

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-05-0093-REA REGARDING:

THE PROPOSED DISCIPLINARY) Case No. 1358-2005
TREATMENT OF THE LICENSE OF)
JOE SEIPEL, Certified General Appraiser,)
License No. 362.)

**PROPOSED FINDINGS OF FACT; CONCLUSIONS OF LAW;
AND RECOMMENDED ORDER**

I. INTRODUCTION

The Montana Department of Labor and Industry Business Standards Division (BSD) filed a complaint against the appraiser's license of Joe Seipel alleging violations of Mont. Code Ann. § 37-54-403(1) (which requires a licensee to comply with generally accepted standards of professional appraisal practice promulgated by the Professional Appraisal Standards Board of the Appraisal Foundation). Hearing Examiner Gregory L. Hanchett held a contested case hearing in this matter on October 19, 2005. John Atkins, agency legal counsel, appeared on behalf of the Department of Labor and Industry. Patrick Flaherty, attorney at law, appeared on behalf of Seipel.

Seipel, a Montana certified general appraiser, testified under oath on his own behalf. Billie VeerKamp, a Montana certified general appraiser and Board investigator, testified on behalf of BSD. Immediately prior to hearing, the parties stipulated to certain facts which are identified and discussed below in the Findings of Fact. In addition, Exhibits A, B, C, and D were admitted into evidence over the licensee's objection. Exhibits A1, B1, C1, and D1, L1 and L2 were admitted by stipulation of the parties. BSD's objection to Exhibit L3 was sustained and that exhibit was not admitted into evidence. The parties were permitted to file post-hearing briefs. Based on the evidence adduced at the hearing as well as the arguments of counsel contained in the post-hearing briefing, the following findings of fact, conclusions of law, and recommended decision are made.

II. FINDINGS OF FACT

1. Seipel has at all times pertinent to this case been a licensed general appraiser in Montana. Seipel obtained his Montana certified residential appraiser's license in 1994 and his Montana certified general appraiser's license in 1996.

2. Between December 2001 and September 2002, Greg Strable, an apprentice appraiser working for Seipel, and Seipel's son-in-law, prepared four appraisals which are the focus of this complaint. The first was dated December 20, 2001, the second March 5, 2002, the third August 5, 2002, and the fourth September 10, 2002. While each report, respectively, indicates on its face sheet that it was prepared for Assurance Mortgage, Wells Fargo Bank, and First Interstate Bank (the August and September 2002 appraisals), none of them were in fact submitted to those clients.¹

3. Strable submitted the four "self contained" (all information is within the "four corners" of the report) appraisals to the Board of Real Estate Appraisers as part of his application for licensure to become a certified residential appraiser in Montana. Each of the appraisals contains numerous violations of the 2002 USPAP² standards, as demonstrated by the sworn testimony of VeerKamp and the review of Certified Appraiser Alan Hummel (Exhibit L2, which the licensee requested be admitted into evidence). The December 20, 2001 appraisal contains violations of USPAP standards 1-4(a), 1-4 (b)(ii) and (iii), 1-5(a), 1-5(c), 2-2 and 2-2(b)(ix). The March 5, 2002 appraisal contains violations of USPAP standards 1-2(d), 1-4(a), 1-5(c), 2-2 and 2-2(b)(iv) and (ix). The August 5, 2002 appraisal contains violations of USPAP standards 1-2(e)(I), 1-4(a), 1-5(c), 2-2 and 2-2(b)(iii) and (ix). The September 10, 2002 appraisal contains violations of USPAP standards 1-2(e)(I), 1-4(a), 1-5(c), 2-2 and 2-2(b)(iii) and (ix).

4. Some of the violations noted above are substantial violations of USPAP. By way of example, the September 10, 2002 appraisal fails to discuss how the market value of the property is arrived at. The market approach to valuation of this property

¹The parties stipulated to the existence of these facts at the time of hearing.

