

BEFORE THE COMMISSION OF APPRAISERS OF REAL ESTATE
STATE OF NEVADA

SHARATH CHANDRA, Administrator,
REAL ESTATE DIVISION,
DEPARTMENT OF BUSINESS AND
INDUSTRY, STATE OF NEVADA,

Petitioner,

vs.

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

Respondent.

CASE NO.: 2018-1366 & AP 19.008.S

RESPONDENT MICHAEL BRUNSON'S
RESPONSE TO COMPLAINT

FILED

MAY 24 2021

NEVADA COMMISSION OF APPRAISERS

Kelly Valadez

Respondent Michael L. Brunson ("Brunson"), by and through his attorneys at LIPSON NEILSON P.C., hereby submits his response to the Factual Allegations and alleged Violations of Law found in the Complaint and Notice of Hearing filed April 23, 2021 a follows:

FACTUAL ALLEGATIONS

1.e In response to Paragraph 1, Brunson admits.e

2.e In response to Paragraph 2, Brunson admits.e

3.e In response to Paragraph 3, Brunson admits.e

4.e In response to Paragraph 4, Brunson admits in part and denies in part.e

The assignment was to determine whether the price paid at auction was reasonable. A retrospective appraisal was part of the scope of work necessary to answer that question. *Please see BRUNSON000006 and BRUNSON000031.*

5.e In response to Paragraph 5, Brunson admits. *Please see BRUNSON 000017.*

6.e In response to Paragraph 6, Brunson denies. The client is identified ase Cascade Research Partners, LLC represented by the Law Office of Mike Beede. *Please see BRUNSON000005 and BRUNSON 000017.*

///

1 7.e In response to Paragraph 7, Brunson admits. *Please see*
2 *BRUNSON000028.*

3 8.e In response to Paragraph 8, Brunson admits. *Please see*
4 *BRUNSON000019.*

5 9.e In response to Paragraph 9, Brunson admits. *Please see Header of*
6 *Brunson's Initial Appraisal.*

7 10.e In response to Paragraph 10, Brunson admits. *Please see*
8 *BRUNSON000011.*

9 11.e In response to Paragraph 11, Brunson admits in part and denies in part.e
10 This analysis is found on Pages 16-17 of the Brunson Initial Appraisal Report ('Brunson
11 Report'). *Please see BRUNSON000020-BRUNSON000021.* The conclusion is that
12 appraisal literature recommends the use of either Liquidation Value or Disposition Value
13 and that "Disposition Value most closely captures the circumstances of an HOA
14 foreclosure sale under NRS 116." *Please see BRUNSON000021.* Impaired Value is
15 selected to avoid confusion related to the lack of a perfect fit in prior cases. This
16 analysis is summarized in the letter of transmittal which states "Disposition Value best
17 fits the circumstances of a 116 foreclosure. However, it is not a perfect fit. Therefore,
18 Impaired Value is used in this analysis." *Please see BRUNSON000006.*

19 12.e In response to Paragraph 12, Brunson denies. The term Impaired Value is
20 not borrowed. It is defined in Real Estate Damages, 3rd edition on page 461. This
21 definition is cited multiple times in the Brunson Report. *Please see BRUNSON000014*
22 *and BRUNSON000021).*

23 13.e In response to Paragraph 13, Brunson denies. Impaired Value is note
24 defined by the Brunson Report. It is defined in Real Estate Damages, 3rd Edition one
25 Page 461. This definition is cited multiple times in the Brunson Report. *Please see*
26 *BRUNSON000014 and BRUNSON000021).*

27 14.e In response to Paragraph 14, Brunson denies. This allegation
28 misconstrues damage theory as found in appraisal literature. Like Market Value,

1 Impaired Value is both a concept and a definition. The allegation focuses on the
2 concept. The Brunson Report focuses on both the concept and the definition.
3 Conceptually, if the scope of work ("SOW") of an assignment is to determine damages
4 to a property, a recognized methodology (process) is to determine both an unimpaired
5 value and an impaired value. The difference between the two becomes an indication of
6 damages. However, the scope of work for this assignment did not include an opinion of
7 damages. Rather, the SOW required a determination of whether or not the price paid at
8 a legal and legally conducted foreclosure auction was reasonable. In this circumstance
9 there is no need to determine an unimpaired value.

10 15. In response to Paragraph 15, Brunson Admits. Please see
11 *BRUNSON000023*.

