

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

**IN THE MATTER OF:**

**DONALD DOWNS  
Certified Residential Appraiser  
License No. CR0085**

**Case No: 08-025**

**CONSENT DECREE AND ORDER**

Now comes the West Virginia Real Estate Appraiser Licensing and Certification Board (hereinafter "Board") and Donald Downs, (hereinafter "Respondent"), for the purpose of resolving all issues regarding the above-styled matter without further litigation.

The Board agrees and acknowledges that the allegations in this Consent Decree are disputed by the Respondent, and that his agreement and consent to these terms do not constitute an admission of guilt or culpability on his part.

As reflected in this Consent Decree, the parties have reached an understanding concerning the proper disposition of the matter in controversy, and, the Board, approving such an agreement, does hereby find and Order as follows:

**FINDINGS OF FACT**

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. The Respondent is a state certified residential real estate appraiser licensed by the Board, holding license number CR0085.

1. In January 2008, the Respondent performed a partial acquisition appraisal on 5 parcels of land in Marion County, West Virginia.
2. Prior to the relevant assignment, the Respondent had not completed any educational courses in eminent domain.
3. The Respondent did not have any educational or field experience in the performance of partial acquisition appraising.
4. The Board perceived that the Respondent provided certain incorrect and/or inadequate information relating to the appraised parcels of land and comparables utilized.
5. As a result, the Board contends that the conclusions arrived at by the Respondent within the appraisal may be inaccurate and/or not supportable.

#### **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. Pursuant to the Uniform Standards of Professional Appraisal Practice, 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. The Board contends that the Respondent failed to have the education and/or experience to complete the partial acquisition appraisal assignment; failed to disclose the lack of education and/or experience to the client before accepting the assignment; and failed to describe the lack of education and/or experience in the report, in violation of W. Va. Code §§ 30-38-12(a)(7), -17, and USPAP Competency Rule.

6. Pursuant to the Uniform Standards of Professional Appraisal Practice, Standards Rule 1-1(a), from which deviation is not permitted, “[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.”

7. The Respondent may have failed to correctly employ appropriate methods and techniques necessary to produce an accurate appraisal of the subject property, where such failure would constitute a violation of W. Va. Code §§ 30-38-12(a)(7), -17, and USPAP Standards Rule 1-1(a).

### CONSENT

The Respondent by affixing his signature hereto, acknowledges the following:

1. The 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.

2. 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.

3. The 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.

4. The Respondent consents to the entry of the following Order affecting his conduct as a certified residential real estate appraiser.



## ORDER

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

1. The Respondent shall be prohibited from performing any real estate appraisals relating to eminent domain or condemnation appraising, either directly or indirectly, and shall not testify in a court of law or act in the capacity of an expert witness in legal proceedings involving eminent domain, until such time he complies with Order Paragraph No. 2 as set forth herein.

2. In the event the Respondent, in his sole discretion, desires to perform real estate appraisals relating to eminent domain or condemnation appraising, he shall successfully pass, complete, and provide to the Board all proper documentation reflecting the same, a minimum 22 hour course, with examination, relating to condemnation appraisal principles and applications, or such Board approved course equivalents. Upon successful completion of such course and proof thereof, the above-referenced restriction of licensure relating to eminent domain and condemnation real estate appraising shall be automatically dissolved. Such course shall be completed in addition to any continuing educational course required to obtain and/or maintain licensure, or renewal of licensure thereof.

3. The Respondent shall pay to the Board the amount of eight hundred dollars (\$ 800.00). Such payment shall represent the costs incurred by the Board associated with

the investigation and prosecution of this matter, and the subsequent reimbursement to the Board thereof. Additionally, Downs shall pay a fine in the amount of Two Hundred Fifty Dollars (\$250.00) to the State of West Virginia. Such payments shall be paid and forwarded to the Board in full within thirty days of the date of entry of the instant Consent Decree and Order.

4. Any deviation from the requirements or violation of the instant Consent Decree and Order, without the prior written consent of the Board, shall constitute a violation of this Order, and result in the immediate suspension of the Respondent' license. The Board shall immediately notify the Respondent via certified mail of the specific nature of the charges, and the suspension of his license. The Respondent may request reinstatement of his 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 his request.

5. In the event the Respondent contests any such allegations of violation of the Consent Decree, if any, which results in the suspension of his license, he 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.*

6. Further, in the discretion of the Board and in the event the 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 the Respondent's license.

7. Other than set forth in Paragraph 4 of Section "Order" hereof, in the event any further, additional or other action is commenced by the Board against the Respondent by reason or growing out of the subject appraisals of the said five parcels of real estate as set forth herein, this Consent Decree shall be void, it being the intent of the parties hereto that this Consent Decree be a full and final disposition of any and all disciplinary actions against the Respondent by reason or growing out of or which are in any way related to the subject appraisals.

Entered this 14<sup>TH</sup> day of MARCH 2013



R. SCOTT BARBER, CHAIR  
WEST VIRGINIA REAL ESTATE APPRAISER  
LICENSING AND CERTIFICATION BOARD

Reviewed and Approved by:



DONALD DOWNS,  
Respondent

Date