

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

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FILED

DEC 29 2011

ADMINISTRATIVE HEARING
COMMISSION

Missouri Real Estate Appraisers)
Commission)
Petitioner,)
v.)
David L. Hartline)
Respondent.)

Case #: 10-2103 RA

RECEIVED

JAN 06 2012

JOINT MOTION FOR CONSENT ORDER,
JOINT STIPULATION OF FACTS AND CONCLUSIONS OF LAW,
WAIVER OF HEARINGS
BEFORE THE ADMINISTRATIVE HEARING COMMISSION
AND THE MISSOURI REAL ESTATE APPRAISERS COMMISSION,
AND DISCIPLINARY ORDER

Respondent David L. Hartline (“Hartline”) and Petitioner Missouri Real Estate Appraisers Commission (“MREAC”) enter into this *Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, Waiver of Hearings Before the Administrative Hearing Commission and Missouri Real Estate Appraisers Commission, and Disciplinary Order* (“Joint Stipulation”) for the purpose of resolving the Complaint filed against Respondent. Pursuant to the rules governing practice and procedure before the Administrative Hearing Commission (“Commission”)(1 CSR 15-3.440(3)) and pursuant to the terms of § 536.060, RSMo¹, as it is made applicable to the Commission by

¹All references are to the 2000 Revised Statutes of Missouri unless otherwise noted.

§ 621.135, RSMo, the parties move for a consent order and waive the right to a hearing and decision in the above-styled case by the Commission, and, additionally, the right to a disciplinary hearing before the MREAC pursuant to § 621.110, RSMo, Cum. Supp. 2007 and jointly stipulate and agree that a final disposition of this matter may be effectuated as described below.

Respondent acknowledges that he is aware of and understands the various rights and privileges afforded him by law, including: 1) the right to a hearing of the charges against him; 2) the right to appear and be represented by legal counsel; 3) the right to have all charges against him proven upon the record by competent and substantial evidence; 4) the right to cross-examine any witness appearing at the hearing against him; 5) the right to present evidence on his behalf at the hearing; 6) the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the complaint pending against him; 7) the right to a ruling on questions of law by the Commission; 8) the right to a disciplinary hearing before the MREAC at which time Respondent could present evidence in mitigation of discipline; 9) the right to a claim for attorneys' fees and expenses, and 10) the right to obtain judicial review of the decisions of the Commission and the MREAC. Being aware of these rights provided Respondent by operation of law, Respondent knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint Stipulation. Respondent further agrees to abide by the terms of this document as they pertain to Respondent.

Respondent acknowledges that he received a copy of the Complaint in this case, which was filed with the Commission on November 4, 2010. Respondent stipulates that the factual allegations contained in this Joint Stipulation are true and stipulates with the MREAC that Hartline's license as a Real Estate Appraiser -- Residential, license no. RA002642, is subject to disciplinary action by the MREAC in accordance with the provisions of Chapter 621, RSMo, and §339.532.2, RSMo.

I. JOINT STIPULATION

Based upon the foregoing, the MREAC and Respondent jointly stipulate to the following findings of fact and conclusions of law in lieu of the facts and conclusions of law as alleged in the Complaint filed in this case, and request that the Commission adopt the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law as the Commission's Findings of Fact and Conclusions of Law.

JOINT PROPOSED FINDINGS OF FACT

1. The Missouri Real Estate Appraisers Commission ("MREAC") is an agency of the State of Missouri, created and established pursuant to Section [Section], RSMo,² for the purpose of executing and enforcing the provisions of Chapter 339, RSMo, Real Estate Agents, Brokers, Appraisers and Escrow Agents.

2. Respondent, David L. Hartline (Hartline), is an adult individual whose registered address is 11029 South Rene Street, Lenexa, KS 66215, and who holds a Missouri license

² Statutory references are to RSMo 2000 and the Cumulative Supplement 2009 unless otherwise noted.

as Real Estate Appraisal -- Residential, License No. RA002642, which is active, which was originally issued July 14, 1993, and which expires June 30, 2012.

3. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to § 621.045, RSMo, and § 339.532.2, RSMo.

Count I – Sapelo Drive Property

4. On or about November 29, 2005, Hartline performed a residential appraisal on a residential property located at 4305 SW Sapelo Drive, Lee's Summit, Missouri 64082.

