

SETTLEMENT AGREEMENT
BETWEEN
THE MISSOURI REAL ESTATE APPRAISERS COMMISSION
AND
EUGENE W. DWIGGINS

Eugene W. Dwiggins (Dwiggins) and the Missouri Real Estate Appraisers Commission (MREAC) enter into this Settlement Agreement for the purpose of resolving the question of whether Dwiggins's certification as a state-certified residential real estate appraiser, no. RA003214, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the MREAC under § 621.110, RSMo Supp. 2011. The MREAC and Dwiggins jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2011.

Dwiggins acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against him at the hearing; the right to present evidence on his behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against him; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the MREAC at which time Dwiggins may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the MREAC.

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

Being aware of these rights provided to him by law, Dwiggins knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to him.

Dwiggins acknowledges that he has received a copy of documents that were the basis upon which the MREAC determined there was cause for discipline, along with citations to law and/or regulations the MREAC believes were violated. Dwiggins stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREAC that Dwiggins's certification as a state-certified residential real estate appraiser, certificate no. RA003214, is subject to disciplinary action by the MREAC in accordance with the relevant provisions of Chapter 621, RSMo, and §§ 339.500 through 339.549, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREAC and Dwiggins in Part II herein is based only on the agreement set out in Part I herein. Dwiggins understands that the MREAC may take further disciplinary action against him based on facts or conduct not specifically mentioned in this document that are either now known to the MREAC or may be discovered.

I.
JOINT STIPULATION OF FACTS AND CONCLUSION OF LAW

Based upon the foregoing, the MREAC and Dwiggins herein jointly stipulate to the following:

1. Respondent Eugene W. Dwiggins ("Dwiggins") is certified by the MREAC as a state-certified residential real estate appraiser, certificate no. RA003214. Such certification is and was at all times relevant to this action current and active.

2. Section 339.535, RSMo, regarding the Uniform Standards of Professional Appraisal Practice, states:

State certified real estate appraisers and state licensed real estate appraisers shall comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation.

Count I
Kimmswick Appraisal Report

3. On December 31, 2003, Donald Brauch owned real property located on the Mississippi River at mile marker 160 and addressed 6060 Mississippi Street, Kimmswick, Missouri (“the Kimmswick property”).

4. In 2003, Daniel Francis engaged Dwiggins to complete a limited restricted appraisal report for the Kimmswick property. The effective date of the appraisal report was December 31, 2003. This appraisal valued the property at \$630,000. This appraisal shall be referred to hereinafter as the “Kimmswick Appraisal Report.” Dwiggins was required to develop and report the results of the Kimmswick Appraisal in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), 2003 Edition.

5. The Kimmswick Appraisal Report was prepared based on the hypothetical condition as if six deadmen were installed on the property along the Mississippi River that could each moor 24 barges for a total of 144 barges.

6. The hypothetical condition regarding mooring 144 barges along the Missouri River was based on a January 2001 permit issued by the St. Louis District Corps of Engineers of the U.S. Army for 6 deadmen to be installed between mile markers 156 and 159 of the Mississippi River. The permit allowed four (4) years for the installation of the deadmen.

7. The frontage of the Kimmswick property along the Mississippi River comprises only a small portion of the riverfront covered by the Corps of Engineers January 2001 permit.

8. The Kimmswick Appraisal Report was prepared using only the Income Approach based on the potential mooring of 144 barges, and without either the Sales Comparison Approach or the Cost Approach.

9. Based on the following errors and omissions in the preparation of the Kimmswick Appraisal Report, Dwiggins is in violation of Section 339.535, RSMo, the USPAP Competency Rule, USPAP Standards 1 and 2, and USPAP Standards Rules 1-1(a), (b), and (c), 1-2(e)(i) and (iv), 1-3(a) and (b), 1-4(c) and (h), 1-5(a) and (b), 2-1(a) and (b), and 2-2(c)(i), (iii), (vi), (x) and (xi), 2003 edition:

