

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. :

0005315

Division of Legal Services and Compliance Case Nos. 16 APP 006 & 16 APP 013

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 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 Joseph W. Michalowicz (DOB 08/08/1943) is certified by the State of Wisconsin as a Certified Residential Appraiser, having certificate of licensure and certification number 1432-9, first issued on August 19, 2005 and current through December 14, 2017. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 19 East Eastman Street, Plymouth, Wisconsin 53073.

2. On May 9, 2012, the Board reprimanded Respondent and ordered him to complete 22 hours of education for violating the Uniform Standards of Professional Appraisal Practice (USPAP) Standards Rules (SR) 1-1(c), SR 1-4(a), SR 2-1(a), SR 1-3(b), and SR 2-2(b)(xi). (Order No. 0001539).

16 APP 006

3. On April 3, 2015, Respondent completed an appraisal of property located at 1008 South Washington Drive, Howards Grove, Wisconsin 53083.

4. On or about January 22, 2016, the Department received a complaint alleging that the subject appraisal violated USPAP. The Division of Legal Services and Compliance (DLSC) subsequently opened Case Number 16 APP 006 for investigation.

5. Respondent's appraisal was reviewed by DLSC and it was determined that the appraisal and appraisal report violated USPAP Rules and/or SR as follows:

a. In the Neighborhood section, Respondent expanded the neighborhood boundaries to encompass his comparable selections and failed to correctly describe all of the characteristics and uses for the delineated neighborhood. [Competency Rule, Scope of Work Rule, SR 1-1(c), SR 1-2(e)(i), SR 2-1(c).]

b. In the Site section, Respondent reported incorrect site dimensions for the subject property. [SR 1-1(c).]

c. In the Improvement section, Respondent reported that the subject property had no updates in the last 15 years and that the kitchen and baths had not been updated; however, the MLS listing indicated the seller had spent \$250,000 in the last four years updating the home and pictures (both MLS and Respondent's) show newer cabinets and countertops. [Scope of Work Rule, SR 1-1(c), SR 2-1(c).]

d. In the Sales Comparison Approach section, Respondent failed to utilize comparable sales from the Village of Howards Grove and provided no data or analysis to show support for the use of comparable sales from other neighborhoods. [SR 1-1(c), SR 1-4(a).]

e. In the Sales Comparison Approach section, Respondent failed to support his adjustments for Comparable Listing #2's pole barn in his report or his workfile. [Record Keeping Rule, Scope of Work Rule, SR 2-1(a,b).]

f. In the Cost Approach section, Respondent failed to provide a summary of the sales data or abstraction method used to develop his opinion of site value and did not have in his workfile the data or the analysis to support his opinion of value. [Record Keeping Rule, Scope of Work Rule, SR 1-1(c), SR 2-1(b).]

16 APP 013

6. On March 1, 2016, Respondent completed an appraisal of property located at 167 East Cotton Street, Fond du Lac, Wisconsin 54935 and provided an opinion of value of \$115,000. On September 14, 2014, Respondent completed an appraisal on the subject property with an opinion of value of \$120,000.

7. On or about April 19, 2016, the Department received a complaint alleging that the subject appraisal violated USPAP. DLSC subsequently opened Case Number 16 APP 013 for investigation.

8. Respondent's appraisal was reviewed by DLSC and it was determined that the appraisal and appraisal report violated USPAP Rules and/or SR as follows:

a. In the Neighborhood section, Respondent's report contained many inconsistencies from his previous appraisal of the subject property including, but not limited to, different neighborhood characteristics and neighborhood boundaries. [SR 1-1(c).]

b. In the Site section, Respondent failed to disclose that the subject property's site dimensions were estimated. [SR 1-1(c).]

c. In the Improvement section, Respondent reported inconsistent characteristics of the subject property, such as style of home, number of rooms and updates, as compared to his previous appraisal. [SR 1-1(c).]

d. In the Improvement section, Respondent failed to correctly depict the first floor in his perimeter sketch. [Scope of Work Rule, SR 1-1(c).]

e. In the Sales Comparison Approach section, Respondent reported an incorrect site size for the subject property and then adjusted the comparable sales based on the incorrect site size. [SR 1-1(b,c).]

f. In the Sales Comparison Approach section, Respondent failed to analyze the prior sale of the subject property. [Scope of Work Rule, SR 1-5(b).]

g. In the Cost Approach section, Respondent stated that he valued the subject property's site, when in fact he did not provide a site value for the subject property. [SR 1-1(c).]

9. In resolution of this matter, Respondent 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 the Findings of Fact, Joseph W. Michalowicz violated the USPAP¹ Competency Rule by failing to be competent to perform the assignment.

