

**BEFORE THE IOWA REAL ESTATE APPRAISER EXAMINING BOARD  
OF THE STATE OF IOWA**

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IN THE MATTER OF:	)	
David A. Winterfeld	)	CASE NO. 00-55
	)	
CERTIFICATE NO. CR01782	)	STATEMENT OF CHARGES
	)	
RESPONDENT	)	

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COMES NOW, the Complainant, Susan A. Griffel, and states:

1. She is the Executive Officer of the Iowa Real Estate Appraiser Examining Board and files this Statement of Charges solely in her official capacity.
2. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 17A, 543D, 272C (2001).
3. On April 4, 1994, David A. Winterfeld, the Respondent, was issued an Iowa Real Estate Appraiser Certificate by the Board.
4. The Certificate No. CR01782 is valid.

**COUNT I**

The respondent willfully disregarded and failed to respond to Board inquiries concerning a disciplinary investigation in violation of Iowa Code section 543D.17(1)(g)(2001) and Iowa Administrative Code 193F-7.1(3)(d).


**CIRCUMSTANCES**

1. In December of 2000, the Board received a complaint from an appraiser who was asked to do an appraisal for Amlend Mortgage. The appraiser was instructed to list David A. Winterfeld as supervisory appraiser and to check the "did inspect" box on the appraisal document. The appraiser declined the assignment because she did not know David Winterfeld and

to her knowledge he had not inspected the subject property. The appraiser sent the Amlend Mortgage request to the Board for investigation.

2. On June 7, 2001, the Board sent a letter to David A. Winterfeld requesting a copy of the appraisal on 1315 Oak Street, Muscatine, IA.
3. On or about June 19, 2001, the respondent called the Board and said that he had not done the appraisal on 1315 Oak Street, Muscatine, IA. He was asked at that time to put his explanation in writing and send to the Board. He said that he would.
4. On July 10, 2001, a certified letter was sent to the respondent asking for his written response to the June 7, 2001 letter and the mid-June telephone conversation. The letter was received and signed for by Don Ver Burg.
5. On November 2, 2001, a second certified letter was sent to the respondent requesting an explanation of the circumstances of the Amlend Mortgage document. The letter was received and signed for by Lynn Baumgartner on 11/08/01. The Board has not received a response from the respondent.

WHEREAS, the Complainant prays that a hearing be held in this matter and that the Board take such action as it deems appropriate under the law.

  
Susan A Griffel, Executive Officer  
Complainant

On this 20th day of December, 2001, the Iowa Real Estate Appraisal Examining Board found probable cause to file this complaint and to order a hearing in this case.

  
Sharon L. Chism, Chair  
Iowa Real Estate Appraiser Examining Board

BEFORE THE REAL ESTATE APPRAISER EXAMINING BOARD  
OF THE STATE OF IOWA

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IN THE MATTER OF:	)	CASE NO. 00-55
	)	DIA NO. 02DOCRE001
DAVID WINTERFELD	)	
CERTIFICATE NO. CR01782	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
RESPONDENT	)	DECISION AND ORDER

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On December 20, 2001, the Iowa Real Estate Appraiser Examining Board (Board) found probable cause to file a Complaint against David Winterfeld (Respondent). The Complaint alleged that the Respondent willfully disregarded and failed to respond to Board inquiries concerning a disciplinary investigation, in violation of Iowa Code section 543D.17(1)(g) (2001) and 193F IAC 7.1(3)(d). A Notice of Hearing scheduled a prehearing conference for February 8, 2002 and a hearing for February 21, 2002. The Board attempted service of the Statement of Charges on the Respondent by certified mail return receipt requested, but the documents were returned to the Board by the post office, marked "unclaimed."

An Amended Notice of Hearing was issued which scheduled a prehearing conference for March 26, 2002 and a hearing for April 3, 2002 at 9:00 a.m. The Statement of Charges and Amended Notice of Hearing were personally served on the Respondent by the sheriff. The Respondent failed to provide a telephone number where he could be reached for the telephonic prehearing conference and did not participate in the prehearing conference.

