

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

STEPHEN C. FAIRBAIRN,
RESPONDENT.

:
:
: FINAL DECISION AND ORDER
:
:

ORDER 0001536

Division of Enforcement Case No. 10 APP 065

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

Stephen C. Fairbairn
135 Brule Road
De Pere, WI 54115

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 Stephen C. Fairbairn (dob 09/11/1964) is licensed in the State of Wisconsin as a Certified Residential Appraiser and Licensed Appraiser, having license number 9-260, first issued on 12/09/1991 and current through 12/14/2013. Mr. Fairbairn's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 135 Brule Road, De Pere, Wisconsin 54115.

2. On August 13, 2008, Respondent Fairbairn was disciplined by the Board for violating the Uniform Standards of Professional Appraisal Practice (USPAP) and/or Standards Rules (SR) 1-1 by failing to adjust for basement type, failing to adjust for water frontage, failing to list the most recent sale of a comparable utilized, and failing to list and discuss acreage which

resulted in an overvalued appraisal and affected the credibility of the appraisal. Respondent Fairbairn was reprimanded, ordered to complete education and ordered to pay costs. Mr. Fairbairn complied with the terms of the August 13, 2008 Order.

3. In September 2010, Respondent Fairbairn performed an appraisal of property located at 4544 Crooked Creek Lane, Hobart, Wisconsin. Respondent Fairbairn's appraisal report, dated September 6, 2010, provided a value of \$625,000 for the property.

4. On or about November 23, 2010, the Department received a complaint alleging that Respondent Fairbairn overvalued the subject property and, without Complainant's approval, named Complainant's mortgage corporation as the client at the borrower's request resulting in the appraisal being utilized to obtain a subordination by the borrower based upon the overinflated value. Division of Enforcement Case Number 10 APP 065 was subsequently opened for investigation.

5. A Division of Enforcement Investigator requested Respondent Fairbairn's work files numerous times between January and June 2011. To date, none of the requested information has been provided by Respondent Fairbairn.

6. Respondent Fairbairn's appraisal was reviewed by the Division of Enforcement and it was determined that the appraisal and appraisal report violated USPAP and/or SR as follows:

- a. Respondent identified a gross living area that is unverified and incorrect. (SR 1-1(b,c), Conduct Section of Ethics Rule.)
- b. In the sales comparison approach, Respondent:
 - i. selected and utilized inappropriate comparable sales. (SR 1-1(a,b,c), Competency Rule, Conduct Section of Ethics Rule.)
 - ii. failed to provide any explanation for his selection of comparable sales in the sales comparison reconciliation. (SR 2-1(b).)
 - iii. failed to make adjustments for differences between the subject and comparable sales' amenities. (SR 1-1(a), Competency Rule.)
 - iv. failed to support comparable sale site adjustments in the sales grid. (SR 1-1(a), SR 2-1(b), Competency Rule.)
- c. In the cost approach, Respondent:
 - i. identified a site value that is not supported by market data. (SR 1-4(b)(i).)
 - ii. calculated costs using an incorrect gross living area. (SR 1-1(b,c), Conduct Section of Ethics Rule.)

- iii. inappropriately utilized an impractical method of estimating depreciation. (SR 1-1(a).)
- iv. demonstrated incompetency by linking the reliability of the approach to the type of building. (Competency Rule.)
- d. Respondent utilized a Uniform Residential Appraisal Report form, intended exclusively for mortgage lending, and identified a mortgage corporation as the lender/client although he claims the appraisal was intended for a non-lending use and accepted payment from the property owner for the appraisal report. (SR 1-1(a), SR 2-1(a), Conduct Section of Ethics Rule, Competency Rule.)

7. In resolution of this matter, Respondent Fairbairn consents to the entry of the following Conclusions of Law and Order.

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 6.a., 6.b.i., 6.b.iii.-iv., 6.c.ii.-iii. and 6.d., Respondent Fairbairn 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.
3. By the conduct described in Finding of Fact 6.c.i., Respondent Fairbairn violated SR 1-4(b)(i) by failing to develop an opinion of site value by an appropriate appraisal method or technique.
4. By the conduct described in Finding of Fact 6.d., Respondent Fairbairn violated SR 2-1(a) by failing to clearly and accurately set forth his appraisal in a manner that will not be misleading.
5. By the conduct described in Findings of Fact 6.b.ii.-iv., Respondent Fairbairn violated SR 2-1(b) by failing to include sufficient information in his report to enable the intended users to understand the report properly.
6. By the conduct described in Findings of Fact 6.a., 6.b.i., 6.c.ii., 6.d., Respondent Fairbairn violated the Conduct Section of the Ethics Rule by performing an assignment in a grossly negligent manner.

7. By the conduct described in Findings of Fact 6.b.i., 6.b.iii.-iv., 6.c.iv. and 6.d, Respondent Fairbairn violated the Competency Rule by demonstrating incompetency in the performance of an appraisal and appraisal report.

8. By the conduct described in Finding of Fact 5, Respondent Fairbairn violated Wis. Admin. Code § RL 86.01(10) by failing to cooperate in a timely manner with the Board's investigation of a complaint.

9. As a result of the above violations, Respondent Fairbairn has violated Wis. Admin. Code §§ RL (now SPS) 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. The Certified Residential Appraiser and Licensed Appraiser license of Stephen C. Fairbairn (license number 9-260) is hereby SUSPENDED for a period of 60 days beginning 15 days after the date of this Order.
3. Within 120 days of the date of this Order, Respondent Fairbairn shall pay a FORFEITURE in the amount of \$1,500.00 and COSTS of this matter in the amount of \$1,044.00.
4. The forfeiture and costs in this matter shall be made payable to the Wisconsin Department of Safety and Professional Services and shall be sent 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 submit payment of the forfeiture and costs as ordered, Respondent's license (no. 9-260) 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.

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

WISCONSIN REAL ESTATE APPRAISERS BOARD

by:


A Member of the Board

5/9/2012
Date