12 16. In response to Paragraph 16, Brunson admits. Please see
13 *BRUNSON000023*.

14 17. In response to Paragraph 17, Brunson admits. Please see
15 *BRUNSON000024*.

16 18. In response to Paragraph 18, Brunson admits. Please see
17 *BRUNSON000024-BRUNSON000027*.

18 19. In response to Paragraph 19, Brunson admits. Please see
19 *BRUNSON000022*.

20 20. In response to Paragraph 20, Brunson denies. This issue is reported on
21 Page 18 of the Brunson Report. Please see *BRUNSON000022*. In developing an
22 appraisal, USPAP SR 1-6(b) requires an appraiser to "reconcile the applicability and
23 relevance of the approaches, methods, and techniques used to arrive at the value
24 conclusion(s)." The relevant reporting standard, USPAP SR 2-2(a)(viii), indicates, "The
25 amount of detail required will vary with the significance of the information to the
26 appraisal." In the context of the identified SOW, the comments found comply with both
27 the letter and the intent of the USPAP. Please see *BRUNSON000022*.

28 *///*

1 21. In response to Paragraph 21, Brunson admits. Please see
2 *BRUNSON001051*.

3 22. In response to Paragraph 22, Brunson admits. Please see
4 *BRUNSON000019*.

5 23. In response to Paragraph 23, Brunson admits. Please see
6 *BRUNSON000027-BRUNSON000030*).

7 24. In response to Paragraph 24, Brunson denies. This allegation refers to a
8 standard of care that does not exist in the USPAP. USPAP SR 1-4(a) mentions no
9 requirement to address variations of any kind. In fact, there is no such requirement
10 found anywhere in the USPAP. Ignoring the lack of any such requirement, the analysis
11 of variation exists in the Brunson Report on Pages 23-26. Please see
12 *BRUNSON000027-BRUNSON000030*. The specific analysis regarding the variation in
13 auction prices is found on Page 26. Please see *BRUNSON000030*. On December 12,
14 2012, the Nevada Department of Business and Industry released an Advisory Opinion
15 on super priority liens. This lead to a decreased perception of risk and prices increased.
16 On March 22, 2013, the decision in *SFR v. US Bank* (in favor of the Bank's position)
17 was published. These events increased the perception of risk and lead to a wider
18 variance (emphasis added) in prices paid for 116 properties. The Nevada Supreme
19 Court published their decision in *SFR v. US Bank* on September 18, 2014. The opinion
20 was favorable to the buyer's position (reducing the perceived risk) and it led to a
21 significant spike in the prices of 116 properties. The data demonstrates that discounts
22 for 116 properties were typically above 70% of the taxable value prior to the Nevada
23 Supreme Court Decision. The data also shows that after the Supreme Court decision
24 typical discounts ranged from 10% to 40%.

25 25. In response to Paragraph 25, Brunson admits in part and denies in part.
26 The conclusion of the Brunson Report was "Based on all of the above analysis, my
27 professional opinion is that the Subject's acquisition price represents a reasonable,
28 retrospective, impaired value." Please see *BRUNSON000031*.

1 26. In response to Paragraph 26, Brunson admits. However, the state has
2 failed to demonstrate the necessity to provide an unimpaired value outside of an
3 analysis of damages. There is no USPAP requirement to provide an unimpaired value
4 when determining whether the price paid at a foreclosure auction is reasonable. No
5 such contextual requirement is found in appraisal literature.

6 27. In response to Paragraph 27, Brunson denies. This allegation is contrary
7 to damages theory as found in the appraisal literature and cited in the Brunson Report.

8 28. In response to Paragraph 28, Brunson denies. The definition of value is
9 not incorrect. Please refer to the responses to allegations 11, 12, 13, and 14. Mr. Dugan
10 (indeed every opposing expert that was deposed or offered testimony in these cases)
11 agreed that the FFIEC definition of Market Value does not fit an HOA foreclosure. As
12 noted in Brunson's initial response dated November 25, 2018, Mr. Dugan has on
13 multiple occasions expressed the opinion that no definition of value (including Market
14 Value) applies to a property facing an HOA Foreclosure. Please see
15 *BRUNSON000001-BRUNSON000003.*)

16 29. In response to Paragraph 29, Brunson denies. The Market analysis was
17 not limited (please refer to the response to allegation 37). The definition of value is not
18 incorrect (please refer to the response(s) to allegation(s) 11, 12, 13, 14, and 28).
19 USPAP SR1-2(c) requires an appraiser to, "identify the type and definition of value."
20 There is no limitation to or requirement for a specific type or definition. SR2-2(a)(v)
21 requires an appraiser to, "state the type and definition of value and cite the source of the
22 definition." Again, there is no requirement for any specific type or definition of value. The
23 allegation ignores the explanation found in the Brunson Report and all cited appraisal
24 literature in alleging that the utilized definition is somehow incorrect.

