STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, DIVISION OF REAL ESTATE,	)	
Petitioner,	)	
vs.	)	Case No. 03-3824PL
D. PHIL JONES,	)	
Respondent.	)	

RECOMMENDED ORDER

A formal hearing was conducted in this case on January 13, 2004, in Milton, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: S. L. Smith, Esquire
Department of Business and
Professional Regulation
400 West Robinson Street, Suite 802N
Orlando, Florida 32801

For Respondent: Robert E. Thielhelm, Jr., Esquire
Baker and Hostetler, LLP
Post Office Box 112
Orlando, Florida 32801-0112

STATEMENT OF THE ISSUES

The issues are as follows: (a) whether Respondent violated a standard for the development or communication of a real estate appraisal or other provision of the Uniform Standards of

Professional Appraisal Practice (USPAP) in violation of Section 475.624(14), Florida Statutes (1995); (b) whether Respondent failed to exercise reasonable diligence in developing an appraisal in violation of Section 475.624(15), Florida Statutes (1995); and (c) whether Respondent is guilty of culpable negligence or breach of trust in a business transaction in violation of Section 475.624(2), Florida Statutes (1995).

PRELIMINARY STATEMENT

On April 20, 1999, Petitioner, Department of Business and Professional Regulation, Division of Real Estate (Petitioner), filed an Administrative Complaint against Respondent D. Phil Jones (Respondent). Said Complaint alleged as follows: (a) in Count I that Respondent was guilty of violating a standard for the development or communication of a real estate appraisal or other provision of USPAP, specifically USPAP Standard 1, Rules 1-1(a), 1-1(b), 1-1(c), and 1-2(a) and USPAP Standard 2, Rule 2-1(a), as well as USPAP's competency and ethics provisions, in violation of Section 475.624(14), Florida Statutes (1995), and (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 (1995). Respondent subsequently requested an administrative hearing to contest the allegations of the initial Administrative Complaint.

On August 13, 1999, Administrative Law Judge Don W. Davis issued a Notice of Hearing, scheduling the hearing in DOAH Case No. 99-2968 for November 2, 1999. On September 23, 1999, Respondent filed an Agreed Request for Continuance. An Order dated September 29, 1999, granted this motion.

In an Order dated October 27, 1999, Administrative Law Judge Charles C. Adams rescheduled the final hearing in DOAH Case No. 99-2968 for March 6 and 7, 2000. In a motion dated February 9, 2000, Petitioner sought a continuance of the formal hearing. Judge Adams granted the motion and rescheduled the final hearing for May 25 and 26, 2000.

In a motion dated March 3, 2000, Petitioner moved again to reschedule the formal hearing. Judge Davis granted the motion and rescheduled the final hearing for May 24 and 24, 2000.

In a motion dated April 28, 2000, Petitioner sought another continuance. On May 1, 2000, Judge Davis granted the continuance and placed the case in abeyance. Pursuant to Judge Davis' Order, the parties were required to advise Judge Davis no later than October 2, 2000, as to the status of the matter. In a motion dated October 2, 2000, Petitioner sought an extension of time to file a status report. In an Order dated October 6, 2000, Judge Davis closed the file in DOAH Case No. 99-2968.

On May 18, 2001, Petitioner filed an Amended Administrative Complaint, alleging as follows:

Count 1

Based upon the foregoing, Respondent has violated a standard for the development or communication of a real estate appraisal or other provision of the Uniform Standards of Professional Appraisal Practice (1996) in violation of Section 475.624(14), Florida Statutes (1995).

COUNT II

Based on the foregoing, Respondent is guilty of having failed to exercise reasonable diligence in developing an appraisal report in violation of Section 475.624(15), Florida Statutes (1995).

COUNT III

Based on the foregoing, Respondent is guilty of culpable negligence or breach of trust in a business transaction in violation of Section 475.624(2), Florida Statutes (1995).

On August 17, 2001, Respondent filed a Response to Amended Complaint and Request for Formal Hearing in the instant case. Petitioner referred the case to the Division of Administrative Hearings on October 16, 2003.

On November 14, 2003, Judge Adams issued a Notice of Hearing, scheduling the hearing for January 13 and 14, 2004. The Division of Administrative Hearings subsequently transferred this case to the undersigned.

