

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
FLORIDA REAL ESTATE APPRAISAL )  
BOARD, )  
 )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 01-0385PL  
 )  
 )  
KATHY F. AUGUSTINE, )  
 )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

A formal hearing was conducted in this case on May 11, 2001, in Deland, Florida, before the Division of Administrative Hearings by its Administrative Law Judge, Suzanne F. Hood.

APPEARANCES

For Petitioner: Sunia Y. Marsh, Esquire  
Department of Business and  
Professional Regulation  
Division of Real Estate  
400 West Robinson Street, Suite N-308A  
Orlando, Florida 32801-1772

For Respondent: Steven W. Johnson, Esquire  
Steven W. Johnson, P.A.  
1801 East Colonial Drive, Suite 101  
Orlando, Florida 32803

STATEMENT OF THE ISSUES

The issues are whether Respondent violated Sections 475.624(2), 475.624(14), and 475.624(15), Florida Statutes, and if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On March 6, 2001, Petitioner Department of Business and Professional Regulation, Division of Real Estate (Petitioner) filed an Administrative Complaint against Respondent Kathy F. Augustine (Respondent). Said complaint alleged as follows:

(a) in Count I, that Respondent was guilty of culpable negligence or breach of trust in a business transaction in violation of Section 475.624(2), Florida Statutes; (b) in Count II, that Respondent was guilty of having failed to exercise reasonable diligence in developing an appraisal report in violation of Section 475.624(15), Florida Statutes; and (c) in Counts III and IV, that Respondent had violated Section 475.624(14), Florida Statutes, by violating certain standards for the development or communication of a real estate appraisal or other provisions of the 1998 Uniform Standards of Professional Appraisal Practice (USPAP).

On or about March 22, 2000, Respondent filed an Election of Rights form with Petitioner requesting an administrative hearing to contest the allegations in the Administrative Complaint. On April 14, 2000, Respondent filed an Answer to Administrative

Complaint and Request for a Formal Hearing. Petitioner referred this case to the Division of Administrative Hearings on January 29, 2001.

On January 6, 2001, Administrative Law Judge Charles C. Adams issued a Notice of Hearing, scheduling the hearing for April 10, 2001, together with an Order of Pre-hearing Instructions.

On March 30, 2001, Petitioner filed an unopposed Motion to Take Deposition by Telephone and Motion to Use Deposition as Evidence at Formal Hearing. An Order dated April 2, 2001, granted this motion.

On March 30, 2001, Petitioner filed an unopposed Motion to Continue. Judge Adams issued an Order Granting Continuance and Re-scheduling Hearing on April 3, 2001. Said order rescheduled the hearing for May 11, 2001.

On April 23, 2001, Petitioner filed an unopposed Motion for Telephonic Witness Testimony. Judge Adams issued an Order Granting Telephonic Witness Testimony on April 26, 2001.

The parties filed a Joint Pre-hearing Stipulation on May 4, 2001.

On May 10, 2001, the Division of Administrative Hearings transferred this case to Administrative Law Judge Suzanne F. Hood.

During the hearing, Petitioner presented the testimony of four witnesses and offered nine exhibits (P1-P6 and P8-P10), which were accepted into evidence. Respondent testified on her own behalf and presented the testimony of one additional witness. Respondent's Exhibits R1 and R2 were accepted into evidence.

During the hearing, the parties stipulated that the 1998 USPAP should be officially recognized. They also agreed that Petitioner could file a copy of that publication as a post-hearing submission. On May 18, 2001, Petitioner filed a copy of the 1998 USPAP publication.

A copy of the Transcript was filed on June 7, 2001. Respondent filed a Proposed Recommended Order on June 20, 2001. Petitioner filed a Proposed Recommended Order on June 22, 2001.

#### FINDINGS OF FACT

1. Petitioner is the agency charged with the duty of licensing and regulating real estate appraisers in the State of Florida.

2. Respondent is and was at all times material here a state-certified residential real estate appraiser. In January 1998, Petitioner issued Respondent residential real estate appraiser certificate number RD-0002524, with a business location of 2607 South Woodlawn Boulevard, No. 271, Deland, Florida, 32720.

3. On or about March 5, 1998, Deborah Jeane Palfrey, as the buyer, and United Capital of Central Florida, Inc. (UCCF), as the seller, entered into a contract for sale and purchase of residential property ("the property") located at 236 Steward Terrace, Deltona, Florida. The contract lists the purchase price of the property as \$54,500.

