

BEFORE THE BOARD OF REAL ESTATE APPRAISERS  
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-06-0300-REA REGARDING:

THE PROPOSED DISCIPLINARY	)	Case No. 113-2007
TREATMENT OF THE LICENSE OF	)	
ROBERT LETANG, Certified Residential	)	
Appraiser, License No. 767.	)	
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**PROPOSED FINDINGS OF FACT;  
CONCLUSIONS OF LAW; AND RECOMMENDED ORDER**

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**I. INTRODUCTION**

The Montana Department of Labor and Industry Business Standards Division (BSD) filed a complaint against the appraiser's license of Robert Letang alleging violations of Montana Code Annotated § 37-54-403(1) (which requires a licensee to comply with the USPAP requirements)<sup>1</sup> and Montana Code Annotated § 37-1-316(18) (which prohibits a licensee from engaging in unprofessional conduct). Hearing Examiner Gregory L. Hanchett held a contested case hearing in this matter on November 20, 2006. John Atkins, agency legal counsel, appeared on behalf of the Department of Labor and Industry. Patrick Melby, attorney at law, appeared on behalf of Letang.

Letang, a Montana certified residential appraiser, and Billie VeerKamp, a Montana certified general appraiser and Board investigator, testified under oath in this matter. Immediately prior to hearing, the parties stipulated to certain facts which are identified and discussed below in the Findings of Fact. In addition, BSD's Exhibits 1 through 4 and Licensee's Exhibits A through E were admitted by stipulation of the

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<sup>1</sup> "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 2005 Edition of USPAP which governs the appraisal at issue in this case.

parties. Based on the evidence adduced at the hearing as well as the arguments of counsel, the following findings of fact, conclusions of law, and recommended decision are made.

## **II. FINDINGS OF FACT**

1. At all times pertinent to this case, Letang has held a certified residential appraiser's license issued by the State of Montana. Letang was admitted to practice by reciprocity in Montana in December, 2004. He obtained reciprocity because he had been licensed in the state of Colorado. He did not, however, actively practice in Colorado.

2. The appraisal at issue in this case was developed in March, 2005, just five months after Letang first became licensed to practice in Montana. Letang completed a limited appraisal for his client, Rocky Mountain Mortgage, of a property located at 343 Grey Drake in Big Sky, Montana (the subject property). Rocky Mountain Mortgage was the intended user of the appraisal and the purpose of the appraisal was to permit Rocky Mountain to determine whether to approve a loan for refinancing the subject property.

3. In conducting the appraisal of the subject property, Letang used two properties located in the Yellowstone Club (an exclusive residential development located in Big Sky) as comparables. Letang improperly utilized the comparable properties because those properties had not actually sold (closed escrow) when the licensee utilized them and had not closed within the preceding 36 months. Letang used the list prices (the price the comparables had been listed for sale on the market), not the sales price of the properties. Letang never verified that the comparables were closed sales and never disclosed to his client or the intended user that the comparables were not closed sales.

4. In addition, Letang indicated in the comment addendum to the Uniform Residential Appraisal Report (URAR) that "it is assumed that the effective age, condition, and quality of construction of the comparables observed during the exterior inspection conducted is reflective of conditions on the interior of the comparable sales chosen" (Comment Addendum, General Sales Comparison Comments, URAR). In fact, neither the licensee nor anyone on his behalf had completed an exterior inspection of the comparables. Letang did not disclose in the URAR that he had not conducted exterior inspections of the comparables. And by not completing exterior inspections of the comparables but representing in the report that he had, Letang stated in his report a scope of work that he did not complete.

5. Letang arrived at a site value (the value of the land without improvements) for the subject property of \$700,000. He provided no analysis or explanation of data to explain how he arrived at that value.

6. By failing to utilize closed sales as comparables and by stating that he had completed exterior inspections of the properties when in fact he had not, Letang created an appraisal that was misleading.

7. Letang failed to correctly verify, analyze and reconcile comparable sales.

8. The hearing examiner finds that certain mitigating factors present themselves in this case. Letang conceded in his initial response to this complaint that he violated USPAP standards. At the hearing in this matter, Letang reiterated that he had violated USPAP and candidly admitted that everything “cascaded” from the initial error in utilizing sales that were not closed. Also, at the time of the appraisal at issue in this case, Letang had only effectively been practicing real estate appraisal for a scant five months.

### III. CONCLUSIONS OF LAW<sup>2</sup>

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. Montana licensed appraisers must “comply with generally accepted standards of professional appraisal practice” as evidenced by USPAP. Mont. Code Ann. § 39-54-403(1). In addition, Admin. R. Mont. 24.207.402 provides that the Board adopts by reference USPAP standards.