5. Hartline prepared and signed a "Universal Residential Appraisal Report" on the Sapelo property, hereinafter referred to as the "Sapelo Report."

6. At all times relevant to this Complaint, Hartline was required to develop and report the results of Sapelo Reports in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), 2005 Edition.

7. The Sapelo Report concluded that the value of the property was \$362,000 as of November 29, 2005.

8. The Sapelo Report was prepared for the benefit of Clarion Mortgage Capital, Overland Park, Kansas.

9. The Sapelo Report failed to comply with USPAP standards in the following respects:

(1) Although the property was 11 years old, the report compared the property to new houses and made a downward adjustment for age of

\$3,000 to the comparables, less than one percent, which is an inadequate adjustment;

(2) The report describes the property as “totally rehabbed,” but fails to specify what improvements were made in the course of the rehab;

(3) The report makes an upward adjustment of \$3,000 adjustment for condition to the comparables, in essence finding that the 11-year old rehabbed property was in better condition than new houses;

(4) The report made no adjustments for whether the properties fronted on water, although the subject fronted on a pond and two of the comparables did not;

(5) The report compares the subject to comparables with different configurations of bedrooms;

(6) The report uses a cost approach, but fails to make any allowance for depreciation;

(7) The cost approach in the report refers to both Average and Good costs, but fails to distinguish which is being used;

(8) The cost approach fails to support the land value;

(9) The report shows no seller paid costs, but the financing addendum reflects seller points which could be as high as \$8,000.

10. The Sapelo Report violated the following USPAP sections:

- (1) SR 1-1(a), by using three new houses and comparing them to the 11-year-old subject; by adjusting the comparable sales down \$3,000 each for age and then adjusting them up \$3,000 for condition; by failing to reflect depreciation in the cost approach; and by failing to correctly employ the sales comparison and cost approaches;
- (2) SR 1-1(b), by omitting any support for adjusting new houses up for condition when compared to an 11-year old subject property;
- (3) SR 1-1(c), by numerous unsupported conclusions and inaccuracies that, in the aggregate, affect the credibility of the results and conclusions;
- (4) SR 1-4(b)(i), by failing to set forth evidence in the report or in the file that the site value was developed by an appropriate appraisal method or technique;
- (5) SR 1-4(b)(ii), by using contradictory cost sources and failing to support the reconciliation of the cost approach;
- (6) SR 1-4(b)(iii), by failing to show any depreciation;
- (7) SR 2-1(a), by inaccuracies and errors which affect the credibility of the report; and
- (8) SR 2-1(b), by falsely stating that there is no assistance to the buyer for financing.

Count II – Bowsprit Drive Property

11. On or about May 15, 2006, Hartline performed a residential appraisal on a residential property located at 4483 SW Bowsprit Drive, Lee's Summit, Missouri 64082.

12. Hartline prepared and signed a "Universal Residential Appraisal Report" on the Bowsprit property, hereinafter referred to as the "Bowsprit Report."

13. At all times relevant to this Complaint, Hartline was required to develop and report the results of Bowsprit Report in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), 2005 Edition.

14. The Bowsprit Report concluded that the value of the property was \$300,000 as of May 15, 2006.

15. The Bowsprit Report was prepared for the benefit of Gateway Mortgage Group, Ottawa, Kansas.

16. The Bowsprit Report failed to comply with USPAP standards in the following respects:

- (1) The market comparison approach used unsupported adjustments in comparing the subject property to the sales comparables;
- (2) The market comparison approach failed to note that one comparable was a lake front property, or that the sales comparables had superior finish and amenities, and made inadequate adjustments for those factors;

- (3) The report assumed a 2-year effective age for a 12-year old property, and failed to support the minimal adjustment for age;
- (4) The cost approach was calculated but not finished;
- (5) Depreciation was not incorporated into the cost approach;
- (6) Inconsistent and contradictory cost figures were used;
- (7) The report failed to note buyer's costs being paid by the seller;
- (8) As a result of these defects, the value calculation was misleading and not supported by the report.

