

**State of New Hampshire
Real Estate Appraiser Board
Concord, New Hampshire 03301**

In the Matter of
NHREAB vs. Gerald A. Clear NHC6-695
Case Number: 11.10
Failure to follow the Uniform Standards of Professional Appraisal Practice

SETTLEMENT AGREEMENT

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of real estate appraisal, the New Hampshire Real Estate Appraiser Board ("Board") and Gerald A. Clear ("Respondent"), a real estate appraiser licensed by the Board, do hereby stipulate and agree to resolve certain allegations of professional misconduct now pending before the Board according to the following terms and conditions:

1. Pursuant to RSA 310-B:17-a, 310-B:18, 310-B:24 and RSA 541-A; and Real Estate Appraiser Board Administrative Rules ("Rab") 202 and 207, the Board has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by real estate appraisers. Pursuant to RSA 310-B:18, Rab 202 and Rab 501 the Board may, at any time, dispose of such allegations by settlement and without commencing a disciplinary hearing.
2. The Board first granted Respondent a license to practice real estate appraisal in the State of New Hampshire on September 1, 1993. Respondent holds license number NHC6-695. Respondent practices real estate appraisal in the State of New Hampshire.

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3. It was alleged that the Respondent's appraisal report contained a series of errors, rendering it misleading.
4. In response to this, the Board conducted an investigation and obtained information from various sources pertaining to the Respondent's appraisal report in question.
5. The Board's investigation revealed and Respondent freely admits to violations of the following Uniform Standards of Professional Appraisal Practice (USPAP – 2010 edition):

No highest and best use analysis regarding the subject's 140 acre site:

Standards Rules:1-3 (b) minor violation/appraisal skills

Standards Rule 2-2b (ix) - Reporting

Measurement of subject included cathedral ceiling area in second floor GLA:

Standards Rule 1-1 (a,b) - Minor violation/appraisal skills

No support of site adjustments and condition adjustment for comparable 3:

Standards Rule 2-2b (viii) - Reporting

No disclosure that the appraiser modified the cost figure from Marshall & Swift with estimates from local builders:

Standards Rule 2-2b - Reporting

Reconciliation of the Sales Approach is minimal. Final reconciliation is minimal. This is not sufficient for a summary report.

Standards Rule 1-6 (a,b)

Standards Rule 2-2b - Reporting

6. The Board finds that Respondent committed the acts as described above and

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concludes that, by engaging in such conduct, Respondent violated RSA 310-B:18, Rab 501.

7. Respondent acknowledges that this conduct constitutes grounds for the Board to impose disciplinary sanctions against Respondent's license to practice as a real estate appraiser in the State of New Hampshire.
8. Respondent consents to the Board imposing the following discipline, pursuant to RSA 310-B:18 and Rab 207:
 - A.. Respondent is required to pay a \$500 fine for deficient appraisal skills.

This fine shall be paid within 10 days of receiving this settlement agreement from the Board.
 - B. Respondent is required to successfully complete, at Respondent's expense, a Highest & Best Use course and a Report Writing course. These classes shall be in addition to the hours required by the Board for renewal of licensure and shall be completed within sixty days from the effective date of this agreement. Within fifteen (15) days of completing this course, Respondent shall notify the Board and provide written proof of completion.
 - C. The Board may consider Respondent's compliance with the terms and conditions herein in any subsequent proceeding before the Board regarding Respondent's license.
9. Respondent's breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant to RSA 310-B:18, and a separate and sufficient basis for further disciplinary action by the Board.

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10. Except as provided herein, this *Settlement Agreement* shall bar the commencement of further disciplinary action by the Board based upon the misconduct described above. However, the Board may consider this misconduct as evidence of a pattern of conduct in the event that similar misconduct is proven against Respondent in the future. Additionally, the Board may consider the fact that discipline was imposed by this Order as a factor in determining appropriate discipline should any further misconduct be proven against Respondent in the future.
11. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.
12. Respondent voluntarily enters into and signs this *Settlement Agreement* and states that no promises or representations have been made to him other than those terms and conditions expressly stated herein.
13. The Board agrees that in return for Respondent executing this *Settlement Agreement*, the Board will not proceed with the formal adjudicatory process based upon the facts described herein.
14. Respondent understands that his action in entering into this *Settlement Agreement* is a final act and not subject to reconsideration or judicial review or appeal.
15. Respondent has had the opportunity to seek and obtain the advice of an attorney of his choosing in connection with his decision to enter into this *Settlement Agreement*.

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16. Respondent understands that the Board must review and accept the terms of this *Settlement Agreement*. If the Board rejects any portion, the entire *Settlement Agreement* shall be null and void. Respondent specifically waives any claims that any disclosures made to the Board during its review of this agreement have prejudiced his right to a fair and impartial hearing in the future if this *Settlement Agreement* is not accepted by the Board.
17. Respondent is not under the influence of any drugs or alcohol at the time he signs this *Settlement Agreement*.
18. Respondent certifies that he has read this *Settlement Agreement*. Respondent understands that he has the right to a formal adjudicatory hearing concerning this matter and that at said hearing he would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on his own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, Respondent fully understands the nature, qualities and dimensions of these rights. Respondent understands that by signing this *Settlement Agreement*, he waives these rights as they pertain to the misconduct described herein.
19. This agreement shall take effect as an *Order of the Board* on the date the certified copy, signed by an authorized representative of the Board, is received by the respondent or a representative of the respondent.

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FOR RESPONDENT

Date: 9-7-2011

Gerald A. Clear
Respondent

Date: _____

Counsel for Respondent (Optional)

FOR THE BOARD

This proceeding is hereby terminated in accordance with the binding terms and conditions set forth above.

Date: 9/9/11

Peggy Gallus
(Signature)

Peggy Gallus
(Print or Type Name)
Authorized Representative of the
New Hampshire Real Estate Appraiser Board