

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
DIVISION OF REAL ESTATE,)
)
Petitioner,)
)
vs.) Case No. 10-10914PL
)
RONALD C. HORMES,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on March 7, 2011, by video teleconference with sites in St. Petersburg and Tallahassee, Florida, before Susan B. Harrell, an 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: Daniel Villazon, Esquire
Daniel Villazon, P.A.
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Celebration, Florida 34747

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent violated sections 475.622(1), 475.622(2), 475.624(2), and 475.624(15), Florida Statutes (2007),^{1/} and Florida Administrative Code Rule 61J1-7.001(2), and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On July 20, 2010, Petitioner, Department of Business and Professional Regulation, Division of Real Estate (Department), filed a three-count Administrative Complaint against Respondent, Ronald C. Hormes (Mr. Hormes), alleging that he violated sections 475.624(15), 475.624(2), 475.622(1), and 475.622(2) and rule 61J1-7.001(2). Mr. Hormes requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings on December 27, 2010, for assignment to an Administrative Law Judge to conduct the final hearing.

At the final hearing, the Department called Michael McKinley and Dennis Black as its witnesses. Petitioner's Exhibits 1 through 5, 8, and 9 were admitted in evidence. Mr. Hormes testified on his own behalf. Respondent's Exhibits 1 and 2 were admitted in evidence.

Official recognition was taken of sections 475.624(15), 475.624(2) and 475.622 and rule 61J1-8.002.

The two-volume Transcript was filed on March 31, 2011. The parties agreed to file their proposed recommended orders within

30 days of the filing of the Transcript. The parties' Proposed Recommended Orders have been given consideration in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Mr. Hormes has been a state-certified general real estate appraiser since March 30, 1992. He was disciplined by the Department in 1995.

2. On or about September 4, 2007, Mr. Hormes prepared an appraisal report (Original Appraisal)^{2/} for real property located at 754 West 4th Street, Cape Coral, Florida (Subject Property). The file number assigned by Mr. Hormes was 0708-248. Mr. Hormes signed the Original Appraisal on September 7, 2007. On the morning of September 7, 2007, he communicated the Original Appraisal to Cirrus Mortgage, which was the intended user of the appraisal. The Original Appraisal appraised the value of the Subject Property at \$240,000, using a sales comparison approach.

3. On the signature page of the Original Appraisal, Mr. Hormes stated that his state certification was "State Cert. Gen. Res. REA 1337." On the cover letter transmitting the Original Appraisal, Mr. Hormes put the following designation underneath his name: "State Cert. Gen. REA RZ #1337."

4. The Original Appraisal had numerous errors. Mr. Hormes stated that the Subject Property was zoned as residential, but the Subject Property was zoned corridor district. The Original

Appraisal stated the Subject Property was a two-story ranch, when it was a one-story ranch.

5. The actual age of the Subject Property as of September 4, 2007, the effective date of the Original Appraisal, was 26 years. Mr. Hormes used three comparable sales to compare to the Subject Property. Two of the three comparable sales were listed as four years old. Mr. Hormes listed the age of the third comparable sale as nine years, but the house was built in 2003, making it four years old at the time of the appraisal.

6. The Original Appraisal states that there were comparable sales in the Subject Property neighborhood that ranged from \$180,000 to \$265,000. There was nothing in the work file to support Mr. Hormes's statement that there had been a \$265,000 sale.

7. The Original Appraisal states that there were listings available for \$175,000 to \$260,000 in the Subject Property neighborhood, meaning that potential buyers could chose a less expensive alternative to the Subject Property. There was no explanation in the Original Appraisal why a potential buyer would choose the higher priced Subject Property over the less expensive listing. Mr. Hormes testified that the listing for \$175,000 was undesirable because of impact fees, but there is no mention in the work file to support this assertion.

8. Mr. Hormes incorrectly listed the view of the Subject Property as residential. The Subject Property was located across the street from a Carrabas restaurant and a strip mall. Although Mr. Hormes did note in the Original Appraisal that there were some external inadequacies due to the Subject Property being located directly behind a restaurant, strip mall, and commercial stores, he did not adjust or analyze for external obsolescence of the Subject Property.

