

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

DEPARTMENT OF BUSINESS AND  
PROFESSIONAL REGULATION,  
DIVISION OF REAL ESTATE,

Petitioner,

vs.

Case No. 21-1377PL

CHRISTOPHER WILSON,

Respondent.

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RECOMMENDED ORDER

An administrative hearing was conducted in this case on June 22, 2021, via Zoom teleconference, before James H. Peterson, III, Administrative Law Judge with the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Mackenzie K. Medich, Esquire  
Delhon Braaten, Esquire  
Department of Business and  
Professional Regulation  
2601 Blair Stone Road  
Tallahassee, Florida 32399

For Respondent: Daniel Villazon, Esquire  
Daniel Villazon, P.A.  
5728 Major Boulevard, Suite 535  
Orlando, Florida 32819

STATEMENT OF THE ISSUE

Whether Christopher Wilson (Respondent) violated real estate appraisal license laws as alleged by the Department of Business and Professional Regulation (Petitioner or Department) in the Administrative Complaint.

## PRELIMINARY STATEMENT

In February 2021, Petitioner filed an Administrative Complaint, dated February 24, 2021 (Administrative Complaint), against Respondent. Respondent timely filed an Election of Rights with Petitioner on March 11, 2021, requesting an administrative hearing before DOAH. On April 22, 2021, the case was forwarded to DOAH and originally assigned to Administrative Law Judge E. Gary Early, who scheduled the final hearing to be held on June 22, 2021. On June 18, 2021, the case was transferred to the undersigned to conduct the administrative hearing, which was held as scheduled.

At hearing, Petitioner presented the testimony of an appraiser, Joel Salley, and Petitioner's expert appraisal witness, Greg Lane. Petitioner offered 11 exhibits received into evidence as Exhibits P-1 through P-11. Respondent testified on his own behalf and offered six exhibits received into evidence as Exhibits R-1 through R-6.

The proceedings were recorded, and a transcript was ordered. The parties were given until 30 days after the filing of the transcript within which to file proposed recommended orders. The one-volume Transcript of the proceedings was filed with DOAH on July 21, 2021. Thereafter, the parties timely filed their respective Proposed Recommended Orders, both of which have been considered in the preparation of this Recommended Order.

## FINDINGS OF FACT

1. Petitioner is the state agency charged with regulating the practice of real estate pursuant to section 20.165, Florida Statutes, and chapters 120, 455 and 475, Florida Statutes.<sup>1</sup>

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<sup>1</sup> All references to Florida Statutes, the Florida Administrative Code, or other applicable rules are to versions in effect in June 2020.

2. At all material times to this case, Respondent was licensed as a state-certified residential appraiser in the State of Florida.

3. Respondent has been preparing appraisal reports for approximately 31 years and has taken numerous courses over the years in appraisal practice.

4. In June 2020, Respondent received an appraisal assignment from Pennymac Loan Services to appraise real property located at 317 Dreadnaught Court, Tallahassee, Florida (Subject Property).

5. Respondent is very familiar with the area where the Subject Property was located, in that most of his appraisal assignments have been for appraisals in the area of the Subject Property.

6. On or about June 11, 2020, Respondent arranged with the owner of the Subject Property to inspect the Subject Property.

7. The owner of the Subject Property gave him access and Respondent inspected the Subject Property, which included taking numerous pictures of the Subject Property.

8. Prior to his inspection, Respondent attempted, on three occasions, to call the owner of the Subject Property to advise her that he would be at the Subject Property 15 minutes earlier than previously scheduled.

9. Respondent arrived at the Subject Property 15 minutes early and the owner of the Subject Property allowed him access to inspect, measure, and take pictures of the Subject Property.

10. When Respondent took photographs of the Subject Property, he did not notice that somebody was in bed under a blanket when he took a picture of a bedroom.

11. The owner of the Subject Property provided Respondent a list of improvements to the Subject Property.

12. Pursuant to the scope of his appraisal assignment, Respondent researched through the Multiple Listing Service (MLS) comparable sales and

listings that were similar in square footage and room count, and located within the same zip code as the Subject Property.

13. Based on his research, Respondent selected nine comparable properties, six sales and three listings.

14. On or about June 15, 2020, with an effective date of June 11, 2020, Respondent developed and communicated an appraisal report for the Subject Property (Appraisal Report).

15. In the photo addendum section of the Appraisal Report, Respondent inadvertently included a photograph of a resident of the Subject Property asleep in bed.

16. Respondent submitted his Appraisal Report to his client and his client had no objection to Respondent's opinion of value for the Subject Property.

