

**NEVADA COMMISSION OF APPRAISERS OF REAL ESTATE
MEETING
JUNE 23, 2021 MINUTES**

VIA TELECONFERENCE
JUNE 23, 2021
9:10 A.M.

1-A) Introduction of Commissioners in Attendance

Larry Michael Gandy, Kenneth Cronin, Scott Krueger, Timothy O'Brien and Deputy Attorney General Asheesh Bhalla sitting as Commission Counsel.

1-B) Introduction of Division Staff in Attendance

Sharath Chandra, Administrator; Jaye Lindsay, Appraisal Program Manager; Kelly Valadez, Commission Coordinator; and Evelyn Pattee, Commission Coordinator.

Deputy Attorney General Peter Keegan was present representing the Division.

2) Public Comment

None.

3-A) NRED v. Michael Brunson

Case No. 2018-1366 AP19.008.S

License No. A.0207222-CG (Active)

Parties Present

Michael Brunson was present.

Janeen Isaacson was present representing Mr. Brunson.

Deputy Attorney General Peter Keegan was present representing the Division.

President Gandy swore in the court reporter.

President Gandy stated that this case was a continuation from the Commission meeting that was held on May 25-27, 2021 and the Commission is in the deliberation phase and continuing their discussion where they left off at factual allegation 30.

Factual Allegations

President Gandy read factual allegation 30 into the record.

President Gandy stated that while Dr. Bell in publication stated that the impaired and unimpaired typically go together and even though they are not dependent, when departing from traditional value definitions, the impaired value in correlation with unimpaired value is a key element that should have been stated.

Commissioner O'Brien stated that he agrees with President Gandy and he would have wanted to see the unimpaired value because it would have strengthened an area where there was no road map for this type of assignment, but that a lack of competency has not been proven.

Commissioner Krueger stated that he agrees, but there was a lack of detrimental condition analysis and he does not believe that it was completed in conjunction with analyzing the impaired value, but he is not quite sure it had to be done by analyzing the unimpaired market value. Commissioner Krueger stated he is uncertain if there was a lack of competency by not including the unimpaired value.

Commissioner Cronin stated that based on Dr. Bell's testimony, he does not think that this rises to the level of incompetency.

Commissioner O'Brien stated that to prove a lack of competency, an alternate valuation would need to be presented to show another approach was better and the Division did not do that.

Commissioner Cronin stated that he agrees that the unimpaired market value would have strengthened the report and an alternative review was not provided, but what was provided was the unimpaired evaluation that had a different scope of work. Commissioner Cronin stated that based on Dr. Bell's testimony, it has not been proven that there was a lack of competency.

Commissioner Krueger stated that during this discussion on whether there was a lack of competency, the Commissioners have all agreed and stated that they would have like to have seen it or that this probably should have been necessary and since consideration should be given to how our peers would address a situation, and we are peers, does that not go to demonstrate a lack of competency.

President Gandy stated that as he recalled, USPAP's competency was expanded to include items that were typical peer expectation. President Gandy stated that if Mr. Brunson had done that analysis, it would have allowed him to rope in other market transactions, maybe under different circumstances and apply a discount to those rather than focusing on a limited sub-set.

Commissioner O'Brien stated that in his view even though the Commission has said they would have like to see more in the report, it does not make Mr. Brunson incompetent, it makes the report weaker.

President Gandy moved that factual allegation 30 has not been proven. Seconded by Commissioner O'Brien. Motion carried.

President Gandy read factual allegation 31 into the record.

Commissioner O'Brien stated that he is troubled with this allegation by the word manipulated. Commissioner O'Brien stated that the Respondent filtered his data too far and it did not have a large enough statistical sample size but does not think that meets the definition of manipulated and it has not been proven in testimony that the predetermined value range was beneficial or not for him to hit.

President Gandy stated that the question was if it was manipulated data or curated to a point to focus on a select five after an event that Mr. Brunson cited that caused a big sway in prices.

Commissioner Krueger stated that he does not see manipulation.

Commissioner Cronin stated that the range that was given does not seem predetermined but clearly stated from the data collected. Commissioner Cronin stated that what may have been manipulated is the final opinion of value stated because it was always the HOA lien sale price.

Commissioner O'Brien stated that in his opinion Mr. Brunson provided too much information to manipulate.

