

Before the
Administrative Hearing Commission
State of Missouri



MISSOURI REAL ESTATE APPRAISERS
COMMISSION,

Petitioner,

vs.

KAREN L. WILL,

Respondent.

No. 09-0336 RA

CONSENT ORDER

The licensing authority filed a complaint. Section 621.045, RSMo Supp. 2009, gives us jurisdiction.

On March 26, 2010, the parties filed a joint motion for consent order, joint stipulation of facts and conclusions of law, and waiver of hearings. 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), (7) and (10), RSMo Supp. 2009. 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, RSMo Supp. 2009.

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, RSMo Supp. 2009.

No statute authorizes us to determine whether the agency has complied with the provisions of § 621.045.4. RSMo Supp. 2009. 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 March 31, 2010.

NIMROD T. CHAPEL, JR.
Commissioner

FILED

MAR 26 2010

ADMINISTRATIVE HEARING
COMMISSION

**BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI**

MISSOURI REAL ESTATE)	
APPRAISERS COMMISSION,)	
)	Case No. 09-0336 RA
Petitioner,)	
v.)	
)	
KAREN L. WILL,)	
)	
Respondent.)	

**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 Karen L. Will (“Will”) 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 15-3.446(4)) and pursuant to the terms of § 536.060, RSMo¹, as it is made applicable to the Commission by §.621.135, RSMo, the parties move for a consent order and waive the right to a

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

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. 2009 and jointly stipulate and agree that a final disposition of this matter may be effectuated as described below.

Will acknowledges that she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; 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 her at the hearing; the right to present evidence on her 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 her; 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 Will 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. Being aware of these rights provided Will by operation of law, Will knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint Stipulation. Will further agrees to abide by the terms of this document as they pertain to her.

Will acknowledges that she received a copy of the Complaint in this case, which was filed with the Commission on March 10, 2009. Will stipulates that the factual

allegations contained in this Joint Stipulation are true and stipulates with the MREAC that Will's certification as a state-certified residential real estate appraiser, certificate no. RA002099, is subject to disciplinary action by the MREAC in accordance with the provisions of Chapter 621, RSMo, and § 339.532.2, RSMo, as amended.

I. JOINT STIPULATION

Based upon the foregoing, the MREAC and Will 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. Respondent Karen L. Will ("Will") is certified by the Commission as a state-certified residential real estate appraiser, certificate no. RA002099. Such certification is and was at all times relevant to this action current and active.

Count I Sterling Crossing Appraisal Report

2. On or about March 14, 2006, Will supervised Geoffrey M. Jones's preparation of a summary appraisal report for residential real estate located at 23 Sterling Crossing Court, O'Fallon, Missouri 63366 ("the Sterling Crossing property"). The effective date of the appraisal report was March 10, 2006. This appraisal valued the property at \$145,000. This appraisal shall be referred to hereinafter as the "Sterling

Crossing Appraisal Report.”

3. Will signed the appraiser’s certification for the Sterling Crossing Appraisal Report as Geoffrey M. Jones’s supervisor on March 14, 2006.

4. The Sterling Crossing Appraisal Report was prepared for Gershman Investment Corp., an Arkansas Corporation.

5. In preparation of the Sterling Crossing Appraisal Report, Jones made significant and substantial errors of omission and commission, including, but not limited to:

- a. The description of the site in the Sterling Crossing Appraisal Report did not identify the dimensions of the site;
- b. The site description mischaracterizes the site as “mostly rectangular” when it was not. It was a cul-de-sac site which would have been irregular in shape;
- c. The zoning of the site was not properly identified using an O’Fallon zoning code, and did not provide enough information regarding the intended uses to know whether the Sterling Crossing property was a legal use or a legal non-conforming use;
- d. The Appraisal Report is internally inconsistent in that in the Sales Comparison Approach, adjustments for actual age were made between \$1,000 and \$1,700 per year while, in the Cost Approach, depreciation was recorded at \$6,863 per year;

- e. In the description in the neighborhood section, the range of sales prices for One-Unit Housing in the neighborhood of the subject property is overstated as \$450,000 to \$700,000, when in fact the range is closer to \$136,900 to \$310,000; and
- f. Based on the overstatement of the sales price range, the predominant value of One-Unit Housing in the neighborhood is also overstated.

