

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
BUREAU OF HEARINGS**

In the matter of

Docket No. 2001-99

**Bureau of Commercial Services,
Petitioner**

Agency No. 12-99-5973-00

v

**Agency: Bureau of Commercial
Services**

**Everett Ray Bielby,
Respondent**

Case Type: Sanction

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**Issued and entered
this 2nd day of October 2001
by Gregory Holiday
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

This proceeding was commenced with the filing of a Notice of Hearing upon a Formal Complaint dated August 28, 2000, charging Respondent with one or more violations of the Occupational Code, 1980 PA 299, as amended (Code), MCL 339.101 *et seq.*; MSA 18.425(101) *et seq.* Pursuant to Section 92 of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 *et seq.*; MSA 3.560(101) *et seq.*, Respondent was afforded an opportunity to demonstrate compliance prior to the commencement of formal proceedings. Respondent failed to satisfactorily demonstrate compliance and, as a result, the matter was set and noticed for a formal hearing.

The hearing was scheduled to be held on February 20, 2001 at 9:30 a.m. at the Bureau of Hearings of the Department of Consumer and Industry Services, 1200 Sixth Street, Eighth Floor, Detroit, Michigan. At Respondent's request, with no objection by Petitioner, the hearing was postponed to April 4, 2001 at 9:30 a.m. On February 26, 2001, at Petitioner's request, an Order Granting Telephone Testimony was issued. On March 12, 2001, at Petitioner's request, an Order For Dismissal was issued which dismissed the proceedings without prejudice. On May 10, 2001, Petitioner filed a Request for Hearing and a Notice of Remand Hearing was issued which scheduled a hearing for June 26, 2001 at 9:30 a.m. By Request from Petitioner filed on June 8, 2001, with no objection by Respondent, the hearing was postponed to Thursday, July 26, 2001 at 9:30 a.m. and the same proceeded as scheduled. Gregory Holiday presided as Administrative Law Judge. Tracey Hampton, Esq., appeared on behalf of the Bureau of Commercial Services' Enforcement Division of the Department of Consumer and Industry Services (Petitioner). Glenn Forgette and Charles Swanson testified for Petitioner. Thomas J. Misko, Esq., appeared on behalf of Respondent, who testified on his own behalf. Carol Forgette also testified for Respondent.

ISSUES AND APPLICABLE LAW

The general issue presented is whether Respondent violated the Code, with respect to the practice of a state licensed real estate appraiser. The specific issues are whether Respondent violated Sections 604(h), 2609(b) and (c) and 2635(a) and (b) of the Code, which provide, in pertinent part:

Sec. 604. A person who violates 1 or more of the provisions of an article which regulates an occupation or who commits 1 or more of the following shall be subject to the penalties prescribed in section 602:

(h) Violates any other provision of this act or a rule promulgated under this act for which a penalty is not otherwise prescribed.

Sec. 2609. An appraisal shall be in writing and shall do all of the following:

(b) Be independently and impartially prepared and conform to the uniform standards of professional appraisal practice and any other standards adopted by the board.

(c) Include an opinion of defined value of adequately described real property as of a specific date and be supported by the presentation and analysis of relevant market information.

Sec. 2635. A licensee who does 1 or more of the following shall be subject to the penalties set forth in article 6:

(a) Violates any of the standards for the development and communication of real property appraisals as provided in this article or a rule promulgated pursuant to this article.

(b) Fails or refuses without good cause to exercise reasonable diligence in developing or communicating an appraisal.

EXHIBITS

Petitioner offered the following exhibits for consideration at the hearing:

<u>Exhibit</u>	<u>Description</u>
1	Copy of 1998 Grosse Ile Tax Bill with Assessed Value of \$111,730
2	Copy of 9/2/98 Uniform Residential Appraisal Report by Everett Bielby
3	Copy of Comparative Market Analysis by Doreen Moxlow (Rejected and Withdrawn)
4	Copy of 10/11/98 Uniform Residential Appraisal Report by Donald Seloft
5	Copy of 11/13/98 Uniform Residential Appraisal Report by William Steinke
6	Statement of Complaint of Glenn Forgette (Admitted to show what complaint was filed)
7	Copy of 6/23/00 Letter from Charles M. Swanson to John Valenti