9. Mr. Hormes stated in the Original Appraisal that the cost of the three comparables was weighted equally in determining the \$240,000 value of the Subject Property. However, Mr. Hormes determined that the adjusted sale prices of the three comparables were \$241,500; \$239,200; and \$249,000. Based on these adjusted sale prices, the value of the Subject Property would have been \$243,233.

10. Mr. Hormes made a positive adjustment to Comparable Sale 1 of \$21,500 for location, but no adjustments were made for Comparable Sales 2 and 3 for location. The Original Appraisal did not state why the positive adjustment was made for Comparable Sale 1, why no positive adjustments were made for Comparable Sales 2 and 3, and why a positive rather negative adjustment was made. At the final hearing, Mr. Hormes stated that he used a paired sales analysis for his locational

adjustments; however, there was nothing in the work file to indicate that he used a paired sales analysis.

11. Mr. Hormes stated in the Original Appraisal that property values in the neighborhood of the Subject Property were stable. However, based on documentation in Mr. Hormes's work file, the property values were declining.

12. There were also inconsistencies within the Original Appraisal. On page 1 of the Original Appraisal, Mr. Hormes stated that the marketing time for one-unit housing was over six months. In the addendum to the Original Appraisal, Mr. Hormes stated that the marketing time was typically from three to six months.

13. Cirrus Mortgage is a correspondent lender; thus, it was no surprise to Mr. Hormes that he received a letter from Chase Home Lending (Chase) dated January 29, 2009, concerning the Original Appraisal. Chase advised Mr. Hormes that a field review of the Original Appraisal had been done and that, based on the review, Mr. Hormes's "appraiser status has been changed to Ineligible for Chase Home Lending and we will not accept appraisal reports performed in whole or in part by you effective immediately." A copy of the appraisal field review report was enclosed with the letter. Chase advised Mr. Hormes that it would consider a written response to the appraisal field review report.

14. By letter dated January 7, 2009, Mr. Hormes responded to Chase concerning the appraisal field review report. He pointed out errors that he felt were in the appraisal field review report. Mr. Hormes stated that, at the time the appraisal was done, the appraisal was \$234,000.

15. By letter dated January 29, 2009, Chase filed a complaint with the Department concerning the Original Appraisal. Martin Straw (Mr. Straw), an investigator with the Department, notified Mr. Hormes by letter dated March 3, 2009, that a complaint had been filed against him concerning the Original Appraisal. By a separate letter dated March 3, 2009, Mr. Straw requested that Mr. Hormes provide "a true and accurate copy of the appraisal as delivered to the client" and "a complete copy of your entire working file and supporting data for this appraisal."

16. By March 19, 2009, the investigation had been reassigned to Mike McKinley (Mr. McKinley), an investigator for the Department, and Mr. McKinley wrote Mr. Hormes, advising of the transfer. By June 5, 2009, Mr. McKinley had not received a copy of the appraisal sent to the client and a copy of Mr. Hormes's entire working file, and Mr. McKinley wrote Mr. Hormes and again requested that the documentation be provided to the Department.

17. By letter dated March 10, 2009, Mr. James R. Mitchell of Baker & Hostetler LLP wrote Mr. Straw, advising that the law firm would be representing Mr. Hormes. By letter dated June 26, 2009, Mr. Jacob R. Stump of Baker & Hostetler LLP sent a response to the Department concerning the complaint filed by Chase and enclosed what purported to be Mr. Hormes's work file and "a copy of the Original Appraisal as sent to Mr. Hormes' client."

18. Mr. Hormes claims that he signed and sent the Original Appraisal to the client on the morning of September 7, 2007. He testified that he was looking over the Original Appraisal in the afternoon and discovered some errors that his computer software review program did not catch. He further testified that on the afternoon of September 7, 2007, he corrected the errors, prepared an Amended Appraisal, signed the Amended Appraisal, and sent the Amended Appraisal to the client. Mr. Hormes's testimony concerning the preparation of an Amended Appraisal on September 7, 2007, is not credible for many reasons.