President Gandy moved that factual allegation 31 was not proven. Seconded by Commissioner O'Brien. Motion carried.

President Gandy read factual allegation 32 into the record.

President Gandy stated that Mr. Brunson used a different value definition, and the research and analysis of the terms and conditions of sale needs to give a comfort level and show that this is a market and explain the circumstances.

Commissioner Krueger stated that the allegation asks the question did the report analyze the circumstances regarding the overages paid. Commissioner Krueger stated that to his recollection the report did not and so the allegation has been proven.

Commissioner Cronin stated that Mr. Brunson did discuss in part the motivation of the investors in attendance and why they were paying the higher amount, but did not reconcile.

Commissioner O'Brien stated that the analysis for the overage paid was not done and there is no answer to why anyone would pay \$97,300 for something that has \$8,700 worth of debt.

President Gandy moved that factual allegation 32 has been proven. Seconded by Commissioner Krueger. Motion carried.

President Gandy read factual allegation 33 into the record.

President Gandy stated the bidder information is not in the report.

Commissioner O'Brien stated that he would like to ask the other Commissioners where this data could be obtained.

President Gandy stated that he is uncertain where this information can be located and there is no way to know what depths were gone to obtain this information, but the ultimate client was in the room or an agent for the client and at a minimum it could have been disclosed what the environment was like in the room.

Commissioners Krueger and Cronin stated that they agree.

President Gandy moved that factual allegation 33 has been proven. Seconded by Commissioner O'Brien. Motion carried.

President Gandy read factual allegation 34 into the record.

Commissioner O'Brien stated that he does not see the analysis done of why.

President Gandy stated that he agreed that an analysis of value to price should have been done.

Commissioner Krueger stated that he believes this allegation was proven.

President Gandy moved that factual allegation 34 has been proven. Seconded by Commissioner O'Brien. Motion carried.

President Gandy read factual allegation 35 into the record.

Commissioner O'Brien stated that Mr. Brunson's report does not include the sales of the two addresses mentioned in the allegation and sees this allegation as proven.

Commissioners Cronin and Krueger stated that they agree.

Commissioner O'Brien stated that he thinks that it should be clearly stated for the record that the Commissioners are not commenting on their specific relevancy or stating whether or not those sales had to be included but affirming that the Brunson report did not include those two sales.

President Gandy moved that factual allegation 35 has been proven. Seconded by Commissioner O'Brien. Motion carried.

President Gandy read factual allegation 36 into the record.

Commissioner O'Brien stated that he sees the wording such as in this allegation to include any other relevant information and there was more data that could have and should have been provided and analyzed.

President Gandy stated that he agreed, especially condition matters and occupancy.

Commissioners Krueger stated that the information is necessary to achieve credible assignment results and it was not analyzed.

Commissioner Cronin stated that he agrees.

President Gandy moved that factual allegation 36 has been proven. Seconded by Commissioner Krueger. Motion carried.

President Gandy read factual allegation 37 into the record.

President Gandy stated that the sole vector that was relied upon is the percentage of the comparable transaction's taxable values relative to the HOA lien sales prices.

Commissioners Cronin, Krueger and O'Brien stated that they agree.

President Gandy moved that factual allegation 37 has been proven. Seconded by Commissioner O'Brien. Motion carried.

President Gandy read factual allegation 38 into the record.

Commissioner O'Brien stated that the analysis does not explain why the income approach was not used and it should have been developed.

Commissioners Cronin and Krueger stated that they agree.

President Gandy moved that factual allegation 38 has been proven. Seconded by Commissioner O'Brien. Motion carried.

President Gandy read factual allegation 39 into the record.

President Gandy stated that this factual allegation should be amended to say Respondent's work file and not report because the Craigslist ad was a part of the work file and that is what is intended in the allegation.

Commissioner O'Brien stated that he sees this as a semantic argument and that Mr. Brunson stated in his response that the Craigslist ad was provided in the work file.

President Gandy moved to amend factual allegation 39 to say work file in lieu of report. Seconded by Commissioner O'Brien. Motion carried.

President Gandy moved that amended factual allegation 39 has been proven. Seconded by Commissioner O'Brien. Motion carried.

President Gandy read factual allegation 40 into the record.