17. Respondent was paid a fee of \$225 for the appraisal.

18. In his Appraisal Report, Respondent indicates Comparable Sale #2 (141 Ivernia Loop, Tallahassee, Florida) was an "arm's length" transaction.<sup>2</sup>

19. Respondent determined Comparable Sale #2 was an "arm's length" transaction even though it was sold to a tenant of the property. Comparable Sale #2 was identical to his Comparable Sale #1 and sold for the same price as Comparable Sale #1.

20. Petitioner's expert, Greg Lane, agreed that there was no evidence indicating that Respondent's Comparable Sale #2 was not an "arm's length" transaction.

21. Comparable Sale #2 was not a foreclosure or short sale, and the evidence was otherwise insufficient to show that it was not an "arm's length" transaction.

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<sup>2</sup> An "arm's length" transaction is "[s]aid of a transaction negotiated by unrelated parties, each acting in his or her own self-interest; the basis for a fair market value determination." Black's Law Dictionary, p. 100 (5th ed. 1979).

22. Respondent maintained MLS sheets and tax sheets for all of his comparable sales and comparable listings in his workfile for the Subject Property and has them readily available.

23. In his Appraisal Report, Respondent made positive adjustments to the Subject Property appraisal in relation to Comparable Sale #1 (\$500), Comparable Sale #4 (\$500), Comparable Sale #5 (\$500), Comparable Sale #6 (\$500), Comparable Sale #7 (\$1,000) and Comparable Sale #8 (\$1,000).

24. These adjustments were made because the Subject Property had a screen porch and patio, which Comparable Sales #1, 4, 5, 6, 7, and 8 did not have according to Respondent's MLS sheets and tax records. Respondent based his adjustments on these documents and on his knowledge of the market and his experience in knowing the value of a screen porch and/or patio.

25. Respondent made a negative \$2,000 adjustment to the Subject Property appraisal in relation to Comparable Sales #6, 7, 8, and 9 because the Subject Property had a one-car garage and those other comparable sales had a two-car garage.

26. Respondent made his adjustments for a one-car garage versus a two-car garage based on his experience of the subdivision and what the price difference is between similar properties having a one- or two-car garage.

27. While Respondent's work file contains data on all comparable sales, at the hearing, Petitioner attempted to show that Respondent failed to apply any recognized methods in the development of adjustments in the Appraisal Report.

28. Petitioner's expert witness, Greg Lane, testified that Respondent's workfile was thorough in that all of his sales data are in the Appraisal Report, but that there was lack of data indicating how adjustments were made.

29. In explaining that his adjustments were based on the differences in the comparable sales data and listings, Respondent testified that he also used

his experience and familiarity with the area in making his adjustments. The fact that Respondent also used his experience in making adjustments does not show that data was missing, that Respondent failed to employ any methods recognized in the industry, or that Respondent failed to exercise reasonable diligence in developing his Appraisal Report.

30. Petitioner's witness, Joel Salley, performed a second appraisal of the Subject Property and his opinion of value of the Subject Property was higher than Respondent's opinion of value for the Subject Property.

31. Mr. Salley made a negative \$5,000 adjustment to the Subject Property appraisal in relation to his Comparable Sale #3 condition because his Comparable Sale #3 had new countertops and the Subject Property just had resurfaced countertops. Mr. Salley admitted that he had no data in his workfile to support his \$5,000 negative adjustment and that his adjustment was made based on his knowledge of what countertops cost.

32. In addition, Mr. Salley made a negative \$4,300 adjustment to the Subject Property appraisal for date of sale/time to his Comparable Sale #4, even though Comparable Sale #4 was a listing and not a sale. He made a guess that there was a two-percent downward price adjustment with no data in his workfile to support his guess.

33. In sum, applying reasoning and experience to comparative information in the files does not equate to lack of data supporting adjustments, and the evidence does not otherwise support a finding that Respondent failed to employ methods recognized in the industry or failed to exercise reasonable diligence in developing his Appraisal Report of the Subject Property.

#### CONCLUSIONS OF LAW

34. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. *See* §§ 120.569, 120.57(1), 120.60(5), and 455.225(5), Florida Statutes.

35. Petitioner is responsible for prosecuting disciplinary cases against licensed real estate appraisers. *See* § 475.021(1), Fla. Stat.

36. The Florida Real Estate Appraisal Board is responsible for taking agency action in disciplinary cases against licensed real estate appraisers. See §§ 475.613(2) and 475.624, Fla. Stat.

