

BEFORE THE WEST VIRGINIA REAL ESTATE
APPRAISER LICENSING AND CERTIFICATION BOARD

IN THE MATTER OF:

KEITH MARTIN,
Certified General
Appraiser No. 0184.



CONSENT DECREE

Now comes Respondent, Keith Martin (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 Board Complaint Number 04-002, 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 0184.
3. On or around November 11, 2001, Respondent performed an appraisal of certain property owned by Nathan Beachler, in Franklin, West Virginia.

4. In particular, Respondent appraised the above-referenced property for purposes of determining the value of the part taken and damage to the residue of the subject property in an eminent domain acquisition by the West Virginia Department of Transportation.

5. Respondent determined the subject property had a "Market Value of the Damage to Residue" of \$191,000.00, as of September 9, 2001.

6. In such appraisal, Respondent utilized three (3) comparables that were improved properties. Two such comparables included improvements that were utilized subsequent to the transfers, including the building currently occupied and utilized by the Pendleton County Chamber of Commerce. In the appraisal, Respondent failed to indicate the methodology of the adjustments made for the contributory value of the improvements found upon the comparable properties.

7. In such appraisal, Respondent utilized comparable properties that were not sufficiently comparable to determine the value of the subject property.

8. It was incorrect for Respondent to include a value for "lost rent" to the value of the affected property in Respondent's development of the income approach.

9. Respondent did not justify or document the damages that Respondent claimed the property owner suffered as a result of the eminent domain action in regard to the subject property.

10. Respondent improperly concluded a value of \$191,000.00 for the subject property. Such amount is over-valued.

11. Though Respondent signed the appraisal, he failed to provide and properly sign a proper certification page on the appraisal.

12. Respondent improperly named the appraisal, and did not document that the appraisal was a self-contained appraisal.

13. Respondent insufficiently stated the intended use of the appraisal, in that Respondent failed to adequately document that the intended use of the appraisal was for purposes of determining the value of the property taken and damages to resolve, if any, as a result of an eminent domain proceeding.

14. Respondent identified the intended user as Attorney Laura Evick, when the intended user was Nathan Beachler, the client of the attorney.

CONCLUSIONS OF LAW

1. 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, revocation or suspension of license.

2. West Virginia Code § 30-38-12(a)(7) provides that "[v]iolation of any section of this article, or any rule of the board" is grounds for disciplinary action, including, but not limited to, revocation or suspension of license.

3. 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 . . ." the Uniform Standards of Professional Appraisal Practice (hereinafter "USPAP").

4. Pursuant to USPAP, Competency Rule, "[p]rior to accepting an assignment or entering into an agreement to perform any assignment, an appraiser must properly identify the problem to be addressed and have the knowledge and experience to complete the assignment competently; or alternatively, must: (1) disclose the lack of knowledge

and/or experience to the client before accepting the assignment; (2) take all steps necessary or appropriate to complete the assignment competently; and (3) describe the lack of knowledge and/or experience and the steps taken to complete the assignment competently in the report."

5. Pursuant to USPAP, Standards Rule 1-1(a), "[i]n developing a real property appraisal, an appraiser must . . . be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal."

6. Pursuant to USPAP, Standards Rule 1-1(b), "[i]n developing a real property appraisal, an appraiser must . . . not commit a substantial error of omission or commission that significantly affects an appraisal."

7. "In developing a real property appraisal, an appraiser must . . . not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affect the credibility of those results." USPAP, Standards Rule 1-1(c).

8. Pursuant to USPAP, Standards Rule 1-2(a), "[i]n developing a real property appraisal, and appraiser must . . . identify the client and other intended users."

9. Pursuant to USPAP, Standards Rule 1-2(b), "[i]n developing a real property appraisal, and appraiser must . . . identify the intended use of the appraiser's opinions and conclusions."

