

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN  
BEFORE THE REAL ESTATE APPRAISERS BOARD

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IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
JOHN D. SPENCE,	:	
RESPONDENT.	:	ORDER 0001376

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Division of Enforcement Case No. 10 APP 010

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

John D. Spence  
5344 N. 64<sup>th</sup> Street  
Milwaukee, WI 53218

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

Division of Enforcement  
Department of Safety and Professional Services  
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. Respondent John D. Spence (dob 11/19/1950) is licensed in the State of Wisconsin as a Certified General Appraiser and Licensed Appraiser, having license number 10-222, first issued on 3/4/1992 and current through 12/14/2013. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 5344 N. 64<sup>th</sup> Street, Milwaukee, WI 53218. Respondent has not been previously disciplined by the Department.

2. On or about December 15, 2008, Respondent appraised and prepared an appraisal report pertaining to property located at 4601 N. 84<sup>th</sup> Street, Milwaukee, WI 53225 (Subject Property).

3. Respondent's appraisal of the Subject Property was reviewed by the Division of Enforcement and it was determined that the appraisal and appraisal report violated the Uniform Standards of Professional Appraisal Practice (USPAP) Statements and/or Standards Rules (SR) as follows:

- a. Respondent improperly identified the appraisal report as a "Restricted/Limited Summary." [SR 2-2]
- b. Respondent did not disclose the identity of the intended users in the text of the appraisal report, nor did the report indicate that the users wished to remain anonymous. Reference was made in the appraisal report to the "lender/client," but no lender or client was otherwise identified. [SR 1-2(a); SR 2-2(b)(i); Statement 9]
- c. Page 1 of the appraisal report identified the intended use as "mortgage financing." Information in the work file and Respondent's written response to the initial complaint contradict the reported intended use. [SR 1-2(b); SR 2-2(b)(ii)]
- d. Respondent's appraisal report referenced values subject to deed restrictions, but Respondent did not identify the nature, or effect on value, of any such deed restrictions. [SR 1-2(e)(i) and (iv)]
- e. Respondent failed to analyze any uses legally permitted by the Subject Property's zoning classification, yet considered alternative uses for the Subject Property that would require changes to zoning. Respondent provided no analysis of whether said alternative uses were feasible. [SR 1-2(e)(i) and (iv)]
- f. Respondent failed to properly analyze the highest and best use of the Subject Property as follows:
  - (i) Respondent failed to present an analysis of relevant legal factors, such as zoning, deed restrictions, or a land use plan for the neighborhood;
  - (ii) Based on data contained in the Respondent's work file, the Subject Property had been deemed excess by Milwaukee Public Schools, but the Respondent failed to analyze the highest and best use of the property where the Subject Property is vacant; and
  - (iii) Respondent failed to provide an analysis of alternative highest and best uses, and failed to provide support for the highest and best use opinion. [SR 1-3(b); SR 2-2(b)(ix)]
- g. Respondent failed to properly apply the sales comparison approach as follows:
  - (i) Respondent utilized comparable sales that are not considered comparable to the Subject Property;

(ii) Respondent provided no market support for any adjustments to the comparable sales;

(iii) Respondent failed to adjust for the property interest conveyed, even though many of the comparables were leased and therefore conveyed on a leased fee basis, or were sold as going concerns; and

(iv) Respondent failed to consider the status of the comparable sales versus the status of the Subject Property, i.e. if the Subject Property was being valued as an occupied office building, apartment or nursing home, Respondent failed to consider and analyze the costs to convert the Subject Property to such use. [SR 1-4(a)]

h. Respondent failed to properly apply the cost approach as follows:

(i) Respondent utilized land sale comparables that are not considered comparable to the Subject Property;

(ii) Respondent failed to provide market support for any adjustments to the comparable land sales, and incorrectly calculated depreciation. Using the age life method, a rate of 35% was calculated, which is misidentified as Curable Physical Depreciation, when it is actually Incurable Physical Depreciation;

