

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

IN THE MATTER OF:)	CASE NO. 03-46
)	DIA NO. 05DOCRE006
JOHN J. LACEY)	
CERTIFICATE NO. CG02314)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
RESPONDENT)	DECISION AND ORDER

On March 23, 2005, the Iowa Real Estate Appraiser Examining Board (Board) found probable cause to file a Statement of Charges against John J. Lacey (Respondent). The Statement of Charges alleged two counts:

Count I: Respondent repeatedly failed to adhere to appraisal standards in the development and communication of appraisals and failed to exercise reasonable diligence and/or demonstrated negligence in the development, preparation and communication of appraisals, in violation of Iowa Code sections 543D.17(1)(d), (e) and 543D.18(1) (2003,2005) and 193F IAC 7.2(5).

Count II: Respondent engaged in unethical practice, harmful and detrimental to the public by failing to appropriately cooperate with a Board investigation, in violation of Iowa Code sections 272C.10(3) (2003,2005) and 193F IAC 7.2(3) "c."

The hearing was held before the Board on June 14, 2005 at 1:05 p.m. The Respondent did not appear and was not represented by counsel. John Baty, Assistant Attorney General, represented the state of Iowa. The following Board members presided at the hearing: Karen Oberman, Appraiser, Chairperson; Richard Koestner, Appraiser; Amy Thorne, Appraiser; Michael Lara, Appraiser; and David Erickson and Barbara Leestamper, Public Members. Administrative Law Judge Margaret LaMarche 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) (2005) and 193 IAC 7.25(2). After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f) (2005) to deliberate its decision. The Board instructed the administrative law judge to prepare these

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, the testimony of the witnesses, and State Exhibits 1-34.

FINDINGS OF FACT

1. On March 3, 2002, the Respondent was issued Certificate No. CR02314 to practice as a certified residential real estate appraiser in the state of Iowa. The Respondent's certificate is currently in good standing and is scheduled to expire on June 30, 2005. (State Exhibit 4)

2. The Board received a complaint concerning the Respondent in October 2003. Certified General Real Estate Appraiser David Urban had been retained to perform a review appraisal (desk review) on an appraisal report completed by the Respondent for a property located at 511 Otoe Street in Sioux City, Iowa. In connection with his review, Urban viewed the exterior of the dwelling and reviewed the property record cards and multiple listing service (MLS) for the comparable properties considered by the Respondent.

In Urban's opinion, the Respondent's appraisal report for the Otoe Street property was very misleading. The Respondent provided a neighborhood description that was too large and which included part of the downtown area and major commercial corridors. The Respondent used comparables that were in completely different and more desirable areas than the subject property (State Exhibits 4, 11). The dwelling was almost 100 years old, but the Respondent gave the property an effective age of 4-5 years and 9% physical depreciation. The effective age was unrealistic for a 100-year-old dwelling even if the property was completely remodeled. The area where the property is located has longer than average selling prices and some external depreciation should have been considered. Based on the property record, it appeared that the Respondent had included a floored attic as finished living space. Based on the style of the home, it appeared that the attic's ceilings would be too low to include the attic as finished living space. The Respondent provided a value of \$127,000 for the property, which was much higher than the highest value property in the neighborhood. Urban found three comparable properties that were less than a mile from the subject property. Using his own comparables, the

remaining information provided by the Respondent, and assuming that the dwelling's interior was completely remodeled, Urban gave the property a value of \$60,000. (Testimony of David Urban; State Exhibits 10-12)

3. The Respondent was uncooperative with the Board's attempts to obtain information.

a. On October 3, 2003, the Board's Executive Officer, Susan Griffel, sent the Respondent a certified letter at his home address, asking him to submit a copy of his appraisal for the Otoe Street property by October 13, 2003. The U.S. Postal Service left two notices for the Respondent before returning the certified letter to the Board, marked "unclaimed." (Testimony of Susan Griffel; State Exhibits 13, 14)

b. On October 27, 2003, Griffel sent the October 3, 2003 letter to the Respondent's office address by certified mail. The return receipt indicated that the letter was delivered on October 30, 2003. There was no response to this letter. (Testimony of Susan Griffel; State Exhibit 15)

c. On December 3, 2003, Griffel sent a certified letter to the Respondent's office address, again asking him to provide the Board with a copy of his appraisal for the Otoe Street property, no later than December 19, 2003. The Respondent was also advised that failure to respond to a Board communication within 30 days is grounds for disciplinary action. The December 3rd letter was delivered on December 8, 2003, but the Respondent did not provide the appraisal report by the December 19, 2003 deadline. (Testimony of Susan Griffel; State Exhibit 16, 17)