10. Pursuant to USPAP, Standards Rule 1-2(c), "[i]n developing a real property appraisal, and appraiser must . . . identify the purpose of the assignment"

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11. Pursuant to USPAP, Standards Rule 1-4(b)(i), "[w]hen a cost approach is applicable, an appraiser must develop an opinion of site value by an appropriate appraisal method or technique."

12. Pursuant to USPAP, Standards Rule 1-4(c), "[w]hen an income approach is applicable, an appraiser must: (i) analyze such comparable rental data as are available and/or the potential earnings capacity of the property to estimate the gross income potential of the property; (ii) analyze such comparable operating expense data as are available to estimate the operating expenses of the property; (iii) analyze such comparable data as are available to estimate rates of capitalization and/or rates of discount; and (iv) base projections of future rent and/or income potential and expenses on reasonably clear and appropriate evidence."

13. Pursuant to USPAP, Standards Rule 2-1(b), "[e]ach written or oral real property appraisal report must contain sufficient information to enable the intended users of the appraisal to understand the report properly."

14. Pursuant to USPAP, Standards Rule 2-2(a)(i), 2(a)(ii), 2(a)(iii), 2(a)(v), 2(a)(vii), 2(a)(ix), and 2(a)(xii), "[e]ach written real property appraisal report must be prepared under one of the following three options and prominently state which option is used: Self-Contained Appraisal Report, Summary Appraisal Report, or Restricted Use Appraisal Report. The content of a Self-Contained 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) describe information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment;

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- (v) state the purpose of the appraisal, including the type and definition of value and its source;
- (vii) describe sufficient information to disclose to the client and any intended users of the appraisal the scope of work used to develop the appraisal;
- (ix) describe the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions;
- (xii) include a signed certification in accordance with Standards Rule.

15. Pursuant to USPAP, Standards Rule 2-3, "[e]ach written real property appraisal report must contain a signed certification that is similar in content to the following form:

I certify that, to the best of my knowledge and belief:

- the statements of fact contained in this report are true and correct.
- the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no (or the specified) present or prospective interest in the property that is the subject of this report and no (or the specified) personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- my engagement in this assignment was not contingent upon developing or reporting predetermined results.
- my compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- my analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
- I have (or have not) made a personal inspection of the property that is the subject of this report. (If more than one person signs this certification, the

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certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property.

- no one provided significant real property appraisal assistance to the person signing this certification. (If there are exceptions, the name of each individual providing significant real property appraisal assistance must be stated.

16. Respondent did not develop, prepare and communicate a credible and accurate appraisal in relation to the Beachler property. Respondent failed to properly identify the appraisal assignment and failed to take appropriate remedial steps as were necessary to complete the assignment. W. Va. Code § 30-38-12(a)(11), USPAP, Competency Rule, Paragraphs 1, 2 and 3, USPAP Competency Rule.

17. Respondent did not correctly employ the proper and appropriate techniques necessary to produce a credible appraisal. USPAP Standards Rule 1-1(a).

18. Respondent's appraisal contained error affecting the integrity and credibility of said appraisal. USPAP Standards Rule 1-1(b) and Rule 1-1(c).

19. Respondent improperly identified Attorney Laura Evick as the client, as opposed to Nathan Beachler. USPAP Standards Rule 1-2(a), and USPAP Standards Rule 2-2(a)(i).

20. Respondent insufficiently stated that the intended use and/or purpose of the appraisal and/or appraisal assignment was with regard to an eminent domain proceeding. USPAP Standards Rule 1-2(b), USPAP Standards Rule 1-2(c), USPAP Standards Rule 2-2(a)(ii), USPAP Standards Rule 2-2(a)(iii) and USPAP Standards Rule 2-2(a)(v).

21. Respondent did not use an appropriate appraisal method or technique in the development of the cost approach in regard to the appraisal. USPAP Standards Rule 1-4(b)(i).

22. Respondent did not use an appropriate appraisal method or technique in the development of the income approach in the appraisal. USPAP Standards Rule 1-4(c).

23. Respondent did not document the methodology he used in making the adjustments he made for the contributory value of the improvements found upon the properties of comparable sales, to enable a user of the appraisal to understand his adjustments in the report. USPAP Standards Rule 2-1(b).

