

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
DIVISION OF REAL ESTATE, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 09-3947PL  
 )  
MICHEAL ANTHONY FACENDO, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on October 21, 2009, by video teleconference, with the parties appearing in Fort Lauderdale, Florida, before Patricia M. Hart, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, who presided in Tallahassee, Florida.

APPEARANCES

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

For Respondent: Norman Malinski, Esquire  
Law Offices of Norman Malinski, P.A.  
2875 Northeast 191st Street, Suite 508  
Aventura, Florida 33180

STATEMENT OF THE ISSUE

Whether the Respondent committed the violations stated in the Administrative Complaint dated March 13, 2009, and, if so, the penalty that should be imposed.

PRELIMINARY STATEMENT

In an eight-count Administrative Complaint dated March 13, 2009, the Department of Business and Professional Regulation, Division of Real Estate ("Department"), charged Michael Anthony Facendo with having violated Sections 475.6221(1); 475.623; and 475.624(1), (2), (4) and (14), Florida Statutes (2006)<sup>1</sup>; and the Uniform Standards of Professional Appraisal Practice ("USPAP") (2006) Record Keeping Section of the Ethics Rule; the Competency Rule; Standards Rule 1-1(b) and (c); Standards Rule 2-1(a) and (b); and Standards Rule 2-2(b)(viii). The charges related to an Individual Condominium Unit Appraisal Report ("Appraisal Report") prepared on or about November 30, 2006, on property located at 281 Southwest Palm Drive, Unit 106, Port St. Lucie, Florida 34986 ("Palm Drive property").

The Department alleged the following facts in the Administrative Complaint to support the violations charged:

4. On or about November 20, 2006, Michael Facendo . . . developed and communicated an appraisal report (Report) for property commonly known as 281 Southwest Palm Drive, Unit 106, Port St. Lucie, Florida 34986, (Subject Property), and estimated its value as \$283,000.00. . . .

5. Respondent made the following errors and omissions on the Report:

A) Respondent states in Subject section of the Report that Subject Property has been offered for sale in the past twelve months, but fails to provide date(s) or offering price(s) on the Report;

B) Respondent states in the Contract section of the Report that the sales contract for the Subject Property was analyzed, yet the workfile fails to contain a copy of the sales contract;

C) Failure to provide a listing history or listing price(s) for the Subject Property, when Respondents [sic] notes it is offered for sale in the Report;

D) Failure to state the neighborhood boundaries in the Neighborhood section of the Report; and

E) Failure to provide a sketch of the Subject Property or verify its gross living area.

6. The workfile lacks a copy of the sales contract for the Subject Property.

7. There is no documentation in the workfile to support the One-Unit Housing data in the Neighborhood section of the Report.

8. There is no documentation in the workfile to support the Present Land Use % data in the Neighborhood section of the Report.

9. There is no documentation in the workfile to support the 20 comparable properties currently offered for sale in the subject neighborhood as listed in the Sales Comparison section of the Report.

10. There is no documentation in the workfile to support the 72 comparable sales in the subject neighborhood for the past twelve months as listed in the Sales Comparison section of Report 1 or Report 2.<sup>[2]</sup>

11. There is no documentation in the workfile to support the # [of] Units for Sale; # of Units Sold; # of Units Rented; or # of Owner Occupied Units in the Project Information section of the Report.

12. There is no documentation in the workfile to support the ages for the Subject Property or any of the comparable sales.

13. There is no documentation in the workfile to support the \$10,000 View adjustment for comparable sale 3 and comparable sale 4 in the Sales Comparison section of the Report. . . .<sup>[3]</sup>

14. During the investigation it was learned that Respondent failed to register his business name with the Department.

15. During the investigation it was learned that Respondent failed to ensure that his trainee had the same business address as Respondent. . . .

16. Respondent's business address is 13790 NW 4 Street, #101, Sunrise, Florida. The appraisal was completed on a property located in Port St. Lucie, Florida, which is approximately 85 miles away.

17. Respondent failed to note, discuss or analyze the sale incentives for the Subject Property as listed in the workfile documentation.

Mr. Facendo timely disputed the material facts stated in the Administrative Complaint and requested an administrative

hearing. The Department transmitted the matter to the Division of Administrative Hearings for assignment of an administrative law judge, and, pursuant to notice, the final hearing was held on October 21, 2009.

At the hearing, the Department presented the testimony of Dawn Luchik and Francois K. Gregoire; Petitioner's Exhibits 1 and 3 through 5 were offered and received into evidence. Mr. Facendo testified in his own behalf and presented the testimony of Dawn Luchik; Respondent offered no exhibits into evidence. At the Department's request, official recognition was granted to Chapter 475, Part II, Florida Statutes (2006), and to Florida Administrative Code Rule Chapter 61J1 (2006).

The one-volume transcript of the proceedings was filed with the Division of Administrative Hearings on November 23, 2009. The Department timely filed its proposed findings of fact and conclusions of law. Mr. Facendo failed to file his proposed findings of fact and conclusions of law timely. On December 18, 2009, Mr. Facendo filed a Motion for Extension of Time to File Respondent's Proposed Recommended Order, in which he stated that he did not obtain a copy of the transcript of the proceedings until December 10, 2009. Mr. Facendo requested an extension until December 22, 2009, for filing his proposed findings of fact and conclusions of law. The Department filed a response in opposition to the request. Having considered the grounds for

the motion and the arguments stated in the response in opposition to the motion, the Motion for Extension of Time to File Respondent's Proposed Recommended Order is granted, and Mr. Facendo's Proposed Recommended Order, filed December 21, 2009, is accepted. The proposed findings of fact and conclusions of law of both parties have, therefore, been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. The Florida Real Estate Appraisal Board ("Board") is the entity responsible for licensing, regulating, and imposing discipline upon real estate appraisers operating in Florida. See §§ 475.613(2) and .624, Fla. Stat.

