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Before The
State Of Wisconsin
Real Estate Appraisers Board

In the **MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST MICHAEL L.
DAVIS**, Respondent

FINAL DECISION AND ORDER
Order No. 0000206

Division of Enforcement Case Nos. 08 APP 062, 08 APP 062, 08 APP 119

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, make 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 at Madison, Wisconsin on May 19, 2010.


Member

Real Estate Appraisers Board



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the **MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST MICHAEL L.
DAVIS**, Respondent

PROPOSED DECISION AND ORDER

DHA Case No. DRL-09-0100

Division of Enforcement Case Nos. 08 APP 062, 08 APP 062, 08 APP 119

The parties to this proceeding for purposes of Wis. Stat § 227.53 are:

Michael Davis
2036 North 34th Street
Milwaukee, Wisconsin 53208

Department of Regulation and Licensing
Division of Enforcement
PO Box 8935
Madison, WI 53708-8935

Real Estate Appraisers Board
PO Box 8935
Madison, WI 53708-8935

Procedural History

The *Complaint* in this matter was filed on September 28, 2009. On October 1, 2009, the *Complaint* and *Notice of Hearing* were sent to the respondent at his two addresses of record with the Wisconsin Department of Regulation and Licensing (DRL). The Notice of Hearing stated that Respondent was required to file an Answer to the Complaint within 20 days, failing which "you will be found to be in default and a default judgment may be entered against you on the basis of the Complaint and other evidence and the Board may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing."

DRL served the Respondent with the *Complaint* and *Notice of Hearing* by both certified U.S. Mail and regular first class U.S. Mail using Respondent's addresses of record with DRL. Regarding the copy that was mailed Certified Mail, Return Receipt Requested, the Certified Mail Receipt has not been received.

Respondent never filed an Answer or otherwise responded to DRL's *Complaint* and *Notice of Hearing*.

On November 6, 2009, DRL mailed to Respondent by regular U.S. Mail at his DRL addresses of record a *Motion for Default Judgment*. Respondent has not responded to the motion.

Findings of Fact

1. Michael L. Davis was licensed in the State of Wisconsin as a Real Estate Appraiser with license number 4-1384, first issued on October 15, 2001.

2. Mr. Davis's most recent address on file with the Department of Regulation and Licensing ("Department") is 2036 North 34th Street, Milwaukee, WI 53208.

Case Number 08 APP 062

3. Mr. Davis performed an appraisal and prepared an appraisal report for property at 3200 North 34th Street in Milwaukee, Wisconsin as of June 23, 2007. His estimate of value was \$115,000.

4. In his appraisal and his report, Mr. Davis failed to comply with the Uniform Standards of Professional Appraisal Practice (USPAP) Standards Rules (S.R.) in the following ways:

- a. Use of Title. Mr. Davis misrepresented his license level on page 7 of the SRIPAR in the signature block. He holds a Licensed Appraiser credential but his license number is typed into the space for State Certification Number. License number space underneath is blank.
- b. Identification of Interest Appraised. The realty interest appraised is incorrectly identified as "fee simple." Subject property is a 2-unit residential income property with month to month leases noted on page 2. Therefore, the correct realty interest is "leased fee." The ownership rights do not allow unencumbered use consistent with the definition of "fee simple."
- c. Subject - Sales & Listing History. The appraiser noted on page 1 of the URAR that he reviewed the offer to purchase. He was unable to provide a copy of the offer to purchase with his work file as required by USPAP. The appraiser omitted analysis of the subject's MIS listing and states the subject was for sale by owner. A copy of the MLS listing was provided to DRL by the appraiser, indicating he was aware of the MIS listing as of the effective date of the appraisal. The MIS listing price as of 6/23/2007 was \$99,000; the appraiser does not explain why the appraised value is \$16,000 higher. He does not appear to understand the intent of the URAR form where required to analyze the current listing & sale contract — the data source cited (offer to purchase) would not provide information about the offering price or date. Further nonsensical verbiage — "The transaction (sic) is a (sic) arms-length transaction (sic), with motivated buyer and informed seller.