² "USPAP" stands for the Uniform Standards of Professional Appraisal Practice, the rules which regulate conduct of appraisers while conducting appraisals. These rules are promulgated by the Appraisal Standards Board of the Appraisal Foundation and govern the professional conduct of Montana appraisers by virtue of Mont. Code Ann. § 37-54-403. For purposes of the instant case, all references are to the 2001 and 2002 Edition of USPAP which govern the four appraisals pertinent to this case.

was nothing more than a mathematical averaging of the three comparables. There is no reconciliation of the comparables. There is no discussion of the appropriateness of the adjustments applied in utilizing the comparables nor is there any discussion relating to the accuracy of the data utilized. These USPAP violations, particularly the 1-5(c) and 2-2(b)(ix) violations, are not inconsequential as Seipel suggested in his testimony. These violations impact the very essence and purpose of the appraisal of this residential property and render the credibility of the appraisal highly suspect.

5. When Strabel prepared the four appraisals for submission to the Board, he had access to Seipel's "Alamode" computer program which prepared the reports with information inputted into the program. Strabel also had Seipel's tacit permission to utilize Seipel's electronic signature (which is contained in the program) when needed. The program incorporated Seipel's electronic signature on Page 2 of the Multi Purpose Supplemental Addendum, Page 2 of the Uniform Residential Appraisal Report, and on the FIRREA³/USPAP addendum contained in each of the four appraisals. Each of the appraisals contain Seipel's electronic signature on the FIRREA/USPAP addendum. By affixing his electronic signature to the FIRREA/USPAP as a supervising appraiser, Seipel was certifying that he (1) directly supervised the appraiser who prepared the report, (2) reviewed the report, (3) agreed with the statements and conclusions of the report, and (4) agreed to take full responsibility for the contents of the report.

6. At the time each of the appraisals was prepared, Seipel did not keep close tabs on Strabel. There was no formal mentoring program employed by the Board of Real Estate Appraisers at the time the appraisals were prepared.

7. Each of the reports also contains a transmittal letter which has on it the handwritten signature of Joe Seipel. The testimony of Veerkamp, as well as a comparison of the electronic signature, which Seipel acknowledged was his, to the handwritten signatures on the transmittal forms, convinces the hearing examiner that Seipel signed the transmittal letters.

³ FIRREA is an acronym for the Financial Institutions Reform, Recovery and Enforcement Act, congressional legislation passed in 1989 in response to the federal savings and loan failures that plagued the United States economy in the 1980's. Title XI of FIRREA provided for a real estate appraiser regulatory system involving the Federal Government, the states and The Appraisal Foundation.

8. Each of the reports, though not transmitted to the clients, was developed as a result of an agreement for valuation services that had been entered into between the appraiser and the client. This is demonstrated by the fact that each appraisal report contained a letter of transmittal accompanying the appraisal identifying a financial institution as the client and each appraisal involved physical inspection of a specific property. The inspection of each property was obviously undertaken at the behest of the financial institution requesting the appraisal.

9. The Department has neither proven nor asserted that there have been any other substantiated complaints of professional misconduct against Seipel.

III. CONCLUSIONS OF LAW⁴

1. The Board of Real Estate Appraisers has jurisdiction over this matter. Mont. Code Ann. § 37-54-105.

2. The Department bears the burden of proof to show by a preponderance of the evidence that the licensee committed an act of unprofessional conduct. Mont. Code Ann. § 37-3-311; *Ulrich v. State ex rel. Board of Funeral Service*, 1998 MT 196, 289 Mont. 407, 961 P.2d 126. The Department must also show that any sanction which it seeks is appropriate under the circumstances of the case.

3. Mont. Code Ann. § 39-54-403 requires licensed appraisers to “comply with generally accepted standards of professional appraisal practice” as evidenced by USPAP. In addition, Admin. R. Mont. 24.207.402 provides that the Board adopts by reference USPAP standards.

4. USPAP Standards Rule 1-5(c) requires an appraiser, when developing a real property appraisal, to “reconcile the quality and quantity of data available and analyzed within the approaches used and the applicability or suitability of the approaches used.”

