

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
)
Petitioner,)
)
vs.) Case No. 12-1220PL
)
CRAIG H. BUTTERFIELD,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on September 14, 2012, by video teleconference in Tallahassee and Miami, Florida, before Thomas P. Crapps, a designated Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

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STATEMENT OF THE ISSUES

Whether Respondent violated section 475.624(15), Florida Statutes (2010), as alleged in the Administrative Complaint; and if so, the appropriate penalty.^{1/}

PRELIMINARY STATEMENT

On June 15, 2011, Petitioner, the Department of Business and Professional Regulation (Department), filed a one-count Administrative Complaint before the Florida Real Estate Appraisal Board against Respondent, Craig H. Butterfield (Mr. Butterfield). The Administrative Complaint charges Mr. Butterfield with violating section 475.624(15), for failing to exercise reasonable diligence in developing and preparing an appraisal report.

On July 15, 2011, Mr. Butterfield filed with the Department a petition seeking an administrative hearing. On April 6, 2012, the Department transmitted the case to DOAH, and the case was set for a final hearing to occur on May 30, 2012. At the beginning of the May 30, 2012, hearing, the video teleconference sites experienced technical difficulties which resulted in an inability to conduct the hearing. As a result, the parties conferred and requested the undersigned to reschedule the

hearing. Therefore, the undersigned granted a motion to continue the hearing on May 30, 2012. The final hearing was rescheduled for final hearing on September 14, 2012.

At the September 14, 2012, hearing, the Department presented the testimony of Philip G. Spool (Mr. Spool) and James J. Courchaine (Mr. Courchaine) and introduced into evidence Exhibits numbered 1 through 4, 6 through 8, 10 through 14, and 16 through 18 and Petitioner's Rebuttal Exhibit numbered 1. Chapters 120, 455, and 475, Florida Statutes; Florida Administrative Code chapter 61J(1); and the 2010-2011 edition of the Uniform Standards of Professional Appraisal Practice (USPAP) were officially recognized. Mr. Butterfield testified on his own behalf.

A two-volume Transcript was filed on October 11, 2012, and the parties submitted proposed recommended orders on November 12, 2012.

FINDINGS OF FACT

1. Department is the state agency charged with regulating the practice of real estate appraisal pursuant to section 20.165 and chapters 455 and 475, Florida Statutes.

2. Mr. Butterfield is licensed as a state-certified general real estate appraiser, holding state license number RD 1063. Consequently, he is certified to give residential and commercial appraisals in Florida. Further, Mr. Butterfield has

been a licensed appraiser in Florida since 1991. In addition to being licensed in Florida, Mr. Butterfield is licensed in 11 other states, holding seven active and four inactive licenses. There is no evidence that Mr. Butterfield has any prior discipline.

3. On April 26, 2010, Mr. Butterfield issued the Appraisal Report, which is at issue in this administrative hearing. He prepared the Appraisal Report for Charles Morgan, P.A., a law firm located in North Miami Beach, Florida. The Appraisal Report identified the law firm as the intended user and that the appraisal would be used in litigation. The stated purpose of the Appraisal Report was to provide a market value for the subject property.

4. The subject property of the appraisal is located at 1500 Brickell Avenue, Miami, Florida.^{2/} The subject property is a unique parcel located on Brickell Avenue, near the heart of Miami's Financial District. The subject property's site is approximately 15,286 square feet with a 6,497 square foot building. The building is a French Chateau home constructed in 1928 by John Murrell, a prominent Miami attorney that helped develop Miami and Coral Gables. The subject property was the home of Mr. Murrell and his wife Ethel Murrell. Ms. Murrell was a noted attorney, author, lecturer and known as one of Florida's leading feminists. Consequently, the subject property has

significant historical value. The building, as described by the Appraisal Report, "contains two octagonal towers with tent roof, parpet roof and dormers, crenellated garage roof, and trefoil arch windows with leaded and stained glass." Clearly, this is a unique historical building situated on one of Miami's most prestigious streets, Brickell Avenue.

5. The Appraisal Report does not identify whether it is a self-contained appraisal report, a summary appraisal report or a restricted use appraisal report, as required by Standards Rule 2-2 of USPAP. Similarly, Mr. Butterfield's work file does not identify the type of appraisal he performed on the subject property. Rather, Mr. Butterfield's work file shows that he contracted to provide a "Commercial Narrative Appraisal Report." Mr. Butterfield's uncontradicted testimony that the Appraisal Report is a summary appraisal report for the intended user, a law firm, is credible.

