

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
DIVISION OF REAL ESTATE, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 09-3685PL  
 )  
HARVEY W. SIGMOND, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on, September 17, 2009, in Naples, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Donna Christine Lindamood, Esquire  
Department of Business and  
Professional Regulation  
400 West Robinson Street, Suite N801  
Orlando, Florida 32801-1757

For Respondent: Steven W. Johnson, Esquire  
Steven W. Johnson, P.A.  
20 North Orange Avenue, Suite 700  
Orlando, Florida 32801

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent violated Subsections 475.624(2), 475.624(14), and 475.624(15), Florida Statutes (2005),<sup>1</sup> and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On March 2, 2009, Petitioner, Department of Business and Professional Regulation, Division of Real Estate (Department), filed a ten-count Administrative Complaint, alleging that Respondent, Harvey W. Sigmond (Mr. Sigmond), violated Subsections 475.624(2), 475.624(14), and 475.624(15), Florida Statutes, concerning an appraisal report developed and communicated by Mr. Sigmond on or about January 6, 2006.

Mr. Sigmond requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings on July 13, 2009, for assignment to an Administrative Law Judge.

At the final hearing, the Department called Deborah Terry and Dennis J. Black as its witnesses. Petitioner's Exhibits 1 through 7 were admitted in evidence. Mr. Sigmond testified in his own behalf and called the following witnesses: Harry Henderson, Michael Timmerman, Christi Bryant, and Burkhard Kleim. Respondent's Exhibits 1 through 3 were admitted in evidence.

The one-volume Transcript of the final hearing was filed on October 19, 2009. The parties agreed to file their proposed

recommended orders within 30 days of the filing of the Transcript. The Department filed its Proposed Recommended Order on November 16, 2009, and Mr. Sigmond filed his Proposed Recommended Order on November 17, 2009. The parties' Proposed Recommended Orders have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Mr. Sigmond is now and was, at all times material to this proceeding, a state-certified residential real estate appraiser in the State of Florida, having been issued license number 2479 in 1994. Mr. Sigmond has never had any prior disciplinary action taken against him.

2. On January 2, 2006, Rels Valuation, an appraisal management company for Wells Fargo Bank, ordered an appraisal from Mr. Sigmond of a condominium unit located at 2740 Cypress Trace Circle, Unit 2715, Naples, Florida (Subject Property). The client for the appraisal was Wells Fargo Bank. The purpose of the appraisal was for mortgage lending.

3. On or about January 6, 2006, Mr. Sigmond developed and communicated an appraisal report (Report) on the Subject Property valuing the Subject Property at \$375,000.

4. The Subject Property is a two-bedroom, two-bath unit with 1,171 square feet of gross living area. The unit is located on the first floor of the building and has a carport.

At the time of the Report, the Subject Property was one year old. The unit was freshly painted, had ceramic floor tile in the foyer, living room, kitchen, and dining areas. The bedrooms were carpeted. The foyer, living room, dining, and kitchen areas had crown molding.

5. The Subject Property was appraised as unfurnished and listed for sale as unfurnished; however, some furniture was left in the unit. Mr. Sigmond stated in his report:

As stated in contract: "Property is being sold 'turnkey.' Furnishings have little or no value and are being left as a convenience to the seller." Also buyer agrees to pay \$1,500 for kitchen set at closing.

6. The Subject Property was sold prior to the issuance of the Report. The first sale was a preconstruction purchase on December 2, 2004, for a purchase price of \$213,900. The Subject Property was listed on September 27, 2005, for \$342,900, and the Subject Property was under contract for sale by October 10, 2005. The second sale was closed on December 13, 2005, and the sale price was \$335,000. The buyers in the second sale entered into a sale and purchase contract with John Schrenkel on December 20, 2005, to sell the Subject Property for \$375,000.

7. After the sale of the Subject Property on December 13, 2005, the buyers put crown molding in the unit, painted all the walls of the unit, put in ceiling fans, and upgraded some electrical fixtures.

8. Mr. Sigmond valued the Subject Property for \$40,000 more than the Subject Property sold on December 13, 2005. He considered the upgrades that were made to the Subject Property after the December 13, 2005, sale, and the amount of time that had elapsed from the listing of the Subject Property in September 2005 for the sale that closed on December 13, 2005, and the date of the appraisal. Mr. Sigmond testified that he did not know the actual execution date of the sales contract for the December 13, 2005, sale. However, in his response to the Department dated July 16, 2008, he acknowledged that the pending date for the December 13 sale was October 10, 2005. He did not include the pending sale date in his Report.

