

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
JOSEPH W. MICHALOWITZ,	:	
RESPONDENT.	:	ORDER 0001539

Division of Enforcement Case No. 10 APP 068

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

Joseph W. Michalowicz
19 E. Eastman Street
Plymouth, WI 53073

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 Joseph W. Michalowicz (dob 8/8/1943) is licensed in the State of Wisconsin as a Certified Residential Appraiser and Licensed Appraiser, having license number 9-1432, first issued on 8/19/2005 and current through 12/14/2013. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 19 E. Eastman Street, Plymouth, WI 53073.
2. Respondent has not been previously disciplined.

3. On or about November 20, 2010, Respondent performed an appraisal of residential property at 6807 East Hillcrest Road, Two Rivers, WI 54241 for the property owner's refinance transaction.

4. On November 30, 2010, the property owner filed a complaint with the Division of Enforcement alleging that Respondent's valuation of her property was too low.

5. Respondent's November 20, 2010 appraisal 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) Rules and/or Standards Rules (SR) as follows:

- a. Respondent selected inappropriate comparable sales and failed to analyze differences relative to the available services (comparables had municipal services while the subject property has a private well and septic system and LP gas tank) or location. [SR 1-1(c); SR 1-4(a); SR 2-1(a)]
- b. Respondent's highest and best use analysis is misleading because it indicates that the subject property as improved with a residence is a legal, conforming use and that the municipal zoning is "A-3 agricultural, residence permitted." During the investigation, Respondent admitted that "Highest and best use for the subject's site as if vacant -- is agriculture or recreational... Because of the shape of the site, the agriculture uses are limited... The site could not be used for a residence because present zoning requires 35 acres for a residence." This information conflicts with data in the appraisal report. [SR 1-3(b); SR 2-1(a); SR 2-2(b)(ix)]

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 Finding of Fact 5.a., Respondent violated USPAP SR 1-1(c) by rendering appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.

3. By the conduct described in Finding of Fact 5.b., Respondent violated USPAP SR 1-3(b) by failing to analyze the relevant legal, physical and economic factors to the extent necessary to support his highest and best use conclusion.

4. By the conduct described in Finding of Fact 5.a., Respondent violated USPAP SR 1-4(a) by failing to analyze such comparable sales data as are available to indicate a value conclusion when a sales comparison approach is necessary for credible assignment results.

5. By the conduct described in Findings of Fact 5.a. and 5.b, Respondent violated USPAP SR 2-1(a) by failing to clearly and accurately set forth the appraisal in a manner that will not be misleading.

6. By the conduct described in Finding of Fact 5.b, Respondent violated USPAP SR 2-2(b)(ix) by failing to summarize the support and rationale for the opinion of highest and best use that was developed by the appraiser.

7. As a result of the above violations, Respondent 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. Respondent Joseph W. Michalowitz is hereby REPRIMANDED.
3. The Certified Residential Appraiser and Licensed Appraiser license issued to Respondent Joseph W. Michalowitz (license number 9-1432) is hereby LIMITED as follows:
 - a. Respondent shall, within one year of the date of this Order, successfully complete 22 hours of education consisting of the following courses 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. Appraisal Institute Market Analysis and Highest and Best Use (15 hours)
 - ii. McKissock Land and Site Valuation (7 hours) or Appraisal University Site Analysis and Valuation (7 hours)
 - b. The courses listed above shall be taken in person in a classroom setting unless an online course is approved in advance by the Board's monitoring liaison or her designee.
 - 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 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.
 - 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 120 days of the date of this Order, Respondent shall pay COSTS of this matter in the amount of \$1,330.

5. Proof of successful course completion and payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) shall be mailed, faxed or delivered by Respondent to the Department Monitor at the address below:

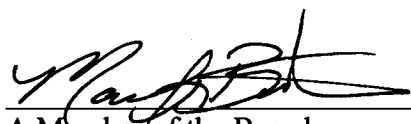
Department Monitor
Division of Enforcement
Department of Safety and Professional Services
P.O. Box 8935, Madison, WI 53708-8935
Telephone (608) 267-3817, Fax (608) 266-2264

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 costs as ordered or fails to comply with the ordered education as set forth above, Respondent's license (no. 9-1432) 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 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

5/9/2012
Date