

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 & INDUSTRY,
6 STATE OF NEVADA,

7 Petitioner,

8 vs.

9 THOMAS L. WITHERBY
10 (License No. A.0001528-CR),

11 Respondent.

Case No. 2020-492, AP20.045.S

FILED

OCT 10 2023

NEVADA COMMISSION OF APPRAISERS

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12 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

13 This matter came on for hearing before the Nevada Commission of Appraisers of Real Estate (the
14 “Commission”), on Tuesday, October 3, 2023 (the “Hearing”). Thomas L. Witherby (“Respondent”) did
15 not appear in person, through counsel, or otherwise. Christal Park Keegan, Esq., Deputy Attorney
16 General with the Nevada Attorney General’s Office, appeared on behalf of Petitioner Sharath Chandra,
17 Administrator of the Real Estate Division, Department of Business and Industry, State of Nevada
(the “Division”).

18 Mrs. Keegan advised the Commission that RESPONDENT was aware of his attendance at the
19 hearing, and that his hearing was scheduled for the July 18-20, 2023 hearings, but the RESPONDENT
20 requested a continuance, which the Commission granted. The Division sent the RESPONDENT Meeting
21 Re-Notices no later than 30 days prior to the October 3-5, 2023 hearings. The RESPONDENT never
22 filed an Answer as part of the record in the proceedings and did not ask for a second continuance.

23 Therefore, the Division proceeded with a default pursuant to NAC 645C.500(13). The Division’s
24 Commission Coordinator, Maria Gallo, testified regarding proper notice to the RESPONDENT. The
25 Commission found appropriate service of the notice of the hearing, the complaint and notice thereof, the
26 Notice of Documents with documents numbered 0001 – 0364 was made, and all other efforts taken to
27 inform the RESPONDENT of the matter before the Commission.

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1 Therefore, the Commission, having considered the evidence introduced by the Division and being
2 fully advised, enters the following Findings of Fact, Conclusions of Law, and Order:

3 **I. JURISDICTION**

4 At all times relevant to this Complaint, the Respondent was a Certified Residential Appraiser
5 licensed by the Division, and therefore, is subject to the Jurisdiction of the Division and the provisions
6 of NRS and NAC Chapter 645C. By availing himself of the benefits and protections of the laws of the
7 State of Nevada, the Respondent has submitted to the jurisdiction of the Division.

8 **II. FINDINGS OF FACT**

9 The matter having been submitted for decision based upon the allegations of the Complaint, the
10 Commission now, based upon the evidence presented during the hearing, finds that there is substantial
11 evidence in the record to establish each of the following:

12 1. The Respondent's Nevada Certified Residential Appraiser, License No. A.0001528-CR,
13 has been in closed, expired status for over a year as of March 31, 2022.

14 2. The Respondent prepared an Appraisal Report for 3183 Mura Del Prato, Henderson,
15 Nevada 89044 ("Property"). 0057 – 0103.

16 3. The Respondent's Appraisal Report represented use of linear regression modules to
17 support the adjustments made in the sales grid but admitted lack of understanding of how to properly
18 complete a linear regression. 0067.

19 4. Further, the Respondent's Appraisal Report and workfile do not contain statistical analysis
20 to support the adjustments made in the sales grid. 0057 – 0329.

21 5. The Complainant alleged the Respondent failed to support adjustments made for upgraded
22 features. 0002.

23 6. The Respondent's Appraisal Report and workfile failed to support the \$25,000 adjustment
24 made to Comparable Sale #2's upgraded features. 0059.

25 7. The Complainant alleged homes built by Toll Brothers are premium but the Respondent
26 failed to note such benefit for Comparables #s 1-3 built by Toll Brothers. 0002.

27 ...

28 ...