9. Mr. Sigmond did not adequately explain in his Report the \$40,000 difference in valuation from the last sale of the Subject Property and his appraisal valuation. He admitted in his letter dated July 16, 2008, to the Department's investigator that that he did not include an analysis of the December 13 sale in his Report. He stated:

The prior sales of the subject property were identified in the addendum to the appraisal, however, the analysis of the 12/13/05 sale was inadvertently omitted from the addendum. The following comment was originally in the appraisal report: "At the time of the inspection, the subject property had been renovated since its previous sale on 12/13/05. The subject improvements were: Custom crown molding throughout, updated/additional electrical repairs and/or

replacement throughout the subject unit; the interior had been completely repainted; replaced and/or upgraded light fixtures and ceiling fans. The subject has been well maintained and is considered to be in good physical condition with no functional inadequacies noted. No external inadequacies were noted in the subject's immediate area." That comment should not have been omitted from the appraisal, however, it did not materially affect the reporting standards or the opinion of the market value as the condition of the subject was referred to as good throughout the report.

10. The Subject Property is part of a condominium complex known as Terrace IV at Cypress Trace. Terrace IV consists of 60 units. Cypress Trace is a conglomerate of individual condominium projects that have banded together through an agreement to share certain common amenities. The total number of condominiums in the conglomerate is 799.

11. There are three methods for valuing all forms of real estate: the cost approach, the sales comparison approach, and the income approach. Mr. Sigmond used the sales comparison approach, which is the appropriate method for valuating condominium units such as the Subject Property. The goal of a sales comparison approach is to find a set of comparable sales as similar as possible to the property being appraised. Mr. Sigmond selected and listed three properties in his Report, which he considered to be comparable to the Subject Property.

12. The first property listed as a comparable sale was located at Veranda III at Cypress Trace (Comparable Sale 1), less than .01 mile northwest of the Subject Property. It is a two-bedroom, two-bath unit with 1,414 square feet of gross living area located on the second floor of the building. The unit has a detached garage. At the time of the Report, Comparable Sale 1 was two years old.

13. A contract for sale was entered into on July 5, 2005, for \$399,000. The sale of Comparable Sale 1, which included furniture, was closed on September 23, 2005.

14. Mr. Sigmond adjusted the value of Comparable Sale 1 downward by \$15,000 for the detached garage and by \$17,000 for the additional square footage. He also made a positive time adjustment for Comparable Sale 1 of \$15,900.

15. A time adjustment is an adjustment for the amount of time that has elapsed since the property last sold. In a market which is climbing, an upward adjustment for appreciation would be appropriate, but, if the market has peaked and is declining, a positive adjustment would not be appropriate. Mr. Sigmond made time adjustments from the time that the contracts for sale were entered for the properties used as comparables. The time adjustments were 1 percent per month from the date of the pending sale.

16. The second property listed as a comparable sale was located at Terrace II at Cypress Trace (Comparable Sale 2), approximately .35 miles northeast of the Subject Property. Comparable Sale 2 is a two-bedroom, two-bath unit consisting of 1,194 square feet of gross living area located on the third floor of the building. The unit was two years old at the time of the report. Comparable Sale 2 has a carport.

17. Comparable Sale 2 was sold furnished in November 2005. The multiple listing for Comparable Sale 2 described the furnishings as follows: "This 3rd floor condo has over \$20,000.00 in furnishings including Tommy Bahama style furniture and drapes." Mr. Sigmond or his assistant contacted the listing agent for Comparable Sale 2 and was told that the value of the furniture was nominal. Mr. Dennis J. Black, expert for the Department, contacted the owner of Comparable Sale 2, who advised Mr. Black that one of the selling points of the unit was the furnishings.

18. A contract for sale for Comparable Sale 2 was pending on October 3, 2005, and the sale closed on November 16, 2005, for \$355,000. Mr. Sigmond made a \$15,000 positive adjustment to Comparable Sale 2 for options and upgrades and a positive time adjustment of \$7,100. Mr. Sigmond made no adjustments for differences in floor locations, feeling that the floor location



is typically a personal preference of the buyer. He also made no adjustments for the furniture that was sold with the unit.

19. Comparable Sale 2 was the most current sale of a basic unit exactly like the Subject Property; however, Comparable Sale 2 did not have crown molding, was not freshly painted, and had carpet as opposed to ceramic tile in the living areas. The multiple listing for Comparable Sale 2 did indicate that the unit had some ceramic tile, but did not specify in what areas the tile was located.

20. The third property listed as a comparable sale was located at Carrington at Stonebridge (Comparable Sale 3), approximately 2.1 miles southwest of the Subject Property. Comparable Sale 3 is a two-bedroom, two-bath unit consisting of 1,184 square feet of gross living area located on the first floor of the building. The unit has a carport and, at the time of the Report, was nine years old.

