

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

000088 FEB 19th

MISSOURI REAL ESTATE)
APPRAISERS COMMISSION,)
)
Petitioner,)
v.)
)
KENT L. WOOTEN,)
)
Respondent.)

Case No. 09-1568 RA

FILED

FEB 22 2010

ADMINISTRATIVE HEARING
COMMISSION

**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 Kent Lindsey Wooten (“Wooten”) 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 MREAC, 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, RSMo 2000, as it is made applicable to the Commission by § 621.135, RSMo 2000, 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. 2009 and jointly stipulate and agree that a final disposition of this matter may be effectuated as described below.

Wooten 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 Wooten 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 Wooten by operation of law, Wooten knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint Stipulation. Wooten further agrees to abide by the terms of this document as they pertain to him.

Wooten acknowledges that he received a copy of the Complaint in this case, which was filed with the Commission on November 19, 2009. Wooten stipulates that the factual allegations contained in this Joint Stipulation are true and stipulates with the MREAC that Wooten's certification as a state-certified general real estate appraiser, certificate no.

RA001845, is subject to disciplinary action by the MREAC in accordance with the provisions of Chapter 621, RSMo, and § 339.532.2, RSMo Cum. Supp. 2009.

I. JOINT STIPULATION

Based upon the foregoing, Wooten and MREAC 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

Count I **1512 NE 99th Street Appraisal**

1. On or about November 4, 2004, Wooten completed and signed a residential summary appraisal report for residential real estate located at 1512 NE 99th Street, Kansas City, MO 64155 (“the 99th Street property”). The effective date of the appraisal report was November 4, 2004. This appraisal valued the property at \$190,000. This appraisal shall be referred to hereinafter as the “99th Street Appraisal Report.”

2. Wooten was required to develop and report the results of the 99th Street Appraisal Report in compliance with the Uniform Standards of Professional Appraisal Practice (“USPAP”), 2004 Edition.

3. The 99th Street Appraisal Report was prepared for Mortgage Lenders of America.

4. In preparation of the 99th Street Appraisal Report, Wooten made significant and substantial errors of omission and/or commission, including, but not limited to:
- a. Using inappropriate comparable sales that were not similar to the subject property in size, design, or age when more similar sales were available from within the subject property's subdivision, and failed to describe the reasoning that supports the analyses, opinions, and conclusions.
 - b. Only using comparable sales significantly larger than the subject property, when more appropriate comparables of similar size were available.
 - c. Overstated and failed to properly verify the size of the comparable sale no. 1; and
 - d. Failed to select comparable sales that bracketed the subject property.

Count II
Kansas Discipline

1. On or about December 20, 2006, the Kansas Real Estate Appraisal Board ("Kansas Board") and Wooten entered into a Consent Order in the case styled "In the Matter of Kent Lindsey Wooten, Certified Real Estate Appraiser, Certification No. G-112," Complaint No. 469 (Kansas Order), which disciplined Wooten's Kansas real estate appraiser certification for violation of the Uniform Standards of Professional Appraisal Practice (USPAP).

2. In the Kansas Order, Wooten and the Kansas Board stipulated that he appraised real property(s) commonly known as 2901 W. 83rd Street, Leawood, KS; 12806 Bond, Overland Park, KS; and 10223 W. 56th Street, Merriam, KS (hereinafter collectively as "the

Properties”) and that the appraisals conducted on the Properties violated USPAP and the Kansas Real Estate Appraisers Act (“Kansas Act”).

3. The Kansas Order noted the following violations of the Kansas Act:

- a. Pursuant to K.S.A. 58-4121, a Certified General appraiser is required to comply with the Uniform Standards of Professional Appraisal Practice (USPAP).
- b. Pursuant to K.S.A. 58-4118(a)(6), violation of any of the standards for the development or communication of real estate appraisals through acts or omissions establishes grounds for revocation or suspension of the certificate of an appraiser.
- c. Pursuant to K.S.A. 58-4118(a)(7), failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal establishes grounds for revocation or suspension of the certificate of an appraiser.
- d. Pursuant to K.S.A. 58-4118(a)(8), negligence or incompetence in developing an appraisal, preparing an appraisal report or communicating an appraisal establishes grounds for revocation or suspension of the certificate of an appraiser.

4. Violations of K.S.A. 58-4121, K.S.A. 58-4118(a)(6), (7) and (8) are also causes to suspend or revoke a real estate appraisers' Missouri license and/or certification pursuant to § 339.532.2(5), (6), (7), (8) and (9), and 339.532.3, RSMo Cum. Supp. 2009.