1 8. The Respondent's Appraisal Report did not make adjustments for differing builders
2 when data indicates a resale townhome built by Toll Brothers commands a higher premium.
3 *0059, 0064, and 0343.*

4 9. The Complainant alleged the RESPONDENT misrepresented Comparables #s 1, 3, 4, 5,
5 and 6 as end-units and made no adjustments or comments about the impact of this feature. *0002.*

6 10. The Property is an end-unit townhome but the Respondent's Appraisal Report contained
7 only one end-unit comparable, Comparable #2, with no adjustments made to the other non-end-unit
8 comparables. *0059 and 0064.*

9 11. The Respondent's Appraisal Report and workfile provided no evidence to
10 support the opinion that seller concessions do not affect pricing, even if under 3% of the sales price.
11 *0067, and 0057 – 0329.*

12 12. The Respondent's Appraisal Report failed to report and analyze a prior sale of the Property
13 that occurred within the prior three years despite such information publicly recorded. *0350.*

14 13. The Respondent's Appraisal Report appraised for \$300,000 which was less than what the
15 Property sold for two years prior at \$310,000. *0350, and 0063.*

16 **III. CONCLUSIONS OF LAW**

17 The Commission, based upon the preponderance of the evidence, makes the following
18 legal conclusions:

19 The Respondent failed to prepare the appraisal report for the Property in Compliance with the
20 Standards of the Appraisal Foundation and the law. The Standards are published in the Uniform
21 Standards of Professional Appraisal Practice ("USPAP") adopted by the Appraisal Standards Board of
22 the Appraisal Foundation, as authorized by Congress, and adopted in Nevada by NAC 645C.400(1)¹.

23 **First Violation**

24 The USPAP RECORD KEEPING RULE requires an appraiser must prepare a workfile for each
25 appraisal or appraisal review assignment. A workfile must be in existence prior to the issuance of any
26 report or other communication of assignment results. A written summary of an oral report must be added
27

28 ¹ The 2020-2021 edition of USPAP, effective January 1, 2020 through December 31, 2021, is
applicable to and utilized for this Complaint.

1 to the workfile within a reasonable time after the issuance of the oral report. The workfile must include
2 all other data, information, and documentation necessary to support the appraiser's opinions and
3 conclusions and to show compliance with USPAP, or references to the location(s) of such other data,
4 information, and documentation.

5 The Respondent violated USPAP RECORD KEEPING RULE by failing to include statistical
6 analysis to support the adjustments made in the sales grid within the Appraisal Report or workfile.

7 The Respondent's actions constitute unprofessional conduct pursuant to NRS 645C.470(2), as
8 determined by NAC 645C.405(1) and grounds for disciplinary action pursuant to NRS 645C.460(1)(a)
9 and/or (b).

10 **Second Violation**

11 USPAP Standards Rule 1-1(c) requires that an appraiser in developing a real property appraisal
12 must (c) not render appraisal services in a careless or negligent manner, such as by making a series of
13 errors that, although individually might not significantly affect the results of an appraisal, in the aggregate
14 affects the credibility of those results.

15 Respondent violated Standards Rule 1-1(c) by failing to contain documentation to support the
16 \$25,000 adjustment for Comparable #2's upgraded features.

17 Respondent further violated Standards Rule 1-1(c) by failing to adjust for differing builders in the
18 Appraisal Report when Comparables #s 1, 2, and 3 are Toll Brother built units, and Comparables #s 4, 5,
19 and 6 are KB Homes built units.

20 Respondent also violated Standards Rule 1-1(c) by failing to use more than just one end-unit
21 comparable, Comparable #2, and failing to make adjustments to the other non-end-unit comparables,
22 Comparables #s 1, 3, 4, 5, and 6.

23 The Respondent's actions constitute unprofessional conduct pursuant to NRS 645C.470(2),
24 as determined by NAC 645C.405(1) and (2) and grounds for disciplinary action pursuant to
25 NRS 645C.460(1)(a) and/or (b).

26 **Third Violation**

27 USPAP Standards Rule 1-2(c) required an appraiser, in developing a real property appraisal, must
28 (c) not render appraisal services in a careless or negligent manner, such as by making a series of errors

1 that, although individually might not significantly affect the results of an appraisal, in the aggregate
2 affects the credibility of those results.