21. A contract for sale of Comparable Sale 3, unfurnished, was entered into on June 22, 2005, and the sale was closed on July 13, 2005, for \$350,000.

22. Mr. Sigmond chose Comparable Sale 1 to bracket the sale price in order to meet an underwriting guideline of Wells Fargo Bank, which requires that a similar unit be listed which has a value that is more than what the appraiser may value the property being appraised. Bracketing is a common and accepted

appraisal practice in the Collier County area when doing appraisals for mortgage lenders. He felt that Comparable Sale 2 was the most recent similar sale in the project. He went out of the project for Comparable Sale 3, because he felt that the banks wanted to have a comparable sale out of the project.

23. Mr. Sigmond's Report contained a description of the general market conditions as follows:

There are no loan discounts, interest buy downs or concessions noted in the marketplace at this time. Conventional financing is readily available and interest rates are at competitive levels. Demand outweighs supply at this time, and market values have been increasing.

The marketing time for condominium[s] in this area has ranged from one to three months and is considered to be typical.

24. Mr. Sigmond also discussed the increasing market in the Sales Comparison Approach section of the Supplemental Addendum of the Report.

Time adjustments were necessary due to a market in which demands [sic] exceeds supply, and properties are commonly sold within 60 days of their listing. These adjustments were calculated at a conservative 1% per month from "pending" date. A 25%-40% increase in the Naples Real Estate market over the last 12 months has been well documented by MLS and local print media.

25. Based on the overall evidence, the real estate market was not declining at the time the appraisal was done.

26. There were other units which Mr. Sigmond considered, but did not use as a comparable sale. One such unit was located at Terrace IV at Cypress Trace, Unit 2738. Built in 2005, this unit has two bedrooms and two bathrooms and is located on the third floor of the building. The living area of the unit is 1,232 square feet. The freshly painted unit has crown molding and ceramic tile throughout the unit. Unit 2738 was a new listing on August 5, 2005, for \$339,900. A pending sale on August 16, 2005, showed a selling price of \$335,000. The sale was closed on October 4, 2005.

27. Another unit which Mr. Sigmond considered but did not use as a comparable sale was located at 2730 Cypress Trace Circle, Unit 2813. This condominium is a first-floor two-bedroom, two-bath unit, which was built in 2004. It has ceramic tile and carpeting. The living area is 1,194 square feet. Unit 2813 was listed on August 18, 2005, for \$339,000. On September 7, 2005, a sale was pending for \$320,000. The sale closed on November 30, 2005.

28. The evidence does not establish that Mr. Sigmond intentionally crafted his Report so that his valuation of the Subject Property would equal the contract price of the Subject Property.

29. In his Report, Mr. Sigmond certified the following:

I performed this appraisal in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.

30. The Uniform Standards of Professional Appraisal Practice (USPAP) (2005), which were in effect at the time the Report was developed and communicated, provide the following:

Standards Rule 1-1 (This Standards Rule contains binding requirements from which departure is not permitted.)

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; and

(c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.

Standards Rule 1-2 (This Standards Rule contains binding requirements from which departure is not permitted.)

In developing a real property appraisal, an appraiser must:

\* \* \*

(e) identify the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal, including:

\* \* \*

(iii) any personal property, trade fixtures, or intangible items that are not real property but are included in the appraisal;

\* \* \*

Standards Rule 1-4 (This Standards Rule contains specific requirements from which departure is permitted. See the DEPARTURE RULE.)

In developing a real property appraisal, an appraiser must collect, verify, and analyze all information applicable to the appraisal problem, given the scope of the work identified in accordance with Standards Rule 1-2(f).

(a) When a sales comparison approach is applicable, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.

\* \* \*

Standards Rule 1-5 (This Standards Rule contains binding requirements from which departure is not permitted.)

In developing a real property appraisal, when the value opinion to be developed is market value, an appraiser must, if such information is available to the appraiser in the normal course of business:

(a) analyze all agreements of sale, options, or listings of the subject property

current as of the effective date of the appraisal; and

(b) analyze all sales of the subject property that occurred within the last three (3) years prior to the effective date of the appraisal.

\* \* \*

Standards Rule 2-1 (This Standards Rule contains binding requirements from which departure is not permitted.)

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 intended users of the appraisal to understand the report properly;

\* \* \*

Standards Rule 2-2 (This Standards Rule contains binding requirements from which departure is not permitted.)

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 Use Appraisal Report.

\* \* \*

(b) The content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:

\* \* \*

(iii) summarize information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment.

