

BEFORE THE WEST VIRGINIA REAL ESTATE
APPRAISER LICENSING AND CERTIFICATION BOARD

IN THE MATTER OF:

ARCHIE BRACKENS,
Licensed Certified General
Appraiser No. 078.



Complaint No. 04-011

CONSENT DECREE

Now comes Respondent, Archie Brackens (hereinafter "Respondent"), and the West Virginia Real Estate Appraiser Licensing and Certification Board (hereinafter "Board"), by Sharron L. Knotts, its Executive Director, and by its counsel, Gregory G. Skinner, Assistant Attorney General, for the purpose of resolving Complaint No. 04-011 filed against Respondent. As reflected in this Consent Decree, the parties have reached an agreement in which Respondent hereby agrees and stipulates to the Findings of Fact and Conclusions of Law set forth in the instant Consent Decree concerning the proper disposition of this matter, and the Board, having approved such agreement, does hereby find and Order as follows:

FINDINGS OF FACT

1. The Board is a state entity created by W. Va. Code § 30-38-1, *et seq.*, and is empowered to regulate, among other things, the conduct of licensed residential appraisers.
2. Respondent is a state licensed certified general real estate appraiser licensed by the Board, holding license number 078.
3. On June 13, 1970, Respondent began employment with the West Virginia Department of Highways (hereinafter "WVDOH").

4. Respondent retired from the WVDOH on October 21, 1999.
5. During his employment with WVDOH, Respondent's job duties included appraising property on behalf of the WVDOH for purposes of eminent domain.
6. Before Respondent retired from WVDOH, Respondent was the review appraiser for a certain property situate in Nicholas County, West Virginia (hereinafter "Property"), owned by Joseph Morris.
7. The Property had been appraised by independent appraiser Tom Holden, and Respondent served as the review appraiser.
8. Holden appraised the Property at or around \$143,000.00.
9. Morris claimed the appraisal performed by Holden was below the actual fair market value of the Property.
10. Ultimately, in 1999, the WVDOH filed an eminent domain civil action in the Circuit Court of Nicholas County against Morris.
11. On October 30, 2001, a jury trial was conducted in the above-referenced matter, styled Civil Action No. 99-C-168, before the Circuit Court of Nicholas County.
12. Shortly before the trial began, Holden passed away.
13. As a result, the WVDOH hired Respondent as an independent contractor to testify to the value of the Property at the trial.
14. Instead of relying on the opinion of Holden, Respondent formulated his own, separate appraisal value opinion on October 29, 2001, the day before the trial began.
15. On October 29, 2001, Respondent appraised the value of the Property at \$103,500.00.

16. Respondent did not prepare a written report of the appraisal of the Property he valued at \$103,500.00.

17. Respondent did not provide any substantive reason for devaluing the appraisal of Holden.

18. Respondent significantly and arbitrarily undervalued the value of the Property.

19. Respondent failed to produce, complete or maintain a workfile in regard to the appraisal of the Property.

20. The WVDOH eventually settled the case, and determined that the value of the Property was \$187,500.00, of which amount the WVDOH paid to Morris.

CONCLUSIONS OF LAW

1. Pursuant to Article 38 of Chapter 30 of the West Virginia Code, the Board is the State entity vested with the power to regulate real estate appraisers in the State of West Virginia.

2. Although W. Va. Code § 30-38-1(c) states that W. Va. Code § 30-1-1, *et seq.* does not apply to, among others not relevant herein, employees of the State of West Virginia where such employees are performing their official duties, such exemption does not apply to individuals who provide appraisal services on behalf of the State of West Virginia as an independent contractor. W. Va. Code § 30-38-1(c).

3. In the instant matter, Respondent had previously retired from the WVDOH, was an independent contractor on behalf of the WVDOH, hired for the explicit purpose of rendering value of the Property and testifying at trial as an expert witness in regard to the same, and therefore was not excluded from Board regulation and authority by W. Va. Code § 30-38-1(c).

4. Pursuant to West Virginia Code § 30-38-12(a)(7), violation of any section of Article 38, Chapter 30 of the Code of West Virginia constitutes grounds for disciplinary action against a licensee.

5. West Virginia Code § 30-38-17 provides, in pertinent part, that “[e]ach real estate appraiser licensed or certified under this act shall comply with generally accepted standards of professional appraisal practice and generally accepted ethical rules to be observed by a real estate appraiser. Generally accepted standards of professional appraisal practice are currently evidenced by the uniform standards of professional appraisal practice promulgated by the appraisal foundation.”

6. Pursuant to the Uniform Standards of Professional Appraisal Practice (hereinafter “USPAP”), Standards Rule 2-1, in pertinent part, from which departure is not permitted, “[e]ach written or oral real property appraisal report must: (a) clearly and accurately set forth the appraisal in a manner that will not be misleading; (b) contain sufficient information to enable the intended users of the appraisal to understand the report properly; and (c) clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions used in the assignment.

7. Respondent unlawfully failed to clearly and accurately set forth Respondent’s oral appraisal report of Property in a manner that was not misleading, by and through Respondent’s failure to provide justification for devaluing Holden’s appraisal report, in violation of W. Va. Code §§ 30-38-12(a)(7), -17 and USPAP Standards Rule 2-1(a).

8. Respondent unlawfully failed to provide sufficient information in Respondent’s oral appraisal report of Property to intend a user of the appraisal to understand the report properly, in that Respondent failed to provide any substantive information relating to the

report whatsoever, in violation of W. Va. Code §§ 30-38-12(a)(7), -17 and USPAP Standards Rule 2-1(b).