17. The Bowsprit Report violated the following USPAP sections:

- (1) SR 1-1(a), by offering questionable adjustments and relying on comparable sales of significantly superior properties;
- (2) SR 1-1(b), by failing to report buyers' costs of up to \$7,000 being paid by seller and failing to reveal that one comparable sale was a lakefront property;
- (3) SR 1-1(c), by preparing an appraisal without proper regard for the features and quality of comparable sales and overvaluing the subject property with questionable and careless adjustments;
- (4) SR 1-4(b)(iv) and (v), by failing to develop the cost approach with an appropriate appraisal method or technique, using costs below sales comparison approach even before depreciation, using inconsistent and

contradictory sources of costs, and failing to calculate depreciation or to offer support for an effective age lower than chronological age;

(5) SR 2-1(a), by using inaccurate and misleading comparable sales selection and adjustments; and

(6) SR 2-1(b), by failing to show buyers' costs paid by seller and failing to support adjustments that inflate property value.

Count III – Harbor Circle Property

18. On or about June 23, 2006, Hartline performed a residential appraisal on a residential property located at 3719 SW Harbor Circle, Lee's Summit, Missouri 64082.

19. Hartline prepared and signed a "Universal Residential Appraisal Report" on the Bowsprit property, hereinafter referred to as the "Harbor Report."

20. At all times relevant to this Complaint, Hartline was required to develop and report the results of Harbor Report in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), 2005 Edition.

21. The Harbor Report concluded that the value of the property was \$215,000 as of June 23, 2006.

22. The Harbor Report was prepared for the benefit of Dana Capital Group, Inc., Irvine, California.

23. The Harbor Report failed to comply with USPAP standards in the following respects:

- (1) The appraisal report counts a finished area of the basement in the floor space and also notes a full basement, double counting the area;
- (2) The appraisal calculates the value of finished basements in the comparable sales differently, inflating the value of the subject;
- (3) The cost approach is not completed and fails to support the land value;
- (4) The cost approach uses a 2-year effective age for an 11-year-old house, without providing support for the lower age figure;
- (5) The cost approach fails to clearly specify whether costs relied upon are “average” or “good,” although both figures are included in the report;
- (6) The report states that the cost approach is not considered reliable because local market multipliers are not accurate, without supporting that conclusion;
- (7) The appraisal report indicates no assistance being offered to the buyer, while the financing addendum shows up to \$5,000 of buyer’s closing costs being paid by the seller; and

(8) The appraisal report adjusts the value of the 11-year old subject property upwards for condition so that it is assigned a higher value than new houses used as sales comparables, stating that it is “totally rehabbed,” but fails to identify what improvements support this conclusion.

24. The Harbor Report violated the following USPAP sections:

- (1) SR 1-1(a), by treating the finished basement areas of comparable sales differently than the subject and inflating the value;
- (2) SR 1-1(b), by not properly comparing square footage and finished basement areas, and failing to consider a heated in-ground pool in one comparable sale in the sales comparison approach;
- (3) SR 1-1(c), by committing errors in the market comparison approach and cost approach which lead to the results lacking credibility;
- (4) SR 1-4(b)(vii), (viii), and (ix), by failing to provide evidence in the report or the file that the site value was developed by an appropriate appraisal method or technique, by failing to include land sales in the file or report, by stating that the cost approach is weak because local multipliers are not indicative of costs in the area without providing any support for the statement, and by failing to offer evidence of

depreciation or support for an effective age less than the chronological age; and

(5) SR 2-1(a) and (b), by stating that no financial assistance was offered to the buyer when the financing addendum shows buyer costs of up to \$5,000 to be paid by the seller, and by failing to mention that one comparable sale had a heated, in-ground swimming pool, which statements resulted in an inaccurate and misleading estimate of value.

JOINT PROPOSED CONCLUSIONS OF LAW

1. For the Sapelo Report, Hartline is subject to discipline under the terms of Section 339.532.2(6) for “violation of any of the standards for the development or communication of real estate appraisals as provided in or pursuant to sections 339.500 to 339.549.”

2. For the Sapelo Report, Hartline is subject to discipline under the terms of Section 339.532.2(7) for “failure to comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation.”

3. For the Bowsprit Report, Hartline is subject to discipline under the terms of Section 339.532.2(6) for “violation of any of the standards for the development or

communication of real estate appraisals as provided in or pursuant to sections 339.500 to 339.549.”

4. For the Bowsprit Report, Hartline is subject to discipline under the terms of Section 339.532.2(7) for “failure to comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation.”