When the hearing commenced, Petitioner requested official recognition of applicable provisions of USPAP. Respondent objected because the Amended Administrative Complaint did not

allege that Respondent had violated any specific USPAP standards.

Respondent also made an ore tenus Motion to Dismiss all allegations that he violated USPAP. Respondent argued that the Amended Administrative Complaint is insufficient because it lacks specificity and does not describe a violation of the counts charged.

The undersigned reserved ruling on the request for official recognition, which is hereby granted. Additionally, the Motion to Dismiss was hereby denied.

Under the facts of this case, it is clear that Respondent had sufficient notice of the charges against him, including notice that his alleged actions or inactions violated applicable provisions of USPAP. See Seminole County Bd. of County Comm'rs v. Long, 422 So. 2d 938,940 (Fla. 5th DCA 1982)(administrative complaints are not required to meet the technical standards of pleading in civil or criminal court). The Amended Administrative Complaint afforded Respondent more than reasonable certainty about the nature of the charges against him, and gave him a reasonable opportunity to defend against them. See Sandin v. Florida Real Estate Comm., 187 So. 2d 355, 358 (Fla. 2nd DCA 1966), citing Florida Bd. of Massage v. Thrall, 164 So. 2d 20, 22 (Fla. 3rd DCA 1964) and State ex rel. Williams v. Whitman, 156 So. 2d 705, 709 (Fla. 1934).

During the hearing, Petitioner presented the testimony of three witnesses and offered 11 exhibits, which were accepted into evidence. Respondent testified in his own behalf and presented the testimony of one additional witness. Respondent presented three exhibits, which were accepted into evidence.

A copy of the transcript was filed on February 6, 2004. Petitioner filed its Proposed Recommended Order on February 20, 2004. Respondent filed his Proposed Recommended Order on February 23, 2004.

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 hereto a state-certified general real estate appraiser, having been issued License RZ0001233 in accordance with Chapter 475, Part II of the Florida Statutes.

3. Respondent has been appraising real property in the State of Florida since 1985 and has conducted over 5,000 appraisals. During that period of time, Respondent has not been charged with any disciplinary action or proceeding as an appraiser other than with respect to this particular case.

4. Respondent is the sole shareholder of McCall Realty and Investment, Inc. (McCall Realty). Eighty percent of McCall Realty's business is appraisals, while 20 percent is attributable to real estate sales, rentals and property management. Respondent is the sole appraiser in his office, but does have two trainees. Imposition of a fine or suspension of Respondent's license would cause a great degree of financial hardship in that the Respondent and McCall Realty would have to file bankruptcy.

5. On or about March 10, 1996, Respondent developed and communicated an appraisal report (Report) for property identified on the cover page as 5600 Bubba Lane, Milton, Florida 32570 (Subject Property) to Ward Brewer.

6. In his Report, Respondent estimated the market value of the subject property as of February 20, 1996, as $1,095,000.00. The Report contained three separate appraisal form reports as follows: (a) an appraisal of parcel 1, an alleged 160-acre vacant land site valued at $800,000 (Appraisal 1); (b) an appraisal of parcel 2, an alleged 7-acre site with a 1,508 square-foot residence valued at $95,000 (Appraisal 2); and (c) an appraisal of parcel 3, an alleged 25-acre vacant land site valued at $200,000 (Appraisal 3) (the Park Property). Each of the form reports indicated that Respondent was appraising a fee simple interest.

7. On November 28, 1995, Ward Brewer called Respondent's secretary and indicated that he needed Respondent to do an appraisal. Mr. Brewer indicated that the Subject Property was between 159 and 200 acres and owned by J. W. Hawkins. According to Mr. Brewer, there also was an alleged 25-acre park that was owned by J. W. Hawkins but leased to the State of Florida. Shortly after receiving this message from his secretary, Respondent returned Ward Brewer's call and confirmed that Mr. Brewer wanted Respondent to appraise the property owned by J. W. Hawkins totaling between 159 to 200 acres, as well as an adjacent park owned by J. W. Hawkins and leased to the State of Florida. Also in that conversation, Mr. Brewer indicated he needed this property to be worth $1 million.

