

1                   **BEFORE THE COMMISSION OF APPRAISERS OF REAL ESTATE**  
2                                   **STATE OF NEVADA**

3 SHARATH CHANDRA, Administrator,  
4 REAL ESTATE DIVISION,  
5 DEPARTMENT OF BUSINESS AND  
6 INDUSTRY, STATE OF NEVADA,

7                                   Petitioner,

8                   vs.

9 FLOYD JOSEPH FREIBURGER  
10 (License No. A.0007386-CR),

11                                  Respondent.

Case No. 2019-1269 AP20.015.S

**STIPULATION AND ORDER FOR  
SETTLEMENT OF DISCIPLINARY  
ACTION**

**FILED**

**APR 06 2023**

NEVADA COMMISSION OF APPRAISERS

*[Signature]*

12           This Stipulation and Order for Settlement of Disciplinary Action (the "Stipulation")  
13 is entered into by and between the State of Nevada, Department of Business and  
14 Industry, Real Estate Division ("the Division"), through its Administrator Sharath  
15 Chandra ("Petitioner"), by and through their attorney of record, Phil W. Su, Senior  
16 Deputy Attorney General, and Respondent Floyd Joseph Freiburger ("RESPONDENT").

17           The RESPONDENT, at all relevant times mentioned in the Complaint, was  
18 licensed by the Division as a Certified Residential Appraiser and, therefore, is subject to  
19 the Jurisdiction of the Division and the Commission and the provisions of NRS 645C and  
20 NAC Chapter 645C.

21                                   **SUMMARY OF FACTUAL ALLEGATIONS**

22           1.     On or about November 19, 2019, the Division received a complaint/statement  
23 of fact from Susan Brager ("Complainant"), asserting that the RESPONDENT completed  
24 a uniform residential appraisal report ("Appraisal Report") of a residential property that  
25 came in at the same price as was paid in 2017.

26           2.     The Division opened an investigation into this matter on November 29, 2019.

27           3.     The Division commissioned a Standard 3 Review of the underlying appraisal  
28

1 performed by the RESPONDENT's intern, Traci Polak, under the supervision of  
2 RESPONDENT.

3 4. The RESPONDENT submitted a December 4, 2019, rebuttal letter to the  
4 Standard 3 Review, as well as his work file.

5 5. Following the investigation and Standard 3 Review, the investigator  
6 recommended the case be heard by the Commissioners of Appraisers of Real Estate.

7 6. Intern Traci Polak entered into a stipulation for settlement of disciplinary  
8 action pursuant to NAC 645C.610(3) regarding her role in preparing the appraisal report,  
9 which the Commission approved at its January 12-14, 2021, meeting.

10 7. Since June 20, 2007, RESPONDENT has held the designation of Certified  
11 Residential Appraiser, license no. A.0007386-CR.

12 8. RESPONDENT was the Supervising Appraiser of Traci Polak, a registered  
13 intern with registration card A.0207532-INTR.

14 9. Traci Polak's intern registration card A.0207532-INTR expired on July 31,  
15 2021.

16 10. The complaint/statement of fact received by the Division contained a copy of  
17 the Appraisal Report, as prepared by Intern Traci Polak under the supervision of  
18 RESPONDENT. ("Appraisal Report").

19 11. On November 1, 2019, Polak prepared a Uniform Residential Appraisal  
20 Report of the two story, approximately 1887 sq. ft. residential property, built in 2017 and  
21 located at 7704 Gallego Plains Dr., Las Vegas, Nevada 89113, APN 163-27-418-035  
22 ("Property"), by analyzing the nature, quality, value, or use of the property, and offered  
23 an opinion as to the nature, quality, value or use of the property for or with the  
24 expectation of compensation.

25 12. The intended use of the appraisal performed by the RESPONDENT was a  
26 "refinance transaction."

27 13. The Appraisal Report contains a value conclusion for the Property of  
28 \$315,000.00, with the date of report identified as November 1, 2019; the appraisal report

1 was signed by Traci Polak and the RESPONDENT on November 6, 2019.

2 14. On November 5, 2019, RESPONDENT signed off on a Comment Addendum  
3 that Traci Polak produced on November 4, 2019, which included further discussion in the  
4 form of a Summary of Sales Comparison Approach.

5 15. The Appraisal Report states, "Sales concessions that were less than 3% of  
6 the sales price are considered typical, and no adjustment was made."