4. Testimony developed at hearing indicates that UCCF did not own the property in fee simple. Instead, UCCF had an assignable contract to purchase the property. UCCF eventually assigned this contract to Ms. Palfrey.

5. In March 1998, John E. Parrot owned both UCCF and Realnet USA. Both companies were located at the same address in Orlando, Florida. Both companies were involved to some extent in the real estate investment business. Competent evidence indicates that Realnet USA was a mortgage broker.

6. Michael Mullvain was vice-president of UCCF and, as such, had signature authority for that company. Mr. Mullvain, a licensed real estate broker, also was the general manager of Realnet USA.

7. On or about March 5, 1998, Mr. Mullvain and/or his assistant at Realnet USA, Tammie Wright, faxed a request for an appraisal of the property to Certified Appraisal Service (CAS), which was located in Winter Park, Florida. The appraisal

request was made on behalf of USCCF and directed to the attention of Cecil and Teresa Wright.

8. UCCF and Realnet USA were frequent clients of CAS. Realnet USA had requested CAS to provide as many as 200 similar appraisals in the past.

9. The appraisal request for the property stated that the projected sale price was \$79,000. The request contained the following comments: "House to be brought up to FHA specifications with central A/C, new kitchen, and baths." The request also included the following statement: "Cecil: Paul said you have already done some research on the property for him. Please go ahead with drive-by appraisal as usual."

10. In requesting a drive-by appraisal, Mr. Mullvain intended for the appraiser to take note of needed repairs. He wanted an estimate of what the property would be worth based on the repairs being requested.

11. At the time that the appraisal request was made, Mr. Mullvain knew that the property was distressed. His purpose in requesting the appraisal was to determine what the property would be worth if it was brought up to minimum Federal Housing Administration (FHA) standards. These standards require that all surface areas be serviceable. They also require anything that functions to function properly. FHA specifications take into consideration paint, carpet, kitchen, central air

conditioning, windows, etc. In other words, the house must be habitable to pass an FHA appraisal inspection.

12. Mr. Mullvain understood that he was ordering a proposed appraisal based on a comparable market analysis of the property's future value after repairs. He did not expect an appraisal based on a cost approach and an income approach, as well as a sales comparison approach.

13. When Mr. Mullvain ordered the appraisal, he did not intend for it to be used by anyone other than UCCF. However, Mr. Mullvain testified that a salesperson would have given the appraisal to potential buyers upon request or in a package to provide additional information about the property.

14. According to its normal business practice, Realnet USA prepared a rehabilitation summary for the property, showing the expected cost of repair. This document listed the following repair items and costs: (a) landscape, \$100; (b) roof, \$0.00; (c) exterior, \$600; windows/doors, \$100; (d) kitchen, \$200; (e) plumbing-bath, \$200; (f) paint & ceilings, \$650; (g) carpet, \$200; (h) subcontractors, \$500; (i) central A/C, \$100; (j) termite, \$100; (k) appliances, \$250; and (l) other, \$0.00. The total expected repair cost was \$3,000. Realnet USA kept this rehabilitation summary in its file for the property. No one provided a copy of the document to Respondent.

15. Respondent occasionally worked for CAS as an independent contractor. Cecil Wright would call Respondent and ask her to prepare appraisals for Realnet USA. Respondent understood that all appraisal reports for Realnet USA should produce a proposed estimate of value based on the assumption that improvements were to be "better than new" when repairs and renovations were complete. Respondent prepared these reports on forms specified by Mr. Wright and sent them to him without signing her name under her typed signature and without identifying her state-certified residential appraiser number.

16. In March 1998, Mr. Wright requested Respondent to prepare an appraisal report on the property for Realnet USA. He asked her to use a Federal Home Loan Mortgage Corporation (Freddie Mac) form contained in his computer software. Respondent understood that she would be using the forms to prepare a "restricted appraisal," showing the estimated market value of the property as it would exist after improvements were made to bring the house up to FHA specifications, including central air conditioning, a new kitchen, and new baths. Respondent also understood that the appraisal was intended only for Realnet USA's use.

17. After accepting the assignment, Respondent went to the property. She observed the neighborhood and the exterior and interior of the house. She took pictures of the property.



18. As to the exterior of the house, Respondent observed wood damage. She concluded that the damage was probably the result of termites or some other kind of pest infestation. There were little holes in the back of the house.

19. As to the interior of the house, Respondent noted that the kitchen needed new cabinets and appliances. One of two baths needed repairs because the toilet shared plumbing with the kitchen refrigerator's icemaker, which was located on the other side of the wall. The other bathroom had a brick shower stall. Respondent saw that someone had renovated a one-car garage, changing it into living space, but leaving the supporting roof beams exposed.