6. The complaint against Mr. Butterfield was instigated by Scott Taylor (Mr. Taylor). Mr. Taylor, a licensed residential appraiser, initially contacted Mr. Butterfield requesting assistance in appraising the subject property. Because the subject property appeared to be a commercial property, Mr. Taylor was not qualified to give an appraisal. Consequently, Mr. Taylor requested Mr. Butterfield's assistance. Mr. Taylor assisted Mr. Butterfield in the preparation of the

appraisal with the taking of photographs and gathering of information. However, Mr. Taylor became unhappy with Mr. Butterfield concerning the payment of Mr. Taylor's fee. According to Mr. Butterfield, Mr. Taylor threatened to file a complaint with the Department, if Mr. Butterfield did not pay the fee. Mr. Butterfield refused to pay the disputed amount. Consequently, Mr. Taylor filed a complaint against Mr. Butterfield for perceived errors in the appraisal.

7. The record contains no evidence that the intended user, the law firm, had any complaint concerning the quality of the work or that the law firm was misled by the Appraisal Report.

8. The Department's expert witness, Mr. Spool, has 39 years of experience as an appraiser in the Miami-Dade, County area. Further, he has taught appraisal practice at Miami-Dade College, and published numerous articles concerning appraisal practice.

9. Mr. Spool identified USPAP as the standards used by appraisers in conducting real estate appraisals. Further, he credibly testified that USPAP standards related to an appraiser using "reasonable diligence" in preparing an appraisal by requiring that the appraiser correctly use recognized methods and techniques to create a credible appraisal.

10. The Appraisal Report contains Mr. Butterfield's certification that the appraisal was conducted in compliance with USPAP.

11. The Department's case at the hearing proceeded to show that Mr. Butterfield did not use reasonable diligence in the preparation of the Appraisal Report along the following four general lines:

- a) The Highest and Best Use section of the Appraisal Report did not contain any supporting analyses or discussion;
- b) The Zoning section of the Appraisal Report did not contain any supporting analyses or discussion;
- c) The comparables used by Mr. Butterfield were inappropriate, and that he used an incorrect methodology for determining the subject property's market value; and
- d) The Appraisal Report contained numerous errors that call into question its credibility.

Each of these areas is discussed separately in this Recommended Order.

Highest and Best Use

12. The Appraisal Report here sets out the Highest and Best Use of the subject property as following:

The Highest and Best Use of the subject property could accommodate office usages. The structure represents a significant portion of the total value of the whole property. Therefore, due to the contributory value of the improvements and our estimate of the Highest and Best use of the subject property is its present usage,

as would benefit an owner occupant, or as present building may generate lease income.

13. The Appraisal Report's discussion of the subject property's highest and best use contains what could be best described as "boilerplate language," setting out definitions and the appropriate tests to be applied when reviewing the subject property.^{3/} Mr. Spool's criticism of the Appraisal Report is not that Mr. Butterfield reached an inappropriate conclusion, but rather the lack of analysis. Mr. Butterfield credibly testified, however, that this appraisal was a summary appraisal report, and that further analysis was not required. The undersigned rejects Mr. Spool's testimony that a more detailed analysis needed to be contained in the Appraisal Report because the report is a summary. A review of the appraisal shows that it summarized the highest and best use of subject property as its existing use. Consequently, the undersigned finds that Mr. Butterfield's determination of the subject property's highest and best use complied with USPAP 2-2(b). Moreover, the Comment to Standard 2-2(b) (vii) provides that "[b]ecause intended users' reliance on a appraisal may be affected by the scope of work, the report must enable them to be properly informed and not misled." In the instant case, the Department did not bring forward any evidence showing that the intended user, a law firm, had been misled by Mr. Butterfield's determination of the subject property's highest and best use.

14. The record shows that the Department did not prove by clear and convincing evidence that Mr. Butterfield failed to use reasonable diligence in the preparation of the appraisal's determination of highest and best use.

