

**BEFORE THE MISSOURI
STATE REAL ESTATE APPRAISERS COMMISSION**

MISSOURI REAL ESTATE APPRAISERS COMMISSION,)	
)	
)	
Petitioner,)	
)	
v.)	No. 2007-000356PV2
)	
STUART PHELPS)	
)	
Respondent.)	

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DISCIPLINARY ORDER**

At its scheduled meeting on March 11, 2010, and pursuant to notice described in the Findings of Fact, the Missouri State Real Estate Appraisers Commission (MREAC) took up the probation violation complaint alleging that Stuart Phelps (Phelps) has failed to comply with the terms of his probation.

The Commission appeared at the hearing through Assistant Attorney General Edwin Frownfelter. Phelps was present at the hearing and was not represented by counsel. Division of Professional Registration Legal Counsel Sarah Ledgerwood served as the MREAC's legal advisor at the hearing, during deliberations, and in the preparation of this order.

Findings of Fact

1. The MREAC was established pursuant to § 339.507, RSMo Cum. Supp. 2009, for the purpose of executing and enforcing the provisions of §§ 339.500 through 339.549, RSMo, as amended, the Missouri Certified Licensed Real Estate Appraisers Act.

2. Phelps holds a probated Certification as a state-certified general real estate appraiser (certification no. RA003126). Phelps's certification is active and on probation.

3. On February 7, 2007, the MREAC issued its Order of the Missouri Real Estate Appraisers Commission Issuing a Probated Certification to Stuart Phelps (the "2007 Order").

4. In the 2007 Order, the MREAC granted a probated certification to Phelps as a state-certified general real estate appraiser. Phelps' probated certification is certification number RA003126, and has been active at all times mentioned herein since February 7, 2007.

5. The terms of the probationary period in the 2007 Order are stated, in pertinent part, as follows:

7. During the probationary period, Phelps shall comply with all applicable provisions of Chapter 339, RSMo, as amended, all applicable MREAC regulations and all applicable federal and state laws. "State" includes the state of Missouri, all other states and territories of the United States, and the ordinances of their political subdivisions.

6. In February 2009, the MREAC through its counsel filed a Complaint alleging that Phelps had violated the 2007 Order by performing an appraisal in violation of USPAP standards with regard to an appraisal performed March 2, 2007, on a property at 505 Cottage Lane, Harrisonville, Missouri 64701.

7. On April 16, 2009, Phelps and the MREAC reached a Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, Waiver of

Hearing before the Missouri Real Estate Appraisers Commission, and Disciplinary Order (“Joint Stipulation”) to resolve the probation violation complaint.

8. In the Joint Stipulation, the parties agreed that Phelps’s probation would be extended for one year, until February 7, 2010.

9. On April 21, 2009, the MREAC issued a Consent Order (“2009 Order”), extending Phelps’s probation for one year, until February 7, 2010.

10. On February 27, 2009, Phelps signed Uniform Residential Appraisal Report on a property located at 909 Westover Street, Belton, Missouri 64012 (“the Westover Appraisal Report”). The effective date of the Westover Appraisal Report was December 31, 2008. The appraisal report reached a value conclusion of \$160,000.

11. Pursuant to §§ 339.532.2(7) and 339.535, RSMo, and the terms and conditions of the 2007 and 2009 Orders, Phelps was required to develop and report the results of the Westover Appraisal Report in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), 2008-2009 Edition.

12. The Westover Appraisal Report was prepared for Hawthorn Bank.

13. In the preparation of the Westover Appraisal Report, Phelps made the following errors and/or omissions:

- a. The form and the market analysis were deficient;
- b. The report omitted a Cost Approach although it would have provided credible results and would be expected by peers;
- c. The report failed to provide age adjustments;

- d. The report did not support Gross Living Area adjustments;
- e. The report failed to use extraction for site value support;
- f. The report appraisal is not credible, is misleading or confusing due to incorrect form for the intended use and lack of appropriate adjustments.

14. In the preparation of the Westover Appraisal Report, Phelps violated USPAP Standards 1 and 2, Standard Rules 1-1(a) and (b), 1-4(a), (b)(i), (ii), and (iii), 2-1(a) and (b), 2-2(b)(ii), (v), and (viii), and/or the Ethics and Competency Rules.

15. On March 31, 2009, Phelps signed an appraisal report on a property located at 12400 Grandview Road, Grandview, Missouri 64030 (“the Grandview Appraisal Report.”) The owner of the property and borrower was Grandview Assembly of God Church. The effective date of the appraisal report was March 23, 2009. The report reached a value conclusion of \$2,300,000.

16. Pursuant to §§ 339.532.2(7) and 339.535, RSMo, and the terms and conditions of the 2007 and 2009 Orders, Phelps was required to develop and report the results of the Grandview Appraisal Report in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), 2008-2009 Edition.