24. Respondent did not indicate and display on the appraisal report that said appraisal was a self-contained appraisal report. USPAP Standards Rule 2-2.

25. Respondent did not sufficiently disclose to the client the scope of work performed and analysis used to develop the Beachler appraisal. USPAP Standards Rule 2-2(a)(vii), and Rule 2-2(a)(ix).

26. Though Respondent signed the report, he did not include and sign a proper certification of appraisal report. USPAP Standards Rule 2-2(a)(xii) and USPAP Standards Rule 2-3.

CONSENT

Respondent, both in his individual capacity and as a licensed certified general 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 certified general real estate appraiser.

ORDER

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

1. The scope of practice of Respondent shall be restricted from a certified general real estate appraiser to state certified residential real estate appraiser. Such restriction of scope of practice shall remain in effect for a minimum of three (3) months, and shall remain in effect thereafter pending compliance with Order Paragraph No. 2 herein. Nothing in this provision shall be deemed to prohibit Respondent from performing commercial appraisals up to and including \$100,000.00, or reclassifying in title Respondent's license designation as a certified general.

2. Respondent shall successfully pass, complete, and provide to the Board all proper documentation reflecting the same, the examinations for Appraisal Institute Course Nos. 310 (Basic Income Capitalization) and 410-A (Uniform Standards of Professional Appraisal Practice), or such approved course equivalents. Upon successful completion of such courses, the Board shall reinstate the scope of practice of Respondent to certified general real estate appraiser, subject to compliance with the remaining terms of the instant Consent Decree, as set forth herein.

3. Respondent shall not perform or participate in the performance of, either directly or indirectly, the preparation of any eminent domain appraisals. Further, Respondent shall not testify in a court of law or act in the capacity of an expert or lay witness in legal proceedings involving eminent domain. The instant restriction shall remain in effect until such time Respondent satisfies the Board that Respondent is competent to perform and act in such capacity, and where such competency has been acknowledged in writing by the Board and the Standards Committee of the Board.

4. Respondent may petition the Board for reinstatement of those privileges restricted in Order Paragraph No. 3 only upon successful completion of Appraisal Institute Course Nos. 710 and 720, or such approved course equivalents. Upon completion of Appraisal Institute Course Nos. 710 and 720, or such approved course equivalents, Respondent shall provide to the Board all proper documentation reflecting successful completion of the same.

5. Upon petition by Respondent to the Board for reinstatement of those privileges restricted in Order Paragraph No. 3, the Standards Committee shall interview Respondent within sixty (60) days of written notification to the Standards Committee that the above-referenced courses have been successfully completed. The Standards Committee shall subsequently make its recommendation to the Board. Upon receipt of the Standards Committee's recommendation, the Board shall within forty-five (45) days determine whether Respondent's privileges shall be reinstated. In the event the Board reinstates Respondent's privileges, the Board, in its discretion, may subsequently require Respondent to submit to the Board at least two (2) eminent domain appraisals to be reviewed by the Standards Committee.

6. In regard to the practice of appraising, Respondent shall comply with all applicable law, including state, federal and the Uniform Standards of Professional Appraisal Practice.

7. Respondent shall pay to the Board the amount of one thousand seven hundred and fifty dollars (\$1,750.00). Such payment by Respondent shall represent the costs incurred by the Board associated with the investigation and prosecution of Complaint Number 04-002, the full costs incurred by the Board for legal services rendered by the Office of the West Virginia Attorney General, and the subsequent reimbursement to the

Board thereof. Such payment shall additionally be paid to the Board in full within thirty (30) days of the date of entry of the Consent Order.

8. All matters in controversy related to the instant Consent Order, including Board Complaint Number 04-002, are hereby resolved and closed, pending full compliance with the terms mandated herein.