8. In making his investigation for the appraisal, Respondent determined that the Park Property was actually owned by the State of Florida. Respondent then called Mr. Brewer and informed him that Mr. Hawkins did not own the Park Property. Mr. Brewer indicated that the owner, Mr. Hawkins, had donated the Park Property to the State, but that Mr. Hawkins was going to get it back through a reversionary interest because he was having problems with the State of Florida. Mr. Brewer then instructed Respondent to appraise the Park Property as if Mr. Hawkins owned the property in fee simple.

9. Respondent also contacted the property owner, Mr. Hawkins, to determine Mr. Hawkins' understanding of the reversionary interest. Mr. Hawkins confirmed that he was expecting to get the property back from the State through the reversionary interest. Respondent also inquired of the owner, Mr. Hawkins, as to the size of the property, and Mr. Hawkins indicated that it was somewhere between 150 and 200 acres.

10. Respondent walked the Subject Property on two separate occasions. During his physical inspection of the Subject Property, Respondent walked all over the property except for the island portion. He only viewed the island from the shoreline. He then used an aerial photograph to confirm his understanding of the island.

11. Respondent asked Mr. Brewer if he had a survey of the Subject Property. Mr. Brewer indicated that he did not have a survey. Respondent was not aware that Mr. Brewer was in the process of obtaining a survey. In fact, Appraisal 2 in the Report states that no survey was available.

12. Additionally, the Report contains a disclaimer, which states as follows:

> This appraiser is not qualified to, nor does the appraisal warrant, the following:
>
> * * *

> 6. The actual location of its designated flood hazard or designated area without a current survey. . . .
>
> * * *
>
> It is recommended that these items and areas be checked by professionals who specialize in these various fields. It is also recommended that any and all reports prepared by others be made available to this appraiser for consideration in the appraisal process. This appraiser reserves a right of review and/or revision subject to any outside reports submitted on the property appraised.

13. Respondent then began the process of compiling comparable sales.

14. After receiving the Report from the Respondent, Mr. Brewer and others obtained title to a portion of the Subject Property. The purchase price for this phase of the purchase was $300,000. Mr. Brewer and his counsel had the Report and a survey before closing on the Subject Property. Neither Mr. Brewer nor his counsel provided the Respondent with a copy of the survey.

15. Thereafter, Mr. Brewer and the other owners decided to finance the purchase of the remaining portion of the Subject Property. The bank requested Mr. R. Shawn Brantley, to prepare an appraisal of a portion of the Subject Property. Mr. Brantley valued a portion of the Subject Property as of May 2, 1997, at $380,000. Thereafter, Mr. Brantley prepared two additional

appraisals of the balance of the Subject Property for $69,000 and $70,000, respectively. Accordingly, Mr. Brantley's appraised value of the Subject Property a little more than a year after the Report was $519,000.

16. Mr. Brewer and others completed the purchase of the remaining property by paying an additional $270,000, for a total of $570,000. Thereafter, Mr. Brewer and others filed a civil lawsuit against Respondent and McCall Realty. In a settlement of the lawsuit, Mr. Brewer and the other owners received a $300,000 settlement. According to Mr. Brewer, one-half of the settlement amount paid attorneys' fees and costs. The other half of the settlement amount was to offset their losses.

17. Because of the disparity in the appraised values, Mr. Brantley's client, SunTrust Bank, insisted on knowing why there was a difference in the values. Mr. Brantley subsequently prepared a Review Appraisal Report.

18. Respondent asserts that he had developed one prior appraisal involving wetlands or property with similar characteristics. Respondent did not produce this prior appraisal as requested by Petitioner's investigator. As a result of this entire experience, the Respondent has limited his appraisal practice to single-family residential.

19. Respondent identified the Subject Property in the Report by tax identification numbers, metes and bounds

descriptions, aerial photographs and a depiction of the property on a zoning map. Tax identification numbers are found in the Report on the tax roll assessment information sheet. With regard to parcel 2, the assessor's parcel number is identified as 35-2N-28-0000-00500-0000 on the form report itself. On parcels 1 and 3, the property is identified on the first page of each form appraisal by metes and bounds in Section 35, Township 1 North, Range 28 West and by reference to the "attached aerial photograph." On the aerial photograph, the Respondent wrote in 1, 2 and 3 corresponding to the separate parcel numbers that he was appraising.