- d. Neighborhood Overview. The neighborhood description is not complete - appears typing was interrupted in mid-sentence. Appraiser included just one sale from inside neighborhood boundaries described.
- e. Trends of Property Values, Supply/Demand & Marketing Time. The appraiser indicates property values are increasing in June 2007. Based on Milwaukee market trend data reviewed, at best the market could be considered stable. See AOL, Yahoo & Zillow market trend charts and article in addenda, which support a stable market conclusion as of the effective date of the appraisal. Contributes to S.R. 1-1(a) unacceptability.
- f. Analysis of Current Zoning. The appraiser failed to analyze or explain the effect of subject's legal non-conforming use due to site size. His defense is that "the city pass (sic) a law stating that all properties were non-conforming can be rebuilt." City of Milwaukee officials deny that there is an all-inclusive ordinance automatically granting legal zoning conformance to legally non-conforming sites. Under existing zoning requirements, the subject may be denied a rebuild permit if the improvements are more than 50% destroyed.
- g. Meaningful Highest & Best Use Analysis. No highest & best use analysis was completed as required by S.R. 1-3(b); checkbox is inadequate to support highest & best use conclusion though it is generally accepted as meeting minimum appraisal standards when completing the Fannie Mae form.
- h. Improvement Description. Property information found in the appraisal report is the same as assessor's data. Cost approach statement indicates GLA is from assessor data. GLA does not match calculations using dimensions shown in appraiser's sketch. All other property information is boilerplate and could apply to any property in any location. An interior inspection was NOT performed as part of the appraisal review; the property condition may have changed since the effective date of the appraisal.
- i. Physical, Functional & External Depreciation. Subject's effective age is estimated at 30 years. The appraiser did not analyze functional obsolescence as required by S.R. 1-4 (b) (iii).
- j. Site Valuation in Cost Approach. The appraiser incorrectly used assessment value instead of market value to estimate site value in the cost approach.
- k. Reproduction/Replacement Cost Estimates. The date of cost data is suspect. The appraiser incorrectly checked "reproduction cost" instead of "replacement cost." Units of cost utilized are unrealistic (very low) and not credible. Site improvement \$ missing. No functional obsolescence taken although significant depreciation is present. Cost data was not included in work file. Estimated remaining economic life is

unsubstantiated and overly optimistic, given the subject's effective age of 30 years.

- l. Sales Comparison Approach - Overall Use of Market Data & Documentation. The appraiser failed to analyze all comparable sales properly to comply with USPAP. None of the sales selected were appropriate for use as comparable sales because none could be verified as arms-length transactions.
- m. Verification of Comparable Sales Data. Sale 1 listing clearly states that it is a one-party listing and was not exposed to market; it does not meet criteria for an arms-length transaction and is not an appropriate comparable sale. The appraiser failed to analyze all listings/sales of Sale 2 within one year (not a USPAP requirement but would be considered a supplemental standard for Fannie Mae Form 1004). Sale 2, located on the same block as the subject, sold twice in the same month: for \$62,000 and for \$120,000. Only the \$120,000 sale was reported by the appraiser. No MLS data sheet was provided from appraiser's work file. Sale 3 is a single family property and is not comparable to subject, which is a duplex income property.
- n. Adjustments to Comparable Sales. The appraiser failed to adjust for Sale 2 garage, resulting in a \$2,000 error in the sales grid. A \$1,000 adjustment for Sale 3 site, more than twice as large as subject, is misleading.
- o. Selection & Analysis of Rent Comps. The subject is included as a rent comparable although appraiser indicated on page 1 the subject was vacant. The subject's rent is cited as \$600 in the comparable rentals grid; conflicting with the appraiser's reconciled market rent conclusion of \$650 per unit. None of the three comparable rents in the rent schedule (\$495 to \$600) supports the appraiser's estimated rents for subject of \$650.
- p. Development of Net Operating Income. Unit prices used in replacement reserves schedule are overly optimistic and unrealistic. Cited replacement cost of furnace and water heaters is low, which reduces expenses and inflates income. Remaining economic life of roof indicates existing roof is nearly new, which is misleading. No reserves are calculated/or flooring or appliances included in rents.
- q. Use of Direct Capitalization. None of the comparable GRMs in the sales grid (91.67 to 99.92) supports the estimated GRM used to derive a value by the income approach (89). The GRM of 89 does indicate a value of \$115,000 by the income approach, supporting the appraiser's reconciled value conclusion, when used in conjunction with the inflated market rents estimated by the appraiser.
- r. Income Approach Conclusion. Estimated rents are not supported by market data; inflated market rents are used to derive value by income approach, resulting in inflated value by income approach.