4. On January 12, 2004, the Respondent finally provided the Board with a copy of his appraisal report for the Otoe Street property. (State Exhibit 4) The Board sent the appraisal report to its peer reviewer, Terry Culver, a certified general real property appraiser. (State Exhibit 30) Culver prepared an Appraisal Review Report, dated January 19, 2004. The purpose of the Appraisal Review Report was to determine if the Respondent's appraisal for the Otoe Street property conformed to the requirements of the 2003 Uniform Standards of Professional Appraisal Practice (USPAP). (State Exhibit 31)

Culver noted numerous significant deficiencies in the Respondent's appraisal report for the Otoe Street property:

- Failed to identify the type of appraisal process used. [USPAP Departure Rule, 2-2(b)(xi)]
- Failed to identify the report format. [USPAP 2-2]
- Failed to identify and correctly interpret the appraisal problem. [USPAP 1-1(a)]
- Failed to consider and identify the purpose of the appraisal. [USPAP 1-2(b), 2-2(b)(i)]
- Failed to adequately identify and report the site description, i.e. comments about the site only general in nature, no dimensions of the site given, no specific zoning given. [USPAP 1-2(e)(i-iv) and 2-2(b)(iii)]
- Failed to identify and report improvements description, i.e., stated that the subject has been completely remodeled but does not give any particulars. Gross living area appears to include the attic, without comment on the amount or quality of finish and states basement is 100% finished but does not describe quality of the finish or ingress and egress. [USPAP 1-2(e)(i-iv) and 2-2(b)(iii)]
- Failed to adequately identify and report the physical, functional and external market factors as they may affect the appraisal, e.g. states that typical marketing time for subject area is 30-90 days but all sales used in the comparable sales grid were less than 30 days with no explanation of the difference. [USPAP 1-2(e)(i-v); 2-2(b)(iii)(x)]
- Failed to consider and report the highest and best use; highest and best use cannot be determined when the specific zoning district is not identified. [USPAP 1-3(b), 2-2(b)(x)]
- Failed to appropriately value the site; no comment on how site value arrived at and no support for value shown. [USPAP 1-4(b)(i), 2-2(b)(iii)(vii)(ix)]
- Failed to collect, verify, analyze and reconcile accrued depreciations; provided a very low effective age of 4-6 years when the subject improvements are over 100 years old. [USPAP 1-4(b)(iii), 2-2(b)(iii)(vii)(ix)]
- Failed to correctly employ recognized methods and techniques; failed to collect, verify, analyze and reconcile comparable sales, adequately identified and described, i.e. the comparable sales are all superior to the subject and sale #2 is different style and newer than the subject. The large difference in gross living area is not explained and the adjustment appears high for attic finish. [USPAP 1-4(a), 1-1(a), 2-2(b)(iii)(vii)(ix)]

- Failed to consider the quality and quantity of the data in the approaches, the applicability of the approaches, and failed to comment in the reconciliation, i.e. arrived at value approach by the Cost Approach and SCA but does not explain why there is a \$15,000 difference in the value opinions and the reconciliation does not meet USPAP criteria. [USPAP 1-6(a)(b), 2-2(b)(iii)(vii)(ix)]
- Failed to clearly and accurately set forth the appraisal in a manner that will not be misleading. [USPAP 2-1(a)(b)(c)]
- Failed to include sufficient information to enable the persons who are expected to receive it or rely on it to understand it properly. [USPAP 1-1(a)(b)(c), 2-1(a)(b)(c)]
- Failed to include a signed certification in accordance with USPAP Standards Rule 2-3.