20. After visiting the property, Respondent performed the necessary research to complete her assignment. This research included performing a computer search of the local multiple listing service and public records to find comparable properties. Respondent did not make and file copies of documents that supported any of her research results. She did take pictures of the properties that she chose as comparable.

21. On March 9, 1998, Respondent produced the report described below. The computer-generated cover page identifies Realnet USA as the entity requesting the appraisal and provides a file number. The following is the only other information on the cover page:

In accordance with your request, I have personally made an exterior inspection from the street in front of the real property at:

235 Steward Terrace  
Deltona, Florida 32738

The purpose of this report is to estimate the market value of the subject property observed. In my opinion, the estimated market value of the property as of March 7, 1998, is:

\$79,000

Seventy-Nine Thousand

The attached report contains the description, analysis, and supportive data for the conclusions, final estimate of value, descriptive photographs, limiting conditions and appropriate certifications.

22. Next, Respondent filed in the two-page Freddie Mac form. The form states as follows at the top: "This form may be used if the second mortgage will not exceed \$15,000 and value is based on 'as is' condition."

23. On the form, Respondent typed in UCCF as the borrower. She indicated that the 1,556 square-foot house had six rooms, including three bedrooms, two baths, a family room, and no garage/carport. She noted that the house had central air conditioning.

24. In the Field Report section of the form, Respondent provided information regarding the neighborhood, adding the following comments: "The subject is located in well-established neighborhood conveniently located to schools, shopping, employment, places of worship, and major arteries. There are no

apparent adverse factors which would affect the subject's marketability."

25. Respondent also typed information about the property, indicating that it was a detached, rambler-style, building with frame/siding exterior walls and a composite shingle roof material. In the section for favorable or unfavorable comments including any deferred maintenance, Respondent stated as follows: "When renovated to meet FHA/HUD standards, the subject will be a well built dwelling that projects good eye appeal. Functional utility will be average. The subject will meet expectations of purchases in this price range."

26. In a section of the form labeled "Market Comparable Analysis Prior to Improvement," Respondent used the data she had collected from the local multiple listing service and public records to describe four pieces of property that she considered comparable. The four houses that Respondent listed as comparable were located one to fifteen miles from the subject property. Respondent listed the sale price of each house all of which sold between September 1997 and December 1997. Comparable one through four sold for \$79,000; \$77,700; \$85,700; and \$77,200, respectively.

27. Respondent included the following general comments about her sales comparable approach: "Sale 3 is located more than one mile from the subject but was included for support

purposes to the report. Depreciation is based on the subject being renovated and having an effective life of 3 years. Depreciation is calculated using 1% per year of effective age."

28. Under the general comments in very fine print, the form states as follows:

The information shown in this report is derived from an inspection of the neighborhood and exterior inspection of the subject property and market comparisons. The estimated market value is based upon this information and the knowledge of the undersigned. This report is not to be construed as an appraisal report.

29. Respondent filled in the blank for the estimated value of the subject property as \$79,000 as of March 7, 1998. She typed in her name as the person completing the report without signing her name under her typed signature and without identifying her state-certified residential appraiser number.

30. Respondent attached the following to the report before she sent it to Cecil Wright at CAS: (a) subject property photo addendum containing three pictures that Respondent took of the property; (b) comparable property photo addendum containing pictures that Respondent took of the four comparable houses described in the report; (c) sketch/area table addendum of the subject property that Respondent prepared.

31. Respondent testified that she also attached some certification pages to her report. However, the record contains

no such documents. Respondent expected Mr. Wright to complete the report and sign his name as her supervising/review appraiser. Respondent did not keep a copy of the report she sent to Mr. Wright.

32. The record contains two copies of Respondent's report, the first of which was eventually sent to Realnet USA. The first report contains the following alterations from the work personally prepared by Respondent: (a) An unidentified individual added Respondent's alleged hand-written initials under her typed name at the end of the Freddie Mac form; and (b) An unidentified individual added the alleged signature of Cecil Wright and his alleged state-certified residential appraiser number at the end of the Freddie Mac form. The first copy of the report includes only the cover page and the Freddie Mac form described above that Respondent prepared. It does not include the pictures or sketch prepared by Respondent or any other addendum.