- s. Reconciliation. Appraiser's reconciliation is boilerplate text which does not provide insight into the appraiser's reasoning and rationale or lead the reader to agree with the appraiser's opinions and conclusions.
- t. Estimate of Reasonable Exposure Time. A reasonable exposure time linked to the value opinion was not developed or reported.
- u. Overall Support & Reasoning for Key Assumptions. Multiple violations of USPAP Standards Rule 1-1(a) and omissions affect the overall support and reasoning for the appraiser's opinions and conclusions.
- v. Editing, Redundancies, Boilerplate, Frequency of Inconsistencies ("series of errors"). Real estate taxes on page 1 are indicated as \$358.81 per year. Actual 2007 property taxes due were approximately \$3000. On page 1 the subject is indicated as vacant which conflicts with page Z where the appraiser uses the subject's rents as Comparable Rental #1. The subject's rent schedule says 2 units are rented at \$650 per month each but Comparable Rental #1 indicates subject is rented at \$600 per month.
- w. Report Written to not be Misleading. None of the three comparable sales utilized in the sales comparison approach were appropriate. 11 other MLS sales of residential income properties that occurred in the 18 months previous to the effective date of the appraisal were identified. All were located within a few blocks of subject and subject to similar external influences. The indicated range of value for these sales was \$42,500 to \$105,000. The median sale price of these 11 sales was \$77,000; average price was \$77,226. There was no market support in subject neighborhood for the appraiser's value conclusion on the effective date of the appraisal.
- x. Is there Sufficient Data & Analysis. Multiple violations of USPAP Standards Rule 1-1(a) and omissions affect the overall credibility of the appraiser's opinions and conclusions.
- y. Work File. The appraiser did not maintain a complete work file. Page 1 (URAR) states he reviewed the offer to purchase which he was unable to provide with his work file. The engagement letter from the client with intended user, use and property information is missing. Also missing: cost approach calculations and documentation of fundamental data used as basis for the appraiser's opinions and conclusions. The "work file" documents provided by the appraiser are printouts of property information sheets from Real Quest and MLS. The dates on the printouts are 7/20/2008 indicating that the work file was not in existence prior to and contemporaneous with the issuance of the written report.

Case Number 08 APP 109

5. Mr. Davis performed an appraisal and prepared an appraisal report for property at 2607 North 51st Street in Milwaukee, Wisconsin as of January 6, 2007. His estimate of value was \$130,000.

6. In his appraisal and his report, Mr. Davis failed to comply with the Uniform Standards of Professional Appraisal Practice (USPAP) Standards Rules (S.R.) in the following ways:

- a. Subject - Sales & Listing History. The subject sold for \$73,500 two and a half years prior to the effective date. The appraiser failed to include the sale price (verified by City of Milwaukee sale data). The sale was not analyzed nor did the appraiser explain his opinion that the property value increased \$56,500 in value during a declining economy and overall stable real estate market. No building or remodeling permits were found in City records which would verify the increase in value; no increase in improvement assessment since purchase in 11/2005.
- b. Neighborhood Overview. Neighborhood boundaries are referred to map addendum which does not show boundaries.
- c. Trends of Property Values, Supply/Demand & Marketing Time. The appraiser indicates property values are increasing in February 2008. Based on Milwaukee market trend data reviewed, at best the market could be considered stable. See AOL, Yahoo & Zillow market trend charts and article in addenda, which support a stable market conclusion as of the effective date of the appraisal. Contributes to S.R. 1-1(a) unacceptability.
- d. Analysis of Current Zoning. The appraiser failed to analyze or explain the effect of subject's legal non-conforming use due to site size. His defense is that "the city pass (sic) a law stating that all properties were non-conforming can be rebuilt". City of Milwaukee officials deny that there is an all-inclusive ordinance automatically granting legal zoning conformance to legally non-conforming sites. Under existing zoning requirements, the subject may be denied a rebuild permit if the improvements are more than 50% destroyed.
- e. Physical, Functional & External Depreciation. The subject's effective age is estimated at 30 years. The appraiser did not analyze functional obsolescence as required by S.R. 1-4. No functional obsolescence taken in cost approach.
- f. Site Valuation in Cost Approach. The appraiser incorrectly used assessment value instead of market value to estimate site value in the cost approach. This is a violation of S.R. 1-1(a).
- g. Reproduction/Replacement Cost Estimates. The date of cost data not provided. Units of cost utilized are unrealistic (very high) and not credible.

No functional obsolescence taken although significant depreciation is present. Cost data was not included in work file. Estimated remaining economic life is unsubstantiated and overly optimistic, given the subject's effective age of 30 years.