9. Respondent unlawfully failed to clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions used in Respondent's oral appraisal of Property, in that Respondent failed to make any disclosures whatsoever concerning the appraisal of Property, in violation of W. Va. Code §§ 30-38-12(a)(7), -17 and USPAP Standards Rule 2-1(c).

10. Pursuant to USPAP Standards Rule 2-4, "An oral real property appraisal report must, at a minimum, address the substantive matters set forth in Standards Rule 2-2(b)."

11. Pursuant to USPAP Standards Rule 2-2(b), "[t]he content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:

(i) state the identity of the client and any intended users, by name or type;

(ii) state the intended use of the appraisal;

(iii) summarize information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment;

(iv) state the real property interest appraised;

(v) state the purpose of the appraisal, including the type and definition of value and its source;

(vi) state the effective date of the appraisal and the date of the report;

(vii) summarize sufficient information to disclose to the client and any intended users of the appraisal the scope of work used to develop the appraisal;

(viii) state all assumptions, hypothetical conditions, and limiting conditions that affected the analyses, opinions, and conclusions;

(ix) summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions;

(x) state the use of the real estate existing as of the date of value and the use of the real estate reflected in the appraisal; and, reporting an opinion of market value, summarize the support and rationale for the appraisers opinion of the highest and best use of the real estate;

(xi) state and explain any permitted departures from specific requirements of STANDARD 1 and the reason for excluding any of the usual valuation approaches; and

(xii) include a signed certification in accordance with Standards Rule 2-3.

12. Respondent unlawfully failed to address all substantive matters in the rendering of Respondent's appraisal, in that Respondent failed to provide any of the information as required immediately above, in violation of W. Va. Code §§ 30-38-12(a)(7), -17, USPAP Standards Rule 2-4, and USPAP Standards 2-2(b)(I), 2-2(b)(ii), 2-2(b)(iii), 2-2(b)(iv), 2-2(b)(v), 2-2(b)(vi), 2-2(b)(vii), 2-2(b)(viii), 2-2(b)(ix), 2-2(b)(x), 2-2(b)(xi), and 2-2(b)(xii).

13. West Virginia Code § 30-38-12(a)(11) provides that "[f]ailing or refusing without good cause to exercise reasonable diligence, or negligence or incompetence, in developing an appraisal, preparing an appraisal report, or communicating an appraisal," is grounds for disciplinary action, including, but not limited to, revocation or suspension of license.

14. Respondent unlawfully failed without good cause to exercise reasonable diligence and competence to the preparation and communication of Respondent's appraisal of Property, in that Respondent failed to provide a legitimate or substantive basis for the rendering of value of Property, in violation of W. Va. Code § 30-38-12(a)(11).

CONSENT

Respondent, both in his individual capacity and as a licensed certified general real estate appraiser, by the execution hereof, agrees to the following:

1. Respondent has had the opportunity to consult with counsel and executes this Consent Decree voluntarily, freely, without compulsion or duress and mindful that it has legal consequences. No person or entity has made any promise or given any inducement whatsoever to encourage Respondent to make this settlement other than as set forth herein. Respondent acknowledges that he is aware that he may pursue this matter through appropriate administrative and/or court proceedings, and is aware of his legal rights regarding this matter, but intelligently and voluntarily waives such rights.

2. Respondent consents to the entry of the following Order affecting his conduct as a state licensed certified general real estate appraiser.

ORDER

On the basis of the foregoing, the Board hereby ORDERS as follows:

1. Respondent, in his capacity as a state licensed certified general appraiser, shall in the future comply with all applicable laws and regulations, as promulgated and set forth by the Real Estate Appraiser Licensing and Certification Act, W. Va. Code § 38-1-1, *et seq.*, and the Uniform Standards of Professional Appraisal Practice.

2. Respondent's license shall be placed on probation for a period of one (1) year, where such probation shall begin on the date of execution of the instant Consent Decree.

3. Respondent, within six (6) months of the date of entry of this order, shall successfully pass, complete, and provide to the Board all proper documentation reflecting

the same, a minimum fourteen (14) hour course approved by the Board related to the Uniform Standards of Professional Appraisal Practice.

4. Respondent, within thirty (30) days of the date of entry of this order, shall pay to the Board the amount of two thousand seven hundred and eighty five dollars (\$2,785.00). Such payment by Respondent shall represent the costs incurred by the Board associated with the investigation and prosecution of the instant complaint, and the subsequent reimbursement to the Board thereof.

5. In the event Respondent violates the terms of this Consent Decree, and, subsequent to notice and hearing, the Board so finds a violation, then, in such event, the events giving rise to this Consent Decree may be considered in the determination of the kind and extent of sanctions to be subsequently imposed.

AGREED TO BY:

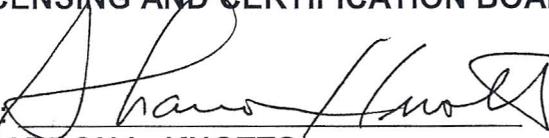

ARCHIE BRACKENS, Individually

5-25-05
DATE

ENTERED into the records of the Board this:

1st day of June, 2005.

**WEST VIRGINIA REAL ESTATE APPRAISER
LICENSING AND CERTIFICATION BOARD**

By: 
SHARRON L. KNOTTS
EXECUTIVE DIRECTOR

June 1, 2005
DATE