¹ Unless otherwise noted, the language of the 2014-2015 Edition USPAP is the same as the language of the 2016-2017 Edition USPAP.

3. By the conduct described in the Findings of Fact, Joseph W. Michalowicz violated the USPAP Scope of Work Rule by failing to properly identify the problem to be solved in order to determine the appropriate scope of work and by failing to gather and analyze information about those assignment elements that are necessary to properly identify the appraisal problem to be solved.

4. By the conduct described in the Findings of Fact, Joseph W. Michalowicz violated the USPAP Record Keeping Rule by failing to include in his workfile all other data, information, and documentation necessary to support his opinions and conclusions and to show compliance with USPAP.

5. By the conduct described in the Findings of Fact, Joseph W. Michalowicz violated USPAP SR 1-1(b) and (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, 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.

6. By the conduct described in the Findings of Fact, Joseph W. Michalowicz violated USPAP SR 1-2(e)(i) 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 its location and physical, legal, and economic attributes.

7. By the conduct described in the Findings of Fact, Joseph W. Michalowicz violated USPAP SR 1-4(a) by failing to analyze comparable sales data as was available to indicate a value conclusion, when the sales comparison approach was necessary for a credible assignment result.

8. By the conduct described in the Findings of Fact, Joseph W. Michalowicz violated USPAP SR 1-5(b) by failing to analyze all sales of the subject property that occurred within the three years prior to the effective date of the appraisal.

9. By the conduct described in the Findings of Fact, Joseph W. Michalowicz violated USPAP SR 2-1(a) – (c) by:

- a. failing to clearly and accurately set forth the appraisal in a manner that is not misleading;
- b. failing to include in his appraisal report sufficient information to enable the intended users of the appraisal to understand the report properly; and
- c. failing to clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions used in the assignment.

10. As a result of the above USPAP violations, Joseph W. Michalowicz violated Wis. Admin. Code § SPS 86.01(1) and (2).

11. As a result of the above violations and conduct, Respondent 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 Joseph W. Michalowicz is REPRIMANDED.
3. The Certified Residential Appraiser certificate of licensure and certification issued to Joseph W. Michalowicz (no. 1432-9) is LIMITED as follows:
 - a. Within 60 days from the date of this Order, Respondent shall successfully complete 75 hours of education consisting of the following courses offered by a provider pre-approved by the Board's monitoring liaison, including taking and passing any exam(s) offered for the courses:
 - i. USPAP (15 hours),
 - ii. Basic Appraisal Principles (30 hours), and
 - iii. Basic Appraisal Procedures (30 hours).
 - b. The USPAP (15 hours) course shall be taken online; however, all other courses listed above may be taken online or in person in a classroom setting.
 - 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.
4. Within 90 days from the date of this Order, Joseph W. Michalowicz shall pay COSTS of this matter in the amount of \$3,209.
5. Requests for pre-approval, 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:

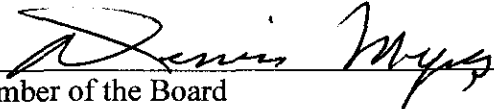
Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

6. In the event Respondent violates any term of this Order, Respondent's certificate of licensure and certification (no. 1432-9), or Respondent's right to renew his certificate of licensure and certification, may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of the Order. The Board may, in addition and/or in the alternative refer any violation of this Order to the Division of Legal Services and Compliance for further investigation and action.

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

WISCONSIN REAL ESTATE APPRAISERS BOARD

by:


A Member of the Board

5-23-17
Date

STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :
 : STIPULATION
JOSEPH W. MICHALOWITZ, :
RESPONDENT. : **0005315**

Division of Legal Services and Compliance Case Nos. 16 APP 006 & 16 APP 013

Respondent Joseph W. Michalowicz 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 Mollie T. Kugler and Attorney David J. Hanus.

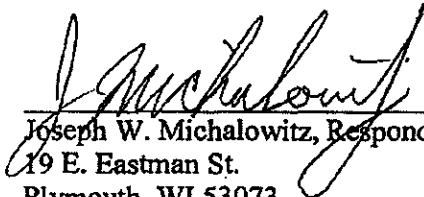
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Real Estate Appraisers Board (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent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

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.

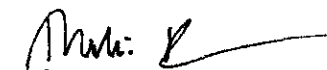
7. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

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.




Joseph W. Michalowitz, Respondent
19 E. Eastman St.
Plymouth, WI 53073
Credential no. 1432-9

4/11/2017
Date



Mollie T. Kugler, Attorney for Respondent
David J. Hanus, Attorney for Respondent
Hinshaw & Culbertson LLP
100 E. Wisconsin Ave., Ste. 2600
Milwaukee, WI 53202

4/11/17
Date



Renee M. Parton, Attorney
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

4/13/2017
Date