Respondent offered the following exhibit for consideration at the hearing:

<u>Exhibit</u>	<u>Description</u>
1	Data re: 28575 Swan Island including 50 total matches, Minutes Statement re: Variance Request, Building Field Sheet, Realtor's Summary Sheet, Multi-List Sheet and Comparable Property Photo Addendum

FINDINGS OF FACT

Glenn and Carol Forgette were preparing to divorce and, as part of divorce, they had to get an appraisal of their marital home located at 27907 Johnson, Grosse Ile, Michigan. The home was a ranch-styled waterfront home at "Frenchman's Creek" which allows exit to the northern point of Lake Erie. With Glenn Forgette's permission, Carol Forgette contacted two or three appraisers, including Respondent, to evaluate which, if either, would be best to

perform an appraisal of their marital home. Glenn Forgette has some 44 years of employment with General Motors Corporation at its Tech Center in Warren. Carol Forgette has some previous experience in the real estate industry, having sold real estate for South Shore Birch Grove's Riverview Office and meeting Respondent in connection with that experience. Because Respondent's appraisal price was cheaper, they selected Respondent. When Respondent came to the home to meet with the Forgettes, Mr. Forgette gained the impression that Respondent and Mrs. Forgette were very much acquainted. Although she probably shouldn't have, Carol Forgette mentioned to Respondent, in front of Glenn Forgette, that the appraisal was being done for purposes of their divorce. Mr. Forgette said nothing about Mrs. Forgette's statement at that time. Respondent contracted with the Forgettes to perform the appraisal. Respondent submitted his appraisal report (Petitioner Exhibit 2) dated August 31, 1998 in which he appraised the marital property at \$362,000. The State Equalized Value, based on the 1998 Summer Tax Bill was \$111,730.00, with a presumed market value of \$223,460.00.

Mr. Forgette questioned the high value placed on the marital home and decided to have a real estate person perform a comparative market analysis. Around that time, he also told Carol Forgette that it was in poor taste for her to have told Respondent that they were getting a divorce. As a result of the market analysis, Mr. Forgette decided to contact another appraiser, Donald Seeloft, who appraised the home at \$268,000.000 (See Petitioner Exhibit 4). Mr. Seeloft's appraisal was issued October 11, 1998. Both appraisals were presented in Court in the divorce matter and, as a result of the disparity in the appraisals, the Judge

decided to have a third appraiser perform an appraisal. Attorneys for the Forgettes jointly selected William G. Steinke who had been recommended to Mr. Forgette by the Township of Grosse Ile. Mr. Steinke appraised the marital property at \$315,000.00 (see Petitioner Exhibit 5), which became the official appraisal for the divorce. That report was issued on November 13, 1998. The divorce was resolved by agreement of the parties based, in part, on the appraisal by Mr. Steinke. While Mr. Forgette was still not happy with the appraised value of the marital home, he accepted the settlement.

Mr. Forgette filed a Statement of Complaint with the Department of Consumer & Industry Services' Bureau of Commercial Services on about October 18, 1999, essentially claiming collusion between Respondent and Carol Forgette. To support his belief of collusion, Mr. Forgette also noted that the original appraisal estimate for Respondent was \$250.00, whereas the other estimate was for \$700.00, thus pointing toward having Respondent perform the appraisal.

Charles Swanson, the State's expert, has been a real estate appraiser since about 1972. He is state certified with MAI and SAI designations. Mr. Swanson spent about 18 years appraising for a bank and the last 12 or so in his own appraisal business.

At the State's request, Mr. Swanson reviewed the August 31, 1998 Appraisal of the Forgette property performed by Respondent to determine whether there were violations of the uniform standards of professional practice. Upon review I noticed that: (1) The cost approach (\$303,002) was substantially lower than the sales comparison approach (\$362,000), which usually serves as a red flag telling an appraiser that something might be

wrong; and (2) In looking at the comparable sales from Respondent's appraisal and from the other two appraisals, he found that there were some comparables that Respondent didn't use that he could have used which would have resulted in a different value. According to Mr. Swanson, Respondent probably should have considered some of the other comparables. Mr. Swanson issued a June 23, 2000 letter report finding two violations of appraisal standards by Respondent: (1) that the appraisal was not supported by market information; and (2) failure to collect, analyze and use comparable sales data. While Mr. Swanson sees that Respondent did use comparable sales data for three other properties, he points out that the sales price for comparable #3 at 28128 Elba, Grosse Ile, was significantly higher than the other two. Mr. Swanson had no problems with either of the other two comparables or Respondent's gross and net adjustments.