The hearing was held on April 3, 2002 at 9:00 a.m. The Respondent appeared for the hearing, and was not represented by counsel. The state of Iowa was represented by Pamela Griebel, Assistant Attorney General. The following Board members were present for the hearing: Sharon Chism, Appraiser, Chairperson; Cindy A. Hansen, Vice Chair, Public Member; Richard Bruce, Appraiser; Luther C. Gammon, Appraiser; Beth Weeks, Appraiser; Richard J. Koestner, Appraiser; and David Erickson, Public Member. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, assisted the Board in conducting the hearing. A certified court reporter recorded the proceedings.

The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(2001). After hearing the testimony and examining the exhibits, the Board convened in closed executive

session, pursuant to Iowa Code section 21.5(1)(f)(2001) to deliberate its decision. The members of the Board instructed the administrative law judge to prepare the Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

#### THE RECORD

The record includes the State's Prehearing Conference Report, Order Following Prehearing Conference, the testimony of the witnesses, and the following exhibits:

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|------------------|--|
| State Exhibit 1: | Statement of Charges, Notice of Hearing, Amended Notice of Hearing, and Proof of Service |
| State Exhibit 2: | Complaint  |
| State Exhibit 3: | Letter dated 6/7/01 (Board to Respondent)  |
| State Exhibit 4: | Letter dated 7/10/01 (Board to Respondent)   |
| State Exhibit 5: | Letter dated 11/2/01 (Board to Respondent)   |

#### FINDINGS OF FACT

1. On April 4, 1994, the Respondent was issued an Iowa Real Estate Appraiser Certificate by the Board. The Certificate No. CR01782 is valid. (State Exhibit 1)
2. The Board received a complaint concerning the Respondent from another appraiser, who had received an appraisal assignment from Amlend Mortgage Services, Inc., 38 19<sup>th</sup> Street SW, Suite 200, Sioux Center, Iowa. The request was for a full appraisal of a property located at 1315 Oak Street in Muscatine, Iowa. The appraisal request form instructed the appraiser to list the Respondent as the supervisory appraiser and to check the "did inspect" box. The form included the Respondent's certification number and expiration date. The appraisal request form listed Gayle Van Donge as the contact person at Amlend Mortgage Services.

The appraiser who received this request did not know the Respondent and did not know whether he had inspected the property. She was unwilling to list him as the supervisory appraiser or to state that he had inspected the property. She declined to perform the appraisal. Because of her concerns, she forwarded the appraisal request form to the Board for its review. (Testimony of Susan Griffel; State Exhibit 2)

3. The Board reviewed the complaint and determined that it raised serious ethical issues. They instructed Susan Griffel, the Board's Executive Officer, to write to the Respondent and request an explanation.

On June 7, 2001, Ms. Griffel wrote to the Respondent and asked him to send the Board a true and exact copy of the appraisal for the property at 1315 Oak Street in Muscatine, Iowa within ten days. This letter was mailed to the address that the Board had on file for the Respondent, which was the same address as Amlend Mortgage Services, Inc.: 38 19<sup>th</sup> Street SW, Sioux Center, Iowa. At the hearing, the Respondent told the Board that Amlend Mortgage Services, Inc. dissolved in April 2001, and the building at 38 19<sup>th</sup> Street was vacant after that date. However, the Respondent admitted that he received this letter because the postmaster knew where to find him. (Testimony of Susan Griffel; Respondent; State Exhibit 3)

4. In June 2001, the Respondent called Ms. Griffel and told her that he did not do the appraisal for the property in question. Ms. Griffel asked him to put his explanation in writing and send it to the Board. Although the Respondent readily agreed, he never sent a written explanation to the Board. (Testimony of Susan Griffel; Respondent)