17. The Grandview Appraisal Report was prepared for Hawthorn Bank.

18. In the preparation of the Grandview Appraisal Report, Phelps made the following errors and/or omissions:

- a. The scope of work, analysis, and approaches used were all deficient;
- b. The appraisal report omitted approaches that would give credible results;
- c. Errors in methods and techniques were multiplied as previous, erroneous information was incorrectly assumed to be valid;
- d. The appraiser undertook a project the scope of which he was not competent to determine;
- e. The appraiser did not have the competency to determine highest and best use;
- f. The appraiser made numerous errors in the sales comparison approach, resulting in analysis which was not accurate, reliable, or based on appropriate methodology;
- g. No Cost Approach was attempted although it would be applicable to special use properties such as the subject;
- h. The reconciliation failed to justify the appraiser's inadequate procedures;
- i. The appraisal report failed to support the statements reconciling the applicability or suitability of the approaches used to arrive at the value conclusion;
- j. The appraiser lacked the competence to determine the appropriate scope of work;

k. Due to the above shortcomings, the appraisal is misleading and is not credible.

19. In the preparation of the Grandview Appraisal Report, Phelps violated USPAP Standards 1 and 2, Standard Rules 1-1(a), (b), and (c), 1-2(h), 1-3(b), 1-4(a), (b)(i), (ii), and (iii), 1-6(a) and (b), 2-1(a) and (b), 2-2(b)(vii) and (viii), and/or the Ethics and Competency Rules.

20. On or about February 16, 2010 the MREAC sent notice by U.S. mail and certified mail to Phelps notifying him of the probation violation complaint and of the disciplinary hearing in this matter set for May 11, 2010 at 9:00 a.m. at the Missouri Council of School Administrators, 3550 Amazonas Drive, Jefferson City, Missouri, 65106. The green return card from the certified mail copy was signed for by Phelps and returned to the MREAC.

21. On or about April 29, 2010, in a Stipulation as to Probation Violation (2010 Stipulation) the parties stipulated as to the facts, described above in paragraphs 1 through 19, in support of a violation of probation.

22. Additionally, in the April 29, 2010 Stipulation, the parties stipulated that:

a. Phelps did not have the experience and competence to complete the Grandview appraisal, but accepted his employer's assignment to the project against his own judgment.

b. Phelps acknowledges that the Commission has cause to take further disciplinary action against his probated certification based on the foregoing facts.

c. Phelps requests an opportunity to address the Commission at its scheduled hearing as to the discipline to be imposed.

d. Phelps acknowledges that he has been informed that he has the right to consult with and be represented by counsel of his choice at his expense, and he declines to do so.

23. Phelps appeared at the hearing on May 11, 2010 but made no statement as to the discipline to be imposed against his license.

Conclusions of Law

24. The MREAC has jurisdiction over the matter pursuant to page 8, paragraph 10, of the 2007 Order, which provides, in pertinent part:

If Phelps fails to comply with the terms of this order during the probationary period, in any respect, the MREAC may choose to conduct a hearing before it either during the probationary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred. In the event MREAC determines that Phelps has violated any term or condition of this Order, the MREAC may, in its discretion, vacate this Order and may impose additional discipline as deemed appropriate by the MREAC, including revocation of the certificate, pursuant to § 620.153, RSMo. [now § 324.042, RSMo Cum. Supp. 2009]. The MREAC has continuing jurisdiction to hold a hearing to determine if a violation of this Order has occurred.

25. The MREAC also has jurisdiction pursuant to § 324.042, RSMo to determine whether Phelps has violated the terms and conditions of the 2007 Order.

Section 324.042 states, in pertinent part:

Any board, commission, or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant, or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission, or committee may impose as additional discipline, any discipline it would be authorized to impose in an initial disciplinary hearing.

26. Section 339.532.2(7), RSMo, provides that the MREAC may discipline the certification of a Missouri state-certified appraiser upon proof of “[f]ailure to comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation[.]”

27. Section 339.535, RSMo, which requires 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.

28. The 2007 Order and § 324.042 allow the MREAC to take such disciplinary action that the MREAC deems appropriate for failure to comply with the terms of the 2007 Order.

29. By failing to comply with USPAP in the preparation of the Westover Appraisal Report, Phelps violated §§ 339.532.2(7) and 339.535, RSMo, and the

terms of his probation in the 2007 Order, providing cause to further discipline his certification under § 324.042, RSMo. Cum. Supp. 2009.

30. By failing to comply with USPAP in the preparation of the Grandview Appraisal Report, Phelps violated §§ 339.532.2(7) and 339.535, RSMo, and the terms of his probation in the 2007 Order, providing cause to further discipline his certification under § 324.042, RSMo. Cum Supp. 2009.

Decision and Order

It is the decision of the MREAC that Phelps has violated the terms of the 2007 Order, and that his license is, therefore, subject to further disciplinary action.

The MREAC orders that Stuart Phelps' state certification for general real estate appraiser, number RA003126, be and is hereby REVOKED.

Respondent shall immediately return all indicia of licensure to the Board.

The Board will maintain this Order as an open and public record of the Board as provided in Chapters 339, 610, and 324, RSMo

SO ORDERED this 27th day of May, 2010.

MISSOURI REAL ESTATE APPRAISERS COMMISSION



Vanessa Beauchamp,
Executive Director