9. In the event Respondent violates the terms of this Consent Decree, and, subsequent to notice and hearing, the Commission so finds a violation, then, in such event, the events giving rise to this Consent Decree shall be considered in the determination of the kind and extent of sanctions to be subsequently imposed. Such possibility of enhancement shall be effective during the pendency of the instant restrictions placed upon Respondent's license subsequent to the entry of this Order.

AGREED TO BY:

Keith W. Martin
KEITH MARTIN, Individually

3-29-05
DATE

ENTERED into the records of the Board this:

1st day of April, ~~2004~~ 2005

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

By: Sharon L. Knotts April 1, 2005
SHARRON L. KNOTTS DATE
EXECUTIVE DIRECTOR

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

IN THE MATTER OF:

**KEITH MARTIN,
Certified General Appraiser No. 0184**

CONSENT DECREE

Now comes Respondent, Keith Martin (hereinafter "Respondent"), and the West Virginia Real Estate Appraiser Licensing and Certification Board (hereinafter "Board"), by Sharron L. Knotts, its Executive Director, for the purpose of resolving Board Complaint Number 04-002, 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 0184.
3. On March 29, 2005, Respondent signed and entered into a Consent Decree with the Board relating to Board Complaint No. 04-002, previously filed against Respondent.

4. Among other things, the Consent Decree restricted Respondent's license from a certified general real estate license to a certified residential real estate appraiser for a minimum three (3) month period, and until such time Respondent successfully passed, completed and provided to the Board all proper documentation reflecting the same, the examinations for Appraisal Institute Course Nos. 310 (Basic Income Capitalization) and 410-A (Uniform Standards of Professional Appraisal Practice), or such approved course equivalents.

5. As of June 27, 2006, the Board's last regularly scheduled and conducted board meeting, Respondent had not successfully passed, completed and provided to the Board all proper documentation reflecting the same, the examinations for Appraisal Institute Course Nos. 310 (Basic Income Capitalization) and 410-A (Uniform Standards of Professional Appraisal Practice), or such approved course equivalents.

6. As a result, as of June 27, 2006, Respondent's license remained restricted to a certified residential real estate appraiser.

7. On or around February 6, 2006, Respondent performed an appraisal of property located near Yellow Springs, Hampshire County, West Virginia, in the amount of \$3,250,000.00.

8. The performance of such an appraisal exceeds the scope of licensure of a certified residential real estate appraiser, and thus constitutes a violation of the Respondent's Consent Decree.

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. The Board or the Standards Committee, in its discretion, may enter into a consent agreement. A representative of the Board or Standards Committee, designated by the chairperson, and an Assistant Attorney General may agree to negotiate a consent agreement. The proposed consent agreement must be presented to the Board or Standards Committee for approval and shall be binding if approved by the Board or Standards Committee and signed by the chairperson of either the board or the standards committee and the Appraiser. Failure of the appraiser to abide by the agreement shall constitute grounds for prosecution. W. Va. Code R. § 190-4-3.6.

3. Pursuant to W. Va. Code §§ 30-38-12(a)(7) and 30-38-13(b), the Board may revoke, suspend, refuse to renew, or otherwise discipline the license of an appraiser, or deny an application, for any violation of any section of this article, or rule of the Board.

4. Respondent failed to abide by the terms of the Consent Decree in violation of W. Va. Code §§ 30-38-12(a), 30-38-13(b) and W. Va. Code R. § 190-4-3.6.

CONSENT

Respondent, both in his individual capacity and as a licensed certified general 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 certified general real estate appraiser.

ORDER

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

1. The real estate appraiser license of Respondent, Certified General License No. 0184, is hereby SUSPENDED for a period of sixty (60) days. Respondent shall not engage in the business of real estate appraising whatsoever, either directly or indirectly, in the State of West Virginia during such period of SUSPENSION.

2. Respondent shall successfully pass, complete, and provide to the Board all proper documentation reflecting the same, the examinations for Appraisal Institute Course Nos. 310 (Basic Income Capitalization) and 410-A (Uniform Standards of Professional Appraisal Practice), or such approved course equivalents.