7 16. Only one comp out of the five comps used showed a sales concession and  
8 showed no adjustments.

9 17. The age of subject property at the time of the appraisal was two years old.

10 18. The age of comps # 1 and #2 were 18 years old, while comp #3 was 26 years  
11 old and comp #5 was 6 years old, yet those older comps received a \$7,500.00 condition  
12 adjustment without any discussion or data to support the adjustment.

13 19. The Appraisal Report checked the box for highest and best use, but  
14 contained no analysis of the relevant legal, physical, or economic factors to support that  
15 conclusion.

16 20. The Appraisal Report mischaracterized comps #1, #2, and #3 as "slightly  
17 older" than the subject property, when in fact comps # 1 and #2 were 18 years old, and  
18 comp #3 was 26 years old. Despite the significant difference in age, no age adjustment  
19 was included in the Appraisal Report.

20 21. The Appraisal Report provided no reconciliation for the quality or quantity of  
21 sales data available and analyzed, did not explain why the income approach was not  
22 considered, and did not explain why the cost approach was not considered on a two-year-  
23 old home.

24 22. Despite noting in the appraisal report addendum that "[t]he appraiser noted  
25 through paired sales analysis homes with rooftop deck sold for approximately \$40,000  
26 more than similar properties without a rooftop deck. As such, comparable 4 was adjusted  
27 \$40,000," the RESPONDENT's work file contained no paired sales analysis.

28 23. On or about August 11, 2020, the Division mailed to the RESPONDENT an

1 NRS 233B letter indicating that the Division's investigation had uncovered sufficient  
2 evidence to recommend the filing of a formal complaint by the Division with the Nevada  
3 Appraisal Commission.

4 24. RESPONDENT emailed the investigator on August 13, 2020, with a  
5 response to the August 11, 2020, letter.

#### 6 SUMMARY OF VIOLATIONS OF LAW

#### 7 ALLEGED IN THE COMPLAINT

8 25. RESPONDENT violated NRS 645C.480(1)(c) when he failed to adequately  
9 train and/or supervise his associated intern, Traci Polak, by allowing her to complete an  
10 appraisal report that contained possible USPAP violations.

11 26. RESPONDENT violated USPAP RECORD KEEPING RULE by failing to  
12 keep and maintain true copies of all written reports, documented on any type of media  
13 and all other data, information, and documentation necessary to support the appraiser's  
14 opinions and conclusions, and to show compliance with USPAP, or references to the  
15 location(s) of such other data, information, or documentation.

16 27. RESPONDENT violated Standards Rule 1-3(b) by marking the box for  
17 highest and best use, but failing to contain analysis of the relevant legal, physical, and  
18 economic factors to support that conclusion, and by not developing discussion and/or  
19 analyses of highest and best use adequately within the report and/or work file.

20 28. RESPONDENT violated Standards Rule 1-4(a) by failing to include an  
21 explanation for the lack of an age adjustment for significantly older comps.

22 29. RESPONDENT violated Standards Rule 1-6(a) and 1-6(b) by failing to  
23 reconcile the quality and quantity of data available and analyzed within the approaches  
24 used and by failing to explain or justify the disregard of the income approach.

25 30. RESPONDENT violated Standards Rule 2-1(a) by failing to provide an  
26 actual paired sales analysis, despite mentioning a paired sales analysis as the basis for a  
27 \$40,000 adjustment of comp #4, and by not explaining the basis for the \$7,500 condition  
28 adjustment or the lack of an age adjustment to comps #1, #2 and #3, and by not

1 explaining the lack of a concession adjustment for comp #3.

2 31. RESPONDENT violated Standards Rule 2-2(a)(viii) by failing to explain the  
3 exclusion of the income approach or why the cost approach was not considered for a two-  
4 year-old home.

5 32. RESPONDENT violated Standards Rule 2-2(a)(x) by failing to describe the  
6 support or rationale for the opinion of highest and best use.

### 7 **DISCIPLINE AUTHORIZED**

8 33. Pursuant to NRS 645C.460(2), if grounds for disciplinary action against an  
9 appraiser are found to exist for unprofessional conduct, the Commission may revoke or  
10 suspend the certificate, place conditions upon the certificate, deny the renewal of his or  
11 her certificate, and/or impose a fine up to \$10,000.00 per violation. NRS 645C.480(1)(a) is  
12 identified as an additional act of unprofessional conduct.