(iii) The appraisal report stated that there was no Economic Depreciation, though market conditions at the effective date of the appraisal indicate otherwise; and

(iv) Respondent failed to provide support for the appraisal report's Functional Depreciation adjustment. [SR 1-4(b)]

i. Respondent failed to properly apply the income approach as follows:

(i) Respondent utilized rental offerings to determine the potential rent for the Subject Property, but failed to (a) identify the offerings as such; and (b) analyze the market as to whether actual rental rates are lower than rental offering rates;

(ii) Respondent utilized comparable rentals that are not comparable to the Subject Property, and provided no adjustments to the rentals or any support for estimates of expenses or vacancy; and

(iii) Respondent failed to consider the status of the comparable rentals versus the status of the Subject Property, i.e. if the Subject Property is being valued as an occupied office building, apartment or retail property, Respondent failed to consider and analyze the costs to convert the Subject Property to such use. [SR 1-4(c)]

- j. Respondent valued the Subject Property under an alternative use, however, no extraordinary assumptions or hypothetical conditions were stated, nor was their affect on value discussed. [SR 2-2(b)(x)]

### 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 paragraph 3(a), Respondent violated USPAP SR 2-2 by failing to prepare and prominently identify the appraisal report of the Subject Property under one of the following three options: Self-Contained Appraisal Report, Summary Appraisal Report, or Restricted Use Appraisal Report.

3. By the conduct described in Findings of Fact paragraph 3(b), Respondent violated USPAP Statement 9, SR 1-2(a) and SR 2-2(b)(i) by failing to disclose the identity of the client and other intended users by name or type.

4. By the conduct described in Findings of Fact paragraph 3(c), Respondent violated USPAP SR 1-2(b) and SR 2-2(b)(ii) by incorrectly identifying the intended use of the appraiser's opinions and conclusions.

5. By the conduct described in Findings of Fact paragraph 3(d) and 3(e), Respondent violated USPAP SR 1-2(e)(i) by failing to identify the characteristics of the Subject Property that are relevant to the type and definition of value and intended use of the appraisal, including the Subject Property's location and physical, legal, and economic attributes.

6. By the conduct described in Findings of Fact paragraph 3(d) and 3(e), Respondent violated USPAP SR 1-2(e)(iv) by failing to identify the characteristics of the Subject Property that are relevant to the type and definition of value and intended use of the appraisal, including any known restrictions, encumbrances, or other items of a similar nature.

7. By the conduct described in Findings of Fact paragraph 3(f), Respondent violated USPAP SR 1-3(b) and S-R 2-2(b)(ix) by failing to analyze, summarize, and support the relevant legal, physical, and economic factors to the extent necessary to support the highest and best use conclusion.

8. By the conduct described in Findings of Fact paragraph 3(g), Respondent violated USPAP SR 1-4(a) by failing to collect, verify, and analyze available comparable sales data to indicate a value conclusion.

9. By the conduct described in Findings of Fact paragraph 3(h), Respondent violated USPAP SR 1-4(b) by failing to:

- a. develop an opinion of site value by an appropriate appraisal method or technique;

b. analyze such comparable cost data as are available to estimate the cost new of the improvements; and

c. analyze such comparable data as are available to estimate the difference between the cost new and the present worth of the improvements.

10. By the conduct described in Findings of Fact paragraph 3(i), Respondent violated USPAP SR 1-4(c) by failing to:

a. analyze such comparable rental data as are available and/or the potential earnings capacity of the Subject Property to estimate the gross income potential of the Subject Property;

b. analyze such comparable operating expense data as are available to estimate the operating expenses of the Subject Property;

c. analyze such comparable data as are available to estimate rates of capitalization and/or rates of discount; and

d. base projections of future rent and/or income potential and expenses on reasonably clear and appropriate evidence.

