

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

IN THE MATTER OF:

**ELIZABETH WHELAN,
Certified Residential Appraiser No. CR0016**

CONSENT DECREE

Now comes Respondent, Elizabeth Whelan, 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 08-017, against Whelan. As reflected in this Consent Decree, the parties have reached an agreement in which Whelan 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 real estate appraisers.
2. Whelan is a state residential general real estate appraiser licensed by the Board, holding license number CR0016.
3. On October 2, 2006, Whelan performed an appraisal (hereinafter "Appraisal No. 1") of residential property located in Wheeling, West Virginia (hereinafter "Property").
4. Whelan performed the appraisal on behalf of a mortgage lender.
5. Whelan appraised the value of the Property at \$124,000.

6. In arriving at the appraised value of the Property, Whelan utilized three comparable properties located on the same street as the Property.

7. The comparable properties were located .1 mile, .06 mile, and .39 miles from the Property, and sold for \$118,000, \$124,000, and \$115,000, respectively.

8. In the cost approach in Appraisal No. 1, Whelan stated the Property to be \$147,632.

9. Upon receipt of Appraisal No. 1, a client representative telephoned Whelan, requested reconsideration of value, and requested Whelan utilize different comparable properties.

10. On or around October 5, 2008, Whelan complied with her client's request, modified the appraisal (hereinafter "Appraisal No. 2"), utilized different comparables, and changed the estimated value of the Property to \$155,000.

11. Whelan did not change the date of the appraisal from October 2, 2006.

12. Whelan utilized comparable properties that had sold for \$154,000, \$165,000, and \$170,000, respectively.

13. The comparable properties were located 7.4 miles, 2.55 miles, and 4.68 miles from the Property, and were not the best comparables available.

14. In the cost approach in Appraisal No. 2, Whelan stated the Property to be \$154,696.

15. Given that Whelan utilized the replacement cost new in both Appraisal No. 1 and Appraisal No. 2, the value determined by the cost approach should have been the same in each appraisal.

16. After closing on the Property, a field review conducted by the lender opined that the value of the Property was \$118,000.

17. On or around December 27, 2006, and after notification of the field review, Whelan again modified the appraisal (hereinafter "Appraisal No. 3").

18. Specifically, Whelan removed the comparable properties that her client chose, and changed the value of the appraisal from \$155,000, back to \$124,000.

19. In Appraisal No. 3, Whelan noted "the final value estimate is changed due to the change in comps that were in closer proximity to the subject. As stated further in this report, it is changed back to the original value as shown in the first report. The lender suggested that better comps were available, in the interest of attempting to give benefit of the doubt, this appraiser tried the other comps. The reviewers had a problem with those comps, the adjustments and the final value estimate. After carefully reviewing the two previous reports, the comps and the review appraiser's comp grid, it seemed obvious that the first appraisal was the most reliable."

20. In the appraisal, Whelan further stated "regarding the reviewer's report - my original report (not the one reviewed), included only comps from Clearview, two were much smaller in square footage. However, this appraiser was satisfied with the then appraised value of \$124,000. However, after the loan officer phoned and berated the comps in the report and also sent other data (most of it listings rather than sales), I then changed the comps for those more similar in square footage but in other locations."

21. In changing the value of the appraisal back to \$124,000, Whelan did not change the date of the appraisal from October 2, 2006.

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. Pursuant to W. Va. Code §§ 30-38-12(a)(7), 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.

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 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.”

4. The Uniform Standards of Professional Appraisal Practice, Ethics Rule (Conduct), in pertinent part, states as follows:

An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.

In appraisal practice, an appraiser must not perform as an advocate for any party or issue.

An appraiser must not communicate assignment results in a misleading or fraudulent manner.

5. Whelan failed to perform the appraisal assignment with impartiality, objectivity, and independence; performed the appraisal as an advocate for her client; and

communicated the assignment results in a misleading and/or fraudulent manner, in violation of W. Va. Code §§ 30-38-12(a)(7), -17, and USPAP Ethics Rule (Conduct).

6. Pursuant to the Uniform Standards of Professional Appraisal Practice, Ethics Rule (Management), in pertinent part, “[i]t is unethical for an appraiser to accept an assignment, or to have a compensation arrangement for an assignment, that is contingent on any of the following: . . . (2) a direction in assignment results that favors the cause of the client; and (3) the amount of a value opinion.”

7. Whelan took direction from her client that favored the cause of the client; and allowed the value opinion of the assignment to be influenced by the client, in violation of W. Va. Code §§ 30-38-12(a)(7), -17, and USPAP Ethics Rule (Management).

8. Pursuant to the Uniform Standards of Professional Appraisal Practice, Rule 2, “[i]n reporting the results of a real property appraisal, an appraiser must communicate each analysis, opinion, and conclusion in a manner that is not misleading.”

9. Whelan reported the results of Appraisal No. 2 in a manner that was misleading, in violation of W. Va. Code §§ 30-38-12(a)(7), -17, and USPAP Standards Rule 2.

CONSENT

Whelan, both in her individual capacity and as a certified residential real estate appraiser, by the execution hereof, agrees to the following:

1. Whelan 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 Whelan to make this settlement other than as set forth herein.

Whelan acknowledges that she is aware that she may pursue this matter through appropriate administrative and/or court proceedings, and is aware of her legal rights regarding this matter, but intelligently and voluntarily waives such rights.

2. Whelan consents to the entry of the following Order affecting her conduct as a certified residential real estate appraiser.

ORDER

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

1. The real estate appraiser license of Whelan, License No. CR016, is hereby SUSPENDED for a period of ninety 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. Whelan shall pay to the Board the amount of two thousand dollars (\$2000.00). Such payment by Whelan shall represent the costs incurred by the Board associated with the investigation and prosecution of Complaint Number 08-017, and the subsequent reimbursement to the Board thereof. Such payment shall be paid to the Board in full within six months of the date of entry of the instant Consent Decree.

3. 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 Whelan's license. The Board shall immediately notify Whelan via certified mail of the specific nature of the charges, and the suspension of Whelan's license. Whelan may request reinstatement of her 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 Whelan's request.

In the event Whelan contests any such allegations of violation of the Consent Decree, if any, which results in the suspension of Whelan's license, Whelan may request a hearing to seek reinstatement of her 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 Whelan 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 Whelan's license.

AGREED TO BY:

Elizabeth Whelan
ELIZABETH WHELAN, Individually

3/5/2009
DATE

ENTERED into the records of the Board this:

12th day of March, 2009.

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

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

3/12/09
DATE