President Gandy stated that he is unclear of the level of the assistance that was provided and if the certification was necessary.

Commissioner O'Brien stated that whether Mr. Brunson had to do it or not, the wording of the allegation is true.

Commissioners Krueger and Cronin stated that they agree.

President Gandy moved that factual allegation 40 has been proven. Seconded by Commissioner O'Brien. Motion carried.

President Gandy read factual allegation 41 into the record.

President Gandy stated that the report did state that Mr. Slivinski provided professional appraisal assistance, but he did not see in the report where it stated the confirmation of the comparable sales data was deemed to be significant.

Commissioner O'Brien stated that he did not recall seeing that either and he would not consider that significant real property assistance.

Commissioners Krueger stated that he agrees.

President Gandy moved that factual allegation 41 has not been proven. Seconded by Commissioner O'Brien. Motion carried.

President Gandy read factual allegation 42 into the record.

Commissioner Krueger stated that Mr. Slivinski is mention but the report does not state the extent of his assistance that was provided.

President Gandy stated that he agrees with Commissioner Krueger.

Commissioner O'Brien stated that the respondent did it correctly, but that the extent of the assistance was not summarized and with the absence of the summary that would validate the allegation.

Commissioner Cronin stated that he agrees with Commissioner O'Brien.

President Gandy moved that factual allegation 42 has been proven. Seconded by Commissioner O'Brien. Motion carried.

Violations of Law

President Gandy read the first violation of law into the record.

President Gandy stated that he is not sure that the report rises to the level of credible and the income approach should have been considered.

Commissioner Krueger stated that he agrees and the lack of utilization of the income capitalization approach reduced the adequacy of information needed to develop credible assignment results and there was a data set put together, but there was no analysis done that would lead to a credible conclusion.

President O'Brien stated that the report identifies the problem to solve, and the scope of work was disclosed, but considering subset two in the violation, the report had too small of a data set or missed other anchoring factors that caused the scope of work to become limited where it could have impacted the credibility, but it really was not presented what an appraiser's peer would have done differently.

Commissioner Cronin stated that he agrees that the lack of the income approach affected the credibility.

President Gandy stated that he sees the scope of work as tailored with no context of market value, detrimental value, or discount to market.

Commissioner Krueger stated that he goes back to the data presented and part of the scope of work to develop credible assignment results was to determine the value of the property and within this data set it had the motivation of the buyers, but the motivation of the sellers was unclear.

Commissioner Cronin stated that he was questioning whether the reconciliation of the report brought everything together for the reader to understand how the value conclusion was gathered and presented.

Commissioner O'Brien stated that the work done was not enough to produce a credible assignment result.

President Gandy moved that the first violation of law has been proven. Seconded by Commissioner O'Brien. Motion carried.

President Gandy read the second violation of law into the record.

President Gandy stated that Mr. Brunson argued, and Dr. Bell alluded to that you do not need to conduct a detrimental condition analysis.

Commissioner O'Brien stated that this violation has not been proven and the testimony by the expert on detrimental conditions indicated that you do not need to do both values. Commissioner O'Brien stated that he does not think that the respondent used an incorrect value definition, and nothing was put forth of an alternative value definition that would have been more reasonable.

Commissioner Cronin stated that based on Dr. Bell's testimony, this violation has not been proven.

Commissioner Krueger stated that he agrees.

President Gandy moved that the second violation of law was not proven. Seconded by Commissioner Cronin. Motion carried.

President Gandy read the third violation of law into the record.

President Gandy stated that understand how the argument could be made if you are only doing a narrow framework it can appear to have advocacy

Commissioner Cronin stated that Mr. Brunson was not acting on an accommodation of personal interest and a range was presented and then the final opinion in the report was a reasonable amount.

Commissioner Krueger stated that other things could have been done but there was no testimony to prove that there was an accommodation of personal interest or bias.

Commissioner O'Brien stated that he agrees and that there was no testimony presented that showed that Mr. Brunson failed to perform the assignment with anything but impartially, objectivity and independence and without accommodation of personal interest.

President Gandy moved that the third violation of law has not been proven. Seconded by Commissioner Krueger. Motion carried.

President Gandy read the fourth violation of law into the record.

President Gandy stated that he understood the analysis even though it was light and did not look at some things because Mr. Brunson stated they were not necessary.