2. The Department is the state agency responsible for investigating complaints and, upon a finding of probable cause by the Board, issuing administrative complaints and prosecuting disciplinary actions involving real estate appraisers in Florida. See § 455.225(1)(a), (4), and (6), Fla. Stat.

3. At all times pertinent to these proceedings, Mr. Facendo was a state-certified real estate appraiser, having been issued license number RD-2598, and his business office was located in 6950 Cypress Road, Suite 206, Plantation,

Florida 33317. Subsequent to November 19, 2008, Mr. Facendo's business address was 13790 Northwest 4th Street, # 101, Sunrise, Florida 33325

4. From November 6, 2007, until the time of the final hearing in this case, Traci Lyn Trueman, a registered trainee real estate appraiser, was supervised by Mr. Facendo, and she worked full-time in Mr. Facendo's business office. Ms. Trueman registered with the Department her home address of 183 Southwest 3rd Street, Pompano Beach, Florida, 33060, rather than the business address of Mr. Facendo's office. As soon as Mr. Facendo learned that Ms. Trueman had registered her home address with the Department, he had her change the address to her business address.

5. In 1988, Mr. Facendo moved to Fort Lauderdale, Florida. He obtained his real estate sales license, and he sold real estate in the Fort Lauderdale area until approximately 1990, when he moved to Port St. Lucie, Florida. Mr. Facendo sold real estate in the Port St. Lucie area for several years, and, because he lived and sold real estate in the Port St. Lucie area, Mr. Facendo became familiar with the real estate market in that area.

6. In 1992, Mr. Facendo moved back to the Fort Lauderdale area and began training in order to become certified as a real estate property appraiser. Mr. Facendo received his

certification in 1995, and he has appraised primarily residential real estate in Miami-Dade County, Broward County, Palm Beach County, and Port St. Lucie.

7. In November 2006, Mr. Facendo's office received a request from South Florida Lending Group for an appraisal on the Palm Drive property, which is located in The Club at St. Lucie West Condominium. The Appraisal Report prepared by Mr. Facendo pursuant to the request had an effective date of November 30, 2006, and it was signed December 11, 2006. Mr. Facendo also compiled a workfile to support the information contained in the Appraisal Report.

8. After receiving the request to prepare an appraisal of the Palm Drive property, Mr. Facendo consulted St. Lucie County public records and other online services available in his business office and verified that the Club at St. Lucie West Condominium was a condominium conversion project in which rental apartments built in 2003 were converted into condominium apartments in October 2005. Mr. Facendo did not include reference to the sources of the information or copies of the documentation from which he obtained the information because the sources were ones commonly used and were considered to be accurate.

9. Mr. Facendo visited the Club at St. Lucie West Condominium sales office and met with Lori Bennett and a man



named Jack. Mr. Facendo was taken to Unit 106 by Jack, where he took several pictures of the exterior of Unit 106 and inspected the unit's interior.

10. As part of his inspection of Unit 106, Mr. Facendo looked at the floor plan and the condition of the property; made a count of the number of rooms and their functions; and noted the type of flooring, the type of amenities, and the upgrades in the unit.

11. Mr. Facendo did not measure the floor space in Unit 106 because he had previously prepared appraisals of several units in the Club at St. Lucie West Condominium that were the same model as Unit 106, which was the Kingston model, and he had previously measured a unit whose floor plan and square footage were identical to those of Unit 106. Mr. Facendo included with the Appraisal Report a copy of the floor plan of the Kingston model, which showed both the total square feet and the square feet under air conditioning of the unit. It is not unusual, in appraisals of condominium units, to include a pre-printed sketch of the unit's floor plan rather than a sketch of the floor plan prepared by the appraiser.

12. After inspecting the Palm Drive property, Mr. Facendo met with Ms. Bennett, who was the sales representative for Club at St. Lucie West Condominium who handled all of the appraisals for the project. Mr. Facendo and Ms. Bennett met in the Club at

St. Lucie West Condominium's sales office, and Ms. Bennett gave Mr. Facendo access to a log book maintained in the sales office listing individual buyers and information regarding each unit of Club at St. Lucie West Condominium.

13. The Club at St. Lucie West Condominium property was purchased by SunVest, LLC, in or about September 2005. The property consisted of rental apartments built in 2003 that the new owner converted into condominium apartments in October 2005. At the times pertinent to this matter, the developer was offering the condominium units for sale, and Mr. Facendo noted in the Subject section of the Appraisal Report that Unit 106 had been offered for sale during the twelve months prior to November 30, 2006, the effective date of Mr. Facendo's appraisal of the unit.

14. Mr. Facendo did not include in the Appraisal Report any data source, offering price, or dates related to the sales history because there was no sales history on Unit 106. According to the information obtained by Mr. Facendo from the Club at St. Lucie West Condominium sales office and by checking the online version of the multiple listing services available in Mr. Facendo's business office, the developer was directly marketing and selling the condominium units and had not listed them with a multiple listing service. Mr. Facendo, therefore, stated in the sales history portion of the Appraisal Report only

that "subject has been offered for sale by the developer of the condo development."

15. Mr. Facendo reviewed the log book for the condominium units maintained in the Club at St. Lucie West Condominium sales office, and he reviewed the sales and purchase contract for Unit 106. From this information, he verified the name of the buyer, as well as the contract price of \$282,990.00.