6. In the preparation of the Sales Comparison Analysis in the Sterling Crossing Appraisal Report, Jones made significant and substantial errors of omission and commission, including, but not limited to:

- a. Making adjustments without providing an adequate explanation, including, but not limited to, a positive \$25,000 adjustment to comparable No. 1 for other amenities, a negative \$2,500 adjustment to comparable No. 2 for a four car tandem garage and adjustments for age to each comparable sale;
- b. Failed to disclose and analyze prior sale of the subject property which occurred three months earlier; and
- c. Comparable Sale No. 3 has a significantly larger site, but no adjustment is made.

7. In the preparation of the Cost Approach in the Sterling Crossing Appraisal Report, Jones made significant and substantial errors of omission and commission, including, but not limited to:

- a. Failed to properly develop and support the estimated site value using an

appropriate appraisal method or technique in accordance with Fanny Mae requirements; and

- b. Incorrectly marked reproduction cost, when it should have been replacement cost new.

8. Based on the errors and omissions set forth above, Jones was careless in the preparation of the Sterling Crossing Appraisal Report by making a series of errors, that although individually were not significant, in the aggregate affected the credibility of the appraisal.

Count II
Piedmont Circle Appraisal Report

9. On or about March 15, 2006, Will supervised Geoffrey M. Jones in the development and reporting of a summary appraisal report for residential real estate located at 1933 Piedmont Circle, St. Peters, Missouri (“the Piedmont Circle property”). The effective date of the appraisal report was March 14, 2006. This appraisal valued the property at \$145,000. This appraisal shall be referred to hereinafter as the “Piedmont Circle Appraisal Report.”

10. Will signed the Appraiser’s Certification for the Piedmont Circle Appraisal Report on or about March 15, 2006 as the Supervisory Appraiser.

11. The Piedmont Circle Appraisal Report was prepared for Gershman Investment Corp., an Arkansas Corporation, doing business under the Missouri fictitious business name of Gershman Mortgage.

12. In preparation of the Piedmont Circle Appraisal Report, Jones made significant and substantial errors of omission and commission, including, but not limited to:

- a. Identified the real property as being located in the City of St. Charles, Missouri when it was located in the City of St. Peters, Missouri;
- b. Described the zoning as “Condominium” when St. Peters does not have such a zoning classification;
- c. Incorrectly marked “no” to the question of “Is there any financial assistance . . .?” under the Contract Analysis, when the Seller gave a \$1,500 promotional discount;
- d. Fails to note an annual special assessment;
- e. The marketing time is inconsistently reported in the report. The marketing time is identified in the Multi-Purpose Supplemental Addendum as “3-6 months,” while it is identified as “under 3 months” in the Neighborhood section;
- f. Fails to perform a budget analysis for the project which was relevant to the appraisal;
- g. Geoffrey Jones uses Will’s certification number when he was not certified;
- h. Incorrectly describes the basis of the Reproduction Cost as Marshall & Swift in the Multi-Purpose Supplemental Addendum, when the cost approach was not used; and

- i. Incorrectly states in the Multi-Purpose Supplemental Addendum that the subject property had not been offered for sale in the past year, when it was then under contract.

13. In the preparation of the Sales Comparison Analysis in the Piedmont Circle Appraisal Report, Jones made significant and substantial errors of omission and commission, including, but not limited to:

- a. Comparable sale no. 3 does not adequately represent the market for the subject property, because it is much older, much larger, and had a garage and fireplace;
- b. Comparable sales no. 1 and 2 are reported to be identical properties to each other and the subject property, but sold for significantly different prices. Jones failed to adjust for any differences that there may have been and failed to analyze and reconcile the difference between the sales prices for the two comparable properties; and
- c. No explanation for the adjustments made to comparable sale no. 3, including, but not limited to the \$12,000 adjustment for age.

14. Based on the errors and omissions set forth above, Jones was careless in the preparation of the Piedmont Circle Appraisal Report by making a series of errors, that although individually were not significant, in the aggregate affected the credibility of the appraisal.

Joint Proposed Conclusions of Law

15. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to § 621.045, RSMo Cum. Supp. 2009 and § 339.532.2, RSMo Cum. Supp. 2009.

16. Section 339.532.2, RSMo Cum. Supp. 2009, setting forth the grounds for discipline, states in part:

The commission may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, 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:

.....

(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 ["USPAP"] promulgated by the appraisal standards board of the appraisal foundation;

.....

(10) Violating, assisting or enabling any person to willfully disregard any of the provisions of sections 339.500 to 339.549 or the regulations of the commission for the administration and enforcement of the provisions of sections 339.500 to 339.549[.]

17. Section 339.535, RSMo, requiring compliance with 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.

18. Jones was required to develop and report the results of the appraisals set forth below in compliance with the Uniform Standards of Professional Appraisal Practice, 2005 Edition (USPAP). A copy of USPAP provisions cited herein is attached hereto as Exhibit A.

