

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 MICHAEL L. BRUNSON)
10 (License No. A.0207222-CG),)

11 Respondent.)

Case No. 2018-1366 & AP 19.008.S

**FIRST AMENDED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

FILED

OCT 14 2021

NEVADA COMMISSION OF APPRAISERS

Kelley Valadez

11 This matter came on for hearing before the Nevada Commission of Appraisers of
12 Real Estate, State of Nevada (Commission) on May 25, 2021, May 26, 2021, May 27, 2021,
13 and June 23, 2021 (the "Hearing"). Respondent Michael L. Brunson (Respondent) appeared
14 through his counsel, Janeen V. Isaacson, Esq. of Lipson Neilson law firm. Peter K. Keegan,
15 Deputy Attorney General, appeared and prosecuted the Complaint on behalf of petitioner
16 Sharath Chandra, Administrator of the Real Estate Division, Department of Business &
17 Industry, State of Nevada (Division). On July 2, 2021, the parties were mailed the Findings
18 of Fact and Conclusions of Law entered by the Commission.

19 This matter came before the Commission on October 5, 2021 for the Commission to
20 consider a letter submitted by counsel for the Division notifying the Commission that the
21 pre-hearing attorney's fees were lower than reported previously to the Division. The
22 Commission reduced the costs imposed and confirmed the due date for the total fine to be
23 one year from the effective date of the original Findings of Fact and Conclusions of Law.
24 This Amended Findings of Fact and Conclusions of Law ("Order") amends and restates the
25 Findings of Fact and Conclusions of Law filed July 2, 2021.

26 **JURISDICTION**

27 The Respondent is a Certified General Appraiser licensed by the Division, and
28 therefore, is subject to the jurisdiction of the Division and the provisions of NRS and NAC

1 Chapter 645C. By availing himself of the benefits and protections of the laws of the State
2 of Nevada, the Respondent has submitted to the jurisdiction of the Division.

3 **FINDINGS OF FACT**

4 The matter having been submitted for decision based upon the allegations of the
5 Complaint, the Commission now, based upon the evidence presented during the Hearing,
6 finds that there is substantial evidence in the record to establish each of the following:

7 1. The Respondent is currently licensed by the Division as a Certified General
8 Appraiser on October 14, 2015, License No. A.0207222-CG.

9 2. Prior to obtaining a Certified General Appraiser license, the Respondent was
10 licensed by the Division as a Certified Residential Appraiser, License No. A.0002794-CR,
11 from December 9, 1997 through October 14, 2015, and as an Appraiser Intern, License No.
12 A.0002105-INTR, from October 25, 1995 through December 9, 1997.

13 3. On or about September 27, 2018, the Division received a complaint/statement
14 of fact asserting that the Respondent had completed a retroactive appraisal in violation of
15 several provisions of the Uniform Standards of Professional Appraisal Practice (USPAP).

16 4. Respondent was engaged to conduct a retrospective appraisal for litigation
17 purposes of the residential property located at 5344 Santa Fe Heights Street, North Las
18 Vegas, NV 89801, APN 124-35-215-181 (Property), by analyzing the nature, quality, value,
19 or use of the property, and offered an opinion as to the nature, quality, value or use of the
20 property for or with the expectation of compensation.

21 5. The intended use of the Respondent's Retrospective Appraisal performed by
22 the Respondent was Litigation in the matter of *Cascade Research Partners LLC v. Lance*
23 *Trammel, et al.* (Case No. A-16-744101-C).

24 6. The Respondent's Retrospective Appraisal Report (Report) identified the
25 property as a 3-bedroom, 2.5-bath 1,756 sq. ft. single family residence with a 2-car garage
26 built in 2004.

27 7. The Respondent's Report identified that the Property was a distressed
28 property since at least 3Q 2010 because it was facing foreclosure under NRS 116 and NRS

1 107.

2 8. The effective date of the Report performed by the Respondent was identified
3 as November 18, 2014.

4 9. The signature date of the Report was identified as March 6, 2018.

5 10. After disqualifying generally accepted value definitions, the Respondent's
6 Report selected the term impaired value as the measure of the value for the Property.

7 11. The Respondent's Report defines Impaired Value as "[t]he indicated value of
8 a property with a detrimental condition reached upon application of one or more of the
9 approaches of value."

10 12. The Respondent's Report identified that "[b]uyers of HOA foreclosures faced
11 limitations on any or all of the rights including but not limited to restrictions on occupancy,
12 possession, or use of the property."

