

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

MICHAEL D. DENIS,
RESPONDENT.

:
:
: FINAL DECISION AND ORDER
:
:

0003950

Division of Legal Services and Compliance Case No. 13 APP 003

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

Michael D. Denis
23 W. Keenen St.
Rhineland, WI 54501

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 Michael D. Denis (dob 01/01/1947) is certified in the State of Wisconsin as a Certified Residential Appraiser, having certificate of licensure and certification number 1266-9, first issued on June 18, 2002 and current through December 14, 2015. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 23 W. Keenen Street, Rhineland, WI 54501.

2. On February 23, 2011, Respondent was disciplined by the Board for violations of the Uniform Standards of Professional Appraisal Practice (USPAP).

Respondent was reprimanded, ordered to complete 33 hours of education and pay a forfeiture of \$3,000 and costs of \$6,400.

3. On June 23, 2012, Respondent performed an appraisal of property located at 9700 Lee Road, Minocqua, WI. Respondent's appraisal report was dated June 26, 2012. Respondent performed a second appraisal of the same property on November 24, 2012, with the appraisal report dated November 28, 2012.

4. On or about January 29, 2013, the Department received a complaint alleging that the subject appraisal violated USPAP. Division of Legal Services and Compliance Case Number 13 APP 003 was subsequently opened for investigation.

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

- a. Respondent incorrectly reported the marketing time in the June 26, 2012 appraisal report. [SR 1-1(c), SR 1-3(a).]
- b. Respondent failed to utilize the same market data search criteria for both appraisal reports resulting in inconsistent and inaccurate market values. [SR 1-1(c), SR 1-3(a).]
- c. Respondent failed to accurately report the site dimensions of the subject property in both reports. [SR 1-2(e)(i).]
- d. Respondent failed to report an easement on the subject property in both reports and failed to provide comments on whether the easement would impact market value, marketability and whether such easement was typical in the market. [SR 1-3(a), SR 1-1(b), SR 1-2(e)(i,iv).]
- e. Respondent failed to describe the support and rationale for his opinion of the highest and best use of the subject property in both reports. [SR 1-3(b), SR 2-2(b)(ix).]
- f. Respondent failed to provide commentary in the November 28, 2012 appraisal report regarding the proposed addition to the subject property when an assignment condition for the appraisal was a home equity loan transaction for the purpose of building an addition to the subject property. [SR 1-1(b,c), SR 1-2(e)(i), Scope of Work Rule.]
- g. Respondent failed to include an outbuilding which was present on the subject property in his opinion of value without explanation of why it was excluded, failed to make adjustments to the comparables for the presence or lack of an outbuilding in both reports, and failed to provide adequate commentary regarding his analysis and value conclusion from the sales and pending sale utilized in the report. [SR 1-1(a,b,c), SR 1-2(e)(i), SR 1-4, SR 1-4(a).]

- h. Respondent utilized the same interior photographs in both reports which would misrepresent the condition of the subject property in the November 28, 2012 report. [SR 1-1(b,c), SR 1-2(e)(i).]
 - i. Respondent reported a change of land value for the subject property between the June 26, 2012 appraisal report and the November 28, 2012 appraisal report when the site had not changed and Respondent failed to indicate the data source and search criteria for the value determination in the cost approach section of both reports. [SR 1-1(b), SR 1-4, SR 1-4(a).]
6. Respondent does not admit or deny the Findings of Fact as set forth above, but consents to entry of this Final Decision and Order in resolution of this matter.

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 SR 1-1(a,b,c).

3. By the conduct described in the Findings of Fact, Respondent violated USPAP SR 1-2(e)(i,iv) 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 known easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of a similar nature.

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

- a. 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; and
- b. develop an opinion of the highest and best use of the real estate when necessary for credible assignment results in developing a market value opinion.

5. 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.

6. 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.

7. 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.

8. By the conduct described in the Findings of Fact, Respondent violated the Scope of Work Rule by failing to determine and perform the scope of work necessary to develop credible assignment results.

9. As a result of the above violations, Respondent Michael D. Denis 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. Respondent Michael D. Denis is REPRIMANDED.
3. The Certified Residential Appraiser certificate of licensure and certification issued to Respondent (number 1266-9) is LIMITED as follows:
 - a. By no later than October 31, 2015, Respondent shall successfully complete sixty (60) 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. Advanced Residential Applications and Case Studies (15 hours),
 - iii. Residential Site Comparison and Cost Approach (15 hours), and
 - iv. Residential Market Analysis and Highest and Best Use (15 hours).
 - b. All courses 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 upgrade to his credential during the term of the license limitation.
- e. This limitation shall be removed from Respondent's certificate of licensure and certification 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 \$702.00.

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. 1266-9) 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: Lawrence R. Malba 5/6/2015
A Member of the Board Date

STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

MICHAEL D. DENIS,
RESPONDENT.

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:
:

STIPULATION

0003950

Division of Legal Services and Compliance¹ Case No. 13 APP 003

Respondent Michael D. Denis 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.

Michael D. Denis
Michael D. Denis, Respondent
23 W. Keaton St.
Rhinelander, WI 54501
Credential no. 1266-9

May 1, 2015
Date

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

May 1, 2015
Date

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

May 1, 2015
Date