

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,

6   Petitioner,

7                   vs.

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

10   Respondent.

Case No. 2019-1269 AP20.015.S

**COMPLAINT AND NOTICE OF  
HEARING**

**FILED**

MAR 06 2023

NEVADA COMMISSION OF APPRAISERS

*M. J. O.*

12                   State of Nevada, Department of Business and Industry, Real Estate Division (“the  
13 Division”), by and through counsel, Attorney General AARON D. FORD and Senior  
14 Deputy Attorney General PHIL W. SU, hereby notifies FLOYD JOSEPH FREIBURGER  
15 (“Respondent”) of an administrative complaint and hearing which is to be held pursuant  
16 to Chapter 233B and Chapter 645C of the Nevada Revised Statutes (“NRS”) and Chapter  
17 645C of the Nevada Administrative Code (“NAC”). The purpose of the hearing is to  
18 consider the allegations stated below and to determine if the Respondent should be  
19 subject to a disciplinary penalty as set forth in NRS 645C and or NAC 645C, if the stated  
20 allegations are proven at the hearing by the evidence presented.

21   **JURISDICTION**

22                   The Respondent is a Certified Residential Appraiser licensed by the Division, and  
23 therefore, is subject to the Jurisdiction of the Division and the provisions of NRS and  
24 NAC Chapter 645C. By availing himself of the benefits and protections of the laws of the  
25 State of Nevada, the Respondent has submitted to the jurisdiction of the Division.

26   **PROCEDURAL HISTORY**

27                   1.       On or about November 19, 2019, the Division received a complaint/statement  
28

1 of fact from Susan Brager (“Complainant”), asserting that the Respondent completed a  
2 uniform residential appraisal report (“Appraisal Report”) of a residential property that  
3 came in at the same price as was paid in 2017. [NRED 0002]

4 2. The Division opened an investigation into this matter on November 29, 2019.  
5 [NRED 0270]

6 3. The Division commissioned a Standard 3 Review of the underlying appraisal  
7 performed by the Respondent’s intern, Traci Polak, under the supervision of Respondent.  
8 [NRED 0247]

9 4. The Respondent submitted a December 4, 2019, rebuttal letter to the  
10 Standard 3 Review, as well as his work file. [NRED 0139-0245]

11 5. Following the investigation and Standard 3 Review, the investigator  
12 recommended the case be heard by the Commissioners of Appraisers of Real Estate.  
13 [NRED 0270]

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

17 **FACTUAL ALLEGATIONS**

18 7. Since June 20, 2007, Respondent has held the designation of Certified  
19 Residential Appraiser, license no. A.0007386-CR. [NRED 0244]

20 8. Respondent was the Supervising Appraiser of Traci Polak, a registered  
21 intern with registration card A.0207532-INTR. [NRED 0245]

22 9. Traci Polak’s intern registration card A.0207532-INTR expired on July 31,  
23 2021. [NRED 0245]

24 10. The complaint/statement of fact received by the Division contained a copy of  
25 the Appraisal Report, as prepared by Intern Traci Polak under the supervision of  
26 Respondent. (“Appraisal Report”). [NRED 0002-0036]

27 11. On November 1, 2019, Polak prepared a Uniform Residential Appraisal  
28 Report of the two story, approximately 1887 sq. ft. residential property, built in 2017 and

1 located at 7704 Gallego Plains Dr., Las Vegas, Nevada 89113, APN 163-27-418-035  
2 (“Property”), by analyzing the nature, quality, value, or use of the property, and offered  
3 an opinion as to the nature, quality, value or use of the property for or with the  
4 expectation of compensation. [NRED 0003-0036]

5 12. The intended use of the appraisal performed by the Respondent was a  
6 “refinance transaction.” [NRED 0004]

7 13. The Appraisal Report contains a value conclusion for the Property of  
8 \$315,000.00, with the date of report identified as November 1, 2019; the appraisal report  
9 was signed by Traci Polak and the Respondent on November 6, 2019. [NRED 0004; NRED  
10 0014]

11 14. On November 5, 2019, Respondent signed off on a Comment Addendum that  
12 Traci Polak produced on November 4, 2019, which included further discussion in the form  
13 of a Summary of Sales Comparison Approach. [NRED 0158]

14 15. The Appraisal Report states, “Sales concessions that were less than 3% of  
15 the sales price are considered typical, and no adjustment was made.” [NRED 0158]

16 16. Only one comp out of the five comps used showed a sales concession and  
17 showed no adjustments. [NRED 0158]

18 17. The age of subject property at the time of the appraisal was two years old.  
19 [NRED 0154].