19. In the Amended Appraisal, Mr. Hormes added three additional comparable sales and a short sale. He states that the source of the data for Comparable Sales 5 and 6 came from public records and that the effective date of the sources is September 17, 2007, which is ten days after he claims that he prepared, signed, and communicated the Amended Appraisal.

20. The work file of Mr. Hormes contains a list of properties that he looked at to determine comparables for the Original and Amended Appraisals. Some of the sales are dated a week to two weeks after the Amended Appraisal supposedly was signed and communicated. The work file contains supporting data for the comparable sales that are dated January 7, 2009, which is the date that Mr. Hormes responded to Chase's letter declaring him ineligible to prepare appraisals for Chase. Mr. Hormes claims that he just consulted the public records and multiple listings for the information at the time that he prepared the Original and Amended Appraisals and did not place them in the work file. There is supporting data for the information concerning the Subject Property dated September 4, 2007; therefore, it is not logical that Mr. Hormes did not place in the work file data concerning the comparable sales used in the Original and Amended Appraisals that was obtained contemporaneously with the preparations of the two appraisals on September 4 and 7, 2007.

21. There were numerous corrections to the Original Appraisal in the Amended Appraisal, including zoning, ages of the comparable sales, additional comparable sales, the correct average of the comparable sales, adjustments made to the comparable sales, and changing the view to residential/busy. It is difficult to understand how Mr. Hormes could have sent out

the Original Appraisal with so many errors which he did not recognize while preparing the Original Appraisal, particularly with his many years of experience as an appraiser. The error concerning the zoning is an error that even an inexperienced appraiser likely would not make. Mr. Hormes's explanation is that the computer software that he used to check his appraisals was not working properly. His explanation is not credited.

22. It is just as difficult to understand how Mr. Hormes could go through the Original Appraisal in the short span of an afternoon, make all the corrections, and communicate the Amended Appraisal to his client. The inevitable conclusion is that Mr. Hormes did not prepare an Amended Appraisal on the afternoon of September 7, 2007, and that the Amended Appraisal was prepared sometime after Chase notified Mr. Hormes that Chase would no longer consider Mr. Hormes eligible to do appraisals for Chase.

23. Mr. Hormes did not provide the Department with a copy of the Amended Appraisal when the Department requested the entire working file concerning the appraisal at issue. When Mr. Hormes's attorney responded to the Department, he did not mention the Amended Appraisal and did not send the Amended Appraisal to the Department.

24. Mr. Hormes testified that he gave the work file to his assistant and asked the assistant to copy the work file and send

it to the Department. He testified that his assistant must have failed to send the Amended Appraisal. Mr. Hormes's testimony is not credited.

25. When Chase made its complaint to the Department, no mention was made of an Amended Appraisal, and no Amended Appraisal was sent to the Department. It is inferred that Chase did not have a copy of the Amended Appraisal.

26. There is a letter dated October 6, 2008, from Mr. Hormes to Mr. Straw concerning the appraisal at issue in the work file, which was provided to the Department by Mr. Hormes's attorney. The letter was not in the Department's files prior to its receipt from Mr. Hormes's attorney. The letter predates the complaint filed by Chase against Mr. Hormes and predates the assignment of the case to Mr. Straw. Assuming, arguendo, that the date was incorrect and the year should have been 2009, the letter rings false because Mr. Straw was no longer investigating the case and Mr. McKinley had been in contact with Mr. Hormes concerning the complaint. It is concluded that Mr. Hormes was doctoring his file to make it appear that he had notified the Department early on that an Amended Appraisal had been prepared.

27. In the Original Appraisal, Mr. Hormes stated that the neighborhood boundary that he used was Nicholas Parkway to the east, Chiquita Boulevard to the west, Embers Parkway to the north, and Southwest 10th Street to the south. The Department

claimed that one of the properties used as a comparable sale, 636 Southwest 10th Street, was not located within the neighborhood boundary. The evidence establishes that the property is on the boundary line and is considered to be within the neighborhood boundary lines.

28. Mr. Hormes stated in the Original Appraisal:

This appraisal report complies with 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.

