

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

GERALD E. ELMER,
RESPONDENT.

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FINAL DECISION AND ORDER

0003872

Division of Legal Services and Compliance Case No. 13 APP 029

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

Gerald E. Elmer
802 1st Center Ave.
Brodhead, WI 53520

Wisconsin Real Estate Appraisers Board
P.O. Box 8366
Madison, WI 53708-8366

Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190
Madison, WI 53707-7190

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 Gerald E. Elmer (dob 11/20/1958) is certified in the State of Wisconsin as a Certified Residential Appraiser, having certificate of licensure and certification number 1477-9, first issued on May 5, 2006 and current through December 14, 2015. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 802 1st Center Ave., Brodhead, WI 53520.

2. On May 21, 2013, Respondent performed an appraisal of property located at 306 W. Nichols Street, Albany, WI 53502.

3. On or about June 17, 2013, the Department received a complaint alleging that the subject appraisal violated the Uniform Standards of Professional Appraisal Practice (USPAP). Division of Legal Services and Compliance Case Number 13 APP 029 was subsequently opened for investigation.

4. Respondent's appraisal was reviewed by the Division of Legal Services and Compliance and it was determined that the appraisal and appraisal report violated USPAP Rules and/or Standards Rules (SR) as follows:

- a. Respondent incorrectly reported the intended use of the report for a mortgage finance transaction, the intended user of the report as lender/client, and incorrectly used Fannie Mae Form 1004 which is intended only for mortgage lending when the assignment condition was a fair market value determination. [Scope of Work Rule, SR 1-1(c).]
- b. Respondent incorrectly described neighborhood boundaries which do not include the subject property and incorrectly reported the market as stable when it was declining. [SR 1-1(b,c), SR 1-3(a).]
- c. Respondent reported inaccurate site dimensions and an inaccurate zoning description for the subject property. [SR 1-1(c), SR 1-2(e)(i).]
- d. Respondent failed to describe the support and rationale for his opinion of the highest and best use of the subject property. [SR 2-2(b)(ix).]
- e. Respondent included personal property in his final value conclusion and failed to provide commentary regarding this inclusion. [SR 1-1(c), SR 1-2(e)(iii).]
- f. In the sales comparison approach, Respondent made errors in reporting data for the comparable sales, failed to report relevant features of the comparable sales, made inconsistent or inappropriate adjustments and used inappropriate comparable sales. [SR 1-1(b), SR 1-4, SR 1-4(a), SR 2-2(b)(viii).]
- g. Respondent did not develop an opinion of reasonable exposure time linked to the value opinion, although exposure time was a component of the definition for the value developed. [SR 1-2(c)(iv) Comment, SR 2-2(b)(v) Comment.]

5. While neither admitting nor denying the findings in this matter, Respondent does not wish to contest them and consents to the entry of the Findings of Fact and 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 the Findings of Fact, Respondent violated USPAP Scope of Work Rule by failing to determine and perform the scope of work necessary to develop credible assignment results for each appraisal.
3. By the conduct described in the Findings of Fact, Respondent violated USPAP SR 1-1(b,c) by:
 - a. committing a substantial error of omission or commission that significantly affects an appraisal; and
 - b. rendering appraisal services in a careless or negligent manner, 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.
4. By the conduct described in the Findings of Fact, Respondent violated USPAP SR 1-2(c)(iv) Comment by failing to develop an opinion of reasonable exposure time linked to the value opinion when exposure time is a component of the definition for the value opinion being developed.
5. By the conduct described in the Findings of Fact, Respondent violated USPAP SR 1-2 (e)(i,iii) by failing to identify the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal, including:
 - a. its location and physical, legal, and economic attributes, and
 - b. any personal property, trade fixtures, or intangible items that are not real property but are included in the appraisal.
6. By the conduct described in the Findings of Fact, Respondent violated USPAP SR 1-3(a) by failing to identify and analyze the effect on use and value of existing land use regulations, reasonably probable modifications of such land use regulations, economic supply and demand, the physical adaptability of the real estate, and market area trends when necessary for credible assignment results in developing a market value opinion.
7. By the conduct described in the Findings of Fact, Respondent violated USPAP SR 1-4 by failing to collect, verify, and analyze all information necessary for credible assignment results.
8. By the conduct described in the Findings of Fact, 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.
9. By the conduct described in the Findings of Fact, Respondent violated USPAP SR 2-2(b)(ix) by failing to summarize the support and rationale for the appraiser's opinion of the highest and best use of the subject property.
10. By the conduct described in the Findings of Fact, Respondent violated USPAP 2-2(b)(v) Comment by failing to state the type and definition of value, cite the source of the

definition and any comments needed to clearly indicate to the intended users how the definition is being applied.