25 30. In response to Paragraph 30, Brunson denies. The allegation implies that
26 a "full" Detrimental Condition (DC) analysis always includes development of the
27 unimpaired and the impaired value. This allegation misconstrues damage theory as
28 presented in the appraisal literature. The DC analysis is found on Pages 18-23 of the

1 Brunson Report. *Please see BRUNSON000022-BRUNSON000027.*

2 31. In response to Paragraph 31, Brunson denies. There is no manipulation of
3 data in the Brunson Report. Rather the data is presented in the context of the actual
4 market conditions facing the subject. There was no preconceived or predetermined
5 opinion of value. Brunson did not opine that the impaired value is equal to the HOA lien
6 sales price. The reconciliation found in the Brunson Report on Page 27 considered the
7 data that indicates a reasonable range of value between \$68,700 and \$101,600.
8 Brunson concludes, "The subject auction price of \$91,300 (80.5% of the retrospective
9 taxable value) is above the trend and well within the indicated range. The subject price
10 is above the mean and median for the overall sample. Moreover, the trend comports to
11 known events." *Please see BRUNSON000031.*

12 32. In response to Paragraph 32, Brunson admits in part and denies in part.
13 The analysis does not exist in the Brunson Report. However, this does not represent a
14 "failure." The allegation is misleading in that no such analysis is required by USPAP and
15 such an analysis is not relevant to the question being solved. However, the fact that the
16 buyer paid \$82,600 above the minimum bid demonstrates the participation of multiple
17 bidders and that Brunson's analysis/conclusions regarding the improving market
18 conditions for HOA foreclosure properties was accurate.

19 33. In response to Paragraph 33, Brunson admits in part and denies in part.
20 The analysis does not exist in the Brunson Report. However, this does not represent a
21 "failure." The allegation is misleading in that no such analysis is required by USPAP and
22 such an analysis is not relevant to the question being solved. Please refer to the
23 response to allegation 32.

24 34. In response to Paragraph 34, Brunson admits in part and denies in part.
25 The analysis does not exist in the Brunson Report. However, this does not represent a
26 "failure." The allegation is misleading in that no such analysis is required by USPAP.
27 Any price paid over a minimum auction bid demonstrates the presence of multiple
28 bidders. Please refer to the response to allegation 32.

35. In response to Paragraph 35, Brunson admits and denies in part. The analysis of the subsequent transfers of 3801 Singing Lark and 3416 Singing Lark does not exist in the Brunson Report. However, this is not an indication of a limited market analysis or any "failure" by Mr. Brunson. The Brunson Report discloses the selection criteria for comparable sales on Page 24. Please see BRUNSON000028. Sales approximately 1 year prior and 90 days after the effective date were considered. The two HOA sales that took place subsequent to the effective date took place within days not months. The HOA sale of 5705 Distant Drum St. sold 2 days after the effective date. The HOA sale of 4348 Desert Haven Ave. sold 31 days after the effective date. The transfer of 3801 Singing Lark took place 186 days (6-months) after the effective date (Doc. No. 150115002646). This transfer was a Quit Claim Deed and not a sale. This property was listed for sale from March 8, 2015 to March 31, 2016 for \$149,900 (ML No. 1521483 expired with no sale). It was relisted on June 28, 2016 to December 29, 2016 for \$187,900 (ML No. 1810761 expired with no sale). Today this property is still facing litigation (Lis Pendens recorded on April 23, 2015; Doc. No. 20150423002839 and Lis Pendens recorded on March 1, 2019; Doc. No. 201903010000027). It is also still facing foreclosure under NRS 107 (DETS; Doc. No. 202003130002338, NOTS; Doc. No. 202105040002733). Not only is the subsequent transfer irrelevant to the Brunson analysis with an effective date of November 18, 2014, but also, it demonstrates the ongoing impact of HOA foreclosures on certain properties. The transfer of 3416 Casa Alto took place 301 days (10-months) after the effective date (Doc. No. 201509150002030). This transfer was a Quit Claim Deed and not a sale. This property was listed for rent on April 13, 2018 and leased for the original asking rent of \$1,650 after 25 days on the market. There is no indication that it was rented prior to that date. There is no indication that the property is currently occupied. Subsequent to the Brunson effective date, this property is still facing litigation (Lis Pendens recorded on March 31, 2014; Doc. No. 201403310002867, Lis Pendens recorded on September 1, 2015; Doc. No. 201509010002696, and Lis Pendens recorded on August 8, 2018; Doc.