29. The Uniform Standards of Professional Appraisal Practice (USPAP) contains the governing standards for appraisers throughout the United States. The following portions of the 2006 USPAP are applicable to the instant case:

Ethics Rule-Conduct

An appraiser must perform assignments ethically and competently, in accordance with USPAP and any supplemental standards agreed to by the appraiser in accepting the assignment. An appraiser must not engage in criminal conduct. An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.

* * *

An appraiser must not communicate assignment results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report or knowingly permit an employee or

other person to communicate a misleading or fraudulent report.

Ethics Rule-Recordkeeping

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, of 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 documentation.^[3/1]

An appraiser must retain the workfile for a period of at least five (5) years after preparation or at least two (2) years after final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment, whichever period expires last.

An appraiser must have custody of his or her workfile, or make appropriate workfile retention, access, and retrieval arrangements with the party having custody of the workfile.

Standards Rule 1-1

In developing a real property appraisal, an appraiser must:

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

(b) not commit a substantial error or 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 1-4(a)

In developing a real property appraisal, an appraiser must collect, verify, and analyze all information necessary for credible assignment results.

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

Standards Rule 2-1

Each written or oral 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 2-4(b) (viii)

(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.

30. The appraisal attached to the Administrative Complaint is designated as 0708-248 org. Dennis Black, who testified as the Department's expert, reviewed Mr. Hormes's appraisal which has a designation of 0708-248. Both appraisals are identical except for the designation and both appraisals constitute the Original Appraisal, which is at issue.

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. (2010).

32. The Department has the burden to establish the allegations in the Administrative Complaint by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996).

33. The Department has alleged that Mr. Hormes violated sections 475.622(1) and 475.622(2), which provide:

(1) Each appraiser registered, licensed, or certified under this part shall place her or his registration, license, or certification number adjacent to or immediately beneath the designation "state-registered trainee real estate appraiser," "state-licensed real estate appraiser," "state-certified residential real estate appraiser," or "state-certified general real estate appraiser," or their appropriate abbreviations as defined by rule, as applicable, when such term is used in an appraisal report or in a contract or other instrument used by the appraiser in conducting real property appraisal activities. The applicable designation shall be included in any newspaper, telephone directory, or other advertising medium, as defined by rule, used by the appraiser.

(2) A registered trainee appraiser or licensed or certified appraiser may not sign any appraisal report or certification or communicate same without disclosing in writing that she or he is a state-registered trainee appraiser or state-licensed, state-certified residential, or state-certified general appraiser, as applicable, even if the appraisal performed is outside of the scope of the appraiser's registration, licensure, or certification as an appraiser.

34. The Department has alleged that Mr. Hormes used an incorrect designation in the Original Appraisal, violating rule 61J1-7.001(2), which provides the following designations, as appropriate, may be used in writing appraisals:

(2) The following designations or abbreviations shall be used:

(a) "State-registered trainee real estate appraiser," "registered trainee" or "trainee."

(b) "State-licensed real estate appraiser," "state-licensed r.e. appraiser," "state-lic. r.e. appraiser," "state-lic. r.e. appr." or "St.Lic.REA"

(c) "State-certified residential real estate appraiser," "state-certified residential r.e. appraiser," "state-certified residential appraiser," "state-certified res. appraiser," "state-cert. res. appraiser," "state-cert. res. appr." or "St.Cert.Res.REA"

(d) "State-certified general real estate appraiser," "state-certified general r.e. appraiser," "state-certified general appraiser," "state-certified gen. appraiser," "state-cert. gen. appr." or "St.Cert.Gen.REA"

35. The Department has established by clear and convincing evidence that Mr. Hormes did not use the appropriate designation for a state-certified general real estate appraiser as set forth in rule 61J1-7.001(2) when he signed the transmittal letter for the Original Appraisal and when he signed the Original Appraisal. Thus, the Department has established that Mr. Hormes violated section 475.622(1) for failing to use the correct designation, but the Department failed to establish that Mr. Hormes failed to identify himself as state-certified general real estate agent in violation of section 475.622(2).

36. The Department has alleged that Mr. Hormes violated sections 475.624(2) and 475.624(15), which provide:

The board may deny an application for registration 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.