- a. Failed to adequately discuss the Corps of Engineers January 2001 permit;
- b. Failed to research the length of the river frontage for the Kimmswick property (165 feet), and how it relates to the Corps of Engineers January 2001 permit and the size of a typical barge (195 feet long by 35 feet wide);
- c. Failed to discuss and/or analyze the apparent discrepancy between the Corps of Engineers January 2001 permit for moorings between mile markers 156 to 159 of the Mississippi River and the location of the Kimmswick property at mile marker 160 of the Mississippi River;
- d. Used a hypothetical condition that is physically impossible, because six deadmen could not possibly be installed to the limited river frontage provided by the Kimmswick property;
- e. Used a hypothetical condition that was unreasonable, because, even if one deadmen was installed, due to other considerations only one or two barges could have moored to the Kimmswick property site;

- f. Provided an inadequate highest and best use analysis, due to the impossible and unreasonable hypothetical condition;
- g. Inaccurately stated that the current use of the property was the mooring of 144 barges, when it was not; thus failing to analyze the current use in the highest and best use analysis;
- h. Failed to properly examine and have available the plans, specifications or other documentation sufficient to identify the scope and character of the proposed improvements;
- i. Failed to properly examine and have available evidence indicating the probable time of completion of the proposed improvements and whether that could be completed within the 4 years allowed by the Corps of Engineers January 2001 permit;
- j. Failed to discuss prior flooding of the Kimmswick property;
- k. Failed to discuss the proximity of the Kimmswick property's river frontage to the navigation channel which would limit the number of barges that can be moored.

Count II
Potosi Appraisal Report

10. On or about March 28, 2008, Dwiggins completed and signed a summary appraisal report for residential real estate located at 12645 John Smith Road, Potosi, Missouri 63664 ("the Potosi property"). The effective date of the appraisal report was March 24, 2008. This appraisal valued the property at \$109,000. This appraisal shall be referred to hereinafter as the "Potosi Appraisal Report."

11. Dwiggins was required to develop and report the results of the Potosi Appraisal in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), 2008-2009 Edition.

12. Based on the following errors and omissions in the preparation of the Potosi Appraisal Report, Dwiggins is in violation of Section 339.535, RSMo, the USPAP Competency Rule, USPAP Standards 1 and 2, and USPAP Standards Rules 1-1(a), (b), and (c), 1-2(a), (b), (c), (d), (e)(i), and (f), 1-4(a), (b), and (c), 1-6(a) and (b), 2-1(a) and (b), 2-2, and 2-2(b)((i), (ii), (v) and (ix), 2008-2009 edition:

- a. Dwiggins stated, without an explanation of his reasoning, that the effective age of the Potosi property was 18-20 years old, when its actual age was approximately 48 years old;
- b. In the Sales Comparison Approach, Dwiggins failed to explain his rationale for making no age adjustment when comparing the subject property to comparable sales ranging from 11 to 63 years in age;
- c. In the Cost Approach, Dwiggins failed to properly support the depreciation since he did not explain his reasoning for the subject property's effective age;
- d. In the Supplemental Addendum, Dwiggins inaccurately referenced to the "Departure Provisions" which were not required since the Departure Rule was eliminated with the implementation of the USPAP, 2006 edition;
- e. In the Supplemental Addendum, Dwiggins inaccurately references to the Standards Rule 2-5 which ceased to exist with the implementation of the USPAP, 2001 edition.

13. Based on the facts and violations set forth above, cause exists to discipline Dwiggins's certification as a state-certified residential real estate appraiser pursuant to § 339.532.2(5), (6), (7), and (9), RSMo Supp. 2011, which states:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any state-certified real estate appraiser, state licensed real estate appraiser, or any person who has failed to renew or has surrendered his or her certificate or license for any one or any combination of the following causes:

.

(5) Incompetency [and] . . . gross negligence . . . in the performance of the functions or duties of any profession licensed or regulated by sections 339.500 to 339.549;

(6) 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;

(7) Failure to comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation;

.

(9) Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal[.]

II.
JOINT AGREED DISCIPLINARY ORDER

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the MREAC in this matter under the authority of § 536.060, RSMo, and §§ 621.045.3 and 621.110, RSMo Supp. 2011.