\* \* \*

(viii) clearly and conspicuously:

- state all extraordinary assumptions and hypothetical conditions; and
- state that their use might have affected the assignment results;

\* \* \*

Standards Rule 2-3 (This Standards Rule contains binding requirements from which departure is not permitted.)

Each written real property appraisal report must contain a signed certification that is similar in content to the following form:

I certify to the best of my knowledge and belief:

- the statements of fact contained in this report are true and correct.
- the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no (or the specified) present or prospective interest in the property that is the subject of this report and no (or specified) personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.

--my engagement in this assignment was not contingent upon developing or reporting predetermined results.

--my compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.

--my analyses, opinions, and conclusions were developed, and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice.

--I have (or have not) made a personal inspection of the property that is the subject of this report. (If more than one person signs this certification, the certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property.)

--no one provided significant real property appraisal assistance to the person signing this certification. (If there are exceptions, the name of each individual providing significant real property appraisal assistance must be stated.)

#### CONCLUSIONS OF LAW

31. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2009).

32. The Department has the burden to establish the allegations of the Administrative Complaint by clear and convincing evidence. Department of Banking and Finance v.



Osborne Stern and Company, 670 So. 2d 932 (Fla. 1998); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

33. The Department has alleged that Mr. Sigmond violated Subsections 475.624(2), 475.624(14), and 475.624(15), Florida Statutes, which provide:

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 registered trainee, licensee, or certificateholder:

\* \* \*

(2) Has been guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest conduct, culpable negligence, or breach of trust in any business transaction in this state or any other state, nation, or territory; has violated a duty imposed upon her or him by law or by the terms of a contract, whether written, oral, express, or implied, in an appraisal assignment; has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or has formed an intent, design, or scheme to engage in such misconduct and committed an overt act in furtherance of such intent, design, or scheme. It is immaterial to the guilt of the registered trainee, licensee, or certificateholder that the victim or intended victim of the misconduct has

sustained no damage or loss; that the damage or loss has been settled and paid after discovery of the misconduct; or that such victim or intended victim was a customer or a person in confidential relation with the registered trainee, licensee, or certificateholder, or was an identified member of the general public.

\* \* \*

(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.

34. Disciplinary statutes such as Section 475.624, Florida Statutes, are penal in nature and "must be strictly construed in favor of the person against whom the penalty would be imposed." Munch v. Department of Business and Professional Regulation, 592 So. 2d 1136, 1143 (Fla. 1st DCA 1992). A statute imposing a penalty is never to be construed in a manner that expands the statute. Hotel and Restaurant Commission v. Sunny Seas No. One, 104 So. 2d 570, 571 (Fla. 1958).

35. The Department alleges that Mr. Sigmond made the following errors and omissions on his appraisal report of the Subject Property:

A) Respondent failed to analyze the December 13, 2005[,] prior sale of the Subject Property for \$335,000, stating only on the supplemental addendum page that "the

second sale of the subject was a resale on 12/13/2005 for the price of \$335,000 under current market conditions”;

B) The Subject Property’s original sale on December 2, 2004[,] was \$121,100 less than the December 13, 2005[,] sales price of the Subject Property and in as much as it occurred within three years of the effective date of the Report, the original sale should have been, but was not, analyzed by the Respondent;

C) Respondent failed to analyze the listing history of the Subject Property, first listed at \$342,900 on September 27, 2005[,] and subsequently sold at \$335,000 according to the MLS on December 9, 2005, as shown on the MLS printout maintained in the Respondent’s work file. . . .

D) Respondent failed to analyze the sales contract for the Subject Property contained in the Respondent’s work file, . . . wherein Schrenkel agreed to purchase the Subject Property on December 18, 2005[,] for \$375,000, which was \$40,000 more than the December 13, 2005[,] sale;

E) Respondent’s valuation of the Subject Property on January 6, 2006[,] at \$375,000 matched exactly the sales contract price, without explanation;

F) Respondent falsely certified in the appraiser’s certification that, “5. I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for the sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated on this report”;

G) Respondent stated that "primary consideration in the selection of the comparable sales went to recent closing of condominium units which were similar to the subject in size, amenities and location," yet Respondent failed to utilize other more recent and more similar Comparable Sales in the Subject Property complex in arriving at valuation via the Sales Comparison Approach;

H) Comparable Sales 1 and 2 were sold furnished, yet Respondent failed to adjust for the furnishing or explain in the Report why no adjustment was warranted;

I) If the Subject Property had significant upgrades that made it superior to the identical model, Comparable Sale 2, Respondent failed to state in the Report what those upgrades were, other than a reference to the Subject Property having crown molding throughout and a separate storage unit.

