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**Before The  
State of Wisconsin  
Real Estate Appraisers Board**

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In the Matter of Disciplinary Proceedings Against  
Thomas M. Prock, Respondent

FINAL DECISION AND ORDER

Order No. **ORDER 0006321**

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**Division of Legal Services and Compliance Case No. 13 APP 092**

The State of Wisconsin, Real Estate Appraisers Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Real Estate Appraisers Board.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 6<sup>th</sup> day of August, 2019.

Al Rohmeyer, DSPS Chief Legal  
Member  
Real Estate Appraisers Board  
Counsel,  
Delegatee



**Before The  
State of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of Disciplinary Proceedings  
Against Thomas M. Prock, Respondent

DHA Case No. SPS-19-0021  
DLSC Case No. 13 APP 092

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**PROPOSED DECISION AND ORDER**

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

Thomas M. Prock  
5220 Clay Street  
Eau Claire, WI 54701

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

Department of Safety and Professional Services, Division of Legal Services and  
Compliance, by

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

**PROCEDURAL HISTORY**

These proceedings were initiated when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed and served a formal Notice of Hearing and Complaint against Respondent Thomas M. Prock (Respondent). The Complaint alleged that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. § 458.26(3)(b) and (i) because Respondent violated Wis. Admin. Code § SPS 86.01(10) by failing to cooperate in a timely manner with a request for information made by the Wisconsin Real Estate Appraisers Board (Board) related to an investigation of a complaint filed against Respondent.

The Division served Respondent on March 5, 2019, by sending a copy of the Notice of Hearing and Complaint to the address on file with the Department by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. Respondent failed to file an Answer to the Complaint, as required by Wis. Admin. Code § SPS 2.09(4), and failed to appear at the telephone prehearing conference held before the Division of Hearings and Appeals on April 16, 2019.

The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). In light of Respondent's failure to file an Answer to the Complaint and failure to appear for the prehearing conference, the undersigned Administrative

Law Judge (ALJ) found Respondent to be in default and issued a Notice of Default and Order on April 16, 2019. Consistent with the Notice, the Division filed a recommended proposed decision and order by May 16, 2019.

### FINDINGS OF FACT

Findings of Facts 1-13 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Thomas M. Prock is certified in the State of Wisconsin as a certified residential appraiser, having certificate of licensure and certification number 1785-9, first issued on February 5, 2010, and current through December 14, 2019.

2. Respondent's most recent address on file with the Department is 5220 Clay Street, Eau Claire, Wisconsin 54701.

3. On July 25, 2013, Respondent signed an appraisal report for an appraisal of property located at 1107 Flint Creek Circle, Wausau, Wisconsin 54401.

4. On or about September 20, 2013, the Department received a complaint alleging that Respondent's appraisal of the Flint Creek Circle property violated the Uniform Standards of Professional Appraisal Practice (USPAP). Division Case Number 13 APP 092 was subsequently opened for investigation.

5. On September 25, 2018, a Division investigator emailed Respondent a request for information at his email address of record with the Department ([tom@certifiedappraisal.biz](mailto:tom@certifiedappraisal.biz)). The email requested the information be provided by October 9, 2018. The email was not returned as undeliverable.

6. On September 28, 2018, the Division investigator called Respondent at his telephone number of record with the Department (715-514-4286). The investigator left a message for Respondent requesting the information that was also the subject of his September 25, 2018 email.

7. On October 1, 2018, the Division investigator called Respondent at his telephone number of record with the Department and requested a return call.

8. On October 10, 2018, the Division investigator emailed Respondent at his email address of record with the Department. In the email, the investigator again requested the information that was the subject of his September 25, 2018 email and advised Respondent of his duty to cooperate in a timely manner with requests for information. The email was not returned as undeliverable.

9. On October 10, 2018, the Division investigator called Respondent at his telephone number of record with the Department. Respondent's voicemail indicated it was full and not taking messages.

10. On October 12, 2018, the Division investigator called Respondent at his telephone number of record with the Department. Respondent's voicemail indicated it was full and not taking messages.

11. On December 11, 2018, the Division investigator mailed Respondent a request for information to his mailing address of record with the Department via certified mail.