1 No. 201808080001760). FNMA recently foreclosed on this property under NRS 107
2 (TDUS; Doc. No. 201808230002760, NOTS; Doc. No. 201807310000067). Not only is
3 the subsequent transfer irrelevant to the Brunson analysis with an effective date of
4 November 18, 2014, but also, it demonstrates the ongoing impact of HOA foreclosures
5 on certain properties.

6 36. In response to Paragraph 36, Brunson denies. The market analysis was
7 not limited. Please refer to the answers for allegations No. 24, 29, 37, and 38. The
8 *Selection of Comparable Sales* was addressed in the Brunson Report on Pages 18-23.
9 Please see *BRUNSON000022-BRUNSON000027*. Relevant characteristics were
10 identified on Page 24. Please see *BRUNSON000028*. These characteristics noted in
11 the Complaint may be relevant in a traditional sale or an appraisal for regulated
12 financing. However, as noted throughout the Brunson Report, an HOA foreclosure sale
13 differs significantly from a traditional sale and the assignment is not for use in a
14 regulated financing transaction. The noted characteristics are not relevant in an
15 assignment where the scope of work is to determine whether or not an auction price
16 was or was not reasonable.

17 37. In response to Paragraph 37, Brunson denies. The allegation
18 mischaracterizes the market analysis disclosed in the Brunson Report. The use of the
19 taxable value relative to the price paid at the HOA foreclosure auction demonstrates the
20 discount demanded for similar HOA foreclosures properties in the market. This is
21 summarized on Pages 24-26 of the Brunson Report. Please see *BRUNSON000028-*
22 *BRUNSON000030*. This comparison is only part of the overall market analysis.
23 Historical market conditions are summarized on Page 15. Please see
24 *BRUNSON000019*. The Sales Comparison Analysis was summarized in the Brunson
25 Report on Pages 23-26. Please see *BRUNSON000027-BRUNSON000030*. The
26 *Selection of Comparable Sales* was addressed in the Brunson Report on Pages 18-23.
27 Please see *BRUNSON000022-BRUNSON000027*. Conclusions related to the selection
28 of comparable sales and a summary of General Market Conditions are found on Page

1 23. *Please see BRUNSON000027.* The analysis was anything but limited.

2 38. In response to Paragraph 38, Brunson denies. As noted in the response to
3 allegation 37 above, the market analysis was anything but limited. The allegation that
4 several of the utilized comparable sales were rental/income properties prior to selling at
5 an HOA foreclosure auction does not lead to a conclusion that the income approach is
6 either relevant or necessary for credible assignment results. On Page 18 of the Brunson
7 Report it states, "Neither the income approach nor the cost approach are necessary for
8 credible assignment results. Neither approach is part of the scope of work for this
9 assignment." *Please see BRUNSON000022.* USPAP SR1-4 states, (b) "When a Cost
10 Approach is necessary for credible assignment results..." and (c) "When an income
11 approach is necessary for credible assignment results..." USPAP defines Credible as,
12 "Worthy of belief." The comment to the definition states, "Credible assignment results
13 require support, by relevant evidence and logic, to the degree necessary for the
14 intended use." (emphasis added). The Intended Use is identified on Page 13 as,
15 "Litigation in the matter of Cascade Research Partners LLC v. Lance Trammell, et al
16 (Case No. A-16-744101-C). USPAP FAQ #158 states, "Whether or not assignment
17 results are credible is always measured in the context of the intended use of the
18 assignment. This means that credibility is relative, not absolute. Assignment results that
19 are credible for one intended use may not be credible for another intended use. *Please*
20 *see BRUNSON000017.* In the context of the intended use, the omission of the Cost
21 Approach and the Income Approach is reasonable and allows for credible assignment
22 results. In the context of the intended use, the explanation found within the Brunson
23 Report is adequate to the degree necessary for the intended use.

