundation may be claimed to satisfy non-client experience.

(3m) An applicant who fails to complete the appropriate hours of experience required under sub. (1), (1a) or (2), as appropriate, before January 1, 2008, may claim only those experience hours acquired after January 30, 1989.

(4) An applicant applying for certification or licensure under subs. (1) and (2) shall submit on forms provided by the department:

(b) A roster of appraisal experience.

(c) A chronological resume of employment.

Wis. Admin. Code § RL 83.02

For purposes of verifying appraisal experience claimed under this chapter, the department may require an applicant to submit any of the following: (6) Any additional information the department deems necessary to evaluate the applicant's experience.

OPINION

The issues for consideration at the hearing derive from four appraisals completed by the applicant between August 14, 2007 and September 26, 2007. (Exhibits 1-4) The appraisals were submitted by the applicant for consideration by the Department of his qualifying appraisal experience for the Certified Residential Appraiser credential. Based upon a review by an expert professional member of the advisory committee, it was determined that two out of the three appraisals were non-compliant with the Uniform Standards of Professional Appraisal Practice (USPAP).^[1] As a result, the applicant was given an opportunity to submit a fourth appraisal. This report was also found to contain numerous violations of the USPAP. Based upon the totality of the appraisals, it was determined that the applicant failed to submit satisfactory evidence of his qualifications to receive the advanced certification credential.

At hearing, the applicant sought only to challenge the evaluation of the fourth appraisal, conceding the determination as to the other appraisals. The fourth appraisal report covered a property located at 1556 Pine Cone Trail, Port Washington, Wisconsin. The expert witness, Linda Verbecken, testified that in reviewing the applicant's fourth appraisal report she identified several USPAP Standards Rules which were violated; Standards Rule 1-1, Standards Rule 1-4 and Standards Rule 2. The first standards rule requires the appraiser to use correct methods and techniques and not commit substantial errors of omission or commission that significantly affect an appraisal. The second rule cited, Standards Rule 1-4, requires the appraiser to collect, verify and analyze all information necessary for credible assignment results and to complete all applicable approaches to value, including a cost approach. The third rule, Standards Rule 2, requires the appraiser to communicate the results of appraisals clearly and accurately in a manner that is not misleading, including disclosing all assumptions, hypothetical and limiting conditions that directly affect the appraisal and indicate their impact on value.

According to the expert witness, Ms. Verbecken, the deficiencies in the appraisals can be summarized in plain terms as the failure to correctly describe the dimensions of the subject property lot; the failure to use appropriate comparable properties and the failure to complete a cost approach analysis. Ms. Verbecken's testimony provided a thorough and credible basis for her recommendation to deny the application. Ms. Verbecken not only cited the violations at issue but explained why the errors in the appraisal reports could have an effect on a client or user. For example, she explained the importance of developing the cost value approach for a property, such as the subject in the fourth appraisal report, when the property is relatively new. Ms. Verbecken testified as follows:

Q: Why is it your opinion that he should have developed the cost approach?

A: Well, it's generally accepted that a buyer when they are evaluating a purchase – if they are looking at new homes, they would also consider as an alternative purchase you know, building a home of their own. So the concept is that the buyer would consider how much it cost him to build that same home in terms of the

eventual decision to purchase the property. ... a cost approach is applicable when the improvements are new as new as the subject was in this case; and that is supported by what is said in the USPAP, which is that the scope of work is acceptable when it meets or exceeds the appraisers pure actions or the expectations of parties who are the intended users.

[Hearing Transcript at pg. 49]

In response to alleged violations of USPAP, the applicant attempted to explain in his testimony why he was not required to use the cost value approach. His explanation was that the lender, Fannie Mae, did not require it on the report form for a federally regulated mortgage transaction. The applicant did not submit any documentation to bolster his argument about the lender's criteria at hearing. However, after the hearing at the request of the Administrative Law Judge, the applicant submitted an unmarked copy of the Fannie Mae appraisal form. This unmarked form appeared to verify that the parenthetical statement "Cost Approach to Value (Not Required by Fannie Mae)" was on the original form and not language written or inserted by the applicant.

In response, to the argument about the necessity of the cost value approach as lender criteria, Ms. Verbecken testified the USPAP Standards Rule 1-4 requires an appraiser to collect, verify, and analyze all information necessary for credible assignment results even if Fannie Mae form might exclude it. Ms. Verbecken also testified that under the USPAP, an appraiser must follow the standards when completing an appraisal report and must decide whether or not the scope of work assignment is acceptable for that particular work. Again, Ms. Verbecken's testimony was informative and persuasive:

Q: ... is there something that you would like to explain about Fannie Mae requires as opposed to USPAP?

A: In terms of this particular situation, it's strictly a form function. Fannie Mae does not require the cost approach, but neither of my – any number of clients or other applications – it's just that the appraiser must follow USPAP when completing his report, and it's up to the appraiser to make the decision whether or not the scope of work is acceptable for that particular assignment.

Q: So my understanding is that this may have been an adequate report on the form for Fannie Mae, but is it your opinion that it not satisfy USPAP?

A: Correct.

Ms. Verbecken also provided expert testimony as to the discrepancies and omissions between various sections in the fourth appraisal report. The USPAP standards involved the applicant's omission of certain property amenities (whirlpool tub, air-to-air exchanger) that were mentioned in one section of the report but not carried over to the sales grid and not explained in any manner. Ms. Verbecken testified that such an omission could result in significant value analysis errors. She further testified that the list of comparable properties was also inconsistent with the description of the market as "stable and in balance" when the report indicates that the subject property is located in a small neighborhood with 25 listings and 24 sales within 12 months, a high turn-over rate. According to Ms. Verbecken, the appraisal report used comparable properties which had lots sizes of significantly smaller square footage.

