

HERB KOHL  
WISCONSIN

WASHINGTON OFFICE:  
330 HART SENATE OFFICE BUILDING  
WASHINGTON, DC 20510  
(202) 224-5653  
T.T.Y. (202) 224-4464  
<http://kohl.senate.gov/>  
senator\_kohl@kohl.senate.gov

# United States Senate

WASHINGTON, DC 20510-4903

May 7, 2002

COMMITTEES:  
APPROPRIATIONS  
JUDICIARY  
SPECIAL COMMITTEE  
ON AGING

MAY 13

Mr. Ben Henson  
Executive Director  
Appraisal Subcommittee  
2000 K Street, N.W. Ste. 310  
Washington, D.C. 20006

Dear Mr. Henson:

I am writing on behalf of my constituent, Mr. [[DELETION]] from [[DELETION]], Wisconsin regarding his denied appeal by the Wisconsin Board of Appraisers. I have enclosed a copy of his correspondence for your information.

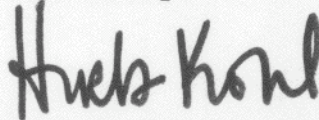
I would appreciate your review and investigation of the concerns expressed by my constituent. Any information that would assist me in responding to him would be greatly appreciated.

Please inform my office of your findings and forward all correspondence to the attention of my staff assistant, Mr. Michael Murphy, at:

U.S. Senator Herb Kohl  
ATTN: Michael Murphy  
14 W. Mifflin Street, Suite 207  
Madison, WI 53703

Thank you for your time and prompt attention to this matter.

Sincerely,



Herb Kohl  
U.S. Senator

HK : mxm  
Enclosure

MILWAUKEE OFFICE:  
310 WEST WISCONSIN AVENUE  
SUITE 950  
MILWAUKEE, WI 53203  
(414) 297-4451  
T.T.Y. (414) 297-4485

MADISON OFFICE:  
14 WEST MIFFLIN STREET  
SUITE 207  
MADISON, WI 53703  
(608) 264-5338

EAU CLAIRE OFFICE:  
402 GRAHAM AVENUE  
SUITE 206  
EAU CLAIRE, WI 54701  
(715) 832-8424

APPLETON OFFICE:  
4321 WEST COLLEGE AVENUE  
SUITE 235  
APPLETON, WI 54914  
(920) 738-1640

LACROSSE OFFICE:  
425 STATE STREET  
SUITE 202  
LACROSSE, WI 54601  
(608) 796-0045

[[DELETION]]

April 10, 2002

Senator Herb Kohl  
14 West Mifflin Street  
Madison, Wisconsin, 53703

Dear Senator Kohl;

Can you help?

The Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) was signed into law by the President on August 9, 1989. As a result, the Appraisal Foundation was created and the Appraisal Standards Board wrote the first national standards for appraisals, known as the Uniform Standards of Professional Appraisal Practice (USPAP). Wisconsin Statutes adopted USPAP, effective July 1991. The certification and regulation of appraisers is delegated to the states.

**Who regulators the regulators** I am a Wisconsin Certified General Appraiser (Certification #11). A complaint was filed against me for a 1993 appraisal, the second year of USPAP. The hearing was held in 1998. Many changes were made to USPAP from 1993 to 1998 due to wide spread misunderstanding by "experts" about what was really meant. Some of the alleged violations were based on guidelines that did not exist in 1993. Some violations were based on the rules of an appraisal organization that was different than the USPAP guidelines. I expected a fair and unbiased investigation. Instead, I have encountered five conflicts of interest, as well as unethical, unprofessional and illegal conduct within the Department of Regulation and Licensing. The Department is entrusted to enforce regulations; however, they appear to have violated Wisconsin Statutes, the administrative code and due process. Who investigates misconduct?

Mr. [DELETION], Chairman of the Appraisers Board at that time, reviewed the appraisal report. He cited numerous violations and became the accuser, prosecutor, judge and jury. He hired his friend to be a second review appraiser for the Board. Each one cited numerous alleged violations, but the two reviewers did not agree upon a single alleged violation. The complainant and the two reviewers are friends and are members of the same local chapter of a large appraisal association. They are also my competitors.

The Board lost 98% of the case, but contrary to Wisconsin Statute 227.485 and 227.485(4). RL 2.18(1) and 2.18(4), they assessed me 100% of the cost. An appeal was filled to the Appraisers Board. **Contrary** to Wisconsin Statute 227.49(5) and RL 2.18(4) the Board did not consider if it should or should not hear the appeal. **The appeal was simply ignored.** RL 2.18(4) requires the Board to review any objections to assessed cost, **but they also ignored that.** The notice of assessed cost was not mailed until five days after the required date, thus making it void. But they insist upon collecting more than \$9,000.

My case was the first one ever considered at a hearing. The investigator, Board's Attorney and the Board did not seem to know what to do. Mr. [DELETION] was in control and called all the shots. In the second case, it is known that he over ruled a Board Attorney and forced the case to proceed after the attorney said not to go any further. That is quite an achievement for someone who is not a state employee and has no legal authority. Excerpts from the second case quote the ADL as making the following comments about Mr. [DELETION]:

“I find that the complainant in this proceeding, [DELETION], was not objective in his complaint, both because he was intimately familiar with the property in question and because he had performed an appraisal of the identical property approximately two years earlier for the opposing side in a lawsuit, reaching an estimate of value more than twice as high as Mr. [DELETION].”