Zoning

15. Mr. Butterfield specifically identified the subject property's zoning, at the time of the appraisal, as "R-3 Multi-Family with HC-Residential Office Heritage Conservation District overlay." Mr. Spool's criticism of the Appraisal Report's zoning section is that Mr. Butterfield's analysis is lacking. A review Appraisal Report's section titled zoning again includes mostly "boilerplate language" without analysis, as to the meaning of the zoning and historical overlay. However, considering that the Appraisal Report here is a summary appraisal report prepared for a law firm, the Department did not prove by clear and convincing evidence that Mr. Butterfield did not use reasonable diligence. There was no evidence that Mr. Butterfield's identification of the zoning, without further analysis, was a lack of reasonable diligence in the context of a summary. Moreover, there was no evidence that the intended user, the law firm, was misled by Mr. Butterfield's identification of the proper zoning, without a further analysis.

Market Value Determination

16. The Department questioned Mr. Butterfield's choice of his direct sales and rental comparisons, and his methodology in determining the subject property's market value. Mr. Spool offered properties that, in his opinion, were more appropriate comparisons with the subject property and questioned Mr. Butterfield's methodology. The discussion of each test used to determine the subject property's market value is discussed separately.

A. Direct sales comparison

17. The Appraisal Report here shows that Mr. Butterfield identified the three approaches used by appraisers to determine a property's market value: 1) the cost approach; 2) direct sales comparisons; and 3) an income approach. Further, the Appraisal Report shows that Mr. Butterfield used a direct sales comparison methodology and income approach to determine the subject property's market value.

18. In the direct sales comparison, the Appraisal Report shows that Mr. Butterfield used four comparable direct sales within the location of the subject property for his analysis. Of the four comparable sales identified by Mr. Butterfield, one involved an office and three involved residential homes. The record shows that Mr. Butterfield chose to use both an office and residential properties in the sales comparison because both

uses were permitted by the subject property's zoning. At the time of the appraisal, the subject property could have been used as either a residence or an office. Consequently, the direct sales comparison which included both office and residential sales was appropriate for valuing the subject property. Based on Mr. Butterfield's testimony and the Appraisal Report, the key consideration in choosing these comparable sales was the proximity to the subject property's Brickell Avenue address. Further, a review of Mr. Butterfield's work file shows that he considered numerous properties for direct sales comparisons in developing his market value opinion. The key factor for Mr. Butterfield in preparing his sales comparisons was the Brickell Avenue location. The undersigned finds Mr. Butterfield's testimony concerning his use of the comparative properties and methodology credible.

19. Mr. Spool's first criticism was that Mr. Butterfield used an incorrect methodology in conducting the direct sales comparison. Specifically, Mr. Spool testified that the highest and best use of the property, as identified by Mr. Butterfield, was an office. Consequently, Mr. Butterfield used an incorrect methodology when he used direct sales from residences for comparison. In essence, the correct methodology required that any comparison be made with direct sales of office space or rather compare "apples to apples and oranges to oranges."

Mr. Spool's criticism that Mr. Butterfield used an incorrect methodology is rejected because it is based on a wrong premise. Mr. Butterfield did not identify the subject property's highest and best use as only an office. The record shows that Mr. Butterfield identified the subject property's highest and best use as its permissible uses, which at the time was either a residence or office. Mr. Butterfield used reasonable diligence in comparing direct sales from nearby residences and an office in his analysis. Next, Mr. Spool identified other properties, which in his opinion, were more appropriate as sales comparisons, such as a historic home near the Miami River that had been converted into office space. However, the identification of other properties that could have been used by Mr. Butterfield does not show that Mr. Butterfield did not use reasonable diligence in preparing his report. It is noted that the properties offered by Mr. Spool did not share the Brickell Avenue address, which is highly desirable. Consequently, the undersigned finds that the Department did not prove by clear and convincing evidence that Mr. Butterfield failed to use reasonable diligence in the preparation of his direct sales comparison.

B. Income approach

20. Next, the Appraisal Report shows that Mr. Butterfield used an income approach to determine the subject property's

market value. The record credibly shows that Mr. Butterfield identified four rental comparables all located on Brickell Avenue within close proximity to the subject property, and verified the rental rate per square foot in the range of \$24.00 to \$37.00 per square foot.