19. Based on Will's errors and omissions in supervising Jones' development and reporting of the Sterling Crossing Appraisal Report, as stipulated to herein, Will violated USPAP Standards 1 and 2, and Standards Rules 1-1(a), (b), and (c), 1-2(e)(i) and (iv), 1-3(a), 1-4(a) and (b), 1-6(a), 2-1(a) and (b), and 2-2(b)(iii) and (ix).

20. Based on Will's errors and omissions in supervising Jones' development and reporting of the Piedmont Circle Appraisal Report, as stipulated to herein, Will violated USPAP Standards 1 and 2, and Standards Rules 1-1(c), 1-2(e)(i) and (iv), 1-3(a), 1-4(a), 1-5(a), 1-6(a), 2-1(a) and (b), and 2-2(b)(iii) and (ix).

21. Will's conduct related to the supervision of the development and reporting of the Sterling Crossing Appraisal Report and the Piedmont Circle Appraisal Report, as stipulated to herein, violates standards for the development and communication of real estate appraisals as provided in or pursuant to §§ 339.500 to 339.549, RSMo, providing cause to discipline her certification as a state-certified real estate appraiser pursuant to § 339.532.2(6), RSMo.

22. Each of Will's USPAP violations related to the supervision of the

development and reporting of the Sterling Crossing Appraisal Report and the Piedmont Circle Appraisal Report, as stipulated to herein, constitutes a violation of § 339.535, RSMo, providing cause to discipline her real estate appraiser certification as a state-certified residential real estate appraiser pursuant to § 339.532.2(7) and (10), RSMo.

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 Will's certification as a state-certified residential real estate appraiser, 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. 2009. This disciplinary order shall become effective immediately upon the issuance of the consent order of the Commission without further action by either party:

1. **Will's certification is on probation.** Will's certification as a state-certified residential real estate appraiser is hereby placed on PROBATION for a period of ONE YEAR. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Will shall be entitled to practice as a state-certified residential real estate appraiser under §§ 339.500 through 339.549, RSMo, as amended, provided Will adheres to all the terms of this agreement.

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

A. Will shall submit written reports to the MREAC by no later than June 1 and November 1, during the disciplinary period stating truthfully whether there has been compliance with all terms and conditions of this Joint Stipulation. Each written report shall be submitted no earlier than 30 days prior to the respective due date. Will is responsible for assuring that the reports are submitted to and received by the MREAC.

B. During the disciplinary period, Will 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 June 1 and November 1 during the disciplinary period. Each log submitted shall be current to at least 30 days prior to the respective due date. Will is responsible for assuring that the logs are submitted to and received by the MREAC. Upon MREAC request, Will shall submit copies of her work samples for MREAC review.

C. Within six months after the effective date of this Joint Stipulation, Will shall submit verification to the MREAC of successful completion of the fifteen-hour approved National USPAP course, including examination. This course will not replace the 7-hour National USPAP course required by the general continuing education requirements.

D. Within six months after the effective date of this Joint Stipulation, Will shall submit verification to the MREAC of successful completion of a Seven (7)-hour approved course, including examination, on Appraiser Supervision.

E. Will may not apply the education required by this Joint Stipulation to satisfy the continuing education hours required for certification renewal.

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

G. During the disciplinary period, Will 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, Will shall advise each trainee real estate appraiser working under her 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, Will shall keep the MREAC apprised at all times in writing of her current work and home addresses and telephone numbers at each place of residence and employment. Will shall notify the MREAC in writing of any change in address or telephone number within 15 days of a change in this information.

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

J. During the disciplinary period, Will 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 Will'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.

K. Will 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. Will 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, Will removes herself 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. The foregoing shall not preclude Will to travel outside the State of Missouri for reasonable periods, not to exceed 42 days, for vacation, visits to friends and relatives, and for business in any year.

3. Upon the expiration of the disciplinary period, the certificate of Will shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREAC determines that Will has violated any term or condition of this Joint Stipulation, the MREAC may, in its discretion, after an evidentiary hearing, vacate

and set aside the discipline imposed herein and impose such further discipline as it shall deem appropriate under § 324.042, RSMo.

4. 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.

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

6. 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.

7. 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. Will agrees and stipulates that the MREAC has continuing jurisdiction to hold a hearing to determine if a violation of this Joint Stipulation 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 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.

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

11. Will, together with her 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 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 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 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


Karen L. Will 3/8/2010
Date

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