33. Respondent copied the second copy of the report from CAS's files after the initiation of Petitioner's investigation in this case. The second copy of the report includes the pictures and sketch prepared by Respondent but does not contain hand-written initials under Respondent's typed name or Mr. Wright's alleged signature and appraiser number at the end of the Freddie Mac form. Instead, it contains the following

additions: (a) three maps prepared by an unidentified individual showing the location of the subject property and the four comparable properties; (b) a CAS certification page, attached by an unidentified individual; and (c) a page setting forth a certification and statement of limiting conditions together with contingent and limiting conditions, attached by an unidentified individual.

34. The first certification page, attached to the second copy of the report, states as follows in relevant part:

CERTIFIED APPRAISAL SERVICE  
CERTIFICATION

\* \* \*

The appraiser has inspected all improvement on this property, but does not warrant the condition of the roof, floors, appliances, plumbing, electrical, heating and air conditioning. Only a visual inspection has been made and it is assumed that all are in serviceable condition for the purpose of this appraisal. Unless noted, it is assumed the subject property is free from termite infestation.

\* \* \*

The value estimate is -as is- unless otherwise stated.

Certification of Appraiser/Review Appraiser  
(If applicable)

As of the date of this report, Cecil Wright, SRA has completed the requirement of the continuing education program of the Appraisal Institute. Cecil Wright is a State-Certified Residential Appraiser-No.RD 0000219.

Additional Certification of the Appraisal Institute

The appraisal analysis and opinion were developed and this appraisal report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Standards Board of the Appraisal [sic] Foundation, and the requirements of the code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.

\* \* \*

Definition of Client

Neither all nor any part of the contents of this report shall be conveyed to any person or entity, other than the appraiser's or firm's client (the client is defined as the person or firm ordering the appraisal from the appraiser), through advertising, solicitation materials, public relations, news, sales, or other media without the written consent or approval of the authors, particularly as to valuation conclusions. . . .

Termite information

The appraiser makes a cursory inspection of the exterior wood on the dwelling for the purpose of determining whether there is wood rot, possible termite damage or any other wood related problems. The appraiser is not qualified to determine if any damage is caused by termites as this is beyond our expertise. Should we find any rotted wood damage that requires attention it will be mentioned in the appraisal report. . . .

35. The last certification page attached to the second copy of the report, states as follows in relevant part:

CERTIFICATION AND STATEMENT  
OF LIMITING CONDITIONS

Certification: The drive-by inspector certifies and agrees that:

\* \* \*

3. The drive-by inspector has inspected the exterior of the property only and that inspection may be limited to what can be seen from the street. To the best of the drive-by inspector's knowledge and belief, all statements and information in this report are true and correct and that the drive-by inspector has not knowingly withheld any significant information. It is assumed that the interior is in good condition but it must be noted that a more complete exterior inspection and/or an interior inspection could produce a substantial change in value from that value indicated in this report.

4. All contingent and limiting conditions are contained herein (imposed by the terms of the assignment or by the undersigned affecting the analyses opinion, and conclusions contained in this report).

5. All conclusions and opinions concerning the real estate that are set forth in the report were prepared by the drive-by inspector whose signature appears on the report, unless indicated as 'reviewer.' No change of any item in the report shall be made by anyone other than the appraiser or the reviewer whose names appear on the report, and the appraiser, the reviewer, or their firm shall have no responsibility for any such unauthorized change.

CONTINGENT AND LIMITING CONDITIONS

The certification of the drive-by inspector is subject to the following conditions in addition to any other specific and limiting conditions as are set forth by the drive-by inspector in the report:



\* \* \*

5. The inspector assumes that there are no hidden or unapparent conditions of the property, subsoil, or structures, which would render it more or less valuable. The inspector assumes no responsibility for such conditions, or for engineering which might be required to discover such factors.

\* \* \*

7. Disclosure of the contents of the report is governed by the Bylaws and Regulations of the professional appraisal organization with which the inspector is affiliated.

8. Neither all, nor any part of the content of the report, or copy thereof (including conclusions as to the property value . . .) shall be used for any purposes by anyone but the client specified in the report, the mortgagee or its successors and assigns . . . without the previous written consent of the inspector, nor shall it be conveyed by anyone to the public . . . without the written consent and approval of the inspector.

9. On all reports, subject to satisfactory completion, repairs, or alteration, the report and value conclusion are contingent upon completion of the improvements in a professional workmanlike manner.

At the end of this last certification page, an unidentified individual signed Respondent's alleged initials as the drive-by inspector. Mr. Wright's alleged signature and appraiser number also appears at the bottom of the page.