5. For the Harbor Circle Report, Hartline is subject to discipline under the terms of Section 339.532.2(6) for “violation of any of the standards for the development or communication of real estate appraisals as provided in or pursuant to sections 339.500 to 339.549.”

6. For the Harbor Circle Report, Hartline is subject to discipline under the terms of Section 339.532.2(7) for “failure to comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation.”

II. JOINT DISCIPLINARY ORDER

Based on the foregoing, the parties hereby mutually agree and stipulate that the following shall constitute the order regarding discipline of Hartline’s license as a Real Estate Appraiser -- Residential, subject to the following terms and conditions, and entered by the MREAC in this matter under the authority of §§ 536.060 and 621.110, RSMo

Cum. Supp. 2007. This disciplinary order shall become effective immediately upon the issuance of the consent order of the Commission without further action by either party:

1. Probation. Hartline's license as a Real Estate Appraiser -- Residential, no. RA002642, is hereby placed on PROBATION for THREE (3) YEARS. The period of probation is referred to hereinafter as either "the probationary period" or "the disciplinary period". During the period of probation, Hartline shall be entitled to practice as a Real Estate Appraiser -- Residential provided he pays all required fees, has maintained his license current and active, and adheres to all the terms stated herein.

A. Hartline shall submit written reports to the MREAC by no later than January 1 and July 1, during each year of the disciplinary period stating truthfully whether there has been compliance with all terms and conditions of this Joint Stipulation. The first written report shall be submitted on or before July 1, 2012. The final written report shall be submitted to the MREAC 90 days prior to the end of the disciplinary period. Each written report shall be submitted no earlier than 30 days prior to the respective due date. Hartline is responsible for assuring that the reports are submitted to and received by the MREAC.

B. During the disciplinary period, Hartline shall maintain a log of all appraisal assignments as required by 20 CSR 2245-2.050. A true and accurate copy of the log shall be submitted to the MREAC by no later than

January 1 and July 1 during each year of the disciplinary period. The first log shall be submitted on or before July 1, 2012. The last log shall be submitted to the MREAC 90 days prior to the end of the disciplinary period.

Each log submitted shall be current to at least 30 days prior to the respective due date. Hartline is responsible for assuring that the logs are submitted to and received by the MREAC. Upon MREAC request, Hartline shall submit copies of his work samples for MREAC review.

F. During the period of probation, Hartline shall not sign appraisal reports as a supervising appraiser.

G. During the disciplinary period, Hartline shall not serve as a supervising appraiser to trainee real estate appraisers under 20 CSR 2245-3.005. Within ten days of the effective date of this Joint Stipulation, Hartline shall advise each trainee real estate appraiser working under him that the supervisory relationship is terminated and comply with all other requirements of 20 CSR 2245-3.005 regarding the termination of the supervisory relationship.

H. During the disciplinary period, Hartline shall keep the MREAC apprised at all times in writing of his current work and home addresses and telephone numbers at each place of residence and employment. Hartline

shall notify the MREAC in writing of any change in address or telephone number within 15 days of a change in this information.

I. Hartline shall timely renew his license and timely pay all fees required for license renewal and comply with all other MREAC requirements necessary to maintain his license in a current and active state.

J. During the disciplinary period, Hartline shall comply with all provisions of §§ 339.500 through 339.549, RSMo, all rules and regulations promulgated thereunder, and all federal and state laws. "State" includes the state of Missouri and all other states and territories of the United States.

Any cause to discipline Hartline's license as a real estate appraiser under § 339.532.2, RSMo, as amended, that accrues during the disciplinary period shall also constitute a violation of this Settlement Agreement.

K. Hartline shall accept and comply with reasonable unannounced visits from the MREAC's duly authorized agents to monitor compliance with the terms and conditions stated herein.

L. Hartline shall appear before the MREAC or its representative for a personal interview upon the MREAC's written request.

M. If, at any time within the disciplinary period, Hartline removes himself from the states of Missouri or Kansas, ceases to be currently licensed under the provisions of §§ 339.500 through 339.549, RSMo, or

fails to keep the MREAC advised of all current places of residence and business, the time of absence, unlicensed status or unknown whereabouts shall not be deemed or taken as any part of the disciplinary period.