Mr. Facendo also verified that the sales and purchase contract provided that the buyer was to receive \$4,500.00 in sales concessions on Unit 106.<sup>4</sup> Ms. Bennett did not allow Mr. Facendo to make a copy of the contract, and, as a result, Mr. Facendo did not include a copy of the sales and purchase contract for Unit 106 in the workfile he prepared for the appraisal.

16. Mr. Facendo did not define the neighborhood boundaries in the Neighborhood section of the Appraisal Report by reference to streets, highways, or landmarks. Rather, in the neighborhood boundaries portion of the Neighborhood section, Mr. Facendo described the neighborhood as being "located in a residential neighborhood with good access to family amenities," and he referenced the location map attached to the Appraisal Report. The location map showed the Palm Drive property and three of the comparables grouped around an arrow located east of U.S. Interstate Highway 95.<sup>5</sup>

17. Mr. Facendo noted in the Present Land Use % portion of the Neighborhood section of the Appraisal Report that one-unit residences composed 60 percent of the present land use in the neighborhood. He did not include any documentation in the workfile for the Appraisal Report to support this information.

18. In the Project Information section of the Appraisal Report, Mr. Facendo noted that, in the Club at St. Lucie West Condominium, 160 units were offered for sale, 220 units had been sold, five percent of the units were rented, and 95 percent of the units were occupied by the owners. There is no documentation in Mr. Facendo's workfile for this appraisal to support this information.

19. Mr. Facendo noted in the Appraisal Report that there were 20 comparable properties currently offered for sale in the subject neighborhood, ranging in price from \$210,000.00 to \$300,000.00. He obtained this data from information provided by the developer that he reviewed in the condominium sales office. He did not include in his workfile any documentation related to these properties and their offering prices.

20. Mr. Facendo chose four properties as comparable sales to determine the value of the Palm Drive property through a comparable-sales analysis. The four properties chosen as comparable to the Palm Drive property were located in the Club at St. Lucie West Condominium and were virtually identical to

Unit 106. The Palm Drive property and three of the four comparable-sales properties were located on the first floor of the condominium project, and one comparable-sales property was located on the second floor of the condominium project.

21. All four comparable-sales properties were the Kingston Model, the same model condominium unit as Unit 106, and the comparable-sales properties were virtually identical to the Palm Drive property. Mr. Facendo noted in the Appraisal Report, however, that Unit 106 had been upgraded with granite countertops, stainless steel appliances, and new flooring.

22. The sales price of the Palm Drive property was noted in the Appraisal Report as \$282,990.00; the sales prices of the three first-floor comparable-sales properties were \$272,990.00, 285,990.00, and \$291,990.00, and the sales price of the second-floor comparable-sales property was \$254,990.00.

23. Mr. Facendo verified these sales prices by reviewing the log book maintained in the Club at St. Lucie West Condominium sales office and by information obtained from the HUD-1 Settlement Statements prepared for the sales transaction for each of the comparable-sales properties. The workfile contained copies of the HUD-1 Settlement Statements. Mr. Facendo also noted in the Prior Sale History section of the Appraisal Report that there was no sales history on the

comparable-sales properties because they were all located in the Club at St. Lucie West Condominium.

24. Mr. Facendo made a \$10,000.00 adjustment for the view in the sales price of comparable sale # 3, a unit on the second floor of the Club at St. Lucie West Condominium, raising its adjusted sale price to \$264,990.00. Mr. Facendo also made a \$10,000.00 adjustment for the view in the sales price of comparable sale # 4, the unit next to Unit 106, raising its adjusted sale price to \$295,990.00. Mr. Facendo did not include any documentation in the workfile to support these adjustments.

25. Mr. Facendo looked at comparable sales outside the Club at St. Lucie West Condominium, but he decided not to use these properties as comparable-sales properties. Mr. Facendo chose four comparables in the same condominium project because the Club at St. Lucie West was a condominium conversion and was unique in the area. In his opinion, the sales prices of units in the Club at St. Lucie West Condominium would be most reliable in gauging the value of Unit 106.

26. Based on his analysis of the four comparable-sales properties, Mr. Facendo valued the Palm Drive property at \$283,000.00.

27. Documentation was included in the workfile for the Appraisal Report that identified a sales incentive program offered to buyers by the developer of the Club at St. Lucie West

Condominium. The sales incentives for buyers included payment by the developer of a three percent contribution at closing; the cost of documentary stamps and recording of the deed; owners title insurance; one year's homeowners' association fees; a one year's warranty; and a decorator's credit within 30 days of closing, the amount depending on the type of unit purchased. The page in the workfile listing the sales incentives was not dated and appeared to be part of sales literature provided by the developer. Mr. Facendo did not note, discuss, or analyze the sales incentives for the Palm Drive property in the Appraisal Report.

28. The definition of "market value" contained in the Appraisal Report requires that the price of the property that is the subject of the appraisal reflect the "normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale." To this end, appraisers must make adjustments to the comparable-sales properties, but the dollar amount of the adjustments "should approximate the market's reaction to the financing or concessions based on the appraiser's judgment." Mr. Facendo did not make any adjustments to the price of the comparable-sales properties in determining the value of the Palm Drive property.

29. The Ethics Rule of the USPAP (2006) provides in pertinent part as follows:

Record Keeping

An appraiser must prepare a workfile for each appraisal, appraisal review, or appraisal consulting assignment. The workfile must include:

- the name of the client and the identity, by name or type, or any other intended users;
- true copies of any written reports, documented on any type of media;
- summaries of any oral reports or testimony, or a transcript of testimony, including the appraiser's signed and dated certification; and
- all other data, information, and documentation necessary to support the appraiser's opinions and conclusions and to show compliance with this Rule and all other applicable Standards, or references to the location(s) of such other documentation.