5. On July 10, 2001, Ms. Griffel wrote a second letter to the Respondent. She reminded him that approximately three weeks earlier he had agreed to send the Board a written explanation concerning his involvement with the property at 1315 Oak Street in Muscatine, Iowa. Ms. Griffel directed the Respondent to provide his written explanation within ten days. This letter was sent to the Respondent by certified mail, return receipt requested, and was delivered on July 17, 2001. Once again, the postmaster delivered the letter to the Respondent even though the address that the Board had for him was now incorrect. The Respondent admits that he received the letter, but he never responded to the Board. (Testimony of Susan Griffel; Respondent; State Exhibit 4)

6. On November 2, 2001, Ms. Griffel wrote a third letter to the Respondent, pointing out that he still had not responded in writing to the Board's inquiry. Ms. Griffel informed the Respondent that failure to respond to the Board's communications within thirty days of receipt can be grounds for disciplinary action.

Ms. Griffel provided the Respondent with a copy of the appraisal request for the property on Oak Street in Muscatine, Iowa and posed six questions to him. The Respondent was directed to provide a written response to the questions within ten days of receipt of the letter. The letter was mailed to the Respondent by certified mail, return receipt requested. The Respondent admits that he received the letter, but failed to respond. (Testimony of Susan Griffel; Respondent; State Exhibit 5)

7. The Respondent could offer no substantive reason for his failure to respond to the Board's repeated communications to him. He testified that he wanted to explain in person, yet he never made this request to the Board.

Amlend Mortgage Services, Inc. was started in 1995 and dissolved in April 2001. It was owned by the Respondent and by a bank in northwest Iowa. The Respondent was in charge of sales for the company, but agreed that he was ultimately in charge of all aspects of the corporation. The company did not employ any appraisers; all appraisals were performed by contract appraisers. The Respondent hired employees to manage the appraisal side of the company, and he was not actively involved in performing or arranging appraisals. The Respondent testified that he assumed that those in charge of the appraisals were performing their jobs appropriately.

The Respondent testified that he did not perform the appraisal in question on the Muscatine property and had no record of it. He claimed that he did not know that the appraisal request had been sent out with his name listed as the supervisory appraiser. He noted that the employee who sent the appraisal request was fired for unrelated reasons two weeks later. The Respondent denied that he ever signed as the supervisor of an appraisal when he did not in fact supervise it. (Testimony of Respondent)

8. The Respondent now owns and operates another company, Lenders Management Corporation. He does not employ any appraisers, and he is not currently performing appraisals or supervising appraisers. The Respondent admits that he has not

kept the Board informed of his current address. (Testimony of Respondent)

CONCLUSIONS OF LAW

Iowa Code section 543D.17(1)(g)(2001) provides, in relevant part:

**543D.17 Disciplinary proceedings.**

1. The rights of a holder of a certificate as a certified real estate appraiser may be revoked or suspended, or the holder may otherwise be disciplined in accordance with this chapter. The board may investigate the actions of a certified real estate appraiser and may revoke or suspend the rights of a holder or otherwise discipline a holder for violation of a provision of this chapter, or chapter 272C, or of a rule adopted under this chapter or commission of any of the following acts or omissions:

...

g. Willful disregard or violation of a provision of this chapter or a rule of the board of the administration and enforcement of this chapter.

193F IAC 7.1(3)(d) provides:

**193F-7.1(543D) Grounds for disciplinary actions against certificates, licenses, and associates.** The grounds for revocation and suspension of certificates, licenses and associate registrations and other disciplinary action against appraisers are set out in Iowa Code section 543D.17 in both specific and general terms. The general terms of that provision of the Code include the following particular grounds for such disciplinary action:

...

**7.1(3)** Violations of the Code or rules promulgated under the Code within the meaning of Iowa Code section 543D.17(1)"f," include knowingly:

...

d. Failing to respond to board communication within 30 days of receipt.

