

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :
 : FINAL DECISION AND ORDER
THOMAS J. ELLIOTT, :
RESPONDENT. :
 : **ORDER 0001050**

Division of Enforcement Case No. 10 APP 030

The parties to this action for the purpose of Wis. Stat. § 227.53 are:

Thomas J. Elliott
Elliott Appraisal Service
S1322 County Rd. II
Alma, WI 54610

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

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

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Real Estate Appraisers Board (Board). The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Thomas J. Elliott (Respondent)(dob 4/25/1951) is licensed in the State of Wisconsin as a Licensed Appraiser, having license number 4-491, first issued on 6/16/1993, and current through 12/14/2011. Respondent's most recent address on file with the Wisconsin Department of Regulation and Licensing (Department) is Elliott Appraisal Service, S1322 County Rd. II, Alma, WI 54610.

2. Respondent has no disciplinary history with the Board or the Department.

3. On or about 6/1/2005, Respondent completed two appraisals of property located at S2226 River Road, Alma, Wisconsin (subject property). The first appraisal pertained to a duplex that currently existed on the site (2005 Duplex Appraisal); the subject of the second appraisal was a proposed 2-story mixed use building to be constructed adjacent to the duplex (2005 Mixed Use Appraisal).

4. On or about 1-24-2007, Respondent completed two subsequent appraisals of the subject property (2007 Duplex Appraisal and 2007 Mixed Use Appraisal, respectively).

5. Respondent's appraisals were reviewed by the Division of Enforcement and it was determined that the appraisals and appraisal reports violated the Uniform Standards of Professional Appraisal Practice (USPAP) Rules and/or Standards Rules (SR) as follows:

a. 2005 Duplex Appraisal and 2005 Mixed Use Appraisal

- i. Although both buildings would be located on the subject property's 100'X133' site, the appraiser completed two separate appraisals. Neither the 2005 Duplex Appraisal report nor the 2005 Mixed Use Appraisal report note the existence of both buildings on the single site or the effect that this would have on the subject property's value. [SR 1-1(a,b,c), SR 1-2(e), SR 1-2(g), SR 2-1(c), SR 1-4(f), SR 2-1(a) and (b)]
- ii. The 2005 Duplex Appraisal reports erroneously that the valuation is subject to completion. [SR 1-1(a,b,c)]
- iii. In 6/06/2005 correspondence to the lender who requested the appraisal, Respondent added the concluded values in the 2005 appraisals together and deducted \$10,000 for an "excess land adjustment." Respondent improperly concluded the value of the property was \$192,000 (\$83,000+\$119,000-\$10,000). [SR 1-1(a,b,c), SR 1-4(e)]
- iv. In the 2005 Duplex Appraisal, all three comparable sales analyzed by Respondent were between 2-3 years old (from 2002) as of the effective date, and were adjusted +10% for time. The 2005 Duplex Appraisal report did not include analysis to support the 10% adjustment. [SR 2-1(a) and (b)]
- v. In the 2005 Mixed Use Appraisal, Respondent's comparable sale 1 was a pending sale that had not closed as of the effective date of the 2005 Mixed Use Appraisal report. [SR 1-1(a,b,c), SR 2-1(a) and (b)]

b. 2007 Duplex Appraisal and 2007 Mixed Use Appraisal

- i. Although both buildings would be located on the subject property's 100'X133' site, the appraiser completed two separate appraisals. Neither the 2007 Duplex Appraisal report nor the 2007 Mixed Use Appraisal report note the existence of both buildings on the single site or the effect that this would

have on the subject property's value. [SR 1-1(a,b,c), SR 1-2(e), SR 1-2(g), SR 2-1(c), SR 1-4(f) SR 2-1(a) and (b)]

- ii. The 2007 Duplex Appraisal was prepared subject to completion of extensive remodeling, with a resulting \$12,000 adjustment to value over the 2005 appraisal. The 2007 Duplex Appraisal report did not include analysis to support the adjustment. [SR 1-1(a,b,c)]
- iii. In correspondence (erroneously dated 6/6/2005) to the lender who requested the appraisals, Respondent added the concluded values in the 2007 Duplex Appraisal and 2007 Mixed Use Appraisal together, but deducted \$21,000 for an "excess land adjustment" stating that, "[b]oth Duplex and Proposed Improvements are located on the same parcel of land and share the same well and septic." He improperly concluded the value of the property was \$189,900 (\$95,000+\$115,900-\$21,000). [SR 1-1(a,b,c), SR 1-4(e)]

c. The 2005 Duplex Appraisal report and the 2007 Duplex Appraisal report are almost identical, to wit:

- i. The same comparables are used in both appraisal reports;
- ii. The same typographical errors are contained in both appraisal reports; and
- iii. The effective dates in the reports transmitted to the lender are identical, despite the fact that the appraisals were conducted in separate years. Respondent subsequently corrected the incorrect dates.

[Ethics Rule, Scope of Work Rule, SR 1-2(h), SR 1-1(a,b,c), SR 1-2(d), SR 1-3(a), SR 2-1(a) and (b), SR 1-3(a), SR 1-4(a)]

d. The 2005 Mixed Use Appraisal and the 2007 Mixed Use Appraisal are almost identical.

- i. The same comparables are used in both appraisal reports;
- ii. The same typographical errors are contained in both appraisal reports; and
- iii. The effective dates in the reports transmitted to the lender are identical, despite the fact that the appraisals were conducted in separate years. Respondent subsequently corrected the incorrect dates.