37. Petitioner, as the party asserting the affirmative in this proceeding, has the burden of proof. See, e.g., *Balino v. Dept. of HRS.*, 348 So. 2d 349 (Fla. 1st DCA 1977). Because Petitioner is seeking to prove violations of a statute and impose administrative fines or other penalties, it has the burden to prove the allegations in the complaint by clear and convincing evidence. *Ferris v. Turlington*, 510 So. 2d 292 (Fla. 1987). Clear and convincing evidence:

requires that 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 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 Henson*, 913 So. 2d 579, 590 (Fla. 2005), quoting *Slomowitz v. Walker*, 429 So. 797, 800 (Fla. 4th DCA 1983).

38. Count One of the Administrative Complaint alleges that Respondent violated section 475.624(4), Florida Statutes; Florida Administrative Code Rule 61J1-9.001; Uniform Standards of Professional Appraisal Practice (USPAP) Record Keeping Rule; and USPAP Standard Rules 1-1(a), (b), and (c), 1-4(a) and 2-1(a).

39. Section 475.624(4) provides:

Discipline of Appraisers. – The board may deny an application for registration or certification of an appraiser; 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 the board finds that the registered trainee, licensee, or certificateholder:

\* \* \*

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

40. Rule 61J1-9.001 provides in pertinent part: “[a]ll registered, licensed, or certified appraisers shall comply with the 2018-2019 Uniform Standards of Professional Appraisal Practice (USPAP), effective January 1, 2018, which is incorporated by reference.”

41. USPAP Record Keeping Rule provides in pertinent part: “[t]he workfile must include: all other data, information, and documentation necessary to support the appraiser’s opinions and conclusions and to show compliance with USPAP, or references to the location(s) of such data, information, and documentation. An appraiser who willfully or knowingly fails to comply with the obligations of the Record Keeping Rule is in violation of the Ethics Rule.”

42. Clear and convincing evidence is lacking to show that Respondent violated the USPAP Record Keeping Rule or that Respondent knowingly or willfully failed to comply with USPAP’s Record Keeping Rule. Rather, the evidence showed that Respondent maintained a workfile for his Appraisal Report of the Subject Property. Respondent’s workfile contained the name of the intended user; a copy of his written report; all other data, information, and documentation necessary to support his opinion value; and reference to where he obtained his information.

43. USPAP Ethics Rule provides in pertinent part: “[a]n appraiser must not advocate the cause or interest of any party or issue; must not communicate assignment results with the intent to mislead or defraud; must



not use or communicate a report or assignment results known by the appraiser to be misleading or fraudulent; must not willfully or knowingly violate the requirements of the Record Keeping Rule; and must not perform an assignment in a grossly negligent manner.”

44. The evidence at the hearing was insufficient to clearly and convincingly show that Respondent violated the Ethics Rule. The evidence did not show that Respondent’s opinion of value used sales that were not comparable to the Subject Property, and the evidence did not reasonably suggest that Respondent advocated an interest in making his appraisal or was fraudulent or misleading in the communication or use of his appraisal results. There was also lack of evidence that Respondent violated the records keeping rule or performed his appraisal in a grossly negligent manner.

45. USPAP Standard Rule 1-1 provides: “in developing a real property appraisal, an appraiser must: (a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal; (b) not commit a substantial error of omission or commission that significantly affects an appraisal; and (c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.”

46. The evidence was insufficient to show that Respondent violated USPAP Standard Rule 1-1(a), (b), or (c). The evidence did not clearly and convincingly demonstrate that the appraisal produced was not a credible appraisal or that Respondent committed a substantial error of omission or commission that significantly affected his appraisal or that he rendered appraisal services in a careless or negligent manner. MLS Sheets and tax records of the Subject Property and comparable sales that Respondent used to determine the differences between the Subject Property and his comparable sales were maintained in Respondent’s workfiles. Respondent

relied on his considerable experience and knowledge of the market in making his minor adjustments in a manner similar to the method used by Petitioner's own witness, Mr. Salley, in adjusting for differences between new countertops and resurfaced countertops.

47. USPAP Standard Rule 1-4(a) provides: “[w]hen a sales comparison approach is necessary for a credible assignment results, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.” Rather than showing that Respondent violated USPAP Standard Rule 1-4(a), the evidence demonstrated that Respondent used appropriate MLS and tax records to select his comparable sales to indicate a value conclusion.

48. There was also a lack of clear and convincing evidence that Respondent violated USPAP Standard Rule 2-1(a). That rule provides: “[e]ach written or written appraisal report must: (a) clearly and accurately set forth the appraisal in a manner that will not be misleading.” Petitioner provided no evidence that anyone was misled by Respondent's appraisal report or that the appraisal was misleading.

49. Accordingly, Count One of the Administrative Complaint should be dismissed.

50. Count Two of the Administrative Complaint alleges that Respondent violated section 475.624(15).

51. That section authorizes discipline against an appraiser that “has failed or refused to exercise reasonable diligence in developing an appraisal or preparing an appraisal report.”

