

BEFORE THE
MISSOURI REAL ESTATE APPRAISERS
COMMISSION

MISSOURI REAL ESTATE)	
APPRAISERS COMMISSION,)	
)	
Petitioner,)	
)	No. 2007-000356PV1
v.)	
)	
STUART PHELPS,)	
)	
Respondent.)	

**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**

Respondent Stuart Phelps (“Phelps”) 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 Hearing Before the Missouri Real Estate Appraisers Commission, and Disciplinary Order* (“Joint Stipulation”) for the purpose of resolving the Probation Violation Complaint filed against Phelps. Pursuant to the terms of § 536.060, RSMo¹, the parties move for a consent order and waive the right to a hearing and decision in the above-styled case by the MREAC pursuant to § 324.042, RSMo (Cum. Supp. 2009), and jointly stipulate and agree that a final disposition of this matter may be effectuated as described below.

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

Phelps 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 the MREAC concerning the complaint pending against him; 7) the right to a ruling on questions of law by the MREAC; 8) the right to seek recovery of attorneys' fees and expenses; and 9) the right to obtain judicial review of this Joint Stipulation. Being aware of these rights provided him by operation of law; Phelps knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint Stipulation. Phelps further agrees to abide by the terms of this document as they pertain to him.

Phelps acknowledges that he received a copy of the Probation Violation Complaint in this case, which was filed with the MREAC on February 5, 2010, and that the hearing in the matter was held on May 11, 2010. After hearing, the MREAC determined to revoke Phelps' certification as a state-certified general real estate appraiser. On June 18, 2010, Phelps filed a Petition for Judicial Review in the Circuit Court of Cole County, Case No. 10 AC-CC00414, and Phelps obtained an Order Staying Enforcement of the MREAC's Order revoking Phelps' certification from the Circuit Court of Cole County on June 30, 2010.

The MREAC and Phelps hereby stipulate to the withdrawal of the MREAC's revocation of Phelps' certification. Phelps stipulates that the factual allegations contained in

this Joint Stipulation are true and stipulates with the MREAC that Phelps' certification as a state-certified general real estate appraiser (certificate no. RA003126) is subject to further disciplinary action by the MREAC in accordance with the provisions of § 324.042, RSMo (Cum. Supp. 2009).

I. JOINT STIPULATION

Based upon the foregoing, the MREAC and Phelps 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 Probation Violation Complaint filed in this case.

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 339.507, RSMo, for the purpose of executing and enforcing the provisions of Sections 339.500 through 339.549, RSMo, the Missouri Certified and Licensed Real Estate Appraisers Act.
2. Phelps holds a probated Certification as a state-certified general real estate appraiser (certification no. RA003126). Phelps' certification is active and on probation pursuant to the Stay Order entered by the Circuit Court of Cole County in Case No. 10AC-CC00414.

Jurisdiction

3. Pursuant to Section 324.042, RSMo, Cum. Supp. 2009, and the terms of the Joint Stipulation, the MREAC has jurisdiction over this matter and has the authority to hold a hearing to determine whether Phelps' certification as a real estate appraiser is subject to further disciplinary action.

History of the Matter

4. 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").

5. 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.

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

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.

7. 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 . . ."

8. 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.

9. The MREAC has jurisdiction over this 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.

10. 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.

11. 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.

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

13. On April 21, 2009, the MREAC issued a Consent Order ("2009 Order"), extending Phelps's probation for one year, until February 7, 2010.

Facts Regarding Probation Violation

Count 1: The Westover Appraisal Report

1. 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.

2. 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.

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

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

(1) Phelps’ assignment was for an exterior only inspection, non-financial report, for which the use of a Uniform Residential Appraisal Report (URAR) was inappropriate.

(2) The report omitted a Cost Approach. Phelps had not performed an interior inspection, and did not have information sufficient to perform a cost approach.

(3) The report failed to provide age adjustments. Phelps believed that the negative influence of being a bank owned home was more significant than the market factor for age.

(4) The report did not present calculations to support the Gross Living Area adjustments. These adjustments were calculated based on two comparable properties for which MLS sheets were included in the work file.

(5) Phelps did not use extraction for site value support, as he did not have figures for the cost of improvements and had not used a cost approach.

(6) The report appraisal is not credible, and is misleading or confusing due to incorrect form for the intended use and lack of appropriate adjustments.

5. 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.

6. 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, providing cause to further discipline his certification under § 324.042, RSMo. Cum. Supp. 2009.

Count II: The Grandview Appraisal

7. 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.

8. 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.

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

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

- (1) The scope of work, analysis, and approaches used were all deficient;
- (2) The appraisal report omitted approaches that would give credible results;
- (3) Errors in methods and techniques were multiplied as previous, erroneous information was incorrectly assumed to be valid;
- (4) The appraiser undertook a project the scope of which he was not competent to determine;
- (5) The appraiser failed to develop highest and best use;
- (6) The appraiser made numerous errors in the sales comparison approach, resulting in analysis which was not accurate, reliable, or based on appropriate methodology;

- (7) No Cost Approach was attempted although it would be applicable to special use properties such as the subject;
- (8) The reconciliation failed to justify the appraiser's inadequate procedures;
- (9) The appraisal report failed to support the statements reconciling the applicability or suitability of the approaches used to arrive at the value conclusion;
- (10) The appraiser lacked the competence to determine the appropriate scope of work;
- (11) Due to the above shortcomings, the appraisal is misleading and is not credible.