30. The Competency Rule of the USPAP (2006) provides as follows:

Prior to accepting an assignment or entering into an agreement to perform any assignment, an appraiser must properly identify the problem to be addressed and have the knowledge and experience to complete the assignment competently; or alternatively, must:

1. disclose the lack of knowledge and/or experience to the client before accepting the assignment;



2. take all steps necessary or appropriate to complete the assignment competently; and

3. describe the lack of knowledge and/or experience and the steps taken to complete the assignment competently in the report.<sup>[6]</sup>

31. USPAP (2006) Standards Rule 1-1(b) and (c) provides:

In developing a real property appraisal, an appraiser must:

\* \* \*

(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.

32. USPAP (2006) Standards Rule 2-1(a) and (b) provides:

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[.]

33. USPAP (2006) Standards Rule 2-2(b)(viii) provides:

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.[footnote omitted.]

\* \* \*

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

\* \* \*

(viii) summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions; exclusion of the sales comparison approach, cost approach, or income approach must be explained.

#### CONCLUSIONS OF LAW

34. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2009).

35. In the Administrative Complaint, the Department seeks to suspend or revoke Mr. Facendo's appraiser's certificate and to impose an administrative fine. Accordingly, the Department must prove the charges against Mr. Facendo by clear and convincing evidence. Department of Banking & Finance, Div. of Securities & Investor Protection v. Osborne Stern & Co., 670 So. 2d 932, 933-34 (Fla. 1996)(citing Ferris v. Turlington, 510 So. 2d 292, 294-95 (Fla. 1987)); Nair v. Department of Business & Prof'l Regulation, 654 So. 2d 205, 207 (Fla. 1st DCA 1995).

36. In Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983), the court defined clear and convincing evidence as follows:

Clear and convincing evidence requires that 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 allegations sought to be established.

Id. The Florida Supreme Court adopted the description of the clear and convincing evidence standard of proof set forth in Slomowitz in Inquiry Concerning a Judge No. 93-62, 645 So. 2d 398, 404 (Fla. 1994), and the court in Westinghouse Electric Corp., Inc. v. Shuler Bros., Inc., 590 So. 2d 986, 988 (Fla. 1st DCA 1991), rev. denied, 599 So. 2d 1279 (1992)(citation omitted), followed the Slomowitz test, adding the interpretive comment that "[a]llthough this standard of proof may be met where the evidence is in conflict, . . . it seems to preclude evidence that is ambiguous."

37. In Counts One, Three, Four, Five, Six, Seven, and Eight of the Administrative Complaint, the Department charged Mr. Facendo with having violated Section 475.624(2), (4), and (14), Florida Statutes,<sup>7</sup> which provides 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 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.

\* \* \*

(4) Has violated any of the provisions of this part or any lawful order or rule issued under the provisions of this part or chapter 455.

\* \* \*

(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.

38. As a disciplinary statute, Section 475.624, Florida Statutes, "must be construed strictly, in favor of the one against whom the penalty would be imposed." Munch v. Department of Prof'l Regulation, Div. of Real Estate, 592 So. 2d 1136, 1143 (Fla. 1st DCA 1992).

I. Violation of Section 475.624(2), Florida Statutes.

39. In Count Seven of its Administrative Complaint, the Department alleged: "Based upon the foregoing, Respondent is guilty of fraud, misrepresentation, culpable negligence, or breach of trust in any business transaction in violation of Section 475.624(2), Florida Statutes." The "foregoing" apparently was intended to encompass all of the factual allegations in the Administrative Complaint,<sup>8</sup> and, even though the violations charged in Count Seven were stated in the disjunctive, the Department did not identify in the Administrative Complaint which of the prohibited actions and/or conduct was at issue. In its Proposed Recommended Order,

however, the Department elected to pursue the charges of culpable negligence and breach of trust in a business transaction against Mr. Facendo.<sup>9</sup>

A. Breach of trust

40. In the second sentence of paragraph 47 of its Proposed Recommended Order, the Department asserts that Mr. Facendo breached the trust of his client by, among other things, "failing to disclose the array of sales concessions offered for the Subject property."<sup>10</sup> Based on the findings of fact herein, the Department has proven by clear and convincing evidence that Mr. Facendo did fail, as alleged in paragraph 17 of the Administrative Complaint, "to note, discuss or analyze the sale incentives" for the Palm Drive property and the comparable-sales properties. This omission is not, however, sufficient to establish that Mr. Facendo violated Section 475.624(2) by committing a breach of trust in his appraisal of the Palm Drive property.

41. In Munch v. Department of Professional Regulation, 592 So. 2d 1136, 1143-44 (Fla. 1973), the court was concerned with a disciplinary action against a real estate broker who was charged with having violated Section 475.25(1)(b), Florida Statutes (1989) by committing "fraud, misrepresentation, concealment, false promises, false pretenses, dishonest dealing by trick, scheme or device, culpable negligence or breach of trust in a

business transaction," language that is virtually identical to that of Section 475.624(2), Florida Statutes. The court in Munch stated:

It is clear that Section 475.25(1)(b) is penal in nature. As such, it must be construed strictly, in favor of the one against whom the penalty would be imposed. Holmberg v. Department of Natural Resources, 503 So.2d 944 (Fla. 1st DCA 1987). Reading the first clause of Section 475.25(1)(b) (the portion of the statute which appellant was charged with having violated in Count I of the complaint), and applying to the words used their usual and natural meaning, it is apparent that it is contemplated that an intentional act be proved before a violation may be found. See Rivard v. McCoy, 212 So.2d 672 (Fla. 1st DCA), cert. denied, 219 So.2d 703 (Fla. 1968).