52. There is no definition of reasonable diligence in developing an appraisal or preparing an appraisal report in Florida Statutes, case law, or the USPAP.

53. In support of its assertions that Respondent violated sections 475.624(4) and 475.624(15), the Administrative Complaint alleges the following facts:

- a) Respondent incorrectly states Comparable Sales #2 was an “arm’s length” transaction;
- b) Respondent has failed to maintain data or information pertaining to comparable listings 7 and 8;
- c) In the Subject Property Photo Addendum Section of the Report, the Respondent utilizes a photograph featuring a resident of Subject Property asleep in his bed;
- d) In the Sales Comparison Approach Section of the Report, Respondent makes adjustments to Comparable Sales for porch/patio; however, the Respondent’s workfile does not contain adequate data, information, or documentation to support the adjustments;
- e) In the Sales Comparison Approach Section of the Report, Respondent makes adjustments to Comparable Sales for garage/carport; however, the Respondent’s workfile does not contain adequate data, information, or documentation to support the adjustments; and/or
- f) Respondent arrived early to the Subject Property to complete the assignment without discussing arrival time with the owner of Subject Property.

54. As found in the Findings of Fact, above, the evidence does not support a finding that Respondent’s Comparable Sale #2 was not an “arm’s length” transaction.

55. Further, clear and convincing evidence did not show that Respondent failed to maintain data or information pertaining to comparable sales or listings 7 and 8. Petitioner’s own expert witness testified that Respondent’s workfile was thorough in that all of the sales data is in the report other than data indicating how adjustments were made. Petitioner provided no evidence that Respondent failed to maintain data or information pertaining to Respondent’s comparable sales or listings 7 and 8.

56. Petitioner also failed to prove that Respondent's inadvertent use of a photo that included a picture of a resident in bed or his arrival early to inspect the Subject Property was a violation. Petitioner conceded this point in paragraph 34 of its Proposed Recommended Order and otherwise provided no evidence that anyone objected to use of the photo or that Respondent was aware that someone was in the bed when the photo was taken.

57. There was also a lack of clear and convincing evidence that Respondent failed to maintain in his workfile adequate data, information, or documentation to support his minimal adjustments of \$500 to \$1,000 for porch and patio features that the Subject Property had which some of the comparable sales did not. Rather, the evidence showed that Respondent relied on the MLS sheets and tax records of the Subject Property and comparable sales maintained in his workfile to determine the difference in patio and porch features of some of his comparable sales. Respondent made minor adjustments based on those differences and on his over 30 years of experience and knowledge of the market and what the value of a property that has a screened porch and patio have versus properties that do not have those features.

58. Similarly, Petitioner failed to prove by clear and convincing evidence that Respondent failed to maintain in his workfile adequate data, information, or documentation to support his \$2,000 adjustment in relation to comparable sales that had a two-car garage versus a one-car garage. Rather, the evidence showed that Respondent relied on the MLS sheets and tax records of the Subject Property and comparable sales to determine which properties had a one-car garage or a two-car garage. Respondent made a negative adjustment of \$2,000 to the Subject Property in relation to the comparable sales that had a two-car garage because the Subject Property had a one-car garage.

59. In addition to MLS sheets and tax records of the Subject Property and comparable sales, Respondent's adjustments were based on his 31 years of

experience and knowledge of the market and what the value of a property having a two-car garage has versus a one-car garage. Petitioner's witness, Mr. Salley, used the same method in determining the value of countertops and admitted there was no data in his workfile to support his \$5,000 adjustment for countertops, but that he simply knows what new countertops cost.

60. Further, Petitioner provided no evidence that Respondent arrived early for his appraisal without discussing his early arrival with the owner of the Subject Property. Respondent explained in his undisputed testimony that he tried calling the owner on three occasions to advise he would be arriving early, and when he arrived fifteen minutes earlier than scheduled, the owner gave him access to inspect the Subject Property.

61. In sum, the evidence was insufficient to show that Respondent's adjustments or opinion of value was not correct or that Respondent failed to exercise reasonable diligence in developing the subject appraisal or preparing the Appraisal Report.

62. Accordingly, Count Two of the Administrative Complaint charging Respondent with violating section 475.624(15), failure to exercise reasonable diligence, should also be dismissed.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Business and Professional Regulation, Division of Real Estate, enter a final order dismissing the Administrative Complaint.

DONE AND ENTERED this 30th day of August, 2021, in Tallahassee,  
Leon County, Florida.



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JAMES H. PETERSON, III  
Administrative Law Judge  
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Filed with the Clerk of the  
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this 30th day of August, 2021.

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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.