36. Respondent's three-page appraisal report did not include the following or state why these factors were not considered: (a) a label or title indicating that the report was

restricted in scope as opposed to a conventional summary report; (b) an accurate statement regarding the report's intended use or purpose; (c) a statement regarding the property's highest and best use; (d) a cost approach analysis including an estimate of site value and an estimate of the value of the improvement, together with comments describing the sources used to compute the cost estimate, site value, and square footage; (e) an income approach analysis; (f) a history of prior sales or listing information for the property even though Respondent knew it had been on the market for 18 months for \$61,500 and had not sold for that price; (g) an addenda explaining relevant information and including any departures from USPAP not otherwise included in the report; (h) a standard language explaining the scope of appraisal and the appraisal process; (i) a standard language of additional comments, explanations and limiting conditions; (j) a statement of contingent and limiting conditions and appraiser's certification, including the supervisory appraiser's certification; and (k) the signature of appraiser and/or supervisory appraiser, together with their respective state certification numbers.

37. On or about August 12, 1998, William Wynn, inspected the subject property. He prepared a Uniform Residential Appraisal Report on August 17, 1998. Mr. Wynn's report lists

Deborah Palfrey as current owner and borrower. It lists Pinnacle Financial Corp. as lender/client.

38. Mr. Wynn's report describes the neighborhood of the property. The report includes comments describing market conditions and factors that affect the marketability of the properties in the neighborhood.

39. Mr. Wynn's report described the property's site, stating that its highest and best use was its present use. It also includes a description of improvements on the property, indicating that the interior floors, walls, trims/finish, bath floor, bath wainscot, and doors were in good condition. Mr. Wynn added the following comments about the condition of the improvement: "The improvements are of average quality construction maintained in good condition. No repairs required at the time of inspection. The garage has been converted into living area."

40. Mr. Wynn's report provides an estimate of the property's value using the cost approach. Regarding the cost approach, Mr. Wynn made the following comments:

See attached sketch. Cost calculations are based on Marshall and Swift Guidelines and information for local contractors. Physical depreciation is based on observed conditions and estimated by the age/life method. Land [is] valued by abstraction, sales comparison, and typical ratio of land to improvement for the area. The estimated remaining economic life is 49 years.

41. Mr. Wynn's report provides an estimate of the property's value using a sales comparison analysis. In making this analysis, Mr. Wynn compared the subject property to three comparables. Regarding the sales comparison approach, Mr. Wynn made the following relevant comments:

The subject and the three comparable sales are located in Deltona Lakes. See the addendum for additional comments explaining the adjustments for the differences in gross living area and explanation for sales dated over six months. The three closed sales used in the sales comparison approach provide a reliable range of value for the appraiser property. \*See Addendum.

\* \* \*

The subject was listed at \$57,500, in the first part of 1998. The subject sold for \$50,000 March 1998.

42. Mr. Wynn's report states that the appraisal was made "as is" and not subject to repairs. As part of the final reconciliation, the report states as follows:

Emphasis is on the sales comparison approach because it reflects current market trends for similar properties. Typically homes in the subject's neighborhood are not purchased for income; therefore, the income approach was not applied. Cost approach is not required.

43. Mr. Wynn concluded in his report that the property's estimated value was \$60,000 as of August 12, 1998. He then signed his name and identified his state certification number.

44. Mr. Wynn attached a General Text Addendum to his report, which states as follows:

The comparables are closed sales in the subject's market area. All three sales are considered to be reasonable substitutes for the appraised property. Sale #2 and #3, although dated over six months is [sic] considered a reliable value indicator due to stable market conditions for the time period covered. The subject has a family room 19.9 x 19.8 that is a garage converted to heated and air-conditioned living area. The adjustments for the differences in living area are made at a lower than typical amount (\$20 per sq. foot) because the ceiling in the family room has exposed roof trusses (painted). There is no finished drywall ceiling in the family room to cover the roof trusses.

The appraiser was not able to bracket the subject in gross living area with a similar comparable sale.

45. Mr. Wynn attached the following additional information to his report: (a) two maps showing the location of the subject property and the comparables; (b) three pictures of the subject property and pictures of the comparables; (c) a sketch/area table addendum; (d) a copy of his curriculum vitae; (e) a definition of market value; (f) a statement of contingent and limiting conditions; (g) an appraiser's certification; and (h) a supervisory appraiser's certification. Mr. Wynn then signed his name to the report and identified his state certification number. Mr. Wynn did not have a supervisory appraiser in making his report.

46. In September 1998, Peter T. Woods, a state-certified general appraiser, requested his employee, Walter A. Drumb, a state-certified residential appraiser, to perform an appraisal of the subject property. Subsequently, Mr. Drumb prepared a Summary Appraisal Report using the form for a Uniform Residential Appraisal Report. The report lists Jean Palfrey as the borrower and Pinnacle Financial Corp. as the lender/client.