Commissioner O'Brien stated that looking at the specific USPAP Rule 1-1(a) cited, it states to correctly implore recognized methods and techniques that are necessary to produce a credible appraisal, but the 2014-2015 edition does have a comment that states the appraisal profession is constantly reviewing and revising appraisal methods and techniques and developing new methods and techniques to meet new circumstance, so there are certain situations where there are no recognized methods and techniques. Commissioner Krueger stated that the violation reads recognized value, but the impaired value is defined and does have a source.

Commissioner Cronin stated that based on the testimony of Dr. Bell, the impaired value definition used is acceptable given the circumstance and for this valuation there is no precedent.

President Gandy moved that the fourth violation of law has not been proven. Seconded by Commissioner O'Brien. Motion carried.

President Gandy read the fifth violation of law into the record.

Commissioner O'Brien stated that it has not been proven that the value definition was invalid.

Commissioners Krueger and Cronin stated that they agree.

President Gandy moved that the fifth violation of law has not been proven. Seconded by Commissioner O'Brien. Motion carried.

President Gandy read the sixth violation of law into the record.

President Gandy stated that with the impaired value measurement, consideration was not given to compulsion, intent, and investor.

Commissioner Krueger stated that he agrees with President Gandy and by the evidence and testimony given this violation has been proven.

Commissioner Cronin stated that this violation goes to factual allegation 33, 34, and 36 which were proven.

Commissioner O'Brien stated that there was no answer given if the auction price presents normal consideration of the property.

President Gandy moved that the sixth violation of law has been proven. Seconded by Commissioner Krueger. Motion carried.

President Gandy read the seventh violation of law into the record.

President Gandy stated that it is a tough standard when it states those that have expertise in HOA NRS Chapter 116 foreclosures when there is such a small number of people who do.

Commissioner O'Brien stated that it was not proven what other intended users were getting and how Mr. Brunson's report was different and neither side called on peers that had expertise.

Commissioner Cronin stated that there was no alternative given by any peers and this violation has not been proven.

Commissioner Krueger stated that he agrees.

President Gandy moved that the seventh violation of law has not been proven. Seconded by Commissioner O'Brien. Motion carried.

President Gandy read the eighth violation of law into the record.

President Gandy stated that highest and best use was stated, and it is contradictory but not sure what could be done to expand that under the conditions.

Commissioner O'Brien stated that his biggest concern is that if it is not what Mr. Brunson said, neither the State nor evidence has suggested what it should be.

Commissioners Krueger and Cronin stated that they agree with President Gandy and Commissioner O'Brien.

President Gandy moved that the eighth violation of law has not been proven. Seconded by Commissioner O'Brien. Motion carried.

President Gandy read the ninth violation of law into the record.

Commissioner O'Brien stated that it is correct that the sales comparison data was limited without considering rent, income approach, unimpaired versus impaired value, and there is more data that could have been considered and used for credible results, but that it is not limited to the unimpaired value. Commissioner O'Brien stated that the tools and methodologies used from a statistical standpoint are questionable, but it does not mean that Mr. Brunson needed to use the unimpaired value. Commissioner O'Brien stated that he sees this violation as truer than not but has trouble with the way that it is worded.

Commissioner Krueger stated that this violation has been proven in part and not proven in part.

Commissioner Cronin stated that based on Dr. Bell's testimony both the unimpaired and impaired values were not necessary, and the unproven methodologies were proven to be acceptable.

President Gandy moved that the ninth violation of law has not been proven. Seconded by Commissioner O'Brien. Motion carried.

President Gandy read the tenth violation of law into the record.

President Gandy stated that there was an interest in the delta value and because of the departure from the traditional value definitions, justification is going to be harder.

Commissioner O'Brien stated that Mr. Brunson did not explain why the income approach was not completed.

Commissioners Krueger and Cronin stated that they agree.

President Gandy moved that the tenth violation of law has been proven. Seconded by Commissioner Krueger. Motion carried.

President Gandy read the eleventh violation of law into the record.

Commissioner Krueger stated that he sees this violation has the same substance as the tenth violation.