20. Additionally, the Report includes a zoning map that identifies the Subject Property with 1, 5, or 5.3, corresponding to the respective tax identification numbers for the three parcels being appraised.

21. The tax roll assessment information sheet in the Report provides a tax identification number of 35-2N-28-0000-00100-0000 for parcel 1. One can then go to the zoning map, which identifies parcel 1 by a no. 1 on the zoning map. Parcel 2 is also identified in the Report as containing assessor's parcel no. 35-2N-28-0000-00500-0000. Here again, this property can be seen on the zoning map and is depicted with a number 5. Finally, parcel 3, the Park Property, is identified as being

zoned P-2 and then further identified as the property on the zoning map where the zoning is indicated as P-2.

22. Respondent's effort to identify and describe the Subject Property is inadequate in at least two important respects. First, the Report described the property as 192 acres when it is in fact much smaller, approximately 99 acres. Correct acreage is a fundamental way to describe and identify a property.

23. Second, the Report fails to reveal the existence of wetlands, which were readily apparent. The Report states that the alleged 160-acre tract is bordered by the Blackwater River to the East but fails to specify the following: (a) the property contains seven ponds; (b) a bayou intersects the property; and (c) over half of the property is an island surrounded by at least 50 feet of water. When reading the Report, the only way to discern these characteristics is by reference to the Report's attachments. At the very least, Respondent should have made some attempt to describe the portion of the property that is dry upland and the portion that is covered with water.

24. Respondent did not physically walk the entire length of the island. Instead, he viewed the island across the river and then used an aerial photograph to become familiar with the island. The use of aerial photographs in some instances may be

a valuable resource where an appraiser finds it impossible to penetrate every square yard of the property. In this case Respondent did not make an effort to gain access to the island or to navigate around it by boat.

25. Mr. Brewer specifically requested that Respondent appraise the Park Property as if J. W. Hawkins owned it in fee simple. Respondent and Mr. Hawkins discussed the donation of the Park Property and the alleged reversionary interest under which Mr. Hawkins expected to get the property back.

26. Respondent's report failed to disclose the basis of his appraisal of the Park Property. The Report did not mention that the State of Florida had any kind of interest in the land. The report did not refer to a lease or a warranty deed with a reversionary interest. In complying with Mr. Brewer's request regarding the estimated market value of the Park Property, Respondent should have made these disclosures.

27. Respondent failed to provide an adequate analysis and overvalued the Subject Property in part because he failed to consider the impact that wetlands would have on the value of the Subject Property. Respondent did not have to be an environmental or ecological expert to know that property covered by so much water would contain wetlands.

28. Respondent’s Report contains a statement of limitations regarding adverse conditions "such as, needed

repairs, depreciation, the presence of hazardous wastes, toxic substances, etc." This statement does not refer to wetlands.

29. The multi-purpose appraisal addendum for federally regulated transactions contained in the Report, provides as follows:

ENVIRONMENTAL DISCLAIMER

> The value estimated is based on the assumption that the property is not negatively affected by the existence of hazardous substances or detrimental environmental conditions unless otherwise stated in this report. The appraiser is not an expert in the identification of hazardous substances or detrimental environmental conditions. The appraiser's routine inspection and inquiries about the subject property did not develop any information that indicated any apparent significant hazardous substances or detrimental environmental conditions which would affect the property negatively unless otherwise stated in this report. It is possible that tests and inspections made by a qualified hazardous substance and environmental expert would reveal the existence of hazardous substances or detrimental environmental conditions on or around the property that would negatively affect its value.

Considering the general description of the Subject Property, Respondent was remiss in not directly addressing the existence of wetlands in his Report and in not expressly stating his expertise (or lack thereof) in appraising wetland property in his statement of limitations and/or disclaimers.

30. The Petitioner did not present the testimony of an ecological or environmental expert to establish the existence of wetlands on the Subject Property. Instead, Petitioner relied on the testimony of Mr. Brantley, who is an expert in the appraisal of wetland property.