11. Phelps knew he 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.

12. 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.

13. 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, providing cause to further discipline his certification under § 324.042, RSMo. Cum Supp. 2009.

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 Phelps' 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 and 621.110, RSMo, as amended. This disciplinary order shall become effective immediately upon the issuance of the consent order of the MREAC without further action by either party:

1. Probation. Phelps' certification as a state-certified general real estate appraiser (certification no. RA003126) is hereby placed on PROBATION for TWO (2) YEARS. The period of probation is referred to hereinafter as either "the probationary period" or "the disciplinary period." During the period of probation, Phelps shall be entitled to practice as a general real estate appraiser provided he pays all required fees, has maintained his certification current and active, and adheres to all the terms stated herein.

A. During the period of probation, all commercial appraisals performed by Phelps shall be under the supervision of and reviewed by a certified general appraiser approved by the Commission, who shall sign and certify the appraisal as the supervising appraiser. This supervision and review will be at Phelps' expense.

B. Phelps shall keep the MREAC apprised at all times of his current address and telephone number at each place of residence and business. Phelps shall notify the MREAC in writing within ten (10) days of any change in this information.

C. Phelps shall timely renew his real estate appraiser certification, timely pay all fees required for certificate renewal, and shall comply with all other requirements necessary to maintain his certification in a current and active status.

D. Phelps shall meet in person with the MREAC or its representative at any such time or place as required by the MREAC or its designee upon notification from the MREAC or its designee. Said meetings will be at the MREAC's discretion and may occur periodically during the probation period.

E. Within five business days of receiving a request by the MREAC or its designee, Phelps shall submit documents showing compliance with the requirements of this joint stipulation.

F. During the probationary period, Phelps shall accept and comply with unannounced visits from the MREAC's representative to monitor compliance with the terms and conditions of this joint stipulation.

G. If at any time during the disciplinary period, Phelps changes his residence from the state of Missouri, ceases to be currently licensed in Missouri under Chapter 339, RSMo, as amended, fails to timely pay all fees required for license renewal, or fails to keep the MREAC advised of all current places of residence and business, then the time of absence, unlicensed status, delinquency in paying fees for license renewal, or unknown whereabouts shall not be deemed, or taken as any part of, the disciplinary period.

H. During the disciplinary period, Phelps shall comply with all provisions of §§ 339.500 through 339.549, RSMo, as amended, 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 Phelps' 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 Joint Stipulation.

I. Phelps shall submit written reports to the MREAC postmarked 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 Joint Stipulation. Phelps is responsible for assuring that the reports are submitted to and received by the MREAC.

J. During the disciplinary period, Phelps 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 every three (3) months after the disciplinary period goes into effect with the written reports required under subparagraph I, above. Phelps is responsible for assuring that the logs are submitted to and received by the MREAC. Upon MREAC request, Phelps shall submit copies of his work samples for MREAC review.

K. During the disciplinary period, Phelps 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, Phelps shall advise each trainee real estate appraiser working under him that the supervisory relationship is terminated and Phelps shall comply with all other requirements of 20 CSR 2245-3.005 regarding the termination of any supervisory relationship.

2. Upon the expiration of the disciplinary period, the certificate of Phelps shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREAC determines that Phelps 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.

3. 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 occurs during the disciplinary period, the MREAC may choose to conduct a hearing before it to determine whether, in fact, a violation occurred and may impose further discipline.

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

5. 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.

6. If any alleged violation of this Joint Stipulation occurs 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, in fact, a violation occurred and, if so, may impose further disciplinary action. Phelps agrees and stipulates that the MREAC has continuing jurisdiction to hold a hearing to determine if a violation of this Joint Stipulation has occurred.

7. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement. Phelps waives any claim to attorney fees under Section 536.087, RSMo.

8. Phelps agrees to dismiss with prejudice the Petition for Judicial Review, filed in the Circuit Court for Cole County, No. 10AC-CC00414, within ten (10) days after the effective date of this Stipulation.

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 as required by Chapters 339, 610, and 620, RSMo, as amended.

11. 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 MREAC based upon the complaint filed in the above-captioned cause.

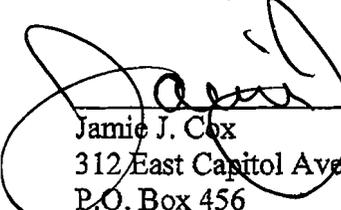
RESPONDENT


Stuart Phelps
Date 11/5/10

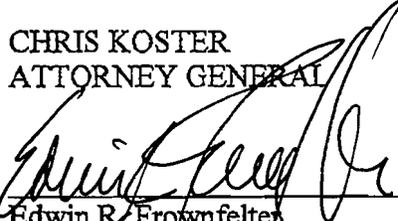
PETITIONER, Missouri Real Estate Appraisers Commission


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Executive Director

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