4. USPAP Standards Rule 1-2(f) requires an appraiser to identify the scope of work necessary to complete the assignment. USPAP Standards Rule 1-4(a) requires appraisers, when implementing a sales comparison approach, to analyze such comparable sales data as are available to indicate a value conclusion. USPAP Standard 1-4(b)(I) requires appraisers, when utilizing a cost approach to valuation, to “develop an opinion of site value by an appropriate appraisal method or technique; . . .”.

5. USPAP Standards Rule 2 and 2-1(a) collectively require a licensee to set forth an appraisal clearly and accurately in a manner that is not misleading. USPAP Standards Rule 2-1(c) requires a licensee to clearly and accurately disclose all assumptions, hypothetical conditions, and limiting conditions used in an assignment. USPAP Standards Rule 2-2(b)(vii) requires a licensee to summarize sufficient information to disclose to the client and any intended users of the appraisal the scope of work used to develop the appraisal. USPAP Standards Rule 2-2(b)(ix) requires that

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

an appraisal report summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analysis opinions and conclusions contained in the reports.

6. The USPAP Ethics Rule, Conduct section, requires an appraiser to perform assignments ethically and competently, in accordance with USPAP. The rule specifically forbids an appraiser from communicating assignment results in a misleading or fraudulent manner.

7. Letang violated USPAP Standards Rules 1-2(f) and 2-2(b)(vii) by stating in his appraisal that he completed an exterior inspection of the comparable properties when he had not in fact done so.

8. Letang violated USPAP Standards Rules 1-4(a) and 2-2(b)(ix) by failing to correctly verify, analyze and reconcile the comparable properties he utilized. The comparables were reported as closed sales when in fact the sales on those properties had not yet closed escrow.

9. Letang violated USPAP Standard Rule 1-4(b)(I) by providing a subject property land value of \$700,000.00 without providing any data or analysis upon which he arrived at the value opinion.

10. Letang violated USPAP Standard Rules 2 and 2-1 by identifying the two comparables as closed sales when neither comparable had sold. He also violated Standards Rules 2-1(a) and 2-1(c) by falsely identifying assumptions about the effective age, condition and quality of construction of the comparables "observed during the exterior inspection". Letang did not undertake an exterior inspection of the comparables and knew or should have known that he had no basis to make that comment.

11. Letang violated USPAP Ethics Rule, Conduct section by utilizing comparables which were not closed sales while identifying them as such and by indicating that he had completed an exterior inspection of the comparables when he had not done so.

12. By failing to comport with USPAP requirements, Letang committed unprofessional conduct. Mont. Code Ann. § 37-1-316(18) and Mont. Code Ann. § 37-54-403(1).

13. 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.

14. To determine which sanctions are appropriate, a regulatory board must first consider the sanctions necessary to protect the public. Only after this

determination has been made can a board then consider and include in the order requirements designed to rehabilitate the licensee. Mont. Code Ann. § 37-1-312(2).

15. In this manner, the hearing examiner finds that the public can be adequately protected and Letang rehabilitated by imposition of probation upon the license with terms and the imposition of a fine of \$500.00. In light of Letang's relative inexperience at the time of conducting the appraisal in this case, as well as BSD's concurrence at the hearing that the infractions were not borne of a desire to engage in fraudulent conduct but were simply errors that made the appraisal misleading, a \$500.00 fine is appropriate.

#### **IV. RECOMMENDED ORDER**

Based on the foregoing, the hearing examiner recommends that the Board of Real Estate Appraisers enter its order placing Letang's license on probation for a period of one year with the terms that:

(1) Letang at his own expense shall attend and successfully complete and pass a current fifteen (15) hour course of instruction on USPAP and a course of instruction consisting of at least thirty (30) hours on the principles and procedures of professional appraisal practice. Both courses of instruction must be sponsored and presented by a national accrediting institution such as the Appraisal Institute. No later than 180 days after entry of the final order in this matter, Letang shall provide documentary evidence to the Board that demonstrates to the satisfaction of the Board that Letang has successfully completed both courses of instruction.

(2) Letang shall, within 90 days of the final order in this matter and at 90 day intervals thereafter during the term of his license probation, submit to the Board a copy of Letang's appraisal log for the preceding three (3) months. The Board may then order Letang to provide a copy of any or all of the appraisals contained within the logs to the Board for its or its designated agent's review. If so ordered, Letang shall at his own expense and within five business days provide any such appraisal or appraisals requested by the Board.

(3) Letang 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.

(4) Letang shall pay a fine of \$500.00 within 30 days of the date of the entry of the final order in this matter.

(5) In the event Letang fails to comport with any of the terms of this order, his license be suspended until such time as he complies with said terms.

DATED this 21st day of December, 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.