31. In his own appraisal performed on a portion of the Subject Property, Mr. Brantley expressly stated with respect to jurisdictional wetlands that:

> This appraisal is based upon the special assumption that the appraiser's estimates regarding this matter, as set forth herein, are correct. The reader is expressly notified that the appraiser does not hold himself out to be an environmental or ecological consultant, nor a surveyor, and the reader is encouraged to employ such experts for further confirmation of the conclusions and estimates rendered herein, if they should so desire or should consider it practical to do so.

32. Mr. Brantley went on to qualify his own appraisal further with the following language:

> Certain portions of the subject property consist of jurisdictional wetlands, which are subject to the rights exercised by the various environmental agencies and governments. This appraisal is subject to the special assumption that that appraiser's estimates of the amount of area subject to environmental scrutiny is accurate. The appraiser has based these estimates upon observation of topography and wetlands species upon the property, as well as review of various soil and aerial maps. While, the appraiser is of the opinion that these estimates are reasonably accurate, he can

> assume no responsibility for variations that may be identified by an environmental audit and survey of lines established by an ecological expert. The reader is encouraged to consult experts in these fields for professional verification of the appraiser's assumptions.

33. During the hearing, Mr. Brantley admitted that he does not warrant his conclusions and assumptions regarding jurisdictional wetlands as a qualified ecologist or environmentalist. He acknowledged that the Subject Property possibly was only seasonally wet and could appear dry for as much as six months out of the year. However, Mr. Brantley's persuasive testimony leaves no doubt that Respondent should have recognized the existence of wetlands in his report and calculated their impact on the value of the Subject Property.

34. In all three appraisals, Respondent used the sales comparison approach to determine the value of each of the three parcels. In making the comparisons, Respondent asked his administrative assistant to calculate the acreage of the Subject Property using the scale on the aerial photograph.

35. Respondent failed to adequately calculate the area of certain comparable sales used in the Report. For example, Respondent used the wrong acreage for each of the comparable sales used in Appraisal 1, the alleged 160-acre parcel, and one comparable sale used in Appraisal 3, the Park Property.

36. Comparable 1 for the alleged 160-acre parcel should have been closer to 51 acres instead of the 40 acres reported by the Respondent. With regard to comparable no. 2 on the alleged 160-acre parcel the acreage is closer to 38.5 acres instead of the 15 acres reported by Respondent. As for the acreage on comparable no. 3 on the alleged 160-acre parcel, the actual acreage was 551 acres and not the 303 acres reported by the Respondent.

37. As for the acreage for comparable number 1 on parcel 3 (Park Property), the acreage was 20.4 acres rather than the 6 acres reported by the Respondent. Respondent should not have relied on the owner's assertion that the comparable property contained 6 acres when Respondent knew the tax identification card indicated 12.91 acres. Apparently, Respondent did not attempt to confirm either of these numbers by checking the deed, which indicated 20.4 acres.

38. Respondent relied on inaccurate acreage for each comparable referenced above. The discrepancies increased the cost of comparable price per acre. The final result was a highly inflated value for the Subject Property.

39. Respondent appraised the value of the Subject Property as $1,095,000.00 as of February 20, 1996. Petitioner’s expert, Mr. Brantley, in his own appraisal of the Subject Property, a little over a year later, valued the property at $519,000.

40. Respondent's and Mr. Brantley's opinions of value are different. In response to questioning from the Court as to whether the removal of a levee on the Subject Property between the time the Respondent appraised the Subject Property and the time that Mr. Brantley appraised the Subject Property affected the value of the property, Mr. Brantley acknowledged that it would have decreased the value. Mr. Brantley indicated that the effect would be the approximate cost that it would take to bridge that particular area where the levee was removed. Petitioner never provided any evidence as to the exact amount or approximate cost that it would take to bridge that particular area. Accordingly, there is no evidence from which the Court can determine that there is a drastic difference in the reported value opinions. Even so, the foregoing facts are sufficient to determine that Respondent's report was misleading and inaccurate.

CONCLUSIONS OF LAW

41. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569, 120.57(1) and 455.225(5), Fla. Stat. (2003).

42. 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, 294 (Fla. 1987); Balino v. Department of Health & Rehabilitative Services, 348 So. 2d 349, 350 (Fla. 1st DCA 1977).