21. Mr. Spool offered alternative properties that in his opinion were more appropriate for making a rental comparison. The crux of the Department's testimony was that Mr. Butterfield's use of rental space from new high rises was inappropriate for comparing with the subject property, which is an older property. The undersigned, however, finds that Mr. Butterfield's explanation that he chose comparable rental properties based on the Brickell Avenue address credible. Again, the fact that other properties may be used as comparable properties does not show that Mr. Butterfield did not prepare the Appraisal Report without reasonable diligence. Next, Mr. Spool's explanation that Mr. Butterfield used an incorrect methodology for determining an income approach by using residential properties is rejected. As found earlier, Mr. Butterfield determined that the subject property's highest and best use could be either as an office or residence. Therefore, it was appropriate to determine the rental income from residences and office space. Moreover, the record shows that Mr. Butterfield gathered information to determine the per

square-foot income. Therefore, the Department did not prove by clear and convincing evidence that Mr. Butterfield failed to use reasonable diligence in the preparation of the appraisal's income approach analysis.

C. Miscellaneous Errors

22. The Appraisal Report does contain several admitted errors. Examples of the errors are that the Appraisal Report wrongly indicates that ingress and egress to the subject property was from Brickell Avenue; that Brickell Avenue was a minor north-south thoroughfare; that the three residences used for direct sales comparison were "historic," as opposed to being located in "historic South Miami"; that it failed to designate the type of appraisal that was conducted; and that it did not state in the certification that Mr. Butterfield had not personally viewed the subject property. The undersigned finds that these errors do not rise to the level of showing a lack of reasonable diligence or could mislead the intended user. For example, the Appraisal Report attached photographs of the three residences used in the direct sales comparison. The photographs clearly show that the three residences were not historical homes, but modern construction. Therefore, it is clear that Mr. Butterfield took steps to insure that the intended user of the report would know the type of residences which were being used for comparison with the subject property. Moreover,

concerning the errors about Brickell Avenue, one could safely assume that a law firm in Miami Beach would know that Brickell Avenue is a major and desirable location in Miami. Therefore, the undersigned finds that although the appraisal contains errors, which were admitted by Mr. Butterfield, those errors are not of such a nature as to show a lack of reasonable diligence.

CONCLUSIONS OF LAW

23. DOAH has jurisdiction over the subject matter of this proceeding and of the parties hereto, pursuant to chapter 120, Florida Statutes (2012).

24. As a certified general real estate appraiser, Mr. Butterfield is qualified to issue appraisal reports for any type of real property. § 475.611(1)(h), Fla. Stat.

25. The Department has been statutorily empowered to take disciplinary action against certified real estate appraisers based upon any of the grounds enumerated in section 475.624, Florida Statutes. An evidentiary hearing must be held when there are disputed issues of material fact. See Hollis v. Dep't of Bus. & Prof'l Reg., 982 So. 2d 1237, 1239 (Fla. 5th DCA 2008); §§ 120.569(1) and 120.57(1), Fla. Stat.

26. The Department has the burden of proving that Mr. Butterfield engaged in the misconduct, and thereby committed the violations, alleged in the charging instrument by clear and convincing evidence. See Dep't of Banking & Fin., Div. of Sec.

and Inv. Prot. v. Osborne Stern & Co., 670 So. 2d 932, 935 (Fla. 1996); Fox v. Dep't of Health, 994 So. 2d 416, 418 (Fla. 1st DCA 2008); and § 120.57(1)(j), Fla. Stat. ("Findings of fact shall be based upon a preponderance of the evidence, except in penal or licensure disciplinary proceedings").

27. The standard of proof for clear and convincing evidence requires that the evidence 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." In re Davey, 645 So. 2d 398, 404 (Fla. 1994) (citing with approval, Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)); see also In re Adoption of Baby E. A. W., 658 So. 2d 961, 967 (Fla. 1995) ("The evidence [in order to be clear and convincing] must be sufficient to convince the trier of fact without hesitancy."). "Although this standard of proof may be met where the evidence is in conflict, . . . it seems to preclude evidence that is ambiguous." Westinghouse Elec. Corp. v. Shuler Bros., 590 So. 2d 986, 988 (Fla. 1st DCA 1991).

28. In determining whether the Department met its burden of proof, it is necessary to evaluate its evidentiary

presentation, in light of the specific allegations of wrongdoing made in the charging instrument. Due process prohibits the Department from taking disciplinary action against a licensee based on conduct not specifically alleged in the charging instrument, unless those matters have been tried by consent. See Aldrete v. Dep't of Health, Bd. of Med., 879 So. 2d 1244, 1246 (Fla. 1st DCA 2004); Shore Village Prop. Owners' Ass'n. v. Dep't of Env'tl. Prot., 824 So. 2d 208, 210 (Fla. 4th DCA 2002). The charging instrument must contain specific factual allegations describing any misconduct upon which disciplinary action is based. See Trevisani v. Dep't of Health, 908 So. 2d 1108, 1109 (Fla. 1st DCA 2005).