20 18. The age of comps # 1 and #2 were 18 years old, while comp #3 was 26 years  
21 old and comp #5 was 6 years old, yet those older comps received a \$7,500.00 condition  
22 adjustment without any discussion or data to support the adjustment. [NRED 0154-0156]

23 19. The Appraisal Report checked the box for highest and best use, but  
24 contained no analysis of the relevant legal, physical, or economic factors to support that  
25 conclusion. [NRED 0153]

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

1 was included in the Appraisal Report. [NRED 0158; 0154]

2 21. The Appraisal Report provided no reconciliation for the quality or quantity of  
3 sales data available and analyzed, did not explain why the income approach was not  
4 considered, and did not explain why the cost approach was not considered on a two-year-  
5 old home. [NRED 0154-0158]

6 22. Despite noting in the appraisal report addendum that “[t]he appraiser noted  
7 through paired sales analysis homes with rooftop deck sold for approximately \$40,000  
8 more than similar properties without a rooftop deck. As such, comparable 4 was adjusted  
9 \$40,000,” the Respondent’s work file contained no paired sales analysis. [NRED 0158]

10 23. On or about August 11, 2020, the Division mailed to the Respondent an NRS  
11 233B letter indicating that the Division’s investigation had uncovered sufficient evidence  
12 to recommend the filing of a formal complaint by the Division with the Nevada Appraisal  
13 Commission. [NRED 0284-0285]

14 24. Respondent emailed the investigator on August 13, 2020, with a response to  
15 the August 11, 2020, letter. [0286-0288]

## 16 VIOLATIONS OF LAW

17 The Respondent failed to prepare, or supervise the preparation of, the appraisal  
18 report for the Property in Compliance with the Standards of the Appraisal Foundation.  
19 These Standards are published in the Uniform Standards of Professional Appraisal  
20 Practice (“USPAP”) adopted by the Appraisal Standards Board of the Appraisal  
21 Foundation, as authorized by Congress, and adopted in Nevada by NAC 645C.400.

### 22 First Violation

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

### 26 Second Violation

27 The Respondent violated the USPAP RECORD KEEPING RULE, as codified  
28 in NAC 645C.405(1), by failing to keep and maintain true copies of all written reports,

1 documented on any type of media and all other data, information, and documentation  
2 necessary to support the appraiser's opinions and conclusions, and to show compliance  
3 with USPAP, or references to the location(s) of such other data, information, or  
4 documentation. The Respondent's actions constitute unprofessional conduct, pursuant to  
5 NRS 645C.470(2) and grounds for disciplinary action pursuant to NRS 645C.460(1)(a)  
6 and/or (b).

### 7 **Third Violation**

8 Respondent's appraisal report marked the box for highest and best use, but failed  
9 to contain analysis of the relevant legal, physical, and economic factors to support that  
10 conclusion, and therefore Respondent violated USPAP Standards Rule 1-3(b), as codified  
11 in NAC 645C.405(1). The Respondent's actions constitute unprofessional conduct  
12 pursuant to NRS 645C.470(3) and grounds for disciplinary action pursuant to NRS  
13 645C.460(1)(a) and/or (b).

### 14 **Fourth Violation**

15 The Respondent's appraisal report failed to include an explanation for the lack of  
16 an age adjustment for significantly older comps. As a result, the Respondent violated  
17 USPAP Standards Rule 1-4(a), as codified in NAC 645C.405(1). The Respondent's actions  
18 constitute professional incompetence pursuant to NRS 645C.470(3) and grounds for  
19 disciplinary action pursuant to NRS 645C.460(1)(a) and/or (b).

### 20 **Fifth Violation**

21 By failing to reconcile the quality and quantity of data available and analyzed  
22 within the approaches used and by failing to explain or justify the disregard of the income  
23 approach, the Respondent violated USPAP Standards Rule 1-6(a) and 1-6(b), as codified  
24 in NAC 645C.405(1). The Respondent's actions constitute professional incompetence  
25 pursuant to NRS 645C.470(3) and grounds for disciplinary action pursuant to NRS  
26 645C.460(1)(a) and/or (b).

### 27 **Sixth Violation**

28 The Respondent failed to provide an actual paired sales analysis, despite

1 mentioning a paired sales analysis as the basis for a \$40,000 adjustment of comp #4. The  
2 appraisal report also did not explain the basis for the \$7,500 condition adjustment or the  
3 lack of an age adjustment to comps #1, #2 and #3, and did not explain the lack of a  
4 concession adjustment for comp #3. Without the paired sales analysis or these  
5 explanations, the respondent's statements could be considered misleading and/or does not  
6 contain sufficient information to enable intended users of the appraisal to understand the  
7 report properly. As a result, the Respondent violated USPAP Standards Rule 2-1(a) and  
8 Rule 2-1(b), as codified in NAC 645C.405(1). The Respondent's actions constitute  
9 unprofessional conduct pursuant to NRS 645C.470(2) and grounds for disciplinary action  
10 pursuant to NRS 645C.460(1)(a) and/or (b).

#### 11 **Seventh Violation**

12 An appraisal report must, at a minimum, summarize the information analyzed, the  
13 method and techniques employed, and the reasoning that supports the analyses, opinions,  
14 and conclusions. Moreover, exclusion of the sales comparison approach, cost approach, or  
15 income approach must be explained.