- h. Cost Approach Conclusion . The appraiser's Certification #4 states that no weight is given the cost approach. This meets minimum acceptable standards for Fannie Mae Form 1004 summary reporting, but the appraiser is still required to correctly execute the cost approach when it is completed in an appraisal report.
- i. Estimate of Reasonable Exposure Time. A reasonable exposure time linked to the value opinion was not developed or reported.
- j. Work File. The appraiser did not maintain a complete work file. Few supporting documents were provided or indicated as his work file. The engagement letter from the client with intended user, use and property information is missing. Also missing: cost approach calculations and documentation of fundamental data used as basis for the appraiser's opinions and conclusions. The "work file" documents provided by the appraiser are printouts of subject's assessment data. The dates on the printouts are 11/28/2008 indicating that the work file was not in existence prior to and contemporaneous with the issuance of the written report.

Case Number 08 APP 119

7. Mr. Davis performed an appraisal and prepared an appraisal report for property at 2644 North 44th Street in Milwaukee, Wisconsin as of February 9, 2007. His estimate of value was \$95,000.

8. In his appraisal and his report, Mr. Davis failed to comply with the Uniform Standards of Professional Appraisal Practice (USPAP) Standards Rules (S.R.) in the following ways:

- a. Mr. Davis misrepresented his license level on page 7 of the URAR in the signature block by including his license number on the line for State Certification No.
- b. Identification of Interest Appraised. The realty interest appraised is incorrectly identified as "fee simple." Subject property is a residential income property according to page one of the appraisal (tenant is occupant). Therefore, the correct realty interest is "leased fee." The ownership rights do not allow unencumbered use consistent with the definition of "fee simple."
- c. Subject - Sales & Listing History. The subject sold for \$30,000 approximately four months prior to the effective date. The appraiser failed to provide the previous sole price for the subject (which is available online through City of Milwaukee sale data) and listed only the transfer fee. There was no analysis of the sale nor did the appraiser explain his opinion

that the property value increased \$65,000 in value during a four-month period in a declining economy and overall stable real estate market. No building or remodeling permits were found in City records which would explain the increase in value; there was a significant increase in improvement assessment prior to 2007 which could indicate some updating, but the total assessment for land and improvements remained less than \$30,000.

- d. Trends of Property Values, Supply/Demand & Marketing Time. The appraiser indicates property values are increasing in February 2007. Based on Milwaukee market trend data reviewed, at best the market could be considered stable.
- e. Analysis of Current Zoning. The appraiser failed to analyze or explain the effect of subject's legal non-conforming use due to site size. City of Milwaukee officials deny that there is an all-inclusive ordinance automatically granting legal zoning conformance to legally non-conforming sites. Under existing zoning requirements, the subject may be denied a rebuild permit if the improvements are more than 50% destroyed. The appraiser incorrectly identifies the zoning conformance as "legal".
- f. Site Valuation in Cost Approach. No support was provided for the site value through market data. The appraiser incorrectly used assessment value instead of market value as the basis for site value in the cost approach. The appraiser certifies and the form requires an estimate of market value, not assessed value.
- g. Reproduction/Replacement Cost Estimates. The date of cost data provided does not correlate to Boeckh's cost services. Units of cost utilized are unrealistic (very high) and not credible. Incorrectly checked "reproduction cost." No cost data or work file. Estimated remaining economic life of 60 yrs is unsubstantiated and overly optimistic, given the subject's actual age of 127 years and effective age of 40 years.
- h. Cost Approach Conclusion. The appraiser's opinion of value by the cost approach does not support the appraised value as appraiser states in the reconciliation — it is approximately \$14,000 lower. Appraiser's Certification #4 states that no weight is given the cost approach, but the appraiser is still required to correctly execute the cost approach when it is completed/n an appraisal.
- i. Sales Comparison Approach - Overall Use of Market Data & Documentation. The appraiser selected "for sale by owner" comparable sales which cannot be confirmed as arms-length transactions. There is no indication that he had personal knowledge of the properties through a previous inspection. Although a search of Multiple Listing Service indicated that there were several sales similar to the subject in close proximity, reflecting a significantly lower property value, MIS and these sales were ignored as a data source. No MIS sales in the subject

neighborhood were found with sale prices over \$100,000, yet all three comparable sales selected by the appraiser were over \$100,000. The property sold four months prior to the effective date for \$30,000 and no significant updates were made (according to the appraisal report.) Appraiser indicates that his data source was Real Quest, which may provide accurate property transfer information, but does not confirm that the properties were exposed to market and that the resulting sale was an arm's length transaction. There is no indication of any legitimate verification source for comparable sales' conditions of sale. Two of three selected sales had bedroom counts superior to subject's; more similar sales were ignored in the analysis.