The preponderance of the evidence established that the Respondent willfully and knowingly failed to respond to communications from the Board within thirty days of receipt, in violation of Iowa Code section 543D.17(1)(g)(2001) and 193F IAC

7.1(3)"d." On June 7, 2001, July 10, 2001, and November 2, 2001, the Board sent letters to the Respondent requesting a written response. The Respondent made one phone call to the Board office during which he agreed to submit a written explanation, but has never done so. To date, the Board has not received a written response to its communications to the Respondent. The Respondent was unable to provide any satisfactory explanation for his failure to respond.

In addition, the Respondent failed to file an answer to the Statement of Charges, as required by the Amended Notice of Hearing and Board rule. The Respondent failed to provide a telephone number or to participate in the prehearing conference which was held on March 26, 2002 at 2:30 p.m. Finally, at the hearing, the Respondent conceded that he has not kept the Board informed of his current address, as required by Board rule. [193F IAC 9.1(4), formerly at 4.2(4)] The address which the Board has on file for the Respondent and which the Board had been using to communicate with him had been incorrect since April 2001. However, the local postmaster knew the Respondent and had delivered the Board's letters to him at his new address.

The Respondent's complete failure to respond to the Board's inquiries is an egregious violation of the Board's rule. By failing to respond to the Board's communications and inquiries, the Respondent has hindered and impeded the Board's conduct of this investigation. If all licensees behaved as this licensee, the Board would be unable to effectively perform its regulatory functions.

The Board rules outline numerous factors which may be considered in determining whether a particular violation merits the assessment of civil penalties. Many of those factors are present in this case. In particular, the Board notes that the Respondent repeatedly ignored the Board's communications to him; that he showed little remorse for his lack of cooperation and still has not responded in writing to the specific questions posed in the Board's November 2, 2001 letter; and that his failure to respond was intentional and it appears that he has acted in bad faith. The issue presented is extremely clear. 193F IAC 8.6.

It is an essential and extremely basic obligation of all licensees to respond to communications from their licensing board. Failure to cooperate and respond to board communications hampers investigations and requires the Board to expend scarce resources by pursuing discipline against the licensee for



failure to respond. The Respondent's violation in this case merits the most severe sanction that the Board can issue.

DECISION AND ORDER

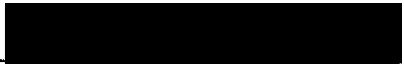
IT IS THEREFORE ORDERED, that the Respondent shall respond to the Board in writing with answers to the six questions posed to him in the November 2, 2001 letter within seven (7) days of receipt of this decision.

IT IS FURTHER ORDERED, that the Respondent shall pay a civil penalty of \$1000.00, within thirty (30) days of receipt of this decision.

IT IS FURTHER ORDERED, that the Respondent's Iowa Real Estate Appraiser Certificate, No. CR01782 is hereby REVOKED, with no possibility of reinstatement for a period of three years. Before an application for reinstatement would be considered, the Respondent will be required to complete all education, experience, and examinations required for licensure at the time of reinstatement. The Respondent's earlier education, experience, and examination will not qualify him for licensure.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 193 IAC 7.41, that the Respondent shall pay \$75.00 within thirty (30) days of receipt of this decision for fees associated with conducting the disciplinary hearing.

Dated this <sup>th</sup>30 day of April, 2002.

  
Sharon Chism, Appraiser  
Chairperson  
Iowa Real Estate Appraiser Board

cc: David A. Winterfeld  
Winterfeld and Associates  
38 19<sup>th</sup> Street SW  
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(CERTIFIED)

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(CERTIFIED)

Pamela Griebel  
Assistant Attorney General  
Hoover State Office Building-2<sup>nd</sup> Fl.  
(LOCAL)

Judicial review of the Board's decision may be sought in accordance with the terms of Iowa Code chapter 17A. If a party does not file a petition for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the board's final decision. 193 IAC 7.37.