(Emphasis in original.) Therefore, to sustain the charge that Mr. Facendo violated Section 475.624(2), Florida Statutes, by committing a breach of trust, the Department must prove as an element of the charge that Mr. Facendo had the intent to commit the acts giving rise to the prohibited conduct.

42. As noted above, the Department has proven that Mr. Facendo failed to disclose sales incentives that may have been available to persons purchasing condominium units in the Club at St. Lucie West Condominium. The only evidence that sales incentives were available was a sheet of paper included in the workfile Mr. Facendo compiled when preparing the Appraisal Report. The Department did not present any evidence to

establish that the sales incentives were actually available to the purchaser of the Palm Drive property, nor did it present evidence to establish that the failure to disclose the sales incentives in the Appraisal Report was material to the purpose of the Appraisal Report. The Department's expert witness testified only that sales incentives would be relevant to determining the market value of the Palm Drive property, but he did not explain how they would be relevant. The Department's expert witness did not disagree with the valuation of \$283,000.00 that Mr. Facendo put on the Palm Drive property, and he did not explain any negative effects Mr. Facendo's failure to disclose the sales incentives had on the validity of his Appraisal Report. Furthermore, the Department did not present any evidence from which it could be reasonably inferred that Mr. Facendo intentionally failed to disclose the sales incentives.

43. The court in Munch, when considering disciplinary action taken by the Florida Real Estate Commission against a real estate broker for violation of those provisions of Section 475.25(1)(b), Florida Statutes, pertinent to this proceeding, stated:

Chapter 475 vests in the Florida Real Estate Commission a broad discretionary power and authority to supervise the privileged business of real estate broker and to deal firmly with those engaged in it, even to the



point of taking away their means of livelihood by revocation or suspension of license. But such potent administrative weapons must always be reasonably and cautiously, and even sparingly, utilized. The administrative processes of the Commission should be aimed at the dishonest and unscrupulous operator, one who cheats, swindles, or defrauds the general public in handling real estate transactions. Accord Pauline v. Borer, 274 So.2d 1 (Fla. 1973).

592 So. 2d at 1144-45. Similarly, the business of real estate appraiser is a privileged business, and a real estate appraiser owes a duty of care to both his clients and to the general public. In this case, the Department proved Mr. Facendo's failure to disclose sales incentive, but it failed to establish that the omission had an adverse effect on the client's interests or affected the validity of the appraised value of the Palm Drive property or of the comparable-sales properties. It must be concluded that the Department failed to prove by clear and convincing evidence that Mr. Facendo is guilty of breach of trust in a business transaction.

B. Culpable negligence

44. In the fourth sentence in paragraph 47 of its Proposed Recommended Order, the Department asserts that Mr. Facendo committed culpable negligence "by failing to maintain the required documentation in the work file."<sup>11</sup> Based on the findings of fact herein, the Department proved by clear and convincing evidence that Mr. Facendo failed to include

documentation required by the USPAP (2006) in his workfile. This failure does not, of itself, constitute culpable negligence in the preparation of the Appraisal Report or misrepresentation of the information contained in that report.

45. The act of culpable negligence incorporates the notion of wrongdoing in the sense that, to commit culpable negligence, a person must act with reckless disregard of the interests of another. See Department of Bus. & Prof's Regulation v. Cartaya, DOAH Case Nos. 04-1148PL and 04-1680PL, paragraphs 52-53 (Recommended Order Nov. 24, 2004) (citing Carrin v. State, 875 So. 2d 719, 721 (Fla. 1st DCA 2004)).<sup>12</sup> The proof offered by the Department falls far short of showing that the omission from Mr. Facendo's workfile of some of the documentation supporting his opinions and conclusions in the Appraisal Report demonstrates a reckless disregard for the interests of his client. The Department did not allege in the Administrative Complaint that the lack of documentation in Mr. Facendo's workfile, which he is required to maintain in his office, materially affected the accuracy of the Appraisal Report or of the value Mr. Facendo placed on the Palm Drive property, nor did the Department submit any evidence on this point. The Department has, therefore, failed to prove that Mr. Facendo's omitting documentation from the workfile constituted culpable

negligence because it failed to prove that the lack of documentation adversely affected the interests of his client.

46. Based on the foregoing discussion, the Department has failed to prove that Mr. Facendo violated Section 475.624(2), Florida Statutes, by committing culpable negligence or breach of trust, and Count Seven of the Administrative Complaint should be dismissed.

II. Violation of Section 475.624(4), Florida Statutes.

47. In Count One of its Administrative Complaint, the Department alleged: "Based upon the foregoing, Respondent is guilty of failure of the primary or secondary supervisory appraiser to have the same business address as the registered trainee appraiser in violation of Section 475.6221(1), Florida Statutes and, therefore, in violation of Section 475.624(4), Florida Statutes."

48. Section 475.6221(1), Florida Statutes (2009), provides in pertinent part:

- 1) A registered trainee real estate appraiser must perform appraisal services under the direct supervision of a licensed or certified appraiser who is designated as the primary supervisory appraiser. The primary supervisory appraiser may also designate additional licensed or certified appraisers as secondary supervisory appraisers. A secondary supervisory appraiser must be affiliated with the same firm or business as the primary supervisory appraiser and the primary or secondary supervisory appraiser must have the same

business address as the registered trainee  
real estate appraiser. . . .

49. Section 475.623, Florida Statutes (2009), provides that "[e]ach appraiser registered, licensed, or certified under this part shall furnish in writing to the department each firm or business name and address from which she or he operates in the performance of appraisal services." Based on the findings of fact herein, the address provided to the Department by Ms. Trueman, the registered trainee real estate appraiser who began working with Mr. Facendo in November 2007, was not the business address from which she worked with Mr. Facendo but was, rather, Ms. Trueman's home address.