16 The appraisal report does not explain the exclusion of the income approach or why  
17 the cost approach was not considered for a two-year-old home. As a result, the  
18 Respondent violated USPAP Standards Rule 2-2(a)(viii) as codified in NAC 645C.405(1).  
19 The Respondent's actions constitute unprofessional conduct pursuant to NRS 645C.470(2)  
20 and grounds for disciplinary action pursuant to NRS 645C.460(1)(a) and/or (b).

#### 21 **Eighth Violation**

22 The Respondent violated USPAP Standards Rule 2-2(a)(x) by failing to describe the  
23 support or rationale for the opinion of highest and best use. The Respondent's actions  
24 constitute unprofessional conduct pursuant to NRS 645C.470(2) and grounds for  
25 disciplinary action pursuant to NRS 645C.460(1)(a) and/or (b).

#### 26 **DISCIPLINE AUTHORIZED**

27 1. Pursuant to NRS 645C.460(2), if grounds for disciplinary action against an  
28 appraiser are found to exist for unprofessional conduct, the Commission may revoke or

1 suspend the certificate, place conditions upon the certificate, deny the renewal of his or  
2 her certificate, and/or impose a fine up to \$10,000.00 per violation. NRS 645C.480(1)(a) is  
3 identified as an additional act of unprofessional conduct.

4 2. Additionally, under NRS Chapter 622.400, the Commission is authorized to  
5 impose the costs of the proceeding upon the Respondent, including investigative costs and  
6 attorney's fees, if the Commission otherwise imposes discipline on the Respondent.

7 3. Therefore, the Division requests the Commission to impose such discipline as  
8 it determines is appropriate under the circumstances and to award the Division its costs  
9 and attorney's fees for this proceeding.

10 **PLEASE TAKE NOTICE** that a disciplinary hearing has been set to consider this  
11 Administrative Complaint against the above-named Respondent in accordance with  
12 Chapter 233B and Chapter 645C of the Nevada Revised Statutes and Chapter 645C of the  
13 Nevada Administrative Code.

14 **THE HEARING WILL TAKE PLACE** at the Commission meeting scheduled  
15 for April 4-6, 2023, beginning at approximately 9:00 a.m. each day, or until such  
16 time as the Commission concludes its business.

17 **The meeting will be located at the following locations:**

18 Nevada State Business Center	<u>with Video Conference to:</u>
19 Real Estate Division	Department of Business & Industry
20 3300 West Sahara Avenue	1818 E. College Parkway
4 <sup>th</sup> Floor, Tahoe Room	Suite 103
21 Las Vegas, Nevada 89102	Carson City, Nevada 89706

22 If you would like an email containing this information, before the hearing,  
23 please contact Maria Gallo, Commission Coordinator, at (702) 486-4074 or  
24 [mgallo@red.nv.gov](mailto:mgallo@red.nv.gov).

25 **STACKED CALENDAR:** Your hearing is one of several hearings that may  
26 be scheduled at the same time as part of a regular meeting of the Commission  
27 that is expected to take place on April 4-6, 2023. Thus, your hearing may be  
28 continued until later in the day or from day to day. It is your responsibility to

1 be present when your case is called. If you are not present when your case is  
2 called, a default may be entered against you, and the Commission may decide  
3 the case as if all allegations in the complaint were true. If you need to negotiate  
4 a more specific time for your hearing in advance, because of coordination with  
5 out of state witnesses or the like, please contact Maria Gallo, Commission  
6 Coordinator, at (702) 486-4074 or mgallo@red.nv.gov.

7 YOUR RIGHTS AT THE HEARING: Except as mentioned below, the hearing is an  
8 open meeting under Nevada's open meeting law and may be attended by the public. After  
9 the evidence and arguments, the Commission may conduct a closed meeting to discuss  
10 your alleged misconduct or professional competence. A verbatim record will be made by a  
11 certified court reporter. You are entitled to a copy of the transcript of the open and closed  
12 portions of the meeting, although you must pay for the transcription.

13 As the Respondent, you are specifically informed that you have the right to appear  
14 and be heard in your defense, either personally or through your counsel of choice. At the  
15 hearing, the Division has the burden of proving the allegations in the complaint and will  
16 call witnesses and present evidence against you. You have the right to respond and to  
17 present relevant evidence and argument on all issues involved. You have the right to call  
18 and examine witnesses, introduce exhibits, and cross-examine opposing witnesses on any  
19 matter relevant to the issues involved.

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1 You have the right to request that the Commission issue subpoenas to compel  
2 witnesses to testify and/or evidence to be offered on your behalf. In making this request,  
3 you may be required to demonstrate the relevance of the witnesses' testimony and/or  
4 evidence. Other important rights you have are listed in NRS Chapter 645C, NRS  
5 Chapter 233B, and NAC Chapter 645C.

6  
7 DATED the 2 day of March, 2023.

DATED the 2nd day of March, 2023.

8 NEVADA REAL ESTATE DIVISION

AARON D. FORD  
Attorney General

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