(Testimony of Terry Culver; State Exhibits 7, 30)

5. The Respondent continued to be uncooperative with the Board's attempts to conduct its investigation.

a. On March 1, 2004, the Board's Executive Officer Susan Griffel sent the Respondent a certified letter notifying him that its disciplinary committee had found possible USPAP violations in the appraisal report for the Otoe Street property. Griffel asked the Respondent to submit two additional appraisals, completed in the last six months and representing his best work, by March 15, 2004. This letter was delivered on March 4, 2004. There was no response. (Testimony of Susan Griffel; State Exhibits 18, 19)

b. On April 9, 2004, Griffel sent the Respondent a second certified letter, again asking him to provide two additional appraisals representing his best work, no later than April 26, 2004. The Respondent was warned that if he did not provide a response by that date, the Board would charge him with violating 193F IAC 7.2. This letter was delivered on April 14, 2004. (Testimony of Susan Griffel; State Exhibits 20, 21)

c. On April 26, 2004, the Board finally received two additional appraisal reports from the Respondent. (State Exhibits 22, 5, 6)

6. The Board submitted the Respondent's two additional appraisal reports to Terry Culver for desk review. Culver found numerous deficiencies similar to those noted in his review of the Otoe Street property. He noted that the Respondent displayed a general lack of competency by his failure to provide

narrative comments on the relative characteristics of the improvements and how they affect the value conclusion that he reached. The Respondent lacked understanding of the requirements for competently completing the appraisal as revealed by his lack of compliance with the following supplemental requirements: zoning and site size. The information in the departure section indicated a lack of understanding of what is required to competently complete the assignment. (Testimony of Terry Culver; State Exhibits 8, 9, 30)

7. The Respondent continued to be uncooperative with the Board's investigation.

a. On August 3, 2004, the Board's Executive Officer Susan Griffel sent the Respondent a letter apprising him of the deficiencies noted in the desk reviews of his three appraisal reports and notifying him that the Board had voted to keep his file open and to ask for additional work product in October. Griffel stated in closing, "In late fall, the Board will ask for a log and select several appraisals to review for USPAP compliance, looking for improvement, as mentioned in the above paragraphs." (Testimony of Susan Griffel; State Exhibit 23)

b. On October 21, 2004, Griffel sent the Respondent a certified letter asking him to submit his appraisal log to the Board by November 12, 2004. After leaving two notices for the Respondent, the post office returned this letter to the Board, stamped "unclaimed." (Testimony of Susan Griffel; State Exhibits 24, 25)

c. The October 21, 2004 letter was then sent to the Respondent by ordinary mail on December 3, 2004. In a cover letter dated December 3, 2004, the Respondent was warned that he could be charged with violating 193F IAC 7.2 for failure to respond to a board communication. The Respondent was instructed to submit his appraisal log by December 20, 2004. The Respondent did not submit his log. (Testimony of Susan Griffel; State Exhibit 27)

d. The December 3, 2004 letter was personally served on the Respondent by the sheriff on December 28, 2004. As of the date of the hearing, the Respondent had not submitted his appraisal log. (Testimony of Susan Griffel; State Exhibit 26)

8. On January 10, 2005, the South Dakota Department of Revenue and Regulation notified the Iowa Board that it had revoked the

Respondent's South Dakota Certified Residential Appraiser Certificate, effective October 25, 2004. The Respondent failed to appear for a telephone prehearing conference with the South Dakota Board on August 23, 2004 and failed to respond to a letter dated August 24, 2004. (Testimony of Susan Griffel; State Exhibit 29)

9. On March 24, 2005, the Respondent was personally served with the Statement of Charges and the Notice of Hearing, which scheduled a telephone prehearing conference for June 7, 2005 at 2:00 p.m. and a hearing for June 14, 2005 at 1:00 p.m. The Respondent was instructed to notify the Board of the telephone number where he or his counsel could be reached for the prehearing conference. The Respondent did not call in a telephone number for the prehearing conference. The administrative law judge attempted to call the Respondent's office telephone number for the prehearing conference, but it had been disconnected. The Respondent also failed to appear for the hearing. (Testimony of Susan Griffel; State Exhibits 1-3)

CONCLUSIONS OF LAW

Failure to Appear

If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of a party. 193 IAC 7.27(1).

The Respondent was personally served with the Statement of Charges and Notice of Hearing on March 28, 2005, more than two months prior to the hearing, in accordance with 193 IAC 7.6(2). The Respondent was properly served but failed to appear. The Board was authorized to proceed with the hearing.

Count I

Iowa Code sections 543D.17(1)(d), (e) and 543D.18(1) (2003, 2005) provide, 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 be otherwise 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 provisions of this chapter, or chapter 272C, or of a rule adopted under this chapter or commission of any of the following acts or offenses:

...

d. Violation of any of the standards for the development or communication of real estate appraisals as provided in this chapter.

e. Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal.

543D.18 Standards of Practice

1. A certified real estate appraiser shall comply with the uniform appraisal standards adopted under this chapter.

193F IAC 7.2(5) provides, in relevant part:

193F-7.2(543D) Grounds for disciplinary actions against certificate holders and associate registrants.