2. Upon the expiration of the disciplinary period, the license of Hartline shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREAC determines that Hartline has violated any term or condition of this Joint Stipulation, the MREAC may, in its discretion, vacate and set aside the discipline imposed herein and impose such further discipline as it shall deem appropriate.

2. No additional discipline shall be imposed by the MREAC pursuant to the preceding paragraph of this Joint Stipulation without notice and opportunity for hearing before the MREAC as a contested case in accordance with the provisions of Chapter 536, RSMo. If any alleged violation of this Joint Stipulation occurred during the disciplinary period, the MREAC may choose to conduct a hearing before it to determine whether a violation occurred and may impose further discipline.

3. This Joint Stipulation does not bind the MREAC or restrict the remedies available to it concerning any future violations by Hartline of §§ 339.500 through 339.549, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Joint Stipulation.

4. This Joint Stipulation does not bind the MREAC or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Joint Stipulation that are either now known to the MREAC or may be discovered.

5. If any alleged violation of this Joint Stipulation occurred during the disciplinary period, the parties agree that the MREAC may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Hartline agrees and stipulates that the MREAC has continuing jurisdiction to hold a hearing to determine if a violation of this Joint Stipulation has occurred.

6. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

7. The terms of this Joint Stipulation are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Joint Stipulation nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

8. The parties to this Joint Stipulation understand that the MREAC will maintain this Joint Stipulation as an open record as required by Chapters [Board Law Chapter], 610, and 620, RSMo, as amended.

9. Respondent, together with his heirs, assigns, agents, partners, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the MREAC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo, as amended, or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation, or from the negotiation or execution of this Joint Stipulation. The parties acknowledge that this paragraph is severable from the remaining portions of the Joint Stipulation in that it survives in perpetuity even in the event that any court of law or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

III. CONCLUSION

In consideration of the foregoing, the parties consent to the entry of record and approval of this Joint Stipulation and to the termination of any further proceedings before the Commission based upon the complaint filed by the MREAC in the above-captioned cause.

RESPONDENT


David L. Hartline 12/15/11
Date

FINNEGAN, CONRAD & PETERSON,
L.C.


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ATTORNEYS FOR RESPONDENT

PETITIONER

Missouri Real Estate Appraisers
Commission

By: 
Vanessa Beauchamp, Executive Director
Date

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ATTORNEYS FOR PETITIONER

Before the
Administrative Hearing Commission
State of Missouri



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JAN 06 2012

MISSOURI REAL ESTATE APPRAISERS
COMMISSION,

Petitioner,

vs.

DAVID L. HARTLINE,

Respondent.

No. 10-2103 RA

CONSENT ORDER

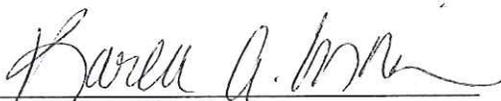
The licensing authority filed a complaint. Section 621.045¹ gives us jurisdiction.

On December 29, 2011, the parties filed a joint motion for consent order, joint stipulation of facts and conclusions of law, waiver of hearings and disciplinary order. Our review of the document shows that the parties have stipulated to certain facts and waived their right to a hearing before us. Because the parties have agreed to these facts, we incorporate them into this order and adopt them as stipulated. *Buckner v. Buckner*, 912 S.W. 2d 65, 70 (Mo. App., W.D. 1995). We conclude that the licensee is subject to discipline under § 339.532.2(6) and (7). We incorporate the parties' proposed findings of fact and conclusions of law into this Consent Order. We certify the record to the licensing agency under § 621.110.

The only issue before this Commission is whether the stipulated conduct constitutes cause to discipline the license. The appropriate disciplinary action is not within our power to decide; that is subject to the licensing authority's decision or the parties' agreement. Section 621.110.

No statute authorizes us to determine whether the agency has complied with the provisions of § 621.045.4. We have no power to superintend agency compliance with statutory procedures. *Missouri Health Facilities Review Comm. v. Administrative Hearing Comm'n*, 700 S.W. 2d 445, 450 (Mo. banc 1985). Therefore, we do not determine whether the agency complied with such procedures.

SO ORDERED on January 3, 2012.


KAREN A. WINN
Commissioner

¹Statutory references are to RSMo Supp. 2010 unless otherwise noted.