3. The scope of practice of Respondent shall be restricted from a certified general real estate appraiser to state certified residential real estate appraiser. Such restriction of scope of practice shall remain in effect until such time Respondent provides all proper documentation that Respondent has successfully passed and completed Appraisal Institute Course Nos. 310 (Basic Income Capitalization) and 410-A (Uniform Standards of Professional Appraisal Practice), and the corresponding examinations thereof, or such approved course equivalents. Nothing in this provision shall be deemed

to prohibit Respondent from performing commercial appraisals up to and including \$100,000.00, or reclassifying in title Respondent's license designation as a certified general real estate appraiser.

4. Respondent shall not perform or participate in the performance of, either directly or indirectly, the preparation of any eminent domain appraisals. Further, Respondent shall not testify in a court of law or act in the capacity of an expert or lay witness in legal proceedings involving eminent domain. The instant restriction shall remain in effect until such time Respondent satisfies the Board that Respondent is competent to perform and act in such capacity, and where such competency has been acknowledged in writing by the Board and the Standards Committee of the Board.

5. Respondent may petition the Board for reinstatement of those privileges restricted in Order Paragraph No. 4 only upon successful completion of Appraisal Institute Course Nos. 710 and 720, or such approved course equivalents, and upon completion of Respondent's suspension period. Upon completion of Appraisal Institute Course Nos. 710 and 720, or such approved course equivalents, Respondent shall provide to the Board all proper documentation reflecting successful completion of the same.

6. Upon petition by Respondent to the Board for reinstatement of those privileges restricted in Order Paragraph No. 4, the Standards Committee shall interview Respondent within sixty (60) days of written notification to the Standards Committee that the above-referenced courses have been successfully completed. The Standards Committee shall subsequently make its recommendation to the Board. Upon receipt of the Standards Committee's recommendation, the Board shall within forty-five (45) days determine whether Respondent's privileges shall be reinstated. In the event the Board reinstates Respondent's privileges, the Board, in its discretion, may subsequently require

Respondent to submit to the Board at least two (2) eminent domain appraisals to be reviewed by the Standards Committee.

7. Respondent shall pay to the Board the amount of one thousand one hundred and seventy dollars (\$1,170.00). Such payment by Respondent shall represent the costs incurred by the Board associated with the investigation and prosecution of Complaint Number 04-002, and the subsequent reimbursement to the Board thereof. Respondent shall additionally pay to the State of West Virginia a fine in the amount of five hundred dollars (\$500.00). Such payments shall be paid to the Board in full within thirty (30) days of the date of entry of the instant Consent Decree.

8. All matters in controversy related to the instant Consent Order, including Board Complaint Number 04-002, are hereby resolved and closed, pending full compliance with the terms mandated herein.

9. Any deviation from the requirements of the instant Consent Decree, without the prior written consent of the Board, shall constitute a violation of this Order, and result in the immediate suspension of Respondent's license. The Board shall immediately notify Respondent via certified mail of the specific nature of the charges, and the suspension of Respondent's license. Respondent may request reinstatement of her probationary license through renewal of this agreement, or execution of a new agreement, which may contain different or additional terms. The Board is not bound to comply with Respondent's request.

In the event Respondent contests any such allegations of violation of the Consent Decree, if any, which results in the suspension of Respondent's license, Respondent may request a hearing to seek reinstatement of his license. Any such hearing shall be scheduled and conducted in accordance with the provisions of West Virginia Code § 30-1-8 and § 30-38-1, *et seq.*

Further, in the discretion of the Board and in the event Respondent violates the provisions of the instant Consent Decree, the Board may schedule a hearing on its own initiative for the purpose of allowing the Board the opportunity to consider further discipline against Respondent's license.

AGREED TO BY:

Keith W. Martin
KEITH MARTIN, Individually

9-11-06
DATE

ENTERED into the records of the Board this:

2nd day of October, 2006.

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

By: Sharon L. Knotts
SHARRON L. KNOTTS
EXECUTIVE DIRECTOR

10/2/06
DATE