The grounds for revocation and suspension of certificates and associate registrations and other disciplinary action 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:

...

7.2(5) Failure to comply with the USPAP applicable at the time of the development and communication of the real estate appraisal.

The preponderance of the evidence established that the Respondent violated Iowa Code sections 543D.17(1)(d), (e); 543D.18(1); and 193F IAC 7.2(5) when he repeatedly failed to adhere to the USPAP appraisal standards in the development and communication of three appraisals and when he failed to exercise reasonable diligence and demonstrated negligence or incompetence in the development, preparation and communication of three appraisals. Two experienced certified real estate appraisers reviewed the Respondent's appraisal for the Otoe Street property

and concurred that it failed to comply with the applicable USPAP standards. The Board's peer reviewer reviewed two additional appraisal reports that the Respondent submitted as representing his best work. The two additional appraisal reports contained the same types of errors and deficiencies that were noted in the Otoe Street report.

Count II

Iowa Code section 272C.10(3) (2003) provides in relevant part:

272C.10 Rules for revocation or suspension of license.

A licensing board established after January 1, 1978 and pursuant to the provisions of this chapter shall by rule include provisions for the revocation or suspension of a license which shall include but is not limited to the following:

...

3. ...engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

193F IAC 7.2(3) (c) provides in relevant part:

7.2(3) Violations of the Iowa Code or rules promulgated under the Iowa Code within the meaning of Iowa Code section 543D.17(1)"f," include knowingly:

...

c. Failing to respond to board communications within 30 days of receipt.

The preponderance of the evidence established that the Respondent repeatedly violated Iowa Code section 272C.10(3) (2003, 2005) and 193F IAC 7.2(3)"c" by failing to respond to Board communications in a timely manner. As a result, the Board and its staff have been forced to expend disproportionate resources to obtain the information necessary to conduct the investigation. The Respondent has displayed a complete lack of respect for the Board's authority.

DECISION AND ORDER

The serious and repetitive nature of the USPAP violations, the Respondent's failure to cooperate with the Board's investigation, and his failure to appear for hearing warrants revocation of his certificate.

IT IS THEREFORE ORDERED that Iowa Real Estate Appraiser Certificate No. CR02314, issued to John J. Lacey, is hereby **REVOKED**, effective immediately upon service of this Decision and Order.

IT IS FURTHER ORDERED that the Respondent may not apply for reinstatement of his certificate for at least one year from the date of this Decision and Order. **IT IS FURTHER ORDERED** that the Respondent will be required to redo all of the education, examination, and experience requirements required for initial licensure. The required education, examination, and experience must be completed following the issuance of this Decision and Order and prior to filing an application for reinstatement.

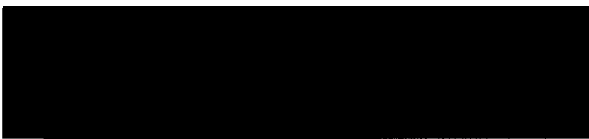
IT IS FURTHER ORDERED that before any application for reinstatement is granted, the Respondent will be required to establish that the reason for the revocation no longer exists and it is in the public interest for his license to be reinstated. 193 IAC 7.38(5). The Board retains the right to set conditions of probation in connection with any order reinstating the Respondent's license.

IT IS FURTHER ORDERED that the Respondent shall pay a civil penalty of \$1000.00 within thirty (30) days of the date of issuance of this Decision and Order.

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.

IT IS FURTHER ORDERED that the Respondent shall notify all clients of the fact that his certification has been revoked within fifteen (15) days of receipt of this final decision, in accordance with 193 IAC 7.30(3). Within thirty days of receipt of this final order, the Respondent shall provide the Board with copies of the notice sent to clients.

Dated this 23rd day of June, 2005.


Karen Oberman, Appraiser
Chairperson
Iowa Real Estate Appraiser Examining Board

Cc: John J. Lacey
1817 W. 2nd St.
Sioux City, Iowa 51103
(PERSONAL SERVICE)

John Baty
Assistant Attorney General
800 Lincoln Way
Ames, IA 50010

This decision becomes final agency action, unless, within 15 days after the date of notification or mailing of this decision, a motion to vacate is filed and served on all parties. A motion to vacate shall state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit or a person with personal knowledge of each such fact attached to the motion. 193 IAC 7.27(3).

Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A. 193 IAC 7.37.

