

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
DON N. FORSS,	:	
RESPONDENT.	:	

0003951

Division of Legal Services and Compliance Case No. 13 APP 026

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

Don N. Forss
840 Lorinda Ave.
Omro, WI 54963-2021

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 Don N. Forss (dob 05/13/1937) is certified in the State of Wisconsin as a Certified Residential Appraiser, having certificate of licensure and certification number 1279-9, first issued on February 7, 2003, and current through December 14, 2015. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 840 Lorinda Ave., Omro, WI 54963-2021.

2. On November 27, 2012, Respondent performed an appraisal of property located at W7754 County Road YY, Wautoma, WI 54982. At the client's request, Respondent submitted a revised report on December 19, 2012 to correct perceived errors.

3. On or about May 10, 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 026 was subsequently opened for investigation.

4. Respondent's December 19, 2012 corrected 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 correctly identified the market conditions as stable but failed to mark the corresponding box in the neighborhood section. [SR 1-1(c).]
- b. Respondent failed to report the correct zoning designation for a portion of the subject property, failed to report an easement, provided no commentary on the wetlands area, and failed to report power lines on and adjacent to the property. [SR 1-3(a), SR 1-2(e)(i,iv), SR 1-1(c).]
- c. Respondent failed to report the presence of a mobile home on the subject property and failed to provide commentary on improvements to the subject property, including the mobile home, a detached garage, and a pole building. [SR 1-2(e)(i), SR 1-1(c).]
- d. Respondent incorrectly reported that access to verifiable municipal and assessor square footage was not available, failed to utilize a different verification source from the data source, and utilized assessed value for his adjustments for comparable sale site size. [SR 1-1(b), SR 1-4, SR 1-4(a), SR 2-2(b)(viii), Competency Rule.]
- e. Respondent failed to research and report additional acreage for Comparable Sale #1. [SR 1-1(b), SR 1-4, SR 1-4(a), SR 2-2(b)(viii), Competency Rule.]
- f. Respondent incorrectly reported square footage, number of bathrooms, garage space, age and days on market in the Comparable Sales and Listings, and made inconsistent and inaccurate adjustments. [SR 1-1(b), SR 1-4, SR 1-4(a), SR 2-2(b)(viii), Competency Rule.]
- g. Respondent failed to reconcile the sales data and failed to state the basis for his opinion of value. [SR 1-1(b), SR 1-4, SR 1-4(a), Record Keeping Rule.]

- h. In reaching his opinion of value, Respondent used assessed value which is not an acceptable method for determining market value. [SR 1-1(a,b), SR 1-4, SR 1-4(a).]
- 5. Due to health issues, Respondent agrees that he will not renew his current certification.
- 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 the USPAP Record Keeping Rule by failing to retain in his work file all other data, information and documentation necessary to support the appraiser's opinions and conclusions and to show compliance with USPAP, or references to the locations(s) of such other documentation.
- 3. By the conduct described in the Findings of Fact, Respondent violated the USPAP Competency Rule by failing to be competent to perform the assignment.
- 4. By the conduct described in the Findings of Fact, Respondent violated the USPAP Scope of Work Rule by failing to determine and perform the scope of work necessary to develop credible assignment results.
- 5. 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.
- 6. 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.

7. 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.

8. 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.

9. 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.

10. By the conduct described in the Findings of Fact, Respondent violated USPAP SR 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 conclusion.

11. As a result of the above violations, Respondent Don N. Forss 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 Don N. Forss is REPRIMANDED.
3. The Certified Residential Appraiser certificate of licensure and certification issued to Respondent Don N. Forss (number 1279-9) is LIMITED as follows:
 - a. Between the date of this Order and December 13, 2015, Respondent's practice is limited to restricted appraisals/desk top reports for U.S. Bank, N.A., 200 South 6th Street, Minneapolis, MN 55402. Respondent shall not engage in any other appraisal practice under his current certification.
 - b. Respondent shall not renew his certificate on December 14, 2015, or at any time in the future.

c. Respondent shall not apply for or be granted any other appraiser credential issued by the Department after the date of this Order.

4. Respondent shall pay COSTS of this matter in the amount of \$500.00 by December 14, 2015.

5. 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, Respondent's certificate of licensure and certification (no. 1279-9) 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.

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

WISCONSIN REAL ESTATE APPRAISERS BOARD

by:


A Member of the Board

5/6/2015
Date

STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

DON N. FORSS,
RESPONDENT.

:
:
:
:
:

STIPULATION

0003951

Division of Legal Services and Compliance¹ Case No. 13 APP 026

Respondent Don N. Forss 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 Robert A. Sayas.

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.

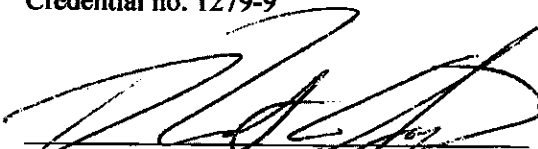
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent, for purposes 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.

Don N. Forss, Respondent
840 Lorinda Ave.
Omro, WI 54963-2021
Credential no. 1279-9

Date



Robert A. Sayas, Attorney for Respondent
Sayas, Schmuki, Rondini & Plum, S.C.
11430 W. Bluemound Road, Suite 200
Watertown, WI 53226-4050

May 1, 2015
Date



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

May 1, 2015
Date

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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.



Don N. Forss, Respondent
840 Lorinda Ave.
Omro, WI 54963-2021
Credential no. 1279-9

5/1/2015

Date

Robert A. Sayas, Attorney for Respondent
Sayas, Schmuki, Rondini & Plum, S.C.
11430 W. Bluemound Road, Suite 200
Wauwatosa, WI 53226-4050

Date

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

Date