47. Mr. Drumb's report states that "[t]he intended use of the appraisal is to aid in mortgage loan negotiations." Mr. Drumb's report also comments that "[t]he dwelling appears to be of average quality construction and in good physical condition with no functional inadequacies noted."

48. In making his report, Mr. Drumb used two approaches: (a) the cost approach; and (b) the sales comparison analysis. The report states that the income approach was not used "due to a lack of reliable market rental data in the subject neighborhood."

49. Regarding the cost approach, Mr. Drumb included the "as is" value of site improvements and made the following comments: "No functional or external obsolescence noted. Cost approach was prepared using Marshall and Swift Residential Cost Handbook and local cost estimates. See attached addendum for measurements. Estimated remaining economic life: 52 years."

50. Regarding the sales comparison analysis, Mr. Drumb made the following comments: "The subject conveyed in March 1998 for \$50,000. The public records reveal no prior sales of the comparable sales within the past year."

51. Mr. Drumb concluded that the property had an estimated market value of \$63,000 as of September 11, 1998. His report indicates that the appraisal was made "as is" and not subject to repairs and alterations.

52. Mr. Drumb signed his report and identified his state-certified residential appraiser number. Mr. Woods also signed the report as the supervising appraiser and identified his state-certified general appraiser number.

53. Mr. Drumb included an addendum to his report that explained his choice of comparables. He included a floor plan, pictures of the subject property and the properties used as comparables, a map showing the locations of the subject property and comparables, and a subdivision plat. Mr. Drumb included a page in his report that explained the scope of the appraisal and the appraisal process in detail.

54. Finally, Mr. Drumb attached three pages to his report, setting forth additional comments, explanations, and limiting conditions. Included in these comments was a statement of limiting conditions and appraiser's certification. Mr. Drumb and his supervisory appraiser, Mr. Woods, signed the final

certification page and identified their state-certified appraiser numbers.

55. Petitioner's investigator, Robert Baird, has personal knowledge of the property as he resided on the same street as the property at all times material here. In late 1997 or early 1998, prior to investigating the complaint, Mr. Baird viewed the property and thought that it was in a state of disrepair.

56. Mr. Baird inspected the property for second time on or about May 17, 1999, as part of his investigation. At that time, the property appeared to have been renovated as compared to its condition in early 1998.

57. In the course of the investigation, Mr. Baird interviewed Respondent. During the interview, Respondent stated that her estimated value of the property included "with improvements." Respondent later admitted that she "could understand how individuals could misunderstand her estimate of value if they were not aware that it was based on proposed renovations." In either case, Respondent was unable to furnish Mr. Baird with documentation to support her estimated value of the property with or without improvements.

58. Respondent admitted in the hearing that the cost of renovating the house could have been more than the renovated house would have been worth. She admitted that, based on her



personal experience, the proposed renovations could cost in excess of \$20,000, excluding any termite or wood rot.

59. Respondent knew Realnet USA wanted the appraisal to help it "determine whether the house was worth it to purchase or not." If Respondent's estimated value of the property was \$79,000 as it existed on March 7, 1998, and as stated on the cover page of her report, then her estimated value was substantially higher than the property's "as is" market value. If Respondent's estimated value of the property was \$79,000, taking into consideration the appraisal request for an estimate of the market value after proposed renovations to meet minimum FHA standards, then Respondent failed to place a stated value on the estimated cost for each proposed renovation.

60. During the hearing, Respondent admitted that USPAP required her to prepare an addendum to include necessary information such as prior sales history when the restricted form she was using did not include that information. She acknowledged that she was required to comply with 1998 USPAP even if she was unfamiliar the publication's contents and despite her client's request for something less than a conventional appraisal.

61. Competent evidence indicates that appraisal reports by state-certified residential appraisers are seldom, if ever, free of errors. Certain information is always subjective as it is

based upon the appraisers' personal experience and expertise. Additionally, there appears to be some confusion in the profession as to the precise information that a "restricted appraisal" must include. Nevertheless, USPAP requires the all appraisal reports prepared by state-certified residential appraisers to contain certain basic information or an explanation as to any departures from those requirements.

62. At times, a supervisory/review appraiser will make changes to an appraiser's report. Knowing that a supervisory appraiser has this prerogative, does not mean that an appraiser is allowed to submit an incomplete appraisal report with the expectation that the review appraiser will complete the report and sign the appraiser's name. Clear and convincing evidence in this case indicates that the three-page appraisal report prepared by Respondent and submitted to Mr. Wright was substantially deficient and resulted in Realnet USA's receipt of an ambiguous, contradictory, and misleading appraisal based on unverifiable data.

