

## 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 DISCIPLINARY  
PROCEEDINGS AGAINST

JAMES E. GARGULAK,  
RESPONDENT.

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FINAL DECISION AND ORDER

**ORDER 0002292.**

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Division of Legal Services and Compliance<sup>1</sup> Case No. 11 APP 018

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

James E. Gargulak  
3011 S. Main St.  
Rice Lake, WI 54868

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 James E. Gargulak (dob 05/24/1944) is licensed in the State of Wisconsin as a Certified General Appraiser, having license number 10-54, first issued on 10/14/1991 and current through 12/14/2013. Mr. Gargulak's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 3011 South Main Street, Rice Lake, Wisconsin 54868.

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<sup>1</sup> The Division of Legal Services and Compliance was formerly known as the Division of Enforcement.

2. In June 2007, Respondent Gargulak performed an appraisal of property located at 2775 29 ½ Avenue, Birchwood, Wisconsin. Respondent Gargulak's appraisal report, signed June 11, 2007, provided a value of \$295,000 for the property.

3. On or about April 19, 2011, the Department received a complaint alleging that Respondent Gargulak used inappropriate comparable sales in his appraisal resulting in an inflated value estimate and non-credible appraisal report. Division of Legal Services and Compliance Case Number 11 APP 018 was subsequently opened for investigation.

4. Respondent Gargulak's 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) and/or Standards Rules (SR) as follows:

- a. Respondent selected and utilized comparable sales that included waterfront property although the subject property does not have a waterfront location. (SR 1-1(a,b,c), SR 1-3(a), SR 1-4(a), Scope of Work Rule.)
- b. Respondent failed to develop an estimated exposure time linked to the value opinion. (SR 1-2(c).)
- c. Respondent failed to adequately reconcile the adjusted values of the comparable sales to a single value conclusion. (SR 1-6(a).)

5. In resolution of this matter, Respondent Gargulak 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 Finding of Fact 4.a., Respondent Gargulak violated SR 1-1(a) by failing to be aware of, understand or correctly employ recognized methods and techniques that are necessary to produce a credible appraisal.

3. By the conduct described in Finding of Fact 4.b., Respondent Gargulak violated SR 1-2(c) by failing to develop an opinion of reasonable exposure time linked to the value opinion.

4. By the conduct described in Finding of Fact 4.a., Respondent Gargulak violated SR 1-3(a) by failing to identify and analyze the effect on use and value of economic supply and demand and market area trends.

5. By the conduct described in Finding of Fact 4.a., Respondent Gargulak violated SR 1-4(a) by failing to analyze such comparable sales data as are available to indicate a value conclusion.

6. By the conduct described in Finding of Fact 4.c., Respondent Gargulak violated SR 1-6(a) by failing to reconcile the quality and quantity of data available and analyzed within the approaches used.

7. By the conduct described in Finding of Fact 4.a., Respondent Gargulak violated the Scope of Work Rule by failing to include research and analyses in the scope of work that are necessary to develop credible assignment results.

8. As a result of the above violations, Respondent Gargulak 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 General Appraiser license of James E. Gargulak (license number 10-54) is hereby LIMITED as follows:
  - a. Respondent shall not supervise any unlicensed individuals in the performance of appraisals for a period of 180 days beginning 15 days after the date of this Order. This limitation shall be removed from Respondent's license 195 days after the date of this Order.
  - b. Respondent shall not sign any appraisals as a supervisor of any licensed appraisers for a period of 180 days beginning 15 days after the date of this Order. This limitation shall be removed from Respondent's license 195 days after the date of this Order.
  - c. Respondent shall not perform any appraisals of waterview or waterfront properties for a period of 180 days beginning 15 days after the date of this Order unless any such appraisals are signed by a supervisor who is a credentialed appraiser in good standing with the Board who has been credentialed for 5 or more years. This limitation shall be removed from Respondent's license 195 days after the date of this Order.
  - d. Respondent shall submit 2 logs of all waterview and/or waterfront property appraisals that he completed in the previous quarter to the Department Monitor. If Respondent has not completed any waterview and/or waterfront property appraisals in a quarter, Respondent shall certify that fact on his log.
    - i. The first log will be due 120 days after the date of this Order. The second log will be due 210 days after the date of this Order.
    - ii. Each log must include:

1. The specific location of each appraised property;
  2. Each appraised property's proximity to water;
  3. The name and contact information for the client of each appraised property;
  4. The approaches to value considered for each appraised property;
  5. The approaches to value completed for each appraised property; and
  6. The name and credential number for the signing supervising appraiser of each appraised property.
- iii. This limitation shall be removed from Respondent's license after the Department Monitor has received 2 logs as ordered.
- e. Respondent shall, within 180 days of the date of this Order, successfully complete the General Appraiser Sales Comparison Approach course (30 hours) offered by the Appraisal Institute or by a provider pre-approved by the Board's monitoring liaison, including taking and passing any exam offered for the course.
- i. The course identified above may be taken in person or online, but the exam for the course shall be taken in person at a test site.
  - ii. Respondent shall submit proof of completion of the education in the form of verification from the institution providing the education to the Department Monitor at the address stated below.
  - iii. None of the education completed pursuant to this limitation may be used to satisfy any continuing education requirements that have been or may be instituted by the Board or the Department, and also may not be used in future attempts to upgrade a credential in Wisconsin.
  - iv. This limitation shall be removed from Respondent's license upon Respondent satisfying the Board or its designee that Respondent has successfully completed all of the ordered education.
- f. Respondent shall, following completion of the education ordered in 2.e., above, submit 3 waterview and/or waterfront property appraisal reports, completed after completion of the education ordered in 2.e., to the Department Monitor for review and compliance with USPAP. This limitation shall be removed from Respondent's license after the Department Monitor has received 3 appraisal reports as ordered.

3. Within 120 days of the date of this Order, Respondent Gargulak shall pay COSTS of this matter in the amount of \$2,015.00.

4. Logs, proof of successful course completion, appraisal reports and costs (made payable to the Wisconsin Department of Safety and Professional Services) 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 submit his logs, timely complete the education, submit his appraisal reports or submit payment of the costs as ordered, Respondent's license (no. 10-54) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with submission of the logs, completion of the education, submission of the appraisal reports and payment of costs.

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

WISCONSIN REAL ESTATE APPRAISERS BOARD

by:

  
A Member of the Board

2/13/2013  
Date