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

In the Matter of Disciplinary Proceedings Against
Shara L. Dahlk, Respondent

FINAL DECISION AND ORDER

Order No. **ORDER 0006322**

Division of Legal Services and Compliance Case No. 17 APP 038

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 6th day of August, 2019.

Al Rohmeyer, ~~Member~~
~~Real Estate Appraisers Board~~

DSPS Chief
Legal Counsel,
Delegatee



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

In the Matter of Disciplinary Proceedings Against
Shara L. Dahlk, Respondent

DHA Case No. SPS-19-0018
DLSC Case No. 17 APP 038

PROPOSED DECISION AND ORDER

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

Shara L. Dahlk
2546 Valley Street
Cross Plains, WI 53528

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

PROCEDURAL HISTORY

The 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 Shara L. Dahlk (Respondent). The Complaint alleged that Respondent's certificate of licensure and certification 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 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 Respondent's 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.

Following expiration of the 20-day time period to file an Answer, an administrative law judge (ALJ) scheduled a telephone prehearing conference for April 16, 2019. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide the ALJ with a telephone number at which Respondent could be reached for the conference no later than April 12, 2019. Respondent failed to provide a telephone number. On April 16, 2019, the Division provided the ALJ with a telephone number for Respondent. However, due to technical difficulties with the telephone system, the ALJ was unable to connect with the parties for the telephone prehearing conference on that date.

Consequently, the ALJ sent written notice to the parties that the telephone prehearing conference was rescheduled to May 30, 2019 at 10:00 a.m. Again, the written notice instructed the Respondent to provide a telephone number where she could be reached for the rescheduled telephone conference. Respondent failed to provide a telephone number.

On May 30, 2019 at 10:00 a.m., the ALJ called Respondent at the telephone number the Division had on file for Respondent. Respondent did not answer the telephone, and there was no voice mail messaging system that allowed the ALJ to leave a message for Respondent. Respondent did not contact the ALJ in any manner. Based on Respondent's failure to file an Answer to the Complaint and failure to appear at the prehearing conference in this matter, the Division moved for default, pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

On May 30, 2019, the ALJ issued a Notice of Default and Order against Respondent and ordered the Division to file a recommended proposed decision and order by June 10, 2019. The Division timely filed its submission on June 5, 2019.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Facts 1-10 are consistent with the allegations in the Division's Complaint against Respondent filed in this matter.

1. Respondent Shara L. Dahlk is certified in the state of Wisconsin to practice as a certified residential appraiser, having certificate of licensure and certification number 1940-9, first issued on January 13, 2015, and current through December 14, 2019.
2. Respondent's most recent address on file with the Department is 2546 Valley Street, Cross Plains, Wisconsin 53528.
3. On May 21, 2017, Respondent performed an appraisal of property located at 908 Charles Street, Watertown, Wisconsin 53094.

4. On or about July 20, 2017, the Department received a complaint alleging that the subject appraisal violated the Uniform Standards of Professional Appraisal Practice (USPAP). The Division subsequently opened an investigation in case 17 APP 038.
5. On February 9, 2018, a Division investigator emailed Respondent a list of questions regarding the investigation at her email address of record with the Department. Respondent failed to respond to this list of questions.
6. On February 26, 2018, the Division investigator called Respondent regarding the February 9, 2018 email at her telephone number of record with the Department. Respondent requested an extension to respond, and she was granted an extension to March 23, 2018.
7. On March 27, 2018, the Division investigator emailed Respondent inquiring about her missed response deadline. Respondent did not respond.
8. On April 3, 2018, the Division investigator emailed Respondent again inquiring about her missing response. The Division investigator notified Respondent that failure to respond to the Division's investigation could result in disciplinary action. Respondent did not respond.
9. On April 18, 2018, the Division investigator called Respondent to discuss her missing response and left a message. Respondent did not return this call.
10. On April 30, 2018, the Division investigator sent a certified letter to Respondent at her address of record with the Department. This letter was returned to the Department on May 24, 2018.

Facts Related to Default

11. 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."
12. Respondent failed to file an Answer as required by Wis. Admin. Code § SPS 2.09(4).
13. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for April 16, 2019 at 9:00 a.m. and sent written Notice of the prehearing conference to both parties on March 25, 2019. The Notice instructed Respondent to provide the ALJ with a telephone number, no later than April 12, 2019, at which Respondent could be reached for the prehearing conference. The Notice also informed Respondent that failure to appear at a scheduled conference or hearing could result in default judgment being entered against Respondent.