50. The registered trainee appraiser is responsible for providing his or her business address to the Department pursuant to Section 475.623, Florida Statutes (2009). Section 475.6221(1), Florida Statutes (2009), requires only that the primary or secondary supervisor of a registered trainee appraiser actually have the same business address as the registered trainee real estate appraiser. Based on the findings of fact herein, Mr. Facendo and Ms. Trueman did have the same business address, regardless of whether she provided that business address to the Department, and the Department has cited no authority requiring Mr. Facendo to ensure that the address Ms. Trueman provided the Department was the appropriate one.

Mr. Facendo cannot, therefore, be held accountable for the address Ms. Trueman provided to the Department, and the Department did not, therefore, prove that Mr. Facendo committed a violation of 475.624(4), Florida Statutes (2009). Count One of the Administrative Complaint should therefore, be dismissed.

III. Violation of Section 475.624(14), Florida Statutes.

51. In Counts Three, Four, Five, Six, and Eight of the Administrative Complaint, the Department charged that Mr. Facendo violated Section 475.624(14), Florida Statutes, by violating "standard[s] for the development or communication of a real estate appraisal," specifically, by violating the Record Keeping Section of the Ethics Rule of the USPAP (2006); the Competency Rule of the USPAP (2006); Standards Rule 2-1(a) and (b) of the USPAP (2006); Standards Rule 2-2(b)(viii) of the USPAP (2006); and Standards Rule 1-1(b) and (c) of the USPAP (2006). As proof of these violations, the Department presented a copy of the relevant USPAP (2006), which were effective during the times relevant to these proceedings, and the testimony of its expert witness, which was based on the USPAP (2006).

52. Based on the findings of fact herein, the Department proved by clear and convincing evidence that Mr. Facendo violated the Record Keeping Section of the Ethics Rule of the USPAP (2006) by failing to include in his workfile all of the

"data, information, and documentation necessary to support [his] opinions and conclusions."

53. Based on the findings of fact herein, the Department failed to prove by clear and convincing evidence that Mr. Facendo violated the Competency Rule of the USPAP (2006). In paragraph 35 of its Proposed Recommended Order, the Department asserted that Mr. Facendo "failed to show geographic competency" and, thereby, violated the Competency Rule. As discussed in endnote 10, the Department did not include an allegation regarding Mr. Facendo's geographic competency in the Administrative Complaint. Even if it had, the evidence presented by the Department is insufficient to establish that Mr. Facendo violated the Competency Rule. The Department's expert witness simply assumed that Mr. Facendo was geographically incompetent to appraise property in the Club at St. Lucie West Condominium because of the distance between Mr. Facendo's business office and the Palm Drive property, but Mr. Facendo's testimony regarding his familiarity with the real estate market in Port St. Lucie, Florida, was not contradicted.

54. Based on the findings of fact herein, the Department failed to prove by clear and convincing evidence that Mr. Facendo's appraisal of the Palm Drive property violated Standards Rule 2-1(a) of the USPAP (2006) because the only evidence presented by the Department to establish that the

appraisal was set forth in a misleading manner was the conclusory and unsupported testimony of the Department's expert witness.

55. Based on the findings of fact herein, the Department failed to prove by clear and convincing evidence that Mr. Facendo violated Standards Rule 2-1(b) of the USPAP (2006). First, there was no proof by the Department that Mr. Facendo's failure to include in the Appraisal Report information regarding the sales incentives set out on the document in the workfile hampered the ability of Mr. Facendo's client, the South Florida Lending Group, to understand the Appraisal Report. The Department presented only the conclusory and unsupported testimony of the Department's expert witness that the sales incentives should have been disclosed because they were, in some unexplained manner, relevant to a determination of market value, but the expert witness never challenged the validity of the value Mr. Facendo assigned to the Palm Drive property.<sup>13</sup>

56. Based on the findings of fact herein, the Department failed to prove by clear and convincing evidence that Mr. Facendo violated Standards Rule 2-2(b)(viii) of the USPAP (2006). The assertions of fact listed by the Department in paragraph 41 of its Proposed Recommended Order to support its contention that Mr. Facendo violated Standards Rule 2-2(b)(viii) of the USPAP (2006) were not alleged in the Administrative

Complaint and cannot, therefore, be the basis on which a violation may be based. See Cottrill, 685 So. 2d at 1372.

57. Based on the findings of fact herein, the Department failed to prove by clear and convincing evidence that Mr. Facendo violated Standards Rule 1-1(b) and (c) of the USPAP (2006). The Department offered no persuasive evidence to establish that Mr. Facendo committed "a substantial error of omission or commission" that affected significantly the validity of his appraisal of the Palm Drive property or that Mr. Facendo made "series of errors that . . . affect[ed] the results of [the] appraisal." First, the Department asserts that Mr. Facendo violated this Standards Rule because he failed to include a discussion of the sales concessions that might have been applicable to the sale of the Palm Drive property and to the comparable-sales property, but the only evidence it presented to support the significance of this omission is the conclusory and unsupported testimony of the Department's expert witness that this omission was a substantial error.<sup>14</sup> Nowhere in his testimony did the Department's expert witness challenge the validity of the value assigned by Mr. Facendo to the Palm Drive property. Second, the Department asserts that Mr. Facendo's failure to include the streets and highways forming the boundaries of the neighborhood in which the Club at St. Lucie West Condominium was located significantly affected the results



of the appraisal, but the Department failed to present any evidence to support this contention. Third, the Department failed to present any persuasive evidence that Mr. Facendo included a "series of errors" in the Appraisal Report that would have affected the credibility of the appraisal. Again, the only evidence presented on this point was the conclusory and unsupported testimony of the Department's expert witness.<sup>15</sup>

58. Finally, even though the Department has proven that Mr. Facendo violated the Record Keeping Section of the Ethics Rule of the USPAP (2006), this proof is insufficient to establish that Mr. Facendo violated Section 475.624(14), Florida Statutes. The 2006 edition of the USPAP was not applicable to certified real estate appraisers doing business in Florida in 2007 and 2008. As recently concluded by Administrative Law Judge Susan B. Harrell in Department of Business and Professional Regulation v. Sigmond, DOAH Case No. 09-3685PL (Recommended Order Jan. 12, 2010):

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. 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.<sup>[16]</sup>

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.