24 39. In response to Paragraph 39, Brunson denies. The Brunson Report
25 includes no Craigslist advertisement. However, the Craigslist advertisements found in the
26 work file are provided to demonstrate that HOA foreclosure properties were not
27 marketed in common fashion and that they included warnings to potential buyers that
28 they would be unable to obtain title insurance or get a traditional mortgage. *Please see*

1 BRUNSON000811-BRUNSON000812).

2 40. In response to Paragraph 40, Brunson denies. USPAP SR2-2(a)(vii)
3 states, "...When any portion of the work involves significant real property appraisal
4 assistance, the appraiser must summarize the extent of that assistance. The name(s) of
5 those providing the significant real property appraisal assistance must be stated in the
6 certification, in accordance with Standards Rule 2-3." The USPAP references AO-31
7 which addresses Significant Professional Assistance in lines 76-91. Lines 79-80 state,
8 "Assistance is related to the appraisal process and requires appraisal competency.
9 Therefore, only those acting as an appraiser sign the certification, or are identified as
10 providing significant appraisal assistance in the certification." This clarifies that
11 Significant Professional Assistance is provided only by appraisers. The comment to
12 USPAP SR2-3 states, "The names of individuals providing significant real property
13 appraisal assistance who do not sign a certification must be stated in the certification. It
14 is not required that the description of their assistance be contained in the certification,
15 but disclosure of their assistance is required in accordance with Standards Rule 2-
16 2(a)(vii)." The Certification of the Brunson Report includes the statement, "William
17 Slivinski (NV Lic. No. A.0003887-RES) provided significant professional appraisal
18 assistance to the person signing this certification. *Please see BRUNSON000011.* Page
19 16 includes a description of the assistance provided by William Slivinski. *Please see*
20 *BRUNSON000020.* In combination, these statements fully comply with the requirements
21 of the USPAP related to the disclosure of significant real property appraisal assistance.

22 41. In response to Paragraph 41, Brunson denies. Please refer to response to
23 allegation 40.

24 42. In response to Paragraph 42, Brunson denies. Please refer to response to
25 allegation 40.

26 43. In response to Paragraph 43, Brunson admits.

27 44. In response to Paragraph 44, Brunson admits.

28 ///

1 45. In response to Paragraph 45, Brunson admits.

2 Dated this 21th day of May, 2021

3 LIPSON NEILSON P.C.

4 *Janeen V. Isaacson*

5 By:

6 JOSEPH P. GARIN, ESQ. (NV Bar No. 6653)
7 JANEEN V. ISAACSON (NV Bar No. 6429)
8 9900 Covington Cross Drive, Suite 120
9 Las Vegas, Nevada 89144
10 (702) 382-1500 - Telephone
11 (702) 382-1512 – Facsimile
12 igarin@lipsonneilson.com
13 JIsaacson@lipsonneilson.com
14 *Attorneys for Respondent*

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of May, 2021, service of the foregoing confirmation of receipt of **RESPONDENT MICHAEL BRUNSON'S RESPONSE TO COMPLAINT AND NOTICE OF HEARING** was made via email to the following parties.

NRED 1818 E. College Parkway, Suite 110 Carson City, NV 89706-7986	Real Estate Commission Nevada Real Estate Division 3300 W. Sahara Ave., Suite 350 Las Vegas, NV 89102
Peter Keegan Deputy Attorney General 100 North Carson Street Carson City, NV 89701	Aaron Ford Attorney General Office of Attorney General 100 North Carson Street Carson City, NV 89701
Office of the Nevada Attorney general 555 E. Washington Ave. #3900 Las Vegas, NV 89101	Real Estate Division Department of Business and Industry State of Nevada 3300 W. Sahara Ave., Suite 350 Las Vegas, NV 89102
Sharatha Chandra, Administrator Real Estate Division Department of Business and Industry State of Nevada 3300 W. Sahara Ave., Suite 350 Las Vegas, NV 89102	Real Estate Commission Christopher Lauger Nevada Real Estate Division 3300 W. Sahara Ave., Suite 350 Las Vegas, NV 89102

Renee M. Rittenhouse

An Employee of Lipson Neilson, P.C.