#### CONCLUSIONS OF LAW

63. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. Sections 120.569 and 120.57(1), Florida Statutes.

64. Petitioner has the burden of proving by clear and convincing evidence that Respondent committed violations of

Chapter 475, Florida Statutes. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977).

65. A real estate licensee is charged with knowledge of Chapter 475, Florida Statutes. Wallen v. Florida Department of Professional Regulation, Division of Real Estate, 568 So. 2d 975 (Fla. 3d DCA 1990).

66. Section 475.624, Florida Statutes, states in pertinent part:

The Board may deny an application for registration, licensure, or certification; may investigate the actions of any appraiser registered, licensed, or certified under this part; may reprimand or impose an administrative fine not to exceed \$5,000 for each count or separate offense against any such appraiser; and may revoke or suspend, for a period not to exceed 10 years, the registration, license, or certification or any such appraiser, or place any such appraiser on probation if it finds that the registrant, licensee, or certificate-holder:

\* \* \*

(2) Has been guilty of . . . culpable negligence or breach of trust in a business transaction . . . .

\* \* \*

(14) Has violated any standard for the development or communication of a real estate appraisal or other provision of the

Uniform Standards of Professional Appraisal Practice.

\* \* \*

(15) Has failed or refused to exercise reasonable diligence in developing an appraisal or preparing an appraisal report.

67. Section 475.628, Florida Statutes, states as follows:

Each appraiser registered, licensed, or certified under this section shall comply with the Uniform Standards of Professional Appraisal Practice. Statements on appraisal standards which may be issued for the purpose of clarification, interpretation, explanation, or elaboration through the Appraisal Foundation shall also be binding on any appraiser registered, licensed, or certified under this section.

68. The Preamble to the 1998 USPAP states as follows in pertinent part:

It is essential that a professional appraiser arrive at and communicate his or her analyses, opinions, and advice in a manner that will be meaningful to the client and will not be misleading in the marketplace. These Uniform Standards of Professional Appraisal Practice reflect the current standards of the appraisal profession.

\* \* \*

These standards deal with the procedures to be followed in performing an appraisal, review or consulting service and the manner in which an appraisal, review or consulting service is communicated. . . .

69. The 1998 USPAP, states as follows in pertinent part:

STANDARD 1

In 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.

\* \* \*

Standards Rule 1-1

In developing a real property appraisal, an appraiser must:

(a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;

\* \* \*

(b) not commit a substantial error of omission or commission that significantly affects an appraisal;

\* \* \*

(c) not render appraisal services in a careless or negligent manner, such as a series of errors that considered individually, may not significantly affect the results of an appraisal, but which, when considered in the aggregate, would be misleading.

\* \* \*

Standards Rule 1-4

In developing a real property appraisal, and appraiser must observe the following specific appraisal guidelines, when applicable:

\* \* \*

(h) appraise proposed improvement only after examining and having available for future examination:

(i) plans, specification, or other documentation sufficient to identify the scope and character of the proposed improvements;

(ii) evidence indicating the probable time of completion of the proposed improvements; and

(iii) reasonably clear and appropriate evidence supporting development costs, anticipated earnings, occupancy projections, and the anticipated competition at the time of completion.

\* \* \*

Standards Rule 1-5

In developing a real property appraisal, an appraiser must:

\* \* \*

(b) consider and analyze any prior sales of the property being appraised that occurred within the following time periods:

(i) one year for one-to four family residential property . . .

STANDARD 2

In reporting the results of a real property appraisal an appraiser must communicate each analysis, opinion, and conclusion in a manner that is not misleading.

\* \* \*

Standards Rule 2-1

Each written or oral real property appraisal report must:

(a) clearly and accurately set forth the appraisal in a manner that will not be misleading;

\* \* \*

(b) contain sufficient information to enable the person(s) who are expected to receive or rely on the report to understand it properly.

\* \* \*

(c) clearly and accurately disclose any extraordinary assumption or limiting condition that directly affects the appraisal and indicate its impact on value.

Standards Rule 2-2

Each written real property appraisal report must be prepared under one of the following three options and prominently state which option is used: Self-Contained Appraisal Report, Summary Appraisal Report or Restricted Appraisal Report.