13 34. Additionally, under NRS Chapter 622.400, the Commission is authorized to  
14 impose the costs of the proceeding upon the RESPONDENT, including investigative costs  
15 and attorney's fees, if the Commission otherwise imposes discipline on the  
16 RESPONDENT.

17 35. Therefore, the Division requests the Commission to impose such discipline as  
18 it determines is appropriate under the circumstances and to award the Division its costs  
19 and attorney's fees for this proceeding.

### 20 **PROPOSED SETTLEMENT AGREEMENT**

21 The Division is prepared to put on a case based on the Complaint filed with the  
22 Commission of Appraisers of Real Estate ("Commission") alleging the above offenses, and  
23 the Division is authorized under NRS Chapter 645C.460(2) to revoke or suspend the  
24 certificate, place conditions upon the certificate, and/or impose a fine up to Ten Thousand  
25 Dollars (\$10,000.00) per violation. The RESPONDENT is prepared to vigorously defend  
26 any such Complaint. However, in an effort to avoid the time and expense of litigating  
27 these issues before the Commission, as well as any possible further legal appeals from  
28 any such decision, the parties desire to compromise and settle the instant controversy

1 upon the following terms and conditions:

2 1. The RESPONDENT agrees to take a minimum of Twenty-Four (24) hours of  
3 Continuing Education Credits ("CEC") in the each of the following areas:

- 4 a. not less than 15 hours of USPAP;  
5 b. not less than 6 hours in Ethics, Competency and Negligence; and  
6 c. not less than 3 hours in Work File.

7 These courses shall be completed within twelve (12) months of the effective date of  
8 the Commission's order approving this Stipulation. These courses will not count toward the  
9 RESPONDENT's continuing education requirements. Proof of completion must be  
10 submitted to the Division upon completion of all the required education.

11 2. RESPONDENT agrees to pay the Division a total amount of FIVE  
12 THOUSAND THREE HUNDRED FIFTY DOLLARS (\$ 5,350.00) ("Amount Due"),  
13 consisting of FIVE THOUSAND DOLLARS AND NO CENTS (\$5,000.00) in fines imposed  
14 by the Division and the Division's pre-hearing and investigative costs incurred in the total  
15 amount of THREE HUNDRED AND FIFTY DOLLARS (\$350.00).

16 3. The Amount Due shall be payable to the Division in twelve monthly  
17 installments of \$445.83, with the first payment due thirty (30) days after approval of this  
18 Stipulation by the Commission. Lump sums can be made in pre-payment with no  
19 penalties.

20 4. Any certificate of supervisory appraisal issued to RESPONDENT and  
21 currently in effect shall be immediately revoked and suspended pursuant to NAC  
22 645C.108(1)(d). RESPONDENT shall immediately, after the effective date of this order,  
23 deliver his certificate of supervisory appraisal to the Division with the registration cards  
24 of his current interns, if any, pursuant to NAC 645C.118.

25 5. RESPONDENT and the Division agree that once this Agreement is approved  
26 and fully performed, the Division will close its file in this matter and the Division agrees  
27 not to pursue any other or greater remedies or fines in connection with RESPONDENT  
28 alleged conduct referenced herein. The Division further agrees that unless

1 RESPONDENT fails to make timely payment, the Division will not bring any claim or  
2 cause directly or indirectly based upon any of the facts, circumstances, or allegations  
3 discovered during the Division's investigation and prosecution of this case.

4         6.       RESPONDENT agrees and understands that by entering into this  
5 Stipulation, RESPONDENT is waiving his right to a hearing in each matter at which  
6 RESPONDENT may present evidence in his defense, his right to a written decision on the  
7 merits of the complaint, his rights to reconsideration and/or rehearing, appeal and/or  
8 judicial review, and all other rights which may be accorded by the Nevada Administrative  
9 Procedure Act, the Nevada Real Estate Appraisers statutes and accompanying  
10 regulations, and the federal and state Constitutions.

11         7.       RESPONDENT understands that this Agreement and other documentation  
12 may be subject to public records laws. The Commission members who review this matter  
13 for approval of this Stipulation may be the same members who ultimately hear, consider,  
14 and decide the Complaints if this Stipulation is either not approved by the Commission or  
15 is not timely performed by RESPONDENT.