14. Respondent failed to provide a telephone number to the ALJ at which she could be reached for the prehearing conference.
15. On April 16, 2019, the Division provided the ALJ with a telephone number for Respondent. However, due to technical difficulties with the telephone system, the ALJ was unable to connect with the parties for the telephone prehearing conference on that date.
16. The ALJ sent a second written Notice to the parties that the telephone prehearing conference was rescheduled to May 30, 2019, at 10:00 a.m. The written Notice stated: "If Respondent fails to appear at the prehearing conference on May 30, 2019, at 10:00, and fails to file an Answer prior to the prehearing conference, default will be entered against her for failure to file an Answer and failure to appear, pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c)."
17. At the prehearing conference held on May 30, 2019, the ALJ called Respondent at the telephone number provided by the Division. Respondent did not answer the telephone, and there was no voice mail messaging system that allowed the ALJ to leave a message for Respondent.
18. Based upon Respondent's failure to file an Answer to the Complaint and failure to appear for the May 30, 2019 prehearing conference, the Division moved for default, pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).
19. On May 30, 2019, the ALJ issued a Notice of Default and Order, requiring the Division to file a recommended proposed decision and order by June 10, 2019.
20. The Division timely filed the recommended proposed decision and order on June 5, 2019.

DISCUSSION AND CONCLUSIONS OF LAW

Default

As stated in the May 30, 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 telephone 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.

Violation

The Department and the Real Estate Appraisers Board (Board) possess the authority to impose discipline upon applicants or holders of real estate certificates under Wis. Stat. § 458.26(3)(b) and (i), as follows:

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.

Here, Respondent violated an administrative rule governing real estate appraisers by failing to respond to multiple requests for information made by the Division on behalf of the Board. Wis. 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.

It is undisputed that, on May 21, 2017, Respondent performed an appraisal of property located at 908 Charles Street, Watertown, Wisconsin 53094. On or about July 20, 2017, the Department received a complaint alleging that Respondent's appraisal of the Charles Street property violated USPAP. Consequently, the Division opened case 17 APP 038 for investigation. The Division contacted Respondent multiple times on behalf of the Board to request information related to the investigation of the complaint. On February 9, 2018, a Division investigator emailed Respondent a list of questions regarding the investigation to her email address of record. On February 26, 2018, Respondent requested an extension to respond. An extension was granted until March 23, 2018. On March 27, 2018, a Division investigator emailed Respondent inquiring about the status of her late response. Respondent did not respond to this email. The Division further attempted to contact Respondent by email, telephone, and postal mail. Respondent failed to respond to all of the Board's requests for information. Therefore, I conclude 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).

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.

The recommended discipline is consistent with the purposes articulated in *Aldrich* and with case law. “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).

Certified residential appraisers must promote and preserve the public trust which is inherent in the appraisal practice. See Appraisal Foundation, *Uniform Standards of Appraisal Practice*, 7 (2018-19). Trustworthiness is paramount to the function appraisers provide to the state of Wisconsin. In the instant case, Respondent demonstrated a lack of respect for the Board’s statutory authority. Respondent failed to respond to multiple requests for information from the Division, made on behalf of the Board, and failed to cooperate with the Division’s investigation and the complaint proceedings. When an appraiser ignores the licensing authority, it does not inspire confidence that the individual can be trusted to conduct competent real estate appraisals. Therefore, the Board cannot assure that Respondent is competent for licensure in the profession. Accordingly, revocation of Respondent’s license is an appropriate response to Respondent’s disrespect for the law, the public welfare, and the licensing authority governing the profession.

Promoting rehabilitation is one of the purposes of discipline; however, rehabilitation is not plausible in this case as Respondent refused to cooperate with the Board. As described above, the Board cannot assure the public that Respondent will practice her 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.

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

Costs

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. In previous orders, the Board has 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. First, in light of Respondent’s default, the factual allegations were deemed admitted, and the Division proved all counts alleged. Second, Respondent’s violation is serious. Respondent did not cooperate with the Division’s investigation or with the disciplinary proceedings. As a result, the Division sought

revocation of Respondent's certified residential appraiser credential. 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, it is appropriate for Respondent to pay the full costs of the investigation and this proceeding, in an amount to be determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

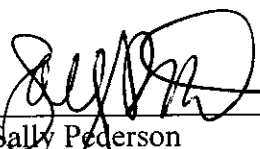
Accordingly, it is hereby ORDERED that Respondent Shara L. Dahlk's certified residential appraiser certificate of licensure and certification (no. 1940-9) is REVOKED, effective on the date the final decision is signed by the Board.

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 in accordance with Wis. Admin. Code § SPS 2.18, prior to the Department's consideration of such application.

Dated at Madison, Wisconsin on June 6, 2019.

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By: _____


Sally Pederson
Administrative Law Judge