Another violation cited by Ms. Verbecken was an error in the description of the dimensions of the subject property. The applicant described the lot as "rectangular" when it actually had more than four sides and one side was curved. Ms. Verbecken acknowledged that the lot may well have appeared to be a rectangular site, but since the report listed five different

dimensions, it required an explanation. Although Ms. Verbecken was willing to acknowledge that some of the factual errors, such as the lot dimensions, may have been attributable to a "cloning" error, she maintained that the report was overall non-compliant with the USPAP standards rules and demonstrated insufficient evidence of experience for receiving an advanced appraisal credential.

IN response, the applicant contends that the errors found in the fourth appraisal were minor "coaching" errors which did not render the report non-compliant with USPAP. The applicant testified that he had used the lot dimensions provided by the Ozaukee County Land Information System and the discrepancy in the dimensions is due to the fact that he added two of the sides together which caused it to appear as a four sided rectangular parcel. The applicant acknowledged that one of the sides was shaped as an arc but was combined as a one continuous line.

With respect to the discrepancies regarding the amenities described in his appraisal report, the applicant indicated that he did not transfer the items to the other sales grid portion of his report because he made the assumption that the interiors of the comparables were at least equal. The applicant testified that he made that assumption because he only had access to the interior of the subject property. The applicant testified that although he did not include the amenities in the sales grid, he did address it in the limiting conditions in the remainder of the report indicating that they were assumed to be equal.

With respect to the comparable properties, the applicant indicated that Fannie Mae form which was used for the report listed the entire City of Port Washington as the neighborhood boundaries. He further explained that he checked the box describing the neighborhood as suburban although it encompassed the entire city because the appraisal form only allows three choices; urban, suburban or rural, and Port Washington is not rural but it does not have the density of other urban areas such as Milwaukee.

Finally, with respect to the final issue in the appraisal review; the failure to complete the cost approach, the applicant testified that it was governed by the requirements of the lending institution which ordered the appraisal report. The applicant testified that the opinion of market value was for the purpose of securing financing or a mortgage on the property. The applicant cited to portions of the USPAP which allow the appraiser to apply discretion in determining the appropriate scope of work for an appraisal. For example, the language in the USPAP Practice and Advisory Opinions 2006 Edition, states as follows:

The scope of work must include the research and analyses that are necessary to develop credible assignments results.

Comment: The scope of work is acceptable when it meets or exceeds:

The expectations of parties who are regularly intended users for similar assignments and
What an appraiser's peers' actions would be in performing the same or similar assignment

An appraiser must be prepared to support the decision to exclude any investigation, information, method or technique that would appear relevant to the client, another intended user, or the appraiser's peers.

Relying upon this interpretation of the USPAP standards, the applicant testified that he did not use the cost approach to value because the intended use of the appraisal was to loan money in a federally regulated transaction and the client asked for current market value. The applicant also contends that Ms. Verbecken failed to mention or cite the absence of the cost approach for the other three reports as a deficiency or violation of the USPAP standards.

Although the applicant attempted to make cogent arguments in response to the deficiencies in the fourth appraisal, the

evidence submitted at hearing does not fully support his contentions. Nor does the evidence submitted at hearing substantiate that the applicant's appraisals were satisfactory to warrant approval of his application for advance certification. The additional information submitted by the applicant from the Ozaukee County Land Information Office regarding the dimensions of the lot is inconsistent with the applicant's testimony that he summed the two values for the side of the lot which was shaped as an arc. When the dimensions are added together the county map indicates the side as 78.83 feet while the applicant's appraisal report indicates 88.80 feet, an overstatement of 20%. The county map also depicts the property as a trapezoid shape with one curved side rather than as a rectangle as described by the applicant in his report. Again, the report does not clarify or explain the discrepancy.

Similarly, the applicant's reason for failing to include the amenities is not persuasive in comparison to the risk that the omission could result in a lower valuation for the subject property and comparables. At best, the applicant may have a reasonable argument concerning the lack of a cost value approach and the description of the market area, but explanations should have been provided if these determinations or factors were inconsistent with USPAP requirements.

The burden of proof in this Class 1 license denial proceeding is upon the applicant to show by a preponderance of the evidence that the decision denying a credential application is incorrect. It is important to recognize that the Department's decision to deny the application for certification was not based upon an "all-or-nothing" approach. Therefore, even if the applicant may be correct in some points or aspects, the record must be taken as a whole. Clearly, there were positive and negative aspects of the appraisals submitted by the applicant in support of his request for a credential; with only two out of the three reports being rejected as non-compliant. However, the purpose of the review of the applicant's appraisals, including the request that he submit an additional report, was to determine if the totality of his appraisals were sufficient to warrant certification.

Although it was made clear that the effect of the fourth report was significant, the Division of Enforcement explained at hearing that the applicant was given an opportunity to submit a fourth report because the reviewer thought it was a close enough call that if the fourth report was completely USPAP compliant, the certification would have probably been granted. Unfortunately, when comparing or weighing the totality of the positives in the appraisals, the negatives were greater. Accordingly, in the opinion of this Administrative Law Judge, the applicant did not meet his burden to demonstrate that the decision denying his application for the certification was legally incorrect.^[2]

Dated this 5th day of December, 2008.

Colleen M. Baird
Administrative Law Judge

^[1] The Division of Enforcement introduced copies of each appraisal report, although recognizing that the fourth appraisal report was the critical report for the determination of whether the application for certification would be granted or denied.

^[2] Although the information presented at hearing by the applicant did not sustain his burden of proof, it is possible that given the applicant's continued efforts in acquiring knowledge and skills in residential appraisals, he may demonstrate the requisite level of proficiency to obtain the advanced certification should he reapply in the future.