36. The Department has established by clear and convincing evidence that Mr. Sigmond failed to adequately analyze the December 13, 2005, sale of the Subject Property in his Report. He admits the error in his response to the Department dated July 6, 2008.

37. The Department has established by clear and convincing evidence that Mr. Sigmond failed to disclose the listing price of the Subject Property for the December 13, 2005, sale.

38. The Department has established by clear and convincing evidence that Mr. Sigmond falsely certified that he had analyzed and reported any offering for sale of the Subject Property for

the last 12 months and that he had reported an analysis of the December 13, 2005, sale in his Report.

39. The Department has established by clear and convincing evidence that Mr. Sigmond failed to adequately explain in his Report the lack of an adjustment for Comparable Sale 2 for the furnishings which were included in the sale. Although Mr. Sigmond contacted the listing agent, the reported nominal valuation by the listing agent does not jibe with the Multiple Listing Service description, which valued the furnishings at \$20,000.

40. The Department has established by clear and convincing evidence that Mr. Sigmond failed to list in his Report the upgrades upon which he based his adjustment for Comparable Sale 2.

41. The Department did establish by clear and convincing evidence that the contract price for the Subject Property and the appraisal valuation were the same. However, this fact does not equate to a violation of Subsections 475.624(2) and 475.624(15), Florida Statutes.

42. The Department did not establish the other allegations in the Administrative Complaint by clear and convincing evidence.

43. The Department has established by clear and convincing evidence that Mr. Sigmond violated his duty to adhere to the

USPAP standards which were in effect at the time of the appraisal. He certified in the appraisal that he had followed the USPAP standards in effect, and he did not. He violated USPAP Standards Rules 1-1(c) and 1-5(a) and (b), by failing to include listing information on the Subject Property, failing to adequately analyze in his Report the December 13, 2005, sale of the Subject Property, failing to list the upgrades for which he made an adjustment to Comparable Sale 2, and failing to explain no adjustment for furnishings for Comparable Sale 2. These omissions affected the credibility of the Report. Thus, the Department has established by clear and convincing evidence that Mr. Sigmond violated Subsections 475.624(2) and 475.624(15), Florida Statutes.

44. In Counts Three through Ten of the Administrative Complaint, the Department alleges that Mr. Sigmond has violated Subsection 475.624(14), Florida Statutes, by violating provisions of the USPAP (2005). The Department is obligated to present evidence of both the standard and the breach of that standard. Purvis v. Department of Professional Regulation, 461 So. 2d 134 (Fla. 1st DCA 1984). The Department submitted in evidence the 2005 USPAP standards.

45. Subsection 475.624(14), Florida Statutes, does not state which version of the USPAP standards is applicable.<sup>2</sup> A statute which incorporates standards such as the USPAP standards

can only be interpreted to mean that the USPAP standards applicable are the editions of the standards that are in effect at the time of the enactment of the statute. See Abbott Laboratories v. Mylan Pharmaceuticals, 15 So. 3d 642 (Fla. 1st DCA 2009). Subsection 475.642(14), Florida Statutes, is construed to refer the USPAP standards in effect in 1991, the year of the enactment of Subsection 475.642(14), Florida Statutes.

46. The Department has failed to present evidence of the USPAP standards that were in effect in 1991. The evidence presented relates to the USPAP standards for 2005 and cannot provide a basis for discipline for a violation of Subsection 475.642(14), Florida Statutes, because they have not been incorporated into Section 475.628 and Subsections 475.611(1)(o) and 475.642(14), Florida Statutes. Counts Three through Ten of the Administrative Complaint should be dismissed.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered finding that Mr. Sigmond violated Subsections 475.624(2) and 475.624(15), Florida Statutes; dismissing Counts Three through Ten; issuing a public reprimand; and imposing a \$5,000 administrative fine.

DONE AND ENTERED this 12th day of January, 2010, in  
Tallahassee, Leon County, Florida.

*Susan B. Harrell*

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Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 12th day of January, 2010.

ENDNOTES

<sup>1/</sup> Unless otherwise indicated, all references to the Florida Statutes are to the 2005 version.

<sup>2/</sup> Subsection 475.611(1)(o), Florida Statutes, provides that the definition of USPAP means the most recent standards adopted by the Appraisal Standards Board of the Appraisal Foundation. Section 475.628, Florida Statutes, requires that appraisers comply with the USPAP standards. Based on the Abbott Laboratories case, these two statutes must also be interpreted to mean that the most recent standards refer to the standards that were in effect at the time of the enactment of the statutes.

COPIES FURNISHED:

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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.