* * *

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

37. The Department alleges in the Administrative Complaint that Mr. Hormes made the following errors or omissions in the preparation of the appraisal of the subject property:

- a) Respondent misstated the neighborhood one unit housing trends as being stable property values and in demand/supply being in balance, when property values were declining and there was an oversupply of similar housing;
- b) Respondent was inconsistent in stating on page 1 of the Report that marketing time was over 6 months, yet stating in the addendum under Neighborhood Market Conditions ". . . marketing time at typically three to six months . . .";
- c) Respondent misstated the Subject Property zoning as R-1, when in 2004, it became Corridor District;
- d) Respondent disclosed, but failed to analyze or adjust for external obsolescence in that the Subject Property lay directly across a busy roadway and faced two restaurants whose ingress/egress was opposite the Subject Property's driveway;
- e) Respondent misstated that the Subject Property had 2 stores when it was one story;
- f) The Subject Property was 26 years old yet Respondent used 4 years old Comparable sales;
- g) Respondent misstated that Comparable Sale 3 was 9 years old, when it was actually 4 years old;

h) Respondent computed an effective age of 8 years for the Subject Property based on it having been "extensively updated with a new kitchen, bathrooms, roof, interior exterior paint, flooring, new A/C and duct system, along with extensive landscaping," other key features such as the electrical wiring, plumbing and windows were presumably 26 years old;

i) Respondent identified three listings of properties comparable to the Subject Property, one of which was offered at \$175,000, but failed to reconcile or explain why the Subject Property was valued at \$240,000 when potential buyers had the choice of selecting a lesser priced alternative purchase;

j) Respondent delineated neighborhood boundaries for the Subject Property neighborhood, yet used Comparable Sale 3 which was outside those boundaries;

k) Respondent stated in the Report that there were 4 Comparable Sales in the subject neighborhood within the previous twelve months ranging in sale price for \$180,000 to \$265,000, yet a printout maintained in Respondent's work file identified 5 additional sales;

l) None of the sales identified in Respondent's work file as having occurred within the twelve months prior to the effective date of the Report sold for \$265,000;

m) Respondent misstated that "equal weight was given to each [Comparable Sale] in arriving at the estimated value of the subject," in that the average of the three Comparable Sales was \$243,232, not \$240,000;

n) Respondent certified incorrectly that "I performed this appraisal in accordance with the requirements of the Uniform Standards of

Professional Appraisal Practice [USPAP] 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" when the Comment to the Record Keeping Section of the USPAP Ethics Rule required a work file, containing documentation necessary to support the appraiser's opinions and conclusions be in existence prior to and contemporaneous with the issuance of the Report. Respondent's documentation for the available pool of Comparable Sales showed three potential Comparable Sales which closed after the effective date of the report;

o) Respondent failed to appropriately adjust the Comparable Sales for time of sale in a declining market;

p) Respondent failed to use other available, similar Comparable Sales with lower sales prices that were more recent than those selected and hence more reflective of a realistic valuation for the Subject Property.

38. The Department has established by clear and convincing evidence that Mr. Hormes failed to exercise due diligence in developing and preparing the Original Appraisal. Mr. Hormes stated in the Original Appraisal that he performed the appraisal in conformance to the requirements of USPAP. He failed to meet the USPAP requirements in several ways. By not following the requirements of USPAP, Mr. Hormes did not exercise due diligence and violated section 475.624(15).

39. Mr. Hormes violated USPAP Standards Rule 1-1(a) by failing to state the proper zoning for the Subject Property.

Establishing the correct zoning is a fundamental element of developing an appraisal. He also failed calculate the value of the Subject Property by giving equal weighting to the three comparable sales in the Original Appraisal. Mr. Hormes violated USPAP Standards Rule 1-1(b) by failing to identify and report the correct zoning and by stating that the view was residential. These are substantial errors which would significantly affect an appraisal. Additionally, Mr. Hormes violated USPAP Standards Rule 1-1(c) by committing numerous errors in the report, which in the aggregate affects the credibility of the appraisal. Mr. Hormes made inconsistent statements concerning the marketing time in the neighborhood of the Subject Property; incorrectly identified the Subject Property as being a two-story ranch; used the wrong age for Comparable Sale 3; and used four-year-old houses as comparable sales when the Subject Property was 26 years old. When considered as a whole, these errors demonstrate that the Original Appraisal lacks credibility.