Commissioner O'Brien stated that the tenth violation had a USPAP violation of only focusing on the income approach and the USPAP violation associated with this violation deals with reconciliation. Commissioner O'Brien stated that this violation has been proven. Commissioner O'Brien stated that USPAP does not say that you need to do the cost approach, income approach, or sales comparisons approach on all assignments but if you do not, you need to reconcile why you did not. Commissioner

O'Brien stated that it may seem to be a semantic argument, but the eleventh violation is specifically why the income approach was not done.

Commissioner Cronin stated that the factual allegations 20 and 38 are applicable to this violation and that they were proven.

Commissioner Krueger stated that he agrees.

President Gandy moved that the eleventh violation of law has been proven. Seconded by Commissioner O'Brien. Motion carried.

President Gandy read the twelfth violation of law into the record.

Commissioner O'Brien stated that Mr. Brunson's report has an acceptable value definition and the criteria.

Commissioners Cronin and Krueger stated that they agree.

President Gandy moved that the twelfth violation of law has not been proven. Seconded by Commissioner O'Brien. Motion carried.

President Gandy read the thirteenth violation of law into the record.

Commissioner O'Brien stated that he would argue that USPAP requires identification of significant real property appraisal assistance but not job assistance with appointment making and pulling public records data. Commissioner O'Brien stated that the concern is with the summarizing of the actual assistance.

President Gandy stated that a better explanation was needed of the assistance that Mr. Slivinski offered but it is uncertain if the assistance of the other people rose to the level of significant assistance or if it was clerical matters.

Commissioner Krueger stated that Mr. Brunson did identify one person as providing significant professional appraisal but failed to summarize the extent of real property appraisal assistance.

Commissioner Cronin stated that the structure of this violation of law nullifies the violation.

President Gandy moved that the thirteenth violation of law has not been proven. Seconded by Commissioner Cronin. Motion carried.

President Gandy read the fourteenth violation of law into the record.

Commissioner O'Brien stated that there is some over-lapping with this violation but as the violation is written it has been proven.

President Gandy and Commissioners Cronin and Krueger stated that they agree.

President Gandy moved that the fourteenth violation of law has been proven. Seconded by Commissioner O'Brien. Motion carried.

President Gandy read the fifteenth violation of law into the record.

Commissioner O'Brien stated that Mr. Brunson did state and summarize his highest and best use and that there was no evidence introduced to show why this was not correct.

Commissioner Krueger stated that the fifteenth violation has not been proven.

President Gandy and Commissioner Cronin stated that they agree.

President Gandy moved that the fifteenth violation of law has not been proven. Seconded by Commissioner Krueger. Motion carried.

Division's Recommendation's for Discipline

Jaye Lindsay presented:

- A fine in the amount of \$3,000 per violation
- Division's fees and costs of \$17,183.91

Commissioner O'Brien stated that there are three distinct issues involving violations one, six and then 10, 11 and 14 overlapping. Commissioner O'Brien stated that he would recommend \$3,000 for each violation with violations 10, 11, and 14 being considered as one.

Commissioner Krueger stated that the fees and costs are concrete, and that violations one and six potentially warrant a higher fine.

President Gandy stated that he agrees that violations 10, 11, and 14 could be fined as one violation due to the duplicitous nature.

Commissioner Cronin stated that due to the large amount of the fees and costs, he would recommend a fine of \$1,000 per violation.

President Gandy and Commissioner O'Brien stated that they agree.

Commissioner Krueger stated that he agrees to the \$1000 per violation plus fees and costs and that it should be paid within one year.

President Gandy moved that in the case of Michael L. Brunson case number 2018-1366 and AP19.008.S that a monetary fine be imposed of \$1,000 for each violation, for a total fine of \$5,000 plus the Division's fees and costs of \$17,183.91 for a total amount due of \$22,183.91 payable within one year. Seconded by Commissioner Krueger. Motion carried.

4) PUBLIC COMMENT

Janeen Isaacson, attorney for Michael Brunson, stated that the panel just approved \$17,183.91 in costs that no one has seen proof, a break-down or disclosure of those costs prior or during the hearing. Ms. Isaacson stated that those costs include two-thirds of this case that the panel threw out as the State not proving.

5) ADJOURNMENT

The meeting adjourned at 3:25 p.m.

Minutes Prepared by: Kelly Valadez
Kelly Valadez, Commission Coordinator