1. **Dwiggins's certification is suspended, followed by a period of probation.**

Dwiggins's certification as a state-certified residential real estate appraiser is hereby SUSPENDED for a period of ONE MONTH, and then immediately thereafter placed on

PROBATION for a period of THREE YEARS. The period of suspension and probation shall constitute the “disciplinary period.” During the period of suspension, Dwiggins shall not be entitled to practice as a state-certified residential real estate appraiser pursuant to §§ 339.500 through 339.549, RSMo. During the periods of probation, Dwiggins shall be entitled to practice as a state-certified residential real estate appraiser under §§ 339.500 through 339.549, RSMo, provided Dwiggins adheres to all the terms of this Settlement Agreement.

2. **Terms and conditions of the disciplinary period.** The terms and conditions of the disciplinary period are as follows:

A. Dwiggins shall submit written reports to the MREAC by no later than January 15, April 15, July 15 and October 15, during each year of the disciplinary period stating truthfully whether there has been compliance with all terms and conditions of this Settlement Agreement. Dwiggins is responsible for assuring that the reports are submitted to and received by the MREAC.

B. During the disciplinary period, Dwiggins shall maintain a log of all appraisal assignments as required by 20 CSR 2245-2.050. A true and accurate copy of which shall be submitted to the MREAC every three (3) months after the disciplinary period goes into effect with the written reports required under subparagraph B., above. Dwiggins is responsible for assuring that the logs are submitted to and received by the MREAC. Upon MREAC request, Dwiggins shall submit copies of his work samples for MREAC review.

C. Dwiggins agrees to take an additional 45 hours of continuing education in addition to those required to maintain certification. Dwiggins will have 180 days to provide proof of completion to the MREAC.

D. During the period of suspension, Dwiggins shall not sign appraisal reports in any capacity. During the periods of probation, Dwiggins shall not sign appraisal reports as a supervising appraiser.

E. During the disciplinary period, Dwiggins 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 Settlement Agreement, Dwiggins 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.

F. During the disciplinary period, Dwiggins 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. Dwiggins shall notify the MREAC in writing of any change in address or telephone number within 15 days of a change in this information.

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

H. During the disciplinary period, Dwiggins 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 Dwiggins's certification 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.

I. Dwiggin 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.

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

K. If, at any time within the disciplinary period, Dwiggin removes himself from the state of Missouri, ceases to be currently certified 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, uncertified status or unknown whereabouts shall not be deemed or taken as any part of the disciplinary period.

3. Upon the expiration of the disciplinary period, the certification of Dwiggin shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREAC determines that Dwiggin has violated any term or condition of this Settlement Agreement, the MREAC may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Dwiggin's certification.

4. No additional discipline shall be imposed by the MREAC pursuant to the preceding paragraph of this Settlement Agreement without notice and opportunity for hearing before the MREAC as a contested case in accordance with the provisions of Chapter 536, RSMo. This Settlement Agreement does not bind the MREAC or restrict the remedies available to it concerning any future violations by Dwiggin of §§ 339.500 through 339.549, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

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

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

7. If any alleged violation of this Settlement Agreement 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. Dwiggins agrees and stipulates that the MREAC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

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

9. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement 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.

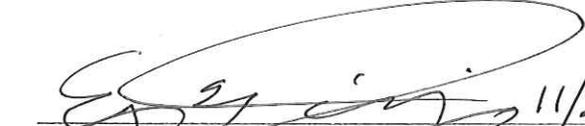
10. The parties to this Settlement Agreement understand that the MREAC will maintain this Settlement Agreement as an open record of the MREAC as required by Chapters 339, 610, and 324, RSMo, as amended.

11. Dwiggins, together with his partners, heirs, assigns, agents, 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 now 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 Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

12. This Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREAC.

LICENSEE

MISSOURI REAL ESTATE
APPRAISERS COMMISSION


Eugene W. Dwiggins
Certificate No. RA003214

Date

11/20/2012


Vanessa Beauchamp, Executive Director
Date: 11-28-12

CHRIS KOSTER
Attorney General


Sherry L. Doctorian
Armstrong Teasdale LLP
3405 West Truman Blvd., Ste. 210
Jefferson City, MO 65109
(573) 636-8394


Craig H. Jacobs
Assistant Attorney General
Missouri Bar No. 48358
Supreme Court Building

(573) 636-8457 facsimile

Attorneys for Respondent
Eugene W. Dwiggins

207 West High Street
P.O. Box 899
Jefferson City, MO 65102
Telephone: 573-751-1143
Telefax: 573-751-5660

Attorneys for the MREAC