16         8.       RESPONDENT fully understands that he has the right to be represented by  
17 legal counsel in these matters at his own expense.

18         9.       Each party shall bear their own attorney's fees and costs, except as provided  
19 above.

20         10.       Approval of Stipulation. Once executed, this Stipulation will be filed with  
21 the Commission and will be placed on the agenda for approval at its next public meeting.  
22 The Division will recommend to the Commission approval of the Stipulation.  
23 RESPONDENT agrees that the Commission may approve, reject, or suggest amendments  
24 to this Stipulation that must be accepted or rejected by RESPONDENT before any  
25 amendment is effective.

26         11.       Withdrawal of Stipulation. If the Commission rejects this Stipulation or  
27 suggests amendments unacceptable to RESPONDENT, RESPONDENT may withdraw  
28 from this Stipulation, and the Division may pursue its Complaint before the Commission.

1 This Stipulation then shall become null and void and unenforceable in any manner  
2 against either party.

3 12. Release. In consideration of the execution of this Stipulation,  
4 RESPONDENT for himself, his heirs, executors, administrators, successors, and assigns,  
5 hereby releases, remises, and forever discharges the State of Nevada, the Department of  
6 Business and Industry, and the Division, and each of their respective members, agents,  
7 employees, and counsel in their individual and representative capacities, from any and all  
8 manner of actions, causes of action, suits, debts, judgments, executions, claims, and  
9 demands whatsoever, known and unknown, in law or equity, that RESPONDENT ever  
10 had, now has, may have, or claim to have against any or all of the persons or entities  
11 named in this section, arising out of or by reason of the Division's investigations, these  
12 disciplinary actions, and all other matters relating thereto.

13 13. Indemnification. RESPONDENT hereby agrees to indemnify and hold  
14 harmless the State of Nevada, the Department of Business and Industry, Petitioner, the  
15 Division, and each of their respective members, agents, employees, and counsel, in their  
16 individual and representative capacities, against any and all claims, suits, and actions  
17 brought against said persons and/or entities by reason of the Division's investigations,  
18 these disciplinary actions, and all other matters relating thereto, and against any and all  
19 expenses, damages, and costs, including court costs and attorney fees, which may be  
20 sustained by the persons and/or entities named in this section as a result of said claims,  
21 suits, and actions.

22 14. Default. In the event of default under this Stipulation, RESPONDENT  
23 agrees that his license shall be immediately suspended, and the unpaid balance of the  
24 administrative fine and costs, together with any attorneys' fees and costs that may have  
25 been assessed, shall be due in full to the Division within ten calendar days of the date of  
26 default. Debt collection actions for unpaid monetary assessments in this case may be  
27 instituted by the Division or its assignee.

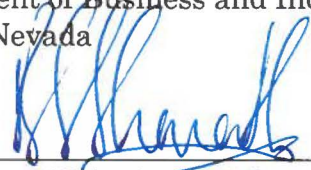
28 15. RESPONDENT has signed and dated this Stipulation only after reading and

1 understanding all terms herein.

2 IT IS SO STIPULATED.

3 Dated: APRIL, 3, 2023.

NEVADA REAL ESTATE DIVISION  
Department of Business and Industry  
State of Nevada

By:   
SHARATH CHANDRA, Administrator  
3300 West Sahara Avenue, Suite 350  
Las Vegas, Nevada 89102

8  
9 Dated: March, 31, 2023.

*Floyd J. Freiburger*  
FLOYD JOSEPH FREIBURGER  
(License No. A.0007386-CR)

11 Approved as to form:

12 AARON D. FORD  
13 Attorney General

14  
15 By: /s/ Phil W. Su  
16 PHIL W. SU (#10450)  
17 Senior Deputy Attorney General  
18 555 East Washington Ave.  
19 Las Vegas, Nevada 89101  
Attorneys for State of Nevada,  
Department of Business and Industry,  
Real Estate Division

20 **ORDER**

21 IT IS ORDERED that the foregoing Stipulation for Global Settlement of  
22 Disciplinary Action, submitted by Petitioner and Respondent, is approved in full.

23 Dated: this 4<sup>th</sup> day of MARCH, 2023.

24  
25 COMMISSION OF APPRAISERS OF REAL ESTATE

26  
27 By:   
28 President, Commission of Appraisers of Real Estate