11. By the conduct described in the Findings of Fact, Respondent violated USPAP 2-2(b)(viii) by failing to summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions.

12. As a result of the above violations, Respondent Gerald E. Elmer has violated Wis. Admin. Code §§ SPS 86.01(1) and (2), and is therefore subject to discipline pursuant to Wis. Stat. §§ 458.26(3)(b), (c) and (i).

ORDER

1. The attached Stipulation is accepted.
2. The Certified Residential Appraiser certificate of licensure and certification issued to Respondent (number 1477-9) is LIMITED as follows:
 - a. Within ninety (90) days of the date of this Order, Respondent shall successfully complete forty five (45) hours of education consisting of 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 examinations offered for the courses:
 - i. National USPAP (15 hours),
 - ii. Residential Sales Comparison and Income Approach (30 hours)
 - b. The USPAP 15 hour course must be taken in person in a classroom setting. The remaining course may be taken in person or online.
 - c. Respondent shall submit proof of successful completion of the ordered education 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 or the Department, and also may not be used in future attempts to upgrade a credential in Wisconsin.
 - d. Respondent shall not apply for or be granted an appraiser license upgrade during the term of the license limitation.
 - e. This limitation shall be removed from Respondent's license after satisfying the Board or its designee that Respondent has successfully completed all of the ordered education.

4. Within ninety (90) days from the date of this Order, Respondent shall pay COSTS of this matter in the amount of \$974.00.

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

Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

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 certificate of licensure and certification. 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 certificate of licensure and certification (no. 1477-9) 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

April 8, 2015
Date

STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

GERALD E. ELMER,
RESPONDENT.

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:
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STIPULATION

0003872

Division of Legal Services and Compliance¹ Case No. 13 APP 029

Respondent Gerald E. Elmer and the Division of Legal Services and Compliance, Department of Safety and Professional Services stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondent consents to the resolution of this investigation by Stipulation.

2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives the following rights:

- the right to a hearing on the allegations against Respondent, at which time the State has the burden of proving those allegations by a preponderance of the evidence;
- the right to confront and cross-examine the witnesses against Respondent;
- the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena;
- the right to testify on Respondent's own behalf;
- the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision;
- the right to petition for rehearing; and
- all other applicable rights afforded to Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. Respondent is aware of Respondent's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation. Respondent is represented by Attorney Mario D. Mendoza.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Real Estate Appraisers Board (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.


¹ The Division of Legal Services and Compliance was formerly known as the Division of Enforcement.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

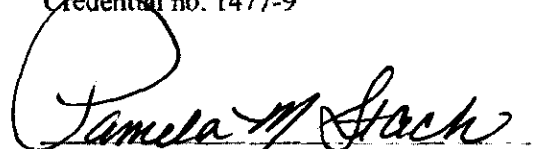
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with deliberations on the Stipulation. Additionally, any such advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

7. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

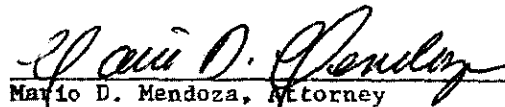
8. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.


Gerald E. Elmer, Respondent
802 1st Center Ave.
Broadhead, WI 53520
Credential no. 1477-9

5/24/2015
Date


Pamela M. Stach, Attorney
Division of Legal Services and Compliance
P.O. Box 8935
Madison, WI 53708-8935

3/24/15
Date


Mario D. Mendoza, Attorney
Murphy Desmond S.C.
P.O. Box 2038
Madison, WI 53701-2038

3-24-15
Date