\* \* \*

(c) The Restricted Appraisal Report must:

\* \* \*

(iii) state the purpose and intended use of the appraisal;

\* \* \*

(iv) state and reference a definition of the value to be estimated;

\* \* \*

(vi) describe the extent of the process of collecting, confirming, and reporting data;

\* \* \*

(vii) state all assumptions and limiting conditions that affect the analyses, opinions, and conclusions;

\* \* \*

(viii) state the appraisal procedures followed, state the value conclusion and reference the existence of specific file information in support of the conclusion;

\* \* \*

(ix) state the appraiser's opinion of the highest and best use of the real estate, when such an opinion is necessary and appropriate;

\* \* \*

(x) state the exclusion of any of the usual valuation approaches;

\* \* \*

(xi) contain a prominent use restriction that limits reliance on the report to the client and warn that the report cannot be understood properly without additional information in the workfile of the appraiser, and clearly identify and explain any permitted departures from the specified guidelines of STANDARD 1;

\* \* \*

(xii) include a signed certification in accordance with Standards 2-3.

70. Black's Law Dictionary (1979 5th Ed.) defines culpable negligence as "[f]ailure to exercise that degree of care rendered appropriate by the particular circumstances, and which



a man of ordinary prudence in the same situation and with equal experience would not have omitted." Respondent is guilty of culpable negligence because she failed to comply with 1998 USPAP when she prepared her report. She carelessly developed and communicated an appraisal report that did not meet the requirements of a restricted report. By failing to include the required information in her report, Respondent produced a misleading appraisal, breaching the trust that was created when she accepted the assignment. Accordingly, Respondent is guilty of violating Section 475.624(2), Florida Statutes.

71. These same actions clearly show that Respondent failed to exercise reasonable diligence in preparing her report. For example, Respondent failed to clearly and correctly identify the type of report she prepared. She failed to document the basis for her estimated value of the property with proposed renovations. She failed to explain her departures from 1998 USPAP. She failed to include a history of the property's prior sales and/or listing information even though this information was available. She failed to sign her report. All of these omissions, among others, show that Respondent is guilty of violating Sections 475.624 (14) and 475.624(15), Florida Statutes, and Standards 1-1(a), 1-1(b), and 1-5(b)(i) in 1998 USPAP.

72. Finally, Respondent violated Section 475.624(14), Florida Statutes, and Standards 2-1(a), 2-1(b), and 2-2(c), 1998 USPAP in the following ways: (a) She failed to develop her report in a manner that was not misleading; (b) Her report did not contain sufficient information to enable Realnet USA to understand it properly; (c) She included an inaccurate purpose on the cover page of her report; (d) She did not reference a definition of the value to be estimated; (e) She did not describe her process of collecting and reporting data; (f) She did not state all assumptions and limiting conditions; (g) She did not reference the existence of specific file information in support of her conclusion; (h) She did not give her opinion of the property's highest and best use; (i) She did not explain why she excluded the usual valuation approaches; (j) She did not include a prominent use restriction that limited reliance on the report to Realnet USA; and (k) She did not include a signed certification or identify her state certification number.

73. Rule 61J1-8.002, Florida Administrative Code, sets forth the applicable disciplinary guidelines absent aggravating or mitigating circumstances. Under these guidelines and pursuant to clear and convincing evidence, Respondent is subject to a penalty of licensure suspension for as much as 90 days for failing to place her state-certification designation and her certification number on her report. She is subject to a penalty

ranging from a \$1,000 fine to one year's suspension of licensure for violation of Section 475.624(2), Florida Statutes. She is subject to a penalty ranging from a five-year suspension to revocation and a \$1,000 fine for violating Sections 475.624(14) and 475.624(15), Florida Statutes.

74. Rule 61J1-8.002(4), Florida Administrative Code, sets forth the applicable mitigating and aggravating factors. Under these guidelines, and pursuant to clear and convincing evidence, Respondent's penalty should be mitigated because she has been a state-certified residential appraiser since 1998, performing hundreds of appraisals, with no prior disciplinary history. Respondent's penalty should be aggravated because of the number of counts in the Administrative Complaint.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

#### RECOMMENDED:

That Petitioner enter a final order, suspending Petitioner's certification for one year followed by one year of probation in which Respondent shall be required to complete 30 hours of continuing education courses in addition to the courses required to maintain licensure and imposing an administrative fine in the amount of \$2,000.

DONE AND ENTERED this 20th day of July, 2001, in  
Tallahassee, Leon County, Florida.

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SUZANNE F. HOOD  
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Division of Administrative Hearings  
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Filed with the Clerk of the  
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this 20th day of July, 2001.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.