[Ethics Rule, Scope of Work Rule, SR 1-2(h), SR 1-1(a,b,c), SR 1-2(d), SR 1-3(a), SR 2-1(a) and (b), SR 1-3(a), SR 1-4(a)]

e. The comparable sales that were 2-3 years old in the 2005 Duplex Appraisal report and the 2005 Mixed Use Appraisal report are 4-5 years old in the 2007 Duplex Appraisal report and the 2007 Mixed Use Appraisal report; Respondent did not analyze new comparable sales or change the time adjustment to reflect this. [Scope of Work Rule; SR 1-1(a) and (b), SR 1-2(h), SR 1-4(a), SR 2-1(b)]

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Appraisers Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 458.26, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).
2. By the conduct described in Findings of Fact paragraphs 5(c)-(e), Respondent violated the USPAP Ethics Rule (Conduct Section) by communicating assignment results in a misleading manner.
3. By the conduct described in Findings of Fact paragraphs 5(c)-(e), Respondent violated the USPAP Scope of Work Rule by failing to investigate current market data while developing the 2007 appraisals of the subject property.
4. By the conduct described in Findings of Fact paragraphs 5(a)(i)-(iii), 5(a)(v), and 5(b)-(e), Respondent violated SR 1-1(a,b,c) by:
 - a. failing to be aware of, understand or correctly employ recognized methods and techniques that are necessary to produce a credible appraisal.
 - b. committing a substantial error of omission or commission that significantly affects an appraisal; and
 - c. rendering appraisal services in a negligent manner.
5. By the conduct described in Findings of Fact paragraphs 5(c) and 5(d), Respondent violated SR 1-2(d) and SR 2-1(a) by failing to identify or update the effective date of his opinions and conclusions.
6. By the conduct described in Findings of Fact paragraphs 5(a)(i) and 5(b)(i), Respondent violated SR 1-2(e) by failing to identify the characteristics of the property that are relevant to the type and definition of value and intended use.
7. By the conduct described in Findings of Fact paragraphs 5(c)-(e), Respondent violated SR 1-2(h) by failing to determine the scope of work necessary to produce credible assignment results in accordance with the Scope of Work Rule.
8. By the conduct described in Findings of Fact paragraphs 5(c)-(e), Respondent violated SR 1-3(a) and SR 1-4(a) by developing value conclusions based on obsolete data and failing to investigate current economic supply and demand and market area trends.
9. By the conduct described in Findings of Fact paragraphs 5(a)(iii) and 5(b)(iii), Respondent violated SR 1-4(e) by:
 - a. failing to analyze the effect on value, if any, of the assemblage of various component parts of the subject property; and

- b. valuing the whole solely by adding together the individual values of the various component parts.
10. By the conduct described in Findings of Fact paragraphs 5(a)(i), 5(a)(iv), 5(a)(v), and 5(b)(i), Respondent violated SR 2-1(a) and SR 2-1(b) by failing to clearly and accurately set forth the appraisal in a manner that was not misleading, and failing to provide sufficient information to enable intended users to understand the report properly.
11. By the conduct described in Findings of Fact paragraphs 5(c)-(e), Respondent violated SR 1-6(a), as Respondent's sales comparison reconciliation does not lead the reader to agree with the appraiser's rationale, opinions and conclusions
12. As a result of the above violations, Respondent has violated Wis. Admin. Code §§ RL 86.01(1) and (2), and is therefore subject to discipline pursuant to Wis. Stat. §§ 458.26(3)(b), (c) and (i).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The attached Stipulation is hereby accepted.
2. Thomas J. Elliot is hereby REPRIMANDED.
3. The Licensed Appraiser license issued to Thomas J. Elliott (license number 4-491) is hereby LIMITED as follows:
 - a. Respondent shall, within one year of the date of this Order, successfully complete the following courses offered by the Appraisal Institute, or equivalent courses offered by a provider pre-approved by the Board's monitoring liaison, including taking and passing any exam offered for the courses:
 - i. Business Practices and Ethics (7 hours)
 - ii. Advanced Residential Applications & Case Studies, Part 1 (15 hours)
 - iii. Advanced Residential Report Writing, Part 2 (30 hours)
 - iv. Residential Challenge: Declining Markets & Sales Concessions (7 hours);
 - b. The courses listed above shall be taken in person in a classroom setting unless the Respondent requests, and the Board's Monitoring Liaison pre-approves at her discretion, an online alternative.
 - c. Respondent shall submit proof of completion in the form of verification from the institution providing the education to the address stated below. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that have been or may be instituted by the Board, Wisconsin Department of Regulation and Licensing or similar authority in

any state, and also may not be used in future attempts to upgrade a credential in any state.

- d. This limitation shall be removed from Respondent's license and Respondent will be granted a full, unrestricted license after satisfying the Board or its designee that Respondent has successfully completed all of the ordered education.
- 4. Within 90 days of the date of this Order, Respondent shall pay a FORFEITURE in the amount of \$1,000.00 and COSTS of this matter in the amount of \$664.50.
- 5. Proof of successful course completion and payment of forfeiture and costs (made payable to the Wisconsin Department of Regulation and Licensing) shall be mailed, faxed or delivered by Respondent to the Department Monitor at the address below:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935, Madison, WI 53708-8935
Telephone (608) 267-3817, Fax (608) 266-2264
- 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. The 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 Respondent fails to timely submit payment of the forfeiture and costs as ordered or fails to comply with the ordered education as set forth above, Respondent's license (no. 4-491) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with payment of the forfeiture and costs and completion of the education.
- 7. This Order is effective on the date of its signing.

WISCONSIN REAL ESTATE APPRAISERS BOARD

by: 
A Member of the Board

8/24/2011
Date