11. By the conduct described in Findings of Fact paragraph 3(j), Respondent violated USPAP SR 2-2(b)(x) by failing to clearly and conspicuously state all extraordinary assumptions and hypothetical conditions; and by failing to state that their use might have affected the assignments results.

12. By the conduct described in Findings of Fact paragraph 3, Respondent violated USPAP SR 1-1(a)-(c) by: failing to be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal; committing a substantial error of commission or omission that significantly affects an appraisal; and rendering appraisal services in a careless or negligent manner.

13. As a result of the above violations, Respondent has violated Wis. Admin. Code §§ RL 86.01(1) and (2), thereby subjecting himself 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. Respondent John D. Spence is hereby REPRIMANDED.

3. The Certified General Appraiser and Licensed Appraiser license issued to John D. Spence (license number 10-222) is hereby LIMITED as follows:

a. Education:

- i. Respondent shall, within two (2) years 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:
  1. Advanced Sales Comparison & Cost Approaches (40 hours, including exam);
  2. General Appraiser Market Analysis & Highest and Best Use (30 hours, including exam);
  3. Advanced Applications (40 hours, including exam); and
  4. National USPAP Course (15 hours, including exam).
- ii. The courses listed above shall be taken in person in a classroom setting. No courses or exams may be taken online, unless pre-approved by the Board's monitoring liaison.
- iii. Respondent shall submit proof of completion in the form of verification from the institution providing the education to the Department Monitor at 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 Safety and Professional Services or similar authority in any state, and also may not be used in future attempts to upgrade a credential in any state.
- iv. This limitation shall be removed from Respondent's license after Respondent satisfies the Board or its designee that he has successfully completed all of the ordered education.

b. For a period of five (5) years following the date of this Order, Respondent shall not perform any appraisals or prepare any appraisal reports for real property with a value in excess of \$750,000.00, except where:

- i. The appraisal is conducted under the direct supervision of a supervising appraiser;
- ii. The appraisal report is signed by Respondent and by the supervising appraiser;
- iii. The supervising appraiser is a Certified General Appraiser licensed, and in good standing, in the state of Wisconsin; and

c. Commencing on the date of this Order, and continuing for a period of five (5) years following completion of all of the education required at paragraph (a) of this Order, Respondent shall provide a quarterly log of all appraisals that he has completed during the preceding quarterly period. The log shall indicate the appraised value of the properties appraised, the name and contact information for the client, approaches to value considered, approaches to value completed, and the name of the signing supervising appraiser, where applicable.

- i. The quarterly logs shall be submitted to the Board's monitoring liaison, or designee, at the address below. The Board Liaison or designee may select up to three (3) of the appraisals for review of compliance with USPAP standards, and, upon request, Respondent shall immediately submit the requested appraisals and work file materials to the Department Monitor for this purpose. In the event that the Board Liaison's, or designee's, review finds noncompliance with USPAP standards, the Board Liaison, or designee, may recommend further education and/or training in the area of noncompliance, or refer the matter to the Department's Division of Enforcement.
- ii. This limitation shall be removed from Respondent's license after expiration of the five (5) year period specified above at paragraph b.

4. Proof of successful course completion and quarterly logs shall be mailed, faxed or delivered by Respondent to the Department Monitor at the address below:

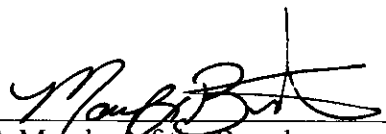
Department Monitor  
Division of Enforcement  
Department of Safety and Professional Services  
P.O. Box 8935, Madison, WI 53708-8935  
Telephone (608) 267-3817, Fax (608) 266-2264

5. 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 comply with the ordered education and submission of quarterly logs and any requested work files as set forth above, Respondent's license (no. 10-222) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with completion of the education and submission of the quarterly logs and any requested work files.

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



WISCONSIN REAL ESTATE APPRAISERS BOARD

by:   
A Member of the Board

2/22/2012  
Date