- j. Verification of Comparable Sales Data. Comparables' sales prices and dates were verified through assessor data; however, it is unknown if the sales were arms-length transactions. None of the 3 selected sales were found in MIS. The appraiser did not verify these sales as arms-length transactions. No verification source is listed in the appraisal report.
- k. Subject & Comparable Sales - Sales Concessions are Properly Reported. Lack of verification of comparable sales data; no verification of financing or sales concessions was provided as required by USPAP and per the definition of Market Value cited.
- l. Sales Comparison Approach Conclusion. Based on the review conducted and the analysis of additional Multiple Listing Service sold property data, there is sufficient evidence to conclude that the value derived from the sales comparison approach is misleading. The subject, appraised at \$95,000, sold four months prior to the effective date of the appraisal for \$30,000 but the appraiser did not disclose or analyze this sale. There is no evidence (building permits, appraiser's comments) to indicate that significant improvements were made to the subject. All comparable sale prices were over \$100,000. None of the comparable sales could be verified as arms-length transactions. An MIS search of all (not just 1-story) homes selling from \$100,000 to \$125,000 in the 12 months prior to effective date produced only 1 proximate sale at \$115,000. See addenda. No 2 BR homes sold near the appraised value of \$95,000. The appraised value is lower than all three comparable sale prices; it is lower than all three adjusted values in the sales grid. The value conclusion by the sales comparison approach, which is given the most weight in the final reconciliation of value, is not credible.
- m. Reconciliation. The appraiser's value conclusion is \$7500 below the lowest sale price of all three comparable sales and \$4500 below the lowest adjusted value of the comparable sales. The final value reconciliation is boilerplate text which does not provide insight into the appraiser's reasoning and rationale or lead the reader to agree with the appraiser's opinions and conclusions. Appraiser's Certification #4 meets minimum acceptable standards for Form 1004 summary reporting. However, appraiser incorrectly and carelessly states in his reconciliation that the cost

approach supports his value conclusion. The cost approach value is \$10,000 lower than the value opinion.

- n. Estimate of Reasonable Exposure Time. A reasonable exposure time linked to the value opinion was not developed or reported.
- o. Editing, Redundancies, Boilerplate, Frequency of Inconsistencies ("series of errors"). Multiple mistakes, incorrect sale dates & FEMA map number, illogical sentences, lack of work file, inappropriate appraisal techniques, concerns about confidentiality and non-compliance with USPAP reduce the credibility of the appraisal report which prevents the intended user from relying on the report to make a decision about a mortgage finance transaction.
- p. Work File. The appraiser did not maintain a complete work file. No supporting documents were provided or indicated as his work file. The engagement letter from the client with intended user, use and property information is missing. Also missing: cost approach calculations and documentation of fundamental data used as basis for the appraiser's opinions and conclusions. The work file was not in existence prior to and contemporaneous with the issuance of the written report.

Conclusions of Law

1. The Wisconsin Real Estate Appraisers Board has jurisdiction to investigate and prosecute allegations of unprofessional conduct by licensed Real Estate Appraisers pursuant to section 458.26 (3) of the Wisconsin Statutes.

2. By failing to comply with the Uniform Standards of Professional Appraisal Practice (USPAP) Standards Rules (S.R.) in the appraisals and appraisal reports as described above, Respondent Michael L. Davis violated sections RL 86.01 (1) and (2) of the Wisconsin Administrative Code, and is subject to discipline under Wis. Stat. § 458.26 (3).

3. Respondent Michael Davis is in Default with regard to this matter and an Order may be entered without further hearing or proceeding.

Order

For the reasons set forth above, **IT IS ORDERED** that the license of Respondent to practice real estate appraisal in the State of Wisconsin be and is hereby **REVOKED**.

IT IS FURTHER ORDERED that Respondent shall pay all recoverable costs in this matter, in an amount to be established pursuant to law. After the amount is established payment shall be made by certified check or money order, payable to the Wisconsin Department of Regulation and Licensing ["DRL"] and sent to:

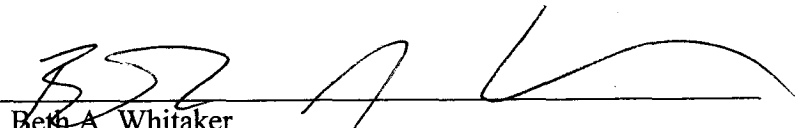
**Department Monitor
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
Telephone: (608) 267-3817
Fax: (608) 266-2264**

IT IS FURTHER ORDERED that this file be and hereby is closed as to Respondent.

Dated at Madison, Wisconsin on April 14, 2010.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

BY: _____


Beth A. Whitaker
Administrative Law Judge