29. Furthermore, in deciding whether "the statute or rule claimed [in the charging instrument] to have been violated" was in fact violated, as alleged by the Department, if there is any reasonable doubt, that doubt must be resolved in favor of the licensee. See Djokic v. Dep't of Bus. & Prof'l Reg., Div. of Real Estate, 875 So. 2d 693, 695 (Fla. 4th DCA 2004); Elmariah v. Dep't of Prof'l Reg., Bd. of Med., 574 So. 2d 164, 165 (Fla. 1st DCA 1990).

30. The Administrative Complaint in this case alleged that Mr. Butterfield violated section 475.624(15) by not exercising reasonable diligence in the developing or preparing an appraisal.^{4/} Specifically, the Department alleged that

Mr. Butterfield failed to exercise reasonable diligence in the following manner:

- a. By misstating the prior sales prices of the Subject Property, specifically the April 2007 sale.
- b. By failing to follow up with obvious discrepancies regarding the Subject Property's sales history.
- c. By failing to clearly indicate highest and best use.
- d. By failing to describe or summarize the support and rationale for his opinion of highest and best use.
- e. By failing to reach a specific conclusion of the highest and best use "as if vacant."
- f. By failing to analyze the Subject Property's zoning.
- g. By exercising an inappropriate selection of comparable sales.
- h. By failing to provide support for his 10% positive adjustment for Sales 2, 3, and 4 for zoning.
- i. By failing to discuss the fact that the Subject Property permits office use based on the County Land Use Code and three house sales do not.
- j. By failing to discuss that the Subject Property is designated as a historic property and all four sales are not.
- k. By using an incorrect methodology to arrive at his concluded value of \$340.53 per square foot.

- l. By using an unsupported capitalization rate, and incorrect methodology to arrive at a capitalization rate.
- m. By exercising a poor choice of comparable rentals for the Income Approach.
- n. By failing to provide support for his conclusion of the Subject Property's rental rate of \$31.00 per square foot or for his expenses.
- o. By failing to provide any data information from a recognized data source for any of the four sales and Rentals 2, 3, and 4.
- p. By failing to indicate whether the Report is self-contained, summary, or restricted use appraisal report.
- q. By failing to indicate in the certification if he made a personal inspection of the Subject Property.
- r. By failing to identify all extraordinary assumptions necessary in the assignment.
- s. By misstating where ingress/egress to the Subject Property came from.
- t. By misstating that Brickell Avenue was a minor north/south thoroughfare, when in actuality access to the Subject Property is from SW 15th Road, a side street.
- u. By failing to include sufficient information to enable intended users of the Report to understand it properly.
- v. By citing an incorrect source for the Subject Property's square footage.
- w. By failing to be competent to appraise a property of this type.
- x. By failing to be competent to appraise a property located so far away.

y. By failing to explain how he was competent to appraise the Subject Property when he was located so far away from it.

31. The Administrative Complaint did not charge Mr. Butterfield with violating section 475.624(14), which subjects an appraiser to discipline for violating "any standard for the development or communication of a real estate appraisal or other provision of the Uniform Standards of Professional Appraisal Practice."^{5/}

32. Section 475.624(15) authorizes the Department to take disciplinary action against a Florida-certified real estate appraiser who "[h]as failed or refused to exercise reasonable diligence in developing an appraisal or preparing an appraisal report." However, there is no statute, rule, or USPAP standard that defines "reasonable diligence." Dep't of Bus. & Prof'l Reg., Div. of Real Estate v. Toral, No. 09-4043PL, 2010 Fla. Div. Admin. Hear. LEXIS 1179 *83 (Fla. DOAH Jan. 28, 2010) (citing Dep't of Bus. & Prof'l Reg., Div. of Real Estate v. Guilfoyle, No. 07-0683PL, 2007 Fla. Div. Adm. Hear. LEXIS 469 *13 (Fla. DOAH Aug. 22, 2007)). Therefore, the Department must bring forward competent evidence from a person with sufficient insight into what constitutes reasonable diligence on the part of a certified general real estate appraiser when developing an appraisal or in preparing an appraisal report under the circumstances that Mr. Butterfield faced in the instant case.