40. Mr. Hormes violated USPAP Standards Rule 1-4(a) by failing to do an adequate analysis of the available sales data. He did not explain the impact on the value of the Subject Property of the external inadequacies due to the Subject Property's location behind a restaurant and a strip mall. There was a contemporaneous listing for comparable property for \$175,000, but Mr. Hormes gave no explanation in the Original

Appraisal why a potential buyer would chose the more expensive Subject Property over a less expensive comparable property.

There was no documentation in the work file to support Mr. Hormes's assertion at the final hearing that the property listed for \$175,000 had impact fees owing. Mr. Hormes stated in the Original Appraisal that there was a property that had sold for \$265,000 in the Subject Property neighborhood, but there was no documentation in the file to support this amount.

41. Mr. Hormes violated USPAP Standards Rule 2-1(a) by internal contradictions in the Original Appraisal concerning the marketing times; by misstatements concerning the zoning, the number of stories of the property, and the age of Comparable 3; and by characterizing the view of the Subject Property as residential.

42. Mr. Hormes violated USPAP Standards Rule 2-1(b) by not providing information why there was a location adjustment to Comparable Sale 1 or how the external inadequacies of the location behind a restaurant and strip mall affected the value of the Subject Property.

43. Mr. Hormes violated USPAP Standards Rule 2-2(b) (viii) by failing to summarize the information that was analyzed and to explain the reasoning that supports his analyses, opinions, and conclusions. He did not provide explanations for the use of comparables that were four years old; the reason that a

potential buyer would purchase the more expensive Subject Property when a less expensive comparable listing was available; and the adjustment for location for Comparable Sale 1 and not for the other two comparables.

44. Mr. Hormes failed to abide by the record keeping provisions of the USPAP, which require that the work file contain all data, information, and documentation necessary to support his opinions and conclusions or contain references to the locations of such documentation. The work file is required to be in existence at the time the appraisal is done.

Mr. Hormes did not include documentation in the work file to support his conclusions concerning the information on the comparable sales nor did he include references to the documentation other than to state "public records." Mr. Hormes attempted to create a work file after Chase made its complaint to him, but that work file was not in existence at the time the Original Appraisal was developed and communicated.

45. The USPAP provides that an appraiser must perform assignments competently and must not communicate an assignment that is misleading. For the reasons stated above, Mr. Hormes did not competently develop and prepare the Original Appraisal in a competent manner. His errors and misstatements were misleading.

46. The Department has failed to establish that Mr. Hormes violated section 475.624(2). Mr. Hormes was incompetent, but his incompetence does not rise to the level of a violation of section 475.624(2).

47. Rule 61J1-8.002 sets forth the disciplinary guidelines to be followed in assessing a penalty. The range of penalty for a violation of section 475.622(1) is up to a 90-day suspension. The range of penalty for a violation of section 475.624(15) is from a five-year suspension to revocation and an administrative fine of \$1,000. An aggravating factor to be considered in assessing a penalty is Mr. Hormes's disciplinary history.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered finding that Mr. Hormes violated sections 475.622(1) and 475.624(15) and rule 61J1-7.001(2); finding that Mr. Hormes did not violate sections 475.622(2) and 475.624(2); suspending his license for six years followed by two years of probation; and imposing an administrative fine of \$5,000.

DONE AND ENTERED this 19th day of May, 2011, in
Tallahassee, Leon County, Florida.

Susan B. Harrell

SUSAN B. HARRELL
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of May, 2011.

ENDNOTES

- ^{1/} Unless otherwise indicated, all references to the Florida Statutes are to the 2007 version.
- ^{2/} There is an issue concerning whether Mr. Hormes prepared an amended appraisal; thus, the first appraisal that was prepared and delivered to the client is designated as the Original Appraisal.
- ^{3/} The comment to the record keeping section in USPAP states: "A workfile must be in existence prior to and contemporaneous with the issuance of a written or oral report."

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.