See also Department of Bus. & Prof'l Regulation v. Lester, DOAH Case No. 09-0642PL (Recommended Order Nov. 24, 2009); Department of Bus. & Prof'l Regulation v. Otero, DOAH Case No. 05-1258PL (Recommended Order Aug. 18, 2005).

59. Accordingly, on the basis of the reasoning in Sigmond, Counts Three, Four, Five, Six, and Eight of the Administrative Complaint should be dismissed.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Real Estate Appraisal Board enter a final order dismissing all counts of the Administrative Complaint dated March 13, 2009.

DONE AND ENTERED this 30th day of March, 2010, in Tallahassee, Leon County, Florida.



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PATRICIA M. HART  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 30th day of March, 2010.

ENDNOTES

<sup>1/</sup> All references herein to the Florida Statutes are to the 2006 edition unless otherwise indicated.

<sup>2/</sup> The appraisal report at issue does not identify "72 comparable sales," nor is there a "Report 2" since there is only one report identified in the Administrative Complaint. It is assumed that this allegation was included in the Administrative Complaint in error. Consequently, no findings of fact or conclusions of law will be included in this Recommended Order relative to this allegation.

<sup>3/</sup> It is noted that no proof was offered with respect to the allegations in this paragraph, and these allegations are, therefore, deemed abandoned.

<sup>4/</sup> A handwritten document entitled "Club at St Lucie - Deal Sheet" was included in the workfile of the Appraisal Report prepared by Mr. Facendo. See Petitioner's Exhibit 1, page 32. Mr. Facendo was unable to identify this document except to say that it was in the workfile, that he had seen the document, and that it had probably been prepared by his assistant, Pablo. The document shows that the buyer of Unit 106 was to receive a "closing cost credit" of \$8,489.70. The Deal Sheet is not signed by either the sales person or the sales manager, and it is not dated. This document does not, therefore, have sufficient probative value to contradict Mr. Facendo's testimony regarding his verification that the concessions offered in the sales contract for Unit 106 totaled \$4,500.00. See Transcript at page 119.

<sup>5/</sup> It is noted that the fourth "comparable" is identified on the location map as 8339 Mulligan Circle, which is, according to the location map, located to the west of U.S. Interstate Highway 95. Mr. Facendo's workfile contains information from the St. Lucie County property appraiser regarding 8339 Mulligan Circle, and Mr. Facendo considered using it as a comparable. He rejected this property, however, because, although it was a condominium unit, it had not been part of a condominium conversion. Mr. Facendo chose instead to use Unit 107 of the Club at St. Lucie West Condominium as comparable 4, but he did not mark it on the location map.

<sup>6/</sup> The Comment to the Competency Rule provides in pertinent part that "[c]ompetency applies to factors such as, but not limited to, an appraiser's familiarity with a specific type of property, a market, a geographic area, or an analytical method."

<sup>7/</sup> In Count Two of the Administrative Complaint, the Department charged Mr. Facendo with having violated Section 475.623, Florida Statutes, and, therefore, Section 475.624(1), Florida Statutes. These charges were based on the allegations in paragraph 14 of the Administrative Complaint. The Department did not include proposed factual findings regarding the allegation in paragraph 14 of the Administrative Complaint that Mr. Facendo failed to register his business name with the Department, nor did it discuss this charge in the proposed conclusions of law in its Proposed Recommended Order. The

allegation in paragraph 14 is, therefore, deemed abandoned, and Count Two of the Administrative Complaint should be dismissed.

<sup>8/</sup> In its Administrative Complaint, the Department alleged that Mr. Facendo failed to include dates and offering prices on the Palm Drive property even though he indicated in the Appraisal Report that it had been offered for sale in the previous three months; that Mr. Facendo failed to provide a listing history or listing prices for the Palm Drive property, even though he indicated in the Appraisal Report that it was currently offered for sale; and that he failed to provide a sketch of the Palm Drive property or to verify its square footage. See Administrative Complaint, paragraphs 5(A), (C), and (E). The Department did not, however, raise these factual issues in its Proposed Recommended Order as a basis for its assertion that Mr. Facendo committed a breach of trust or culpable negligence. It will be presumed, therefore, that the Department has abandoned these factual allegations as the bases for a violation of Section 475.624(2), Florida Statutes, and the sufficiency of these allegations, if proven, to support such a statutory violation will not be addressed in this Recommended Order.

<sup>9/</sup> Because the Department did not address any alleged violations of Section 475.624(2), Florida Statutes, except those of culpable negligence and breach of trust, it has effectively abandoned the charges of fraud and misrepresentation alleged in Count Seven of the Administrative Complaint. Mr. Facendo is, therefore, found not guilty of these prohibited acts.