12. On January 11, 2019, the Division investigator called Respondent at his telephone number of record with the Department. Respondent's voicemail greeting indicated the voicemail was Respondent's but also that it was full and not taking messages.

13. On January 14, 2019, the Division's December 11, 2018 certified mail was returned, stamped "Unclaimed."

#### Facts Related to Default

14. The Complaint and Notice of Hearing in this matter were served on Respondent on March 5, 2019, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing advised Respondent: "If you do not provide a proper Answer within 20 days, you will be found to be in default and a default judgment may be entered against you on the basis of the Complaint and other evidence. In addition, the Board may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing."

15. Respondent failed to file an Answer to the Complaint within 20 days from the date of service of the Complaint as required by Wis. Admin. Code § SPS 2.09(4).

16. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for April 16, 2019, at 11:30 am. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide to the ALJ a telephone number at which he could be reached for the conference no later than April 12, 2019. The Notice instructed Respondent: "The Respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the Respondent."

17. Respondent failed to provide a telephone number at which he could be reached for the April 16, 2019 prehearing conference.

18. At the prehearing conference held on April 16, 2019, the Division provided a telephone number for Respondent. The ALJ attempted to contact Respondent at the number provided at approximately 11:30 am and again at 11:48 am, but the number was not in service.

19. At the prehearing conference held on April 16, 2019, the Division moved for default, pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c) based on Respondent's failure to file an Answer to the Complaint and failure to appear for the prehearing conference.

20. On April 16, 2019, the ALJ issued a Notice of Default and Order, requiring the Division to file and serve, no later than May 16, 2019, a recommended proposed decision and order.

21. The Division timely filed the recommended proposed decision and order on May 14, 2019.

22. Respondent did not file a response to the Notice of Default and Order or to the Division's recommended proposed decision and order.

### DISCUSSION AND CONCLUSIONS OF LAW

#### Default

As stated in the April 16, 2019 Notice of Default and Order, Respondent is in default for failing to file an Answer to the Complaint and failing to appear for the prehearing conference. Accordingly, an order may be entered against Respondent on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

#### Violation of Wis. Admin. Code § SPS 86.01(10)

The Division alleges that Respondent is subject to discipline pursuant to Wis. Stat. § 458.26(3)(b) and (i), which states, in relevant part:

(3) . . . The department may deny any certificate under this subchapter, and the board may limit, suspend or revoke any certificate under this subchapter or reprimand or impose additional continuing education requirements on the holder of a certificate under this subchapter, if the department or board finds that the applicant for or holder of the certificate has done any of the following:

...  
(b) Engaged in unprofessional or unethical conduct in violation of rules promulgated under s. 458.24.

...  
(i) Violated this subchapter or any rule promulgated under this subchapter.

Wisconsin Admin. Code § SPS 86.01(10) states, in relevant part:

After a request for information made by the board, a certified or licensed appraiser shall cooperate in a timely manner with the board's investigation of a complaint filed against the licensed or certified appraiser . . . There is a rebuttable presumption that a licensed or certified appraiser who takes longer than 10 business days to respond to a request for information by the board has not acted in a timely manner under this subsection.

The undisputed facts establish that on July 25, 2013, Respondent signed an appraisal report for an appraisal of property located at 1107 Flint Creek Circle, Wausau, Wisconsin 54401. On or about September 20, 2013, the Department received a complaint alleging that Respondent's appraisal of the Flint Creek Circle property violated USPAP. Division Case Number 13 APP 092 was subsequently opened for investigation. The Department contacted Respondent multiple times on behalf of the Board to request information related to the investigation of the complaint. Emails were sent to Respondent's email address on file with the Department on two occasions, phone calls were made to Respondent's phone number on file with the Department on five occasions, and a letter was sent by certified mail to Respondent's mailing address on file with the Department on December 11, 2018. On January 14, 2019, the Division's December 11, 2018 certified mail was returned stamped "Unclaimed." Respondent

failed to respond to all of the Board's requests for information. Accordingly, Respondent violated Wis. Admin. Code § SPS 86.01(10).

As a result of the above violation, Respondent is subject to discipline pursuant to Wis. Stat. § 458.26(3)(b) and (i).