5. USPAP Standards Rule 2-2(b)(ix) requires the appraisal report to be consistent with the intended use of the appraisal and also requires an appraiser to summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analysis opinions and conclusions contained in the reports. The content of a self-contained appraisal report must, at a minimum,

⁴Statements of fact in the conclusions of laws are incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

describe the information analyzed, the appraisal procedures followed, and the reasoning that supports the analysis, opinions, and conclusions.

6. Strabel's four appraisals at issue in this case contain numerous substantial violations of USPAP standards, not the least of which are Standards Rule 1-5(c) and Standards Rule 2-2(b)(ix). The Standards Rules 1-5(c) and 2-2(b)(ix) violations (such as those discussed above in Finding of Fact Paragraph 4) are substantial errors of omission that significantly affect the credibility of the appraisals.

7. By permitting his electronic signature to be utilized in the appraisal certification and by signing off on the transmittal letter, Seipel engaged in unprofessional conduct in violation of Mont. Code Ann. § 37-1-318(18) and Mont. Code Ann. § 37-54-403. Seipel's main defense to this action centers on his contention that a violation of USPAP can only occur where an "appraisal report" is transmitted to a client as contemplated under the USPAP definitions. He notes that Standard Rule 2 applies only to real property appraisal reports. Under the 2002 USPAP, the term "reports" is defined as a written or oral communication of an appraisal "that is transmitted to a client upon completion of an assignment." BSD contends, on the other hand, that Strable must have intended these appraisals to be reports within USPAP because he submitted them as part of a license application in conformity with Admin. R. Mont. 24.407.502.

8. The Department's assertion that Strable intended to present these appraisals to the Board as "reports" as that term is defined by USPAP is well taken. Strable presented them to the Board pursuant to Admin. R. Mont. 24.407.502(a), which requires an applicant to submit three appraisal reports of their choice for review by the Board. This is factually sufficient to show that the appraisals are what they purport to be: "reports" within the meaning of USPAP to which USPAP standards apply.

9. Moreover, even taken at face value, Seipel's argument would at most prohibit a finding of USPAP violations under Standard Rule 2. It would not provide a defense to the Standard Rule 1 violations for which Seipel, by signing the supervisor's certification on the FIRREA/USPAP addendum to the appraisals, accepted responsibility. The standards of USPAP have the force of law in Montana by virtue of Mont. Code Ann. § 37-54-403. One of the basic tenets of statutory interpretation is that the language of a statute is to be construed according to its plain meaning. If the language is clear and unambiguous, no further interpretation is necessary. *Rausch v. State Comp. Ins. Fund*, 2002 MT 203, ¶33, 311 Mont. 210, ¶ 33, 54 P.3d 25, ¶33.

By its plain language, nothing in Standard Rule 1 limits its application to “reports.” Rather, that rule applies to development of a real property “appraisal.” The comment to Standard 1 notes that the standards contained in that rule are “directed toward the substantive aspects of developing a competent appraisal of real property.” When the word “appraisal” is used as a noun in the 2002 Edition of USPAP, it means “the act or process of developing an opinion of value.” Rule 1 by its plain terms applies to appraisals and is not limited to the contents of reports. The Department has thus proven that Seipel has committed violations of USPAP Standard Rule 1 and, concomitantly, violations of Mont. Code Ann. §§ 37-1-316(18) and 37-54-403.

10. While Seipel asserts that USPAP is concerned solely with the content of reports, the plain language of Standard Rule 1 is not so limited, and it makes no sense to limit a state agency in that manner where the agency is charged with protecting the welfare of its citizens. Standard Rule 1 is addressed to development of appraisals resulting from an assignment. As Seipel notes, an assignment is defined as “a valuation service provided as a consequence of an agreement between an appraiser and a client.” “Valuation services” are services pertaining to aspects of property value. Valuation services not only include the report, they include the development of the appraisal. The USPAP preamble states that the purpose of the USPAP is to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers. The preamble goes on to state that appraisers must *both* develop and communicate their analysis to intended users in a manner that is meaningful and not misleading. Standard Rule 1 reinforces the reliability of appraisal by ensuring that the development facet of the appraisal is based on sound appraisal practices. For this reason, the plain language of that standard does not premise accountability on transmission of a report to a client.