See Dep't of Bus. and Prof'l Reg., Div. of Real Estate v. Harrison, No. 06-3387PL, 2007 Fla. Div. Adm. Hear. LEXIS 315 *24-25 (Fla. DOAH May 30, 2007); Dep't of Bus. & Prof'l Reg., Div. of Real Estate v. Catchpole, No. 06-3389PL, 2007 Fla. Div. Adm. Hear. LEXIS 316 *22-23 (Fla. DOAH May 30, 2007); and Dep't of Bus. & Prof'l Reg., Div. of Real Estate v. Price, No. 06-3720PL, 2007 Fla. Div. Adm. Hear. LEXIS 249 *26-27 (Fla. DOAH May 3, 2007); see also McDonald v. Dep't of Prof'l Reg., 582 So. 2d 660, 670 (Fla. 1st DCA 1991) (Zehmer, J., specially concurring) ("[W]here the agency charges negligent violation of general standards of professional conduct, i.e., the negligent failure to exercise the degree of care reasonably expected of a professional, the agency must present expert testimony that proves the required professional conduct as well as the deviation therefrom").

33. Here, there is no dispute that USPAP standards apply in the preparation of the Appraisal Report. In fact, Mr. Butterfield certified in the Appraisal Report that he prepared the appraisal in compliance with USPAP. Consequently, there is no dispute in this case that an appraiser acts with "reasonable diligence" if the appraisal is in compliance with USPAP. Conversely, failure to comply with USPAP is evidence that the appraiser did not act with "reasonable diligence." Mr. Spool's testimony tied the USPAP standards to the

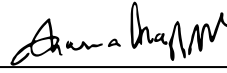
determination of reasonable diligence. Further, Mr. Butterfield's Appraisal Report states that it complied with USPAP. Thus, there is no dispute that USPAP is applicable and that failure to follow the standards provides evidence of whether or not an appraiser acted with reasonable diligence. The dispute in this case turns on whether or not the facts show a lack of reasonable diligence. The Department presented evidence supporting its claim through the expert testimony of Mr. Spool. However, Mr. Butterfield also testified regarding facts showing his methods in conducting the appraisal. The undersigned credits Mr. Butterfield's testimony as showing reasonable diligence that effectively rebutted Mr. Spool's testimony.

34. The Department failed to show by clear and convincing evidence that Mr. Butterfield did not use "reasonable diligence" in the preparation of the Appraisal Report.

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 the Administrative Complaint against Mr. Butterfield.

DONE AND ENTERED this 12th day of December, 2012, in
Tallahassee, Leon County, Florida.



THOMAS P. CRAPPS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of December, 2012.

ENDNOTES

^{1/} References to Florida Statutes shall be the 2010 version,
unless otherwise indicated.

^{2/} The subject property's legal description is the following:

BRICKELLS FLAGER PB 5-44 LOTS 41 & 42 BLK 55
LOT SIZE 84.920 x 180 COC 25565-1139 04 2007
5 JOHN M MURRELL & W ETHEL EVERETT V
SUGABAKER OR 12735-3254 1185 1 KACHKAR GRP
HOLDINGS INC COC 24509-1919 P5 2006 5.

^{3/} Boilerplate is defined as "standardized text, formulaic or
hackneyed language." Merriam-Webster, [http://www.merriam-
webster.com](http://www.merriam-
webster.com).

^{4/} Section 475.624(15) reads as follows:

Discipline.--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 certificate holder:

* * *

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

^{5/} At the beginning of the hearing, the Department sought official recognition of the Uniform Standards of Professional Appraisal Practice (USPAP). Mr. Butterfield's counsel objected based on the fact that the Board did not allege in its Administrative Complaint that Mr. Butterfield had violated USPAP standards. Thus, USPAP standards were irrelevant to the instant charges, and would violate Mr. Butterfield's due process. In response, the Department's counsel argued that it could not have charged Mr. Butterfield with violating USPAP because at the time the appraisal here occurred "the rule was not properly incorporated in the Florida Statute." The undersigned notes that section 475.624(14) subjected an appraiser to discipline for preparing an appraisal that violated USPAP standards. Therefore, it is not clear to the undersigned why the Department could not charge Mr. Butterfield with the specific standards that it believed he violated. Nevertheless, the undersigned took official recognition of USPAP standards to the extent that the Department was able to show that those standards established the relevant standard of care for establishing the "reasonable diligence" that Mr. Butterfield should have used in preparing the Appraisal Report.

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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.