

BEFORE THE WEST VIRGINIA REAL ESTATE  
APPRAISER LICENSING AND CERTIFICATION BOARD

WEST VIRGINIA REAL ESTATE APPRAISER  
LICENSING AND CERTIFICATION BOARD,  
Complainant,

v.

Case No.: 08-027

JOSEPH SMITH, JR.,

Respondent.



CONSENT DECREE AND ORDER

Now comes Respondent, Joseph Smith, Jr. (hereinafter "Respondent"), and the West Virginia Real Estate Appraiser Licensing and Certification Board (hereinafter "Board"), for the purpose of resolving Board Complaint Number 08-027, against the Respondent. The Board agrees and acknowledges that the Respondent disputes these claims, 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 agreement in which they hereby agree and stipulate to the Findings of Fact and Conclusions of Law set forth in the instant Consent Decree and Order 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 *et seq.*, and is empowered to regulate, among other things, the conduct of licensed residential appraisers.

2. The Respondent is a state certified general real estate appraiser licensed by the Board, holding license number CG0292.

3. In May 2008, the Respondent performed an appraisal of residential property located in White Sulphur Springs, Greenbrier County, West Virginia (hereinafter "the Property").

4. The Board alleges that the Respondent committed certain errors in the development and reporting of the appraisal of the Property.

5. The Board alleges that the errors committed by the Respondent include the following:

a. The Respondent failed to consider and apply standard industry practice and methodology in the development of square footage in the attic of the Property;

b. The Respondent stated that there were two bedrooms in the attic, where such rooms should not have been considered bedrooms, and where such rooms should not have been included within the Property's gross living area; and

- c. Given the specific physical characteristics and deficiencies of the attic, the Respondent failed to consider any attendant functional obsolescence associated with the Property.
6. As a result of the above-referenced assignments of error, the conclusions arrived at by the Respondent within the appraisal of the Property are not supportable and may be inaccurate.
7. That the Respondent disputes that he failed to comply with USPAP standards and disputes that he failed to comply with the applicable rules and methodology applicable to the appraisal he performed.
8. That the Respondent has alleged that the appraisal report that was presented was specifically prepared based upon the requests and expressed needs of the client.

#### 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, 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.”

5. The Respondent failed to correctly employ appropriate methods and techniques necessary to produce an accurate and/or credible appraisal of the Property, in violation of W. Va. Code §§ 30-38-12(a)(7), -17, and USPAP Standards Rule 1-1(a).

#### CONSENT

The Respondent, Joseph Smith, Jr., both in his individual capacity and as a certified general real estate appraiser, by the execution hereof, agrees to the following:

1. That he 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 him to make this settlement other than as set forth herein. He 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. He consents to the entry of the following Order affecting his conduct as a certified general real estate appraiser.

### **ORDER**

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

1. The Respondent, Joseph Smith, Jr. shall successfully enroll and complete, a minimum seven hour course relating to standards and conformity assessment in building construction *pre-approved* by the Board. Such course shall be completed in addition to any continuing educational course required to obtain and/or maintain licensure, or renewal of licensure thereof.

2. The Respondent shall pay to the Board the amount of Two Thousand Dollars (\$2,000.00). Such payment by Smith shall represent the costs incurred by the Board

associated with the investigation and prosecution of Complaint Number 08-027, and the subsequent reimbursement to the Board thereof. Additionally, Smith 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 twenty-four (24) months of the date of entry of the instant Consent Decree and Order.

3. Any deviation from the requirements 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 Respondent's license. The Board shall immediately notify the Respondent via certified mail of the specific nature of the charges, and the suspension of his license. He 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.

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.*

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

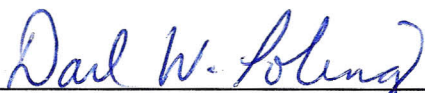
initiative for the purpose of allowing the Board the opportunity to consider further discipline against the license of the Respondent.

Entered this 30<sup>th</sup> day of November 2012.

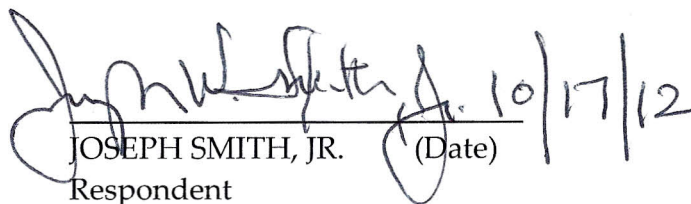


R. SCOTT BARBER, CHAIR  
WEST VIRGINIA REAL ESTATE APPRAISER  
LICENSING AND CERTIFICATION BOARD

AGREED TO BY:



DARL W. POLING, Esquire (WV Bar. # 4915)  
Counsel for Respondent



JOSEPH SMITH, JR. (Date)  
Respondent