3 The Respondent violated Standards Rule 1-2(c) by failing to provide support for the opinion that
4 seller concessions of 3% or less do not affect pricing and failing to update the boiler plate Definition of
5 Value language stating "the seller pays these costs in virtually all sales transactions" which contradicted
6 his opinion that there were seller concessions.

7 The Respondent's actions constitute unprofessional conduct pursuant to NRS 645C.470(2),
8 as determined by NAC 645C.405(1) and (2) and grounds for disciplinary action pursuant to
9 NRS 645C.460(1)(a) and/or (b).

10 **Fourth Violation**

11 USPAP Standards Rule 1-5(b) provides that when the value opinion to be developed is market
12 value, an appraiser must, if such information is available to the appraiser in the normal course of business:
13 (b) analyze all sales of the subject property that occurred within the three (3) years prior to the effective
14 date of the appraisal.

15 Respondent violated Standards Rule 1-5(b) by failing to report or analyze the publicly recorded
16 prior sale of the Property which occurred June 21, 2018, for \$310,000, less than two (2) years prior to the
17 effective date of the Appraisal Report.

18 The Respondent's actions constitute unprofessional conduct pursuant to NRS 645C.470(2), as
19 determined by NAC 645C.405(1) and grounds for disciplinary action pursuant to NRS 645C.460(1)(a)
20 and/or (b).

21 **Fifth Violation**

22 USPAP Standards Rule 2-1(a) requires each written or oral real property appraisal report must:
23 (a) clearly and accurately set forth the appraisal in a manner that will not be misleading.

24 In violation of Standards Rule 2-1(a), Respondent failed to change his Definition of Value to
25 match his opinion that there were seller concessions, even if under 3% of the sale price.

26 Respondent also violated Standards Rule 2-1(a) when he made a series of errors which in
27 their aggregate can mislead the intended user, specifically, when Respondent failed to support
28 the \$25,000 adjustment for Comparable #2's upgraded features; failed to adjust for differing

1 builders; used only one end-unit comparable, Comparable #2, and failed to make adjustments to the other
2 non-end-unit comparables.

3 The Respondent's actions constitute unprofessional conduct pursuant to NRS 645C.470(2),
4 as determined by NAC 645C.405(1) and (2) and grounds for disciplinary action pursuant to
5 NRS 645C.460(1)(a) and/or (b).

6 **Sixth Violation**

7 USPAP Standards Rule 2-2(a)(x) requires each written real property appraisal report must be
8 prepared under one of the following options and prominently state which option is used: Appraisal
9 Report or Restricted Appraisal Report. (a) The content of an Appraisal Report must be appropriate for
10 the intended use of the appraisal and, at a minimum (x) provide sufficient information to indicate that the
11 appraiser complied with the requirements of STANDARD 1 by: (1) summarizing the appraisal methods
12 and techniques employed; (2) stating the reasons for excluding the sales comparison, cost, or income
13 approach(es) if any have not been developed; (3) summarizing the results of analyzing the subject sales,
14 agreements of sale, options, and listings in accordance with Standards Rule 1-5; [Comment: If such
15 information is unobtainable, a statement on the efforts undertaken by the appraiser to obtain the
16 information is required. If such information is irrelevant, a statement acknowledging the existence of the
17 information and citing its lack of relevance is required.]; (4) stating the value opinion(s) and
18 conclusion(s); and (5) summarizing the information analyzed and the reasoning that supports the
19 analyses, opinions, and conclusions, including reconciliation of the data and approaches.

20 Respondent violated Standards Rule 2-2(a)(x) by failing to analyze the previous sale in the
21 Appraisal Report.

22 The Respondent's actions constitute unprofessional conduct pursuant to NRS 645C.470(2), as
23 determined by NAC 645C.405(1) and grounds for disciplinary action pursuant to NRS 645C.460(1)(a)
24 and/or (b).

25 **ORDER**

26 The Commission, being fully apprised in the premises and good cause appearing,
27 hereby ORDERS:

- 28 1. Respondent's license (License No. A.0001528-CR) is revoked;

