

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

IN THE MATTER OF:)	CASE NO. 04-41
)	DIA NO. 04DOCRE006
MARK S. WALLACE)	
(CR015809 Surrendered))	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
RESPONDENT)	DECISION AND ORDER

On July 12, 2004, the Iowa Real Estate Appraiser Examining Board (Board) found probable cause to file a Statement of Charges against Mark S. Wallace (Respondent). The Statement of Charges alleged that the Respondent violated a Consent Order imposing discipline, in violation of Iowa Code section 272C.3(2)(a)(2003) and engaged in a practice harmful or detrimental to the public, in violation of Iowa Code section 272.10(3)(2003).

A prehearing conference was held by telephone conference call on August 20, 2004 at 1:30 p.m. The hearing was held before the Board on August 24, 2004 at 9:35 a.m. The Respondent appeared 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: Karen Oberman, Appraiser, Vice-Chairperson; Luther C. Gammon, Appraiser; Richard DeHeer, 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 closed to the public at the election of the Respondent, pursuant to Iowa Code section 272C.6(1)(2003) 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)(2003) 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, the testimony of the witness, and the following exhibits:

State Exhibit 1:	Statement of Charges, Notice of Hearing, Sheriff's Service
State Exhibit 2:	Consent Order and charges, Case No. 01-13
State Exhibit 3:	Charges, Case Nos. 03-05, 03-06, 03-27, 03-35, 03-38, 03-44
State Exhibit 4:	Verification Regarding Notice of Ceasing and Desisting of Real Estate Appraiser Work
State Exhibit 5:	Consent Order, Case Nos. 03-05, 03-06, 03-27, 03-35, 03-38, 03-44
State Exhibit 6:	Complaint
State Exhibit 7:	Appraisal

FINDINGS OF FACT

1. On June 6, 1993, the Respondent was issued Certificate No. CR01539 to practice as a certified residential real estate appraiser in the state of Iowa. (State Exhibit 1)

2. The Respondent has a recent history of very serious disciplinary action by this Board, which culminated in the surrender of his appraiser certificate on February 12, 2004.

a. On February 3, 2003, the Board charged the Respondent with repeatedly failing to adhere to appraisal standards; failing to exercise reasonable diligence; and negligence, careless acts and omissions or incompetence in the development, preparation, and communication of eight appraisals in 2002. The Board also alleged that the Respondent consistently failed to conform to the Ethics Rule Conduct and Management sections by not performing the assignment with impartiality, objectivity and independence and by accepting an assignment that includes the reporting of predetermined opinions and conclusions.

The Board and the Respondent entered into a Consent Order on May 20, 2003. The Consent Order required the Respondent to complete continuing education [a 15-hour tested USPAP course and a 7-hour course on the three approaches to value] in addition to the continuing education normally required for renewal. The

Consent Order further required the Respondent to submit all appraisals to mandatory pre-release desk review by an appraiser approved by the Board. (State Exhibit 2)

b. On October 23, 2003, the Respondent was charged with numerous violations, including failing to demonstrate minimum qualifications for continued licensure due to his failure to complete any continuing education in the prior biennial period. The Respondent was also charged with violating the May 20, 2003 Consent Order by failing to complete the additional required continuing education courses and by failing to submit all of his appraisals for pre-release desk review. The Respondent was also charged with repeatedly failing to adhere to appraisal standards in the development and communication of appraisals and with engaging in a practice harmful or detrimental to the public by making false, misleading, or deceptive representations in his preparation and communication of appraisals; by failing to adhere to USPAP Ethics and Competency Rules; by failing to exercise reasonable diligence, and committing careless acts and demonstrating negligence or incompetence in the development, preparation, and communication of appraisals. (State Exhibit 3)

To encourage the Board to agree to a continuance of the hearing, the Respondent consented to cease practicing as a certified appraiser in December 2003. (State Exhibit 4) On February 12, 2004, the Board and the Respondent entered into a new Consent Order. The Respondent voluntarily surrendered his certification and agreed to comply with 193 IAC 7.30(3) regarding client notification of the voluntary surrender. The Respondent was assessed a \$1,000 civil penalty: \$500 to be paid by April 15, 2004 and the remaining \$500 to be paid with any application for reinstatement. The Consent Order imposed strict terms for any potential future reinstatement, requiring that the Respondent wait at least six months before applying for reinstatement and that he successfully pass the pre-certification examination, repeat all 120 hours of education, and then only be reinstated as an associate appraiser. (State Exhibit 5)