Seipel’s reliance on *Kelly v. Carbonne*, 837 N.E. 2d 438 (Ill. App. 2005) in support of his argument is misplaced. In that case, the Illinois Court of Appeals was faced with the question of whether the appraiser had third party tort liability exposure to a plaintiff who, in purchasing a property, had relied on the appraiser’s valuation undertaken for the seller. The court stated that appraisal certification “did certify that it complied with USPAP, the purpose of which is, presumably, to encourage accurate appraisals.” 837 N.E. 2d at 442. That case makes no mention, other than in passing, to USPAP and does not stand for the proposition that the protections of USPAP apply only to the dissemination of reports.

11. Seipel’s contention that he did not knowingly permit Strable to use his electronic signature is not credible. Seipel signed the transmittal letters

accompanying the appraisals. He most certainly would not have done that had he discovered that Strable had utilized Seipel's electronic signature without Seipel's permission.

12. A regulatory board may impose any sanction provided for by Mont. Code Ann. Title 37, Chapter 1, upon a finding of unprofessional conduct. Mont. Code Ann. § 37-1-307(f). Among other things, Mont. Code Ann. § 37-1-312 provides that a regulatory board may impose probation with terms and levy a fine not to exceed \$1,000.00 per occurrence.

13. To determine which sanctions are appropriate, the regulatory board must first consider the sanctions necessary to protect the public. Only after this determination has been made can the Board then consider and include in the order requirements designed to rehabilitate the licensee. Mont. Code Ann. § 37-1-312(2).

14. The Board has asserted that revocation of Seipel's license is appropriate. The hearing examiner does not agree. It is apparent that Seipel's lack of oversight of Strable's preparation of the reports is the problem here. The Department has failed to present any evidence to show that Seipel's activity on his own appraisals (as opposed to those he is mentoring) has ever been the subject of a substantiated complaint. Moreover, Seipel's errors in oversight occurred at a time when there was no formal mentoring program employed by the State of Montana. While the hearing examiner recognizes that Seipel's certification on these appraisals stated that he accepted full responsibility for them, and thus the USPAP violations can be imputed to him, it is obvious that Seipel did not monitor Strable's four appraisals closely. The hearing examiner finds this to be a mitigating factor.

15. In addition, the hearing examiner finds as mitigation that there is no evidence that Seipel's license has otherwise been sanctioned since he began his licensed residential appraisal work in 1994. To revoke the licensee after an otherwise unblemished 10 year record under the facts of this case is too severe. The public can be adequately protected by imposing requirements of probation, remedial education, monitoring, and a fine.

IV. RECOMMENDED ORDER

Based on the foregoing, the hearing examiner recommends that the Board enter its order placing Seipel's license on one year probation with the terms that (1) Seipel at his own expense enroll in and successfully complete remedial education within six months of the final order issued in this matter, the type and amount of

education to be determined by the Board of Real Estate Appraisers, (2) that Seipel shall, at the frequency directed by the Board, submit appraisals which he completes to the Board or the Board's designee for review to ensure the appraisal or appraisals comport with USPAP standards, (3) Seipel shall at all times comport with the requirements of Mont. Code Ann. Title 31, Chapters 1 and 54 and Admin. R. Mont. Title 24, Chapter 207, and (4) Seipel shall pay a fine of \$500.00 within 30 days of the date of the entry of the final decision in this matter. In addition, it is recommended that in the event Seipel fails to comport with any of the terms of this order, that his license be suspended until such time as he complies with said terms.

DATED this 4th day of April, 2006.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT
GREGORY L. HANCHETT
Hearing Examiner

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.