43. Clear and convincing evidence "requires more proof than a 'preponderance of the evidence' but less than 'beyond and to the exclusion of a reasonable doubt.'" In re Graziano, 696 So. 2d 744, 753 (Fla. 1997). It is an "intermediate standard." Id. The "clear and convincing" standard requires:

> [T]hat the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegation to be established . . . .

In re Davey, 645 So. 2d 398, 404 (Fla. 1994), quoting Slomovitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

44. Section 475.624, Florida Statutes (1995), 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 of 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.

45. The USPAP Rules (1996 Edition) at issue here are set forth below, without the Comments:

Standards Rule 1-1

In developing a real property appraisal, an appraiser must:

(a) Be aware of, understand, and 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 1-2

In developing a real property appraisal, an appraiser must observe the following specific appraisal guidelines:

(a) adequately identify the real estate, identify the real property interest, consider the purpose and intended use of the appraisal, consider the extent of the data collection process, identify any special limiting conditions, and identify the effective date of the appraisal;

* * *

(c) consider easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of a similar nature;

Standards Rule 1-3

In developing a real property appraisal, an appraiser must observe the following specific appraisal guidelines:

(a) consider the effect on use and value of the following factors: existing land use regulations, reasonably probable modifications of such land use regulation, economic demand, the physical adaptability of the real estate . . . .

Standards Rule 1-4

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

* * *

(b) collect, verify, analyze, and reconcile:

* * *

(iii) such comparable sales data, adequately identified and described, as are available to indicate a value conclusion;

* * *

(g) identify and consider the appropriate procedures and market information required to perform the appraisal, including all physical, functional, and external market factors as they may affect the appraisal;

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 assumptions or limiting conditions 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.

* * *

(b) The Summary Appraisal Report must:

(i) identify and provide a summary description of the real estate being appraised;

46. Respondent violated the above-referenced USPAP Standard Rules in contravention of Section 475.624(14), Florida Statutes (1995). Additionally, Respondent has failed to exercise reasonable diligence in developing an appraisal report in violation of Section 475.624(15), Florida Statutes (1995).

47. Finally, Respondent is guilty of breach of trust and/or culpable negligence in violation of Section 475.624(2), Florida Statutes (1995). Respondent breached the trust of his clients by failing to preserve their interests in preparing an appraisal that was overvalued, misleading, and inaccurate. He committed culpable negligence by recklessly failing to administer his affairs in a manner in which he knew or should have known would cause harm to his clients.

48. The disciplinary guidelines for violation of Section 475.624, Florida Statutes (1995), are contained in Florida

Administrative Code Rule 61J1-8.002,. The penalty range associated with a violation of Section 475.624(2), Florida Statutes (1995), for culpable negligence and breach of trust is to impose a penalty from a $1,000 fine to a one-year suspension. The penalty range associated with a violation of Section 475.624(14), Florida Statutes (1995), is to impose a penalty from a five-year suspension to revocation and an administrative fine of $1,000. The penalty range typically attributed to a violation of Section 475.624(15), Florida Statutes (1995), is to impose a penalty from a five-year suspension to revocation and an administrative fine of $1,000.

49. Florida Administrative Code Rule 61-J2-8.002(4), sets forth the applicable mitigating factors. Under these guidelines any penalty bestowed upon the Respondent should be mitigated because he has been a state-certified general real estate appraiser since 1992, performing thousands of appraisals since 1985, with no prior disciplinary history. Additionally, the imposition of a fine or suspension of his license would result in a great degree of financial hardship given the nature of his business and its dependency on his appraisal practice.

50. In aggravation of the penalty, the evidence establishes the financial harm suffered by Mr. Brewer and the other owners of the Subject Property. The financial harm

required the initiation and settlement of a civil suit against Respondent in order to recoup their losses.

51. On balance, the mitigating factors outweigh the aggravating factors. This is especially true in light of Respondent's voluntary restriction of his appraisal practice to single-family residential appraisals.

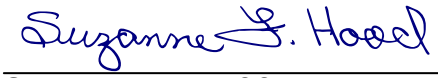
RECOMMENDATION

Based upon the forgoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED:

That Petitioner enter a final order suspending Respondent's license for one year and imposing an administrative fine in the amount of $3,000.

DONE AND ENTERED this 17th day of March, 2004, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
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this 17th day of March, 2004.

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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.