3. On July 6, 2004, a representative of Fidelity Hansen Quality sent the Board a copy of an appraisal completed by the Respondent and signed by him on June 15, 2004 as a certified appraiser. (State Exhibits 6, 7) The Respondent admits that he prepared the appraisal report and signed it as a certified appraiser, even though his certification had been voluntarily surrendered, and he was not authorized to represent himself as a certified real estate appraiser. In response to questions from

the Board, the Respondent stated that he *believes* that this is the only certified appraisal that he prepared while his license was suspended. The only explanation offered by the Respondent was that he needed the money because he owed two car payments and a mortgage payment at the time he was contacted to prepare the appraisal. In response to questions concerning his notification of clients of his voluntary surrender, the Respondent claimed that he did notify his existing clients, either in person or in writing, but admits that he failed to provide the Board with copies of the notice he provided to his clients. (Testimony of Respondent)

4. The Respondent failed to timely pay the \$500 civil penalty that was due by April 15, 2004. When the Respondent did submit a \$500 check, the bank returned the check due to insufficient funds. The Respondent concedes that he has not yet paid the \$500 civil penalty required by the February 12, 2004 Consent Order. He told the Board that although he had financial problems, he thought that he had sufficient funds in his account to cover the check at the time that he sent it to the Board. (State Exhibit 1; Testimony of Respondent)

CONCLUSIONS OF LAW

I. The Violations

Iowa Code section 272C.3(2)(a)(2003) provides in relevant part:

272C.3 Authority of licensing boards.

Each licensing board may impose one or more of the following as licensee discipline:

a. Revoke a license, or suspend a license either until further order of the board or for a specified period,...upon the failure of the licensee to comply with a decision of the board imposing licensee discipline.

The preponderance of the evidence established that the Respondent violated the terms of the February 12, 2004 Consent Order when he signed an appraisal report as a certified appraiser on June 15, 2004. The Respondent surrendered his certification on February 12, 2004 and was no longer authorized to sign an appraisal as a certified appraiser. In addition, it is noted that the Respondent failed to provide the Board with copies of the notices he sent to clients informing them that he had voluntarily surrendered his license, in violation of the terms of the Consent Order and 193 IAC 7.30(3). Finally, the

Respondent failed to pay the \$500 civil penalty, as required by the Consent Order. The Respondent has violated Iowa Code section 272C.3(2)(a)(2003).

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.

See 193F IAC 7.2(8) (A violation of Iowa Code chapter 272C shall be grounds for discipline).

The preponderance of the evidence established that the Respondent engaged in a practice harmful and detrimental to the public by misrepresenting himself as a certified appraiser when he signed an appraisal report on June 15, 2004. The financial community relies on the statements and representations in appraisal reports to make decisions whether to extend loans to customers. Many segments of the public are potentially harmed when an appraiser misrepresents his certification status on an appraisal report, including the parties to the real estate transaction and the financial community extending loans for the purchase of the property. The Respondent has violated Iowa Code section 272C.10(3)(2003).

II. Sanction

In a period of eighteen months, the Board has filed three Statements of Charges against the Respondent, all of which alleged extremely serious violations of the Respondent's professional and ethical duties as certified appraiser. In this same time period, the Board has entered into two Consent Orders with the Respondent, providing him with ample opportunity for a second and third chance to demonstrate that he is both willing and able to practice as a certified appraiser in accordance with professional and ethical standards. The Respondent quickly and substantially violated the terms of both Consent Orders and also committed further violations. The Respondent's most recent violation was economically motivated and willful, demonstrating

a total lack of respect for the Board's authority and the professional obligations of a certified appraiser. By his actions over the past eighteen months, the Respondent has ~~forfeited any future interest in returning to the practice as a certified real estate appraiser.~~

The Board's rules allow the Board to impose a civil penalty not to exceed \$1000 per violation. 193F IAC 8.14(3). The rules also set out a number of factors to be considered by the Board in determining whether to impose a civil penalty and in determining its amount. Nearly all of the factors are relevant to this case and weigh in favor of a maximum penalty:

- ...
2. Whether the amount imposed will be a substantial economic deterrent to the violation;
 3. The circumstances leading to the violation;
 4. The severity of the violation and the risk of harm to the public;
 5. The economic benefits gained by the appraiser as a result of the violation;
 6. The interest of the public;
 7. Evidence of reform or remedial action;
 8. Time elapsed since the violation occurred;
 9. Whether the violation is a repeat offense following a prior cautionary letter, disciplinary order, or other notice of the nature of the infraction;
 10. The clarity of the issue involved;
 11. Whether the violation was willful and intentional;
 12. Whether the appraiser acted in bad faith;
 13. The extent to which the appraiser cooperated with the board;
 14. Whether the appraiser practiced appraising with a lapsed, suspended or revoked certificate or registration.

193F IAC 8.15. Based on these factors, the Board has determined that in addition to revocation, the Respondent's violation merits the maximum civil penalty permitted under Board rules.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the Iowa Real Estate Appraiser Certificate No. CR01539, issued to Mark S. Wallace, is hereby

permanently REVOKED, effective immediately upon service of this Decision and Order.