13 13. The Respondent's Report identified lack of insurable clear title insurance
14 following an HOA foreclosure sale as a risk to the right of transfer.

15 14. The Respondent's Report identified likely litigation by the banks arguing that
16 their deeds of trust have not been extinguished by NRS 116 HOA foreclosures.

17 15. The Respondent's Report identified that the circumstances surrounding NRS
18 116 HOA foreclosures diminish their value and are known as a Detrimental Condition.

19 16. The Respondent's Report identifies that the most likely purchaser was an
20 investor.

21 17. The Respondent's Report fails to reconcile the applicability or suitability of
22 the valuation approaches and why the income or cost approach were not used in arriving
23 at a valuation conclusion.

24 18. The HOA lien on the Property was \$8,700.00.

25 19. The Respondent's Report identified that "the subject traded at a public HOA
26 foreclosure auction on the effective date. The highest bid was \$91,300.00."

27 20. The Respondent's Report used 36 comparable NRS 116 foreclosure sales as
28 part of his comparable sales approach to develop a retrospective impaired value opinion.

- 1 21. The Respondent's Report identified the impaired value of the Property at
2 \$91,300.00.
- 3 22. The Respondent's Report does not include the unimpaired value of the
4 property.
- 5 23. The Respondent's Report failed to analyze the circumstances regarding the
6 overage paid between the \$8,700.00 HOA debt and the \$91,300.00 sales price for the
7 Property.
- 8 24. The Respondent's Report failed to include a discussion of the number of
9 bidders at the auction for the Property or the comparable sales auctions.
- 10 25. The Respondent's Report failed to include an analysis of the overages paid by
11 the buyers above the HOA debt.
- 12 26. The Respondent's limited market analysis failed to include the subsequent
13 sales of 3801 Singing Lark Court or 3416 Casa Alto Avenue despite including at least two
14 comparable sales within the Report's HOA foreclosure sales grid which occurred after the
15 effective date of the report.
- 16 27. The Respondent's limited market analysis failed to analyze other relevant
17 information such as the comparable sale's site area, views, design and appeal, quality,
18 condition, functional utility, heating/cooling, garage storage capacity, or landscaping.
- 19 28. The Respondent's limited market analysis is based solely on the percentage of
20 the comparable sale's taxable value relative to the HOA lien sale price.
- 21 29. Respondent's limited market analysis failed to explain why the income
22 approach was not used when the Clark County Assessor's Office online database reflects
23 that several of the comparable sales were rental/income properties prior to their respective
24 lien sales.
- 25 30. Respondent's work file included a Craigslist advertisement for three
26 properties which were previously purchased at HOA lien sales.
- 27 31. The Respondent's Report failed to identify in the Certification each of the
28 individuals whose initials appeared on the work file spreadsheet as having

1 confirmed/verified the HOA foreclosure comparable sales data.

2 32. The Respondent's Report does not adequately summarize the extent of the
3 assistance provided by the individuals whose initials appear in his work file.

4 33. On or about October 5, 2018, the Division mailed to the Respondent an
5 opening letter indicating a complaint had been filed against him and requesting copies of
6 the Respondent's work file for the Property be submitted to the Division before October 19,
7 2018.

8 34. On or about October 25, 2018, after receiving an extension, the Respondent
9 submitted his response to the complaint and a copy of his work file for the Property, which
10 was bates stamped BRUNSON00001-BRUNSON001108.

11 35. On or about August 8, 2018, the Division mailed to the Respondent an NRS
12 Chapter 233B Letter, as required by NRS 233B.237(3), indicating that the Division's
13 investigation had collected sufficient evidence to commence the filing of a formal
14 disciplinary complaint with the Nevada Commission of Appraisers of Real Estate.

15 VIOLATIONS OF LAW

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

18 The Respondent failed to prepare the appraisal report for the Property in
19 Compliance with the Standards of the Appraisal Foundation. These Standards are
20 published in the Uniform Standards of Professional Appraisal Practice (USPAP) adopted
21 by the Appraisal Standards Board of the Appraisal Foundation, as authorized by Congress,
22 and adopted in Nevada by NAC 645C.400.¹

23 First Violation

24 By failing to (1) identify the problem to be solved; (2) determine and perform the
25 scope of work necessary to develop credible assignment results; and (3) fully disclose the
26 scope of work in the report, the Respondent violated the USPAP Scope of Work Rule as

27 _____
28 ¹ The 2014-2015 edition of USPAP, effective January 1, 2014 through December 31,
2015, is applicable to and utilized for this Complaint.