“Mr. [DELETION] naturally characterized every way in which Mr. [DELETION] report differed from his own as a deficiency, and he referred to “numerous omissions in the report, numerous misleading comments, incorrect data in the report”

“This appears to be a case of Mr. [DELETION] not being able to see the forest for the trees, or perhaps intentionally cataloging every tree that Mr. [DELETION] failed to mention.”

“Because of my prior experiences with Mr. [DELETION], it took some time to come to the conclusion that he was not as objective in this case as he has been in others. He is too close to this case, he is emotionally involved, and he has confused his usual professional pursuit of perfection with personal disagreement and defense of his own appraisal.”

“It almost appears as if Mr. [DELETION] deliberately misinterpreted anything which could possibly be misinterpreted in Mr. [DELETION] report.”

Mr. [DELETION] criticism is meritless and it is frankly difficult to accept it as a serious criticism. This is simply not the level and quality of scrutiny which the Real Estate Appraisers Board should be applying to its licensee’s appraisals.”

“As stated, I believe that Mr. [DELETION] performed his review conscientiously and that he presented his findings objectively. However, I think he was nevertheless influenced in a subtle way by the very fact that Mr. [DELETION] filed the complaint... but it presumes that Mr. [DELETION] did not deliberately misunderstand Mr. [DELETION]’s report whenever possible.”

“...I can reach no other conclusion but that Mr. [DELETION] deliberately misunderstood whenever possible.” Source: FINAL DECISION AND ORDER LS99031 1 1APP, January 9, 2000.

**Is it OK for the Department of Regulation and Licensing to use misrepresentation to obtain a conviction when there are no violations?**

The reviewers, the investigator and the attorney approached my case as if they had to find me guilty of something, even if they had to make it up. The (ALJ) dismissed all of the alleged violations except for one, the use of “departure.” A departure takes place when an appraisal guideline of Standards Rule One is omitted. There were not any allegations or testimony that work from Standard One was omitted. Since nothing was omitted there could not be a “departure.” That erroneous conviction was based upon misleading testimony and misrepresentation of important definitions by the Board’s Reviewers and by the Board’s Attorney. They misrepresented the important definitions of “departure” “work” and “report” in testimony, presentations at the hearing and in written documents to the ALD. These misrepresentations resulted in an erroneous decision that is contrary to USPAP and Wisconsin Statutes. A letter from the Appraisal Standards Board, authors of the 1993 USPAP, was submitted at the hearing. It supported my position on “departure.” The Appraisal Standards Board made numerous public statements that even appraisal experts were confused about “departure”. Therefore, effective in 1994, they amended USPAP so that “appraisal experts” such as Mr. [DELETION], could not make the same misrepresentation again.

The allegation of departure in this case is such a minor technical issue that the entire process should never have started. Even Mr. [DELETION] stated that only one statement indicating departure was required (if a departure had taken place). The Board's Reviewers made so many errors that their competency must be questioned. One reviewer cited 24 alleged violations; the other one cited 27 violations, but neither one alleged the same violation. Their allegations were opinionated, judgmental and contained factorial errors and misrepresentations. The "experts" for the State by design, or by error, successfully confused the Department's Investigator, The Department's Attorney and the ALJ, each of whom stated that he was not knowledgeable of USPAP.

Considering Mr. [DELETION]'s errors and conduct, one must wonder, what standard is to be met? Is the bar set above, equal to, or below that of the alleged expert who is the Board's Chairman?

My first attorney was an appraiser and a member of the same association as the other three competitors. As an attorney and a certified appraiser, he probably is the best expert in the state on this topic. He was coerced into dropping out of the case. My expert witness was unable to appear at the hearing. My request for another date was denied. I was forced to find someone else in a short amount of time. I didn't even get to meet them before the hearing.

It has been said that power corrupts and absolute power corrupts absolutely. Thus it is easy to see why Mr. [DELETION] would be unquestioned and unchallenged by the Board. He is the Chairman of the Board and is the only certified general appraiser on the board. The general appraiser is considered to be more advanced than the other certifications. The other appraiser board members (by Statute) have lessor certifications and do not perform complex narrative appraisals. Thus it is easy to see why the reviewer would be unquestioned and unchallenged by the board. It is also easy to see why he would be unquestioned and unchallenged by The Department, since the Department does not have a state employee who is knowledgeable about USPAP. The Department's Attorney, [DELETION], stated that he was not knowledgeable in regards to USPAP. Mr. [DELETION] could have put an end to this. Instead he was a willing participant in the misconduct. The system does not have an effective check and balance procedure. There is currently no way to guard against the improper, biased and unethical behavior that I was subjected to.

I appealed to the Appraiser's Board. The Board stated that if they do not respond to an appeal within thirty days, the appeal is deemed to have been denied. However, the Board meets once per quarter. Therefore, they do not consider appeals that were filed more than thirty days ago because they are deemed to have been denied. Thus two thirds of all appeals are automatically denied without consideration. Is that good public policy? The Appraiser's Board never considered my request for an appeal. Therefore, it was deemed to have been denied. That appears to be a violation of Chapter 227 and a denial of due process.

I feel the Appraiser's Board should have considered my case, and if upheld, they should have heard my appeal or requested a rehearing since the ALJ decision is contrary to USPAP and Wisconsin Statutes.

I have a large amount of additional materials that you might be interested in reviewing.

Sincerely,

[DELETION]