~~IT IS FURTHER ORDERED that the Respondent shall pay a civil penalty of \$1,000 within thirty (30) days of the 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 file copies of the notice sent to clients with the Board.

The Respondent is hereby WARNED that if he prepares and signs any appraisals purporting to be a certified real estate appraiser, an enforcement action will be filed in district court.

Dated this 30th day of August, 2004.


Karen Oberman, Appraiser
Vice-Chairperson
Iowa Real Estate Appraiser Examining Board

cc: Mark S. Wallace
4920 Hawthorne Drive
West Des Moines, IA 50265
(CERTIFIED)

Pamela Griebel
Assistant Attorney General
Hoover State Office Building, 2nd Floor
Des Moines, Iowa 50319

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

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

State of Iowa ex rel., Iowa Real Estate)
Appraiser Examining Board,)
99AG27211,)
)
Plaintiff,)
)
v.)
)
Mark S. Wallace,)
)
Defendant.)

Equity No. CE50659

Final Decree by Consent

FILED
POLK COUNTY I
05 MAR 24 PM 4:25
CLERK DISTRICT COURT

NOW on this 24th day of March, 2005, upon the State's Petition for Temporary and Permanent Injunctive Relief and Request for Expedited Hearing, the Court having been advised that the parties now agree to the entry of a Final Decree by Consent, **FINDS:**

1. The Court has jurisdiction of the parties and of the subject matter of this case.
2. The State of Iowa ex rel. Iowa Real Estate Appraiser Examining Board ("Board") filed its Petition for Temporary and Permanent Injunctive Relief on March 7, 2005.
3. Defendant Mark S. Wallace was duly served with the Petition, Original Notice, and Order for Hearing on State's Petition for Temporary Injunctive Relief, on March 11, 2005.
4. Hearing on the Board's request for temporary injunctive relief is set for March 28, 2005, at 8:15 a.m.
5. The parties have now agreed to resolve all issues in the pending case by consent.
6. Wallace was first issued a certificate as an Iowa certified real estate appraiser on June 6, 1993.
7. On February 12, 2004, Wallace voluntarily surrendered his certificate to the Board, and agreed to restrictive terms governing any future application to reinstate.

8. Following contested case hearing, the Board subsequently permanently revoked Wallace's certificate on August 30, 2004.

9. From and after the date Wallace was no longer authorized to practice real estate appraising in Iowa as a certified real estate appraiser, he completed at least 60 appraisals in Iowa and submitted the appraisal reports to lending organizations using, without authorization, the electronic signature of Jonathan E. Nelson, an Iowa certified real estate appraiser.

10. Without Nelson's knowledge or consent, Wallace instructed lending organizations to issue checks in the name of Wallace as payment for the appraisals Wallace submitted using Nelson's electronic signature and certification number.

11. Wallace repeatedly violated Iowa Code chapter 543D, and in particular Iowa Code sections 543D.3 and 15 (2003, 2005), by practicing real estate appraising in Iowa, while falsely representing himself as a certified appraiser through the use of another's certification number and electronic signature.

12. Wallace now agrees to the relief requested in the State's Petition, and understands that a violation of this Final Decree shall subject him to an order to show cause why he should not be held in contempt of court.

IT IS THEREFORE ORDERED AND DECREED:

- A. Wallace shall cease practicing as a certified real estate appraiser in Iowa.
- B. Wallace shall cease using the certification, certification number, electronic signature, or other evidence of certification of persons who are certified as real estate appraisers in Iowa.
- C. Wallace shall otherwise cease violating any provision of Iowa Code chapter 543D.

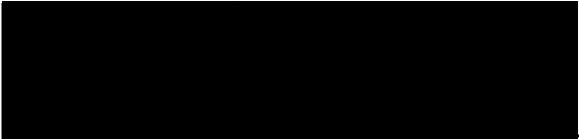
D. Wallace is assessed the costs of this action.

E. The Court shall retain jurisdiction of this matter to resolve any issues which may arise

in the future, including the issuance, if warranted, of an order to show cause why Wallace should not be held in contempt of court in the event of a future violation.


Judge, Fifth Judicial District of Iowa
D. J. STOVALL, JUDGE

Approved as to form and content:


State of Iowa ex rel Iowa Real Estate
Appraiser Examining Board, by Assistant
Attorney General Pamela Griebel

3/24/05
Date


Mark S. Wallace

3/21/05
Date

Copies to:

Pamela Griebel
Assistant Attorney General
Department of Justice
Hoover Building, 2nd Floor
Des Moines, Iowa 50319

Mark S. Wallace
4920 Hawthorne Dr.
West Des Moines, IA 50265