1 codified in NAC 645C.400(1) and (2). The scope of work is acceptable when it meets or
2 exceeds what an appraiser's peers' actions would be in performing the same or similar
3 assignment.

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

8 Second Violation

9 By utilizing the impaired value measurement, Respondent failed to identify if the
10 seller was under compulsion to sell and failed to identify the motivation of the buyer as an
11 investor. The Respondent's use of the impaired value measurement did not address if the
12 buyer and seller were acting prudently or if both parties were acting in their best interest.
13 The Respondent's use of the impaired value term does not dictate if the price represents
14 normal consideration for the property sold or sales concessions granted by anyone
15 associated with the sale. The Respondent's use of the impaired value measurement fails
16 to dictate if the auction price presents normal consideration for the property. Respondent
17 acted in a careless or negligent manner, causing the Report to contain a series of errors
18 that affected the credibility of the appraisal, and therefore Respondent violated USPAP
19 Standards Rule 1-1(c) as codified in NAC 645C.400(1) and (2).

20 The Respondent's actions constitute unprofessional conduct and/or professional
21 incompetence, pursuant to NRS 645C.470(2) and NAC 645C.405(1), (2), and/or (3).
22 Respondent's actions are grounds for disciplinary action pursuant to NRS 645C.460(1)(a)
23 and/or (b).

24 Third Violation

25 By failing to include an income approach or explain why the income approach was
26 not completed, the credibility of Respondent's Report was diminished. Respondent's
27 limited comparable sales analysis failed to explain why the income approach was not used
28 despite several of the comparable sales used by Respondent being rental/income properties

1 prior to their respective lien sales. As a result, the Respondent violated USPAP Standards
2 Rule 1-4(c) as codified in NAC 645C.400(1) and (2).

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

7 **Fourth Violation**

8 By failing to explain or justify the selection of the sales comparison approach and
9 disregard of the income and cost approach, the Respondent failed to reconcile the suitability
10 of the approaches used to arrive at the value conclusion. As a result, the Respondent
11 violated USPAP Standards Rule 1-6(b) as codified in NAC 645C.400(1) & (2).

12 The Respondent's actions constitute unprofessional conduct and/or professional
13 incompetence, pursuant to NRS 645C.470(2) and NAC 645C.405(1), (2), and/or (3).
14 Respondent's actions are grounds for disciplinary action pursuant to NRS 645C.460(1)(a)
15 and/or (b).

16 **Fifth Violation**

17 By failing to explain in the Report why the cost approach and income approach were
18 excluded, the Respondent's Report failed to provide sufficient information to enable the
19 client and intended users to understand the rationale for the opinions and conclusions,
20 including reconciliation of the data and approaches. As a result, the Respondent violated
21 USPAP Standards Rule 2-2(a)(viii) as codified in NAC 645C.400(1) & (2).

22 The Respondent's actions constitute unprofessional conduct and/or professional
23 incompetence, pursuant to NRS 645C.470(2) and NAC 645C.405(1), (2), and/or (3).
24 Respondent's actions are grounds for disciplinary action pursuant to NRS 645C.460(1)(a)
25 and/or (b).

26 **ORDER**

27 IT IS HEREBY ORDERED that Respondent shall pay to the Division a total
28 monetary penalty of \$17,475.72. The total penalty reflects a fine of \$5,000.00, comprised

1 of a \$1,000.00 fine for committing each of the above five violations of law, plus \$12,475.72
2 for hearing and investigative costs. Respondent shall pay the total fine to the Division on
3 or before August 2, 2022.

4 If the payment is not actually received by the Division on or before its due date, it
5 shall be construed as an event of default by Respondent. In the event of default,
6 Respondent's licenses and permit shall be immediately suspended, and the unpaid balance
7 of the administrative fine and costs, together with any attorney's fees and costs that may
8 have been assessed, shall be due in full to the Division within ten calendar days of the date
9 of default. The Division may institute debt collection proceedings for failure to timely pay
10 the total fine.

11 The Commission retains jurisdiction for correcting any errors that may have
12 occurred in the drafting and issuance of this Order.

13 This Order shall become effective on the 15th day of November, 2021.

14 DATED this 13 day of October, 2021.

15 COMMISSION OF APPRAISERS OF REAL ESTATE
16 STATE OF NEVADA

17 By: 
18 President, Commission of Appraisers of Real Estate