#### Appropriate Discipline

The three purposes of discipline are: (1) to promote the rehabilitation of the credential holder; (2) to protect the public from other instances of misconduct; and (3) to deter other credential holders from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

The Division recommends that Respondent's certified residential appraiser credential be revoked. Given that Respondent has made no argument to the contrary and that the recommended discipline is consistent with the purposes articulated in *Aldrich* and with case law, I adopt the Division's recommendation.

"Protection of the public is the purpose of requiring a license." *State ex rel. Green v. Clark*, 235 Wis. 628, 631, 294 N.W. 25 (1940). When a license is granted to an individual, Wisconsin is assuring the public that the licensed individual is competent in his or her profession. *Stringez v. Dep't of Regulation & Licensing Dentistry Examining Bd.*, 103 Wis. 2d 281, 287, 307 N.W.2d 664 (1981). It follows that if the state cannot assure the public of the licensee's competence to practice the profession, then revocation is appropriate. *Gilbert v. State Medical Examining Bd.*, 119 Wis. 2d 168, 189–90, 349 N.W.2d 68 (1984).

Revocation is necessary to protect the public from other instances of misconduct and to deter other credential holders from engaging in similar conduct. Respondent has demonstrated a lack of respect for the Board's legitimate authority. Respondent failed to cooperate throughout the Department's investigation and these proceedings. Thus, the Board cannot assure the public of Respondent's competency. Therefore, revocation of Respondent's license is an appropriate response to Respondent's disrespect for the law, the public welfare, and the licensing authority governing his profession.

Promoting rehabilitation is one of the purposes of discipline; however, rehabilitation is unlikely in this case as Respondent refused to engage with the Board which granted his credential. Having been unable to obtain requested information during the investigation from Respondent, the Board cannot assure the public that Respondent will practice his profession in a competent manner. Moreover, revocation of Respondent's license is necessary to deter other licensees from refusing to cooperate with the Board as it relates to a disciplinary matter. Licensees need to know this conduct will not be tolerated.

In light of the facts of this case and the factors set forth in *Aldrich*, revocation of Respondent's certified residential appraiser credential is warranted.

#### Costs

As a result of Respondent's credential being revoked by the Board, the Board is vested with discretion concerning whether to assess all or part of the costs of this proceeding against Respondent. See Wis. Stat. § 440.22(2). In exercising such discretion, the Board must look at

aggravating and mitigating facts of the case; it may not assess costs against a licensee based solely on a "rigid rule or invocation of an omnipresent policy," such as preventing those costs from being passed on to others. *Noesen v. State Department of Regulation & Licensing, Pharmacy Examining Board*, 2008 WI App 52, ¶¶ 30-32, 311 Wis. 2d 237, 751 N.W.2d 385. The Board has also, in previous orders, considered many factors when determining if all or part of the costs should be assessed against a Respondent. *See In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS0802183 CHI) (Aug. 14, 2008). It is within the Board's discretion as to which, if any, of these factors to consider, whether other factors should be considered, and how much weight to give any factors considered.

The following facts are particularly relevant to the instant case. The Division proved every count it alleged. This is not a case where the Division wasted resources or incurred additional costs by alleging multiple counts and then failing to prove those counts. Additionally, Respondent's conduct is serious. Respondent did not cooperate with the Department's investigation or with these proceedings. As a result, the Division sought revocation of Respondent's certified residential appraiser credential, which was granted in this case. Further, Respondent made no argument concerning whether costs should be assessed against him. Finally, the Department is a program revenue agency whose operating costs are funded by the revenue received from credential holders. As such, fairness weighs heavily in favor of requiring Respondent to pay the costs of this proceeding which resulted in significant discipline rather than spreading the costs among all certified residential appraisers in Wisconsin.

Based on the foregoing, all of the costs of this proceeding should be assessed against Respondent in an amount to be determined pursuant to Wis. Admin. Code § SPS 2.18.

#### ORDER

Accordingly, it is hereby ORDERED that Respondent Thomas M. Prock's certified residential appraiser certificate of licensure and certification (no. 1785-9) is REVOKED, effective on the date the final decision is signed by the Board.

IT IS FURTHER ORDERED that should Respondent ever apply for a credential with the Department in the future, Respondent shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18, prior to the Department's consideration of any such application.

Dated at Madison, Wisconsin on July 15, 2019.

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By: 

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Administrative Law Judge