5. The Kansas Real Estate Appraisal Board disciplined Wooten’s Kansas real estate appraiser certification based on the above-referenced grounds.

6. The Kansas Real Estate Appraisal Board disciplined Wooten’s Kansas real estate appraiser certification upon grounds for which revocation or suspension is authorized in this state.

JOINT PROPOSED CONCLUSIONS OF LAW

1. The 99th Street Appraisal Report overestimates the value and is not credible and was developed and reported in violation of USPAP Standards 1 and 2.

2. USPAP Standard 1, regarding the development of an appraisal, states:

In developing a real property appraisal, an appraiser must identify the problem to be solved and the scope of work necessary to solve the problem, and correctly complete research and analysis necessary to produce a credible appraisal.

3. USPAP Standard 2, regarding the reporting of an appraisal, states:

In reporting the results of a real property appraisal, an appraiser must communicate each analysis, opinion, and conclusion in a manner that is not misleading.

4. Based on Wooten's errors and omissions in developing and reporting the results of the 99th Street Appraisal Report, as stipulated to in Count I, Wooten failed to correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal in violation of USPAP Standard 1 and Standard Rules (SR) 1-1(a), which states:

In developing a real property appraisal, an appraiser must:

(a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal[.]

5. Based on Wooten's errors and omissions in developing and reporting the results of the 99th Street Appraisal Report, as stipulated to in Count I, Wooten committed substantial errors of omission and commission that significantly affected the appraisal in violation of USPAP Standard 1 and SR 1-1(b), which states:

In developing a real property appraisal, an appraiser must:

(b) not commit a substantial error of omission or commission that significantly affects an appraisal[.]

6. Based on Wooten's errors and omissions in developing and reporting the results of the 99th Street Appraisal Report, as stipulated to in Count I, Wooten committed substantial errors of omission and commission that significantly affected the appraisal in violation of USPAP Standard 1 and SR 1-4(a), which states:

(a) When a sales comparison approach is applicable, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.

7. Based on Wooten's errors and omissions in developing and reporting the results of the 99th Street Appraisal Report, as stipulated to in Count I, Wooten failed to clearly and accurately set forth the appraisal in a manner that would not be misleading and violated USPAP Standard 2 and SR 2-1(a), which states:

Each written or oral real property appraisal report must:

(a) clearly and accurately set forth the appraisal in a manner that will not be misleading[.]

8. Based on Wooten's errors and omissions in developing and reporting the results of the 99th Street Appraisal Report, as stipulated in Count I, Wooten failed to prepare a report that contained sufficient information to enable the intended users of the appraisal to understand the report properly and violated USPAP Standard 2 and SR 2-1(b), which states:

Each written or oral real property appraisal report must:

(b) contain sufficient information to enable the intended user of the appraisal to understand the report properly[.]

9. By failing to provide adequate support for the reasoning and conclusions in the Summary Appraisal Report in the 99th Street Appraisal Report, as stipulated to in Count I, Wooten failed to summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analysis, opinions, and conclusions, in violation of USPAP SR 2-2(b)(ix), which states:

(b) The content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:

(ix) summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions[.]

10. Based on Wooten's errors and omissions in developing and reporting the results of the 99th Street Appraisal Report, as stipulated to in Count I, Wooten communicated results in a misleading manner, in violation of the Conduct provision of the USPAP Ethics Rule, which states in part:

An appraiser must perform assignments ethically and competently, in accordance with USPAP and any supplemental standards agreed to by the appraiser in accepting the assignment. An appraiser must not communicate assignment results in a misleading or fraudulent manner.

11. Wooten's conduct, as stipulated to in Count I, 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 his real estate appraiser certification pursuant to § 339.532.2(6), RSMo Cum. Supp. 2009.

12. Wooten's conduct, as stipulated to in Count I, demonstrates a failure and refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, and communicating an appraisal, providing cause to discipline his real estate appraiser certification/license pursuant to § 339.532.2(8), RSMo Cum. Supp. 2009.

13. Wooten's conduct, as stipulated to in Count I, demonstrates negligence and incompetence in developing an appraisal, in preparing an appraisal report, and in communicating an appraisal, providing cause to discipline his real estate appraiser certification pursuant to § 339.532.2(9), RSMo Cum. Supp. 2009.