Mr. Swanson suggested that Respondent could have reasonably used 28575 Swan Island as the third comparable, but there is some question on whether that property was purchased at \$263,000.00 to raise the structure and rebuild an entirely new structure. Respondent Exhibit 1 contains a multi-list photo of 28575 Swan Island that differs markedly from the comparable sales photo which would have been taken later. If that were so, then that property would not have been suitable as a comparable sale since it would not have been purchased for use as then-currently constructed.

Respondent has been an appraiser since before 1985 and has lived on Grosse Ile for over 25 years. He started in real estate first as a salesperson and then as a broker. He has appraised (residential only) for Standard Federal Bank, First Federal, Wyandotte Savings

Bank, most downriver lenders and some lenders around the country.

According to Respondent, he felt that it was proper to use comparable #3, the Alba property, because it fairly represented the upper limit of market value for the subject property. The 28575 Swan Island property was familiar to him, having been on the market for well over a year and vacant. In looking back, Respondent understands that the difference between the cost approach (giving a value of \$303,000) and the market approach (giving a value of \$362,000) might be something that would raise a red flag. He insists that at the time of the appraisal, it did not. Respondent disagrees with the assertions that he didn't research the data before issuing his appraisal and that he failed to use reasonable diligence in developing the appraisal.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's Michigan Pleading & Practice (2d ed) § 60.48, page 230. The burden of proof is upon Petitioner to prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions upon Respondent. 1990 AACS, R 339.1763.

Violation of Section 604(h) of the Code

By this charge, Petitioner asserts that Respondent violated Sections 2609(b) and (c) of the Code, thereby violating Section 604(h) of the Code.

Section 2609(b) of the Code sanctions an appraiser who issues an appraisal that was not independently and impartially prepared or did not conform to the uniform standards of professional appraisal practice and any other standards adopted by the board.

In this case, the assertions are that the appraisal was not independently prepared (it was prepared through collusion between Respondent and Mrs. Forgette) and that the appraisal did not conform to uniform standards of professional appraisal practice. The evidence presented was insufficient to support a finding that Respondent did not independently and impartially perform the appraisal. The evidence was also insufficient to establish that Respondent's appraisal did not conform to uniform standards of professional appraisal practice. The red flag described by Mr. Swanson did not require Respondent to include any additional comparable properties in the appraisal.

Section 2609(c) of the Code sanctions an appraiser who issues an appraisal that does not include an opinion of defined value of adequately described real property as of a specific date *and be supported by the presentation and analysis of relevant market information* (italics added).

Respondent's appraisal of the Forgette property, while controversial or debatable, was properly supported by the presentation and analysis of relevant market information.

Accordingly, Petitioner has not proven any violation of Sections 2609(b) or (c) or 604(c) of the Code.

Violation of Section 2635(a) and (b) of the Code

By this charge, Petitioner asserts that Respondent violated Sections 2635(a) and (b), subjecting him to disciplinary sanctions by the Board under Section 602 of the Code.

Section 2635(a) of the Code sanctions an appraiser who violates any of the standards for *the development* and communication of real property appraisals as provided in Article 26 of the Code or in a rule promulgated pursuant to Article 26 of the Code (italics added).

Petitioner failed to establish that Respondent violated standards for the development and communication of his appraisal of the Forgette property.

Section 2635(b) of the Code sanctions an appraiser who fails or refuses without good cause to exercise reasonable diligence in *developing* or communicating an appraisal (italics added). Petitioner did not prove that Respondent failed to exercise reasonable diligence in developing or communicating his appraisal to the Forgettes.

DECISION AND RECOMMENDED SANCTIONS

It is the decision of this Administrative Law Judge that no violations of the Occupational Code were established. Therefore, this matter shall be, and the same is hereby, DISMISSED.

Gregory Holiday
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 2nd day of October, 2001.

Tina E. Watson
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