<sup>10/</sup> The Department included several other purported misrepresentations and failures to disclose in the second and third sentences of paragraph 47 to support its proposed conclusion that Mr. Facendo committed breach of trust with respect to the Appraisal Report. The Department asserted that Mr. Facendo (1) "list[ed] the incorrect age for the Subject Property"; (2) "failed to disclose the percentage of developer ownership in the Project"; (3) made "conflicting statements with regard to the percentage of individual ownership"; (4) "claim[ed] competency when no such proof or documentation supported this claim/certification"; (5) "fail[ed] to describe the neighborhood or market area"; and (6) "prepar[ed] an appraisal report that was misleading." These purported misrepresentations and failures to disclose information cannot, however, support the charge that Mr. Facendo committed a breach of trust in violation of Section 475.624(2), Florida Statutes.

First, the only mention in the Administrative Complaint of item (1), quoted above, was in the context of the absence of documentation in Mr. Facendo's workfile to support "the ages for the Subject Property or any of the comparables." Administrative Complaint at paragraph 12. There was no allegation in the Administrative Complaint that the information regarding the ages of the Palm Drive property and the comparable-sales properties given in the Appraisal Report were incorrect. With respect to item (5), the Department alleged in paragraph 5(D) of the Administrative Complaint that Mr. Facendo failed "to state the neighborhood boundaries in the Neighborhood section of the Report." There was no allegation in the Administrative Complaint that Mr. Facendo failed to describe the neighborhood, and, in fact, Mr. Facendo did include a lengthy description of the neighborhood in the Neighborhood Description portion of the Neighborhood section of the Appraisal Report. Finally, there were no allegations at all in the Administrative Complaint related to items (2), (3), (4), or (6), quoted above. As a result, the six asserted grounds quoted above upon which the Department relies to establish a breach of trust cannot, as a matter of law, be used by the Department as the basis for a violation of Section 475.624(2), Florida Statutes, in this case. See Cottrill v. Department of Ins., 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996)("Predicating disciplinary action against a licensee on conduct never alleged in an administrative complaint or some comparable pleading violates the Administrative Procedure Act.").

In addition, with respect to item (1), quoted above, there is no persuasive evidence in the record to establish that the ages of the Palm Drive property and the comparable-sales properties Mr. Facendo included in the Appraisal Report were incorrect. The Department's expert witness, Francois Gregoire, testified that the information he obtained from the public records established that the Club at St. Lucie West Condominium was built in 2005, the year the rental apartments were converted into condominiums. Mr. Gregoire offered no testimony regarding the date the rental apartments were built. Mr. Gregoire's testimony did not, therefore, contradict the information Mr. Facendo included in the Appraisal Report regarding the year in which the rental apartment complex was built or the year in which the apartments were converted into condominiums. In any event, even if the Department had alleged in the Administrative Complaint that the ages of the Palm Drive property and the comparable-sales properties Mr. Facendo included in the

Appraisal Report were incorrect, the evidence it presented was wholly insufficient to support such a finding of fact.

With respect to item (4), quoted above, the Department alleged in paragraph 16 of the Administrative Complaint only that the Palm Drive property was located "approximately 85 miles" from Mr. Facendo's business office; there was no allegation in the Administrative Complaint regarding Mr. Facendo's competence to appraise the Palm Drive property. The only issue regarding Mr. Facendo's competence was raised by Mr. Gregoire, who testified that, because of the distance between Mr. Facendo's office and the Club at St. Lucie West Condominium, Mr. Facendo did not have the geographical competence to appraise the Palm Drive property. Mr. Gregoire's testimony, however, constituted mere supposition and was unsupported by any evidence that he had personal knowledge of Mr. Facendo's familiarity with the Port St. Lucie area. On the other hand, Mr. Facendo's uncontroverted testimony established that he had lived and sold real estate in the Port St. Lucie, Florida, area in the early 1990's and that, since moving to the Fort Lauderdale area in 1992, he had routinely conducted appraisals in the Port St. Lucie area. Consequently, even if the Department had alleged in the Administrative Complaint that the distance between Mr. Facendo's business office and the Club at St. Lucie West Condominium rendered Mr. Facendo geographically incompetent to conduct the appraisal, the evidence it presented was wholly insufficient to support such a finding of fact.

<sup>11/</sup> The Department also asserts in paragraph 47 of its Proposed Recommended Order that Mr. Facendo committed culpable negligence "by failing to verify information used in the Report with disinterested third parties." The Administrative Complaint contains no allegation that Mr. Facendo failed to verify information contained in the report with disinterested third parties. This allegation appears only in the testimony of the Department's expert witness, and it cannot, therefore, be used by the Department as the basis for a violation of Section 475.624(2), Florida Statutes, in this case. See Cottrill, 685 So. 2d at 1372.

<sup>12/</sup> Certain portions of Administrative Law Judge John G. Van Laningham's Recommended Order in Cartaya were rejected by the Real Estate Appraisal Board in its Amended Final Order filed May 22, 2006, but the paragraphs of the Recommended Order cited were adopted.

<sup>13</sup>/ The remaining assertions of fact listed by the Department in paragraph 38 of its Proposed Recommended Order to support its contention that Mr. Facendo violated Standards Rule 2-1(b) of the USPAP (2006) were not alleged in the Administrative Complaint and cannot, therefore, be the basis on which a violation may be based. See Cottrill, 685 So. 2d at 1372.

<sup>14</sup>/ Immediately after this testimony, Mr. Gregoire testified that this was a "minor" error. See Transcript at page 61.

<sup>15</sup>/ The Department also asserted in paragraph 50 of its Proposed Recommended Order that Mr. Facendo's reliance "on unverified information supplied by interested persons" to support its contention that Mr. Facendo violated Standards Rule 1-1(b) and (c) of the USPAP (2006), but this was not alleged in the Administrative Complaint and cannot, therefore, be the basis on which a violation may be based. See Cottrill, 685 So. 2d at 1372.

<sup>16</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.

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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.