14. Each of Wooten's USPAP violations, as stipulated to in Count I, constitutes a violation of § 339.535, RSMo, providing cause to discipline his real estate appraiser certification/license pursuant to § 339.532.2(7) and (10), RSMo Cum. Supp. 2009.

15. Wooten's conduct, as stipulated to in Count I, violates the professional trust and confidence he owed to his clients, the intended users of the appraisal report, and the public, providing cause to discipline his real estate appraiser certification pursuant to § 339.532.2(14), RSMo Cum. Supp. 2009.

16. Wooten's conduct, as stipulated to in Count I, demonstrates that Wooten rendered appraisal services in violation of the USPAP Ethics Rule, USPAP Standards 1 and 2, the USPAP Standards Rules cited in Count I, and § 339.535, RSMo, providing cause to

discipline Wooten's certification as a state-certified general real estate appraiser pursuant to §§ 339.532.2(6), (7), (8), (9), (10) and (14), RSMo Cum. Supp. 2009.

17. Because the Kansas Board disciplined Wooten's Kansas real estate appraiser certification upon grounds for which revocation or suspension is authorized in Missouri, as stipulated to in Count II, cause exists to discipline Wooten's Missouri real estate appraiser certification pursuant to § 339.532.2(18).

18. Therefore, cause exists to discipline Wooten's state-certified general real estate appraiser certification pursuant to §§ 339.532.2(6) – (10), (14) and (18), 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 Wooten's certification as a state-certified general real estate appraiser, subject to the following terms and conditions, and entered by the MREAC in this matter under the authority of §§ 536.060 RSMo 2000 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. **Wooten's certification is on probation.** Wooten's certification as a state-certified general real estate appraiser is hereby placed on PROBATION for a period of SIX (6) MONTHS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Wooten shall be entitled to practice as a real estate appraiser under

§§ 339.500 to 339.549, RSMo, as amended, provided Wooten 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. Wooten shall submit written reports to the MREAC by no later than May 15 and July 15, during each year of the disciplinary period stating truthfully whether there has been compliance with all terms and conditions of this Joint Stipulation. Wooten is responsible for assuring that the reports are submitted to and received by the MREAC.
- B. During the disciplinary period, Wooten 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 no later than May 15 and July 15, during each year of the disciplinary period with the written reports required under subparagraph A., above. Wooten is responsible for assuring that the logs are submitted to and received by the MREAC. Upon MREAC request, Wooten shall submit copies of his work samples for MREAC review.
- C. During the disciplinary period, Wooten 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, Wooten 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.

- D. During the disciplinary period, Wooten 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. Wooten shall notify the MREAC in writing of any change in address or telephone number within 15 days of a change in this information.
- E. Wooten 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.
- F. During the disciplinary period, Wooten 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 Wooten’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.
- G. Wooten 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.

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

I. If, at any time within the disciplinary period, Wooten 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 certificate of Wooten shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREAC determines that Wooten 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 Wooten of Chapter 339, 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. Wooten 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. Wooten, 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 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.

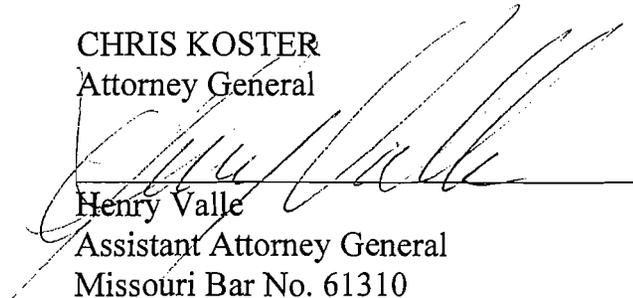
RESPONDENT


Kent L. Wooten 2/9/10
Date

MISSOURI REAL ESTATE
APPRAISERS COMMISSION

By: 
Vanessa Beauchamp 2-19-10
Executive Director Date

CHRIS KOSTER
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Before the
Administrative Hearing Commission
State of Missouri



MISSOURI REAL ESTATE APPRAISERS)
COMMISSION,)

Petitioner,)

vs.)

KENT L. WOOTEN,)

Respondent.)

No. 09-1568 RA

CONSENT ORDER

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

On February 22, 2010, the parties filed a joint motion for a consent 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), (7), (8), (9), (10), (14) and (18), RSMo. 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. 2008.

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 1, 2010.


NIMROD T. CHAPEL, JR.
Commissioner