

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,
7 STATE OF NEVADA,

8
9 Petitioner,

10 vs.

11 HARRY H. SCHMALZ
12 (License No. A.0001745-CR),

13 Respondent.

Case No. 2019-991, AP20.008.S

COMPLAINT AND NOTICE OF
HEARING

FILED

MAR 03 2023

NEVADA COMMISSION OF APPRAISERS

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

23 **JURISDICTION**

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

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PROCEDURAL HISTORY

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2 1. The Division received a complaint alleging that the Respondent utilized
3 different forms of comparables than the subject in his manufactured home appraisal
4 report ("Appraisal Report"), specifically the Property, a manufactured home converted to
5 real property, was compared to unconverted manufactured homes which are different
6 forms of real estate and considered developed land and personal property. Such use of
7 improper comparables allegedly impacted buyers financing options, this, in addition to
8 alleged multiple inaccuracies represented in the report undermined the Property's
9 valuation. *NRED 000002 - 000031.*

10 2. The Division commissioned a Standard 3 Review of the underlying appraisal
11 performed by the Respondent. *NRED 000128 - 000157.*

12 3. Based on the result of that review, the Division determined that this matter
13 should be heard by the Nevada Commission of Appraisers of Real Estate ("Commission"),
14 now comes herewith.

FACTUAL ALLEGATIONS

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16 1. The Respondent is licensed by the Division as a Certified Residential
17 Appraiser, License No. A.0001745-CR.

18 2. The Respondent prepared an Appraisal Report for 6056 Casa Loma Avenue,
19 Las Vegas, Nevada 89156 ("Property"). *NRED 000039 - 000084.*

20 3. The Property is a manufactured home converted to real property. *NRED*
21 *000089.*

22 4. The Respondent's Appraisal Report made comparable sales #s 1, 2, 4, and 6
23 to non-converted manufactured homes which are considered developed land and the home
24 as personal property. *NRED 000041 and NRED 000046, NRED 000094 - 000105.*

25 5. The Respondent's Appraisal Report made inconsistent adjustments in the
26 sales grid for the non-converted manufactured home comparables (adjustment made for
27 comparable sale #1, but no adjustments for comparable sales #s 2, 4, and 6). *NRED*
28 *000041, and NRED 000046.*

1 6. The market data in the Respondent's work file demonstrated a premium for
2 converted manufactured homes over non-converted homes. *NRED 000087.*

3 7. The Respondent's Appraisal Report Cost Approach section represented land
4 sales were researched but the work file contained no data, information, or documentation
5 to support the opinion of site value. *NRED 000040.*

6 8. The Respondent's Appraisal Report's Sales Comparison section made
7 adjustments in the sales grid for age, gross living area, condition, conversion to real
8 estate, and carport. *NRED 000041, and NRED 000046.*

9 9. The Respondent's work file did not support the adjustments made in the
10 sales grid. *NRED 000041, NRED 000046, and NRED 000032 – 000126.*

11 10. The Respondent's Appraisal Report's Cost Approach section lacked
12 improvement costs to flooring, appliances, interior drywall, and tub enclosure, despite the
13 report's photos indicating such, and Respondent's work file showing supplemental costs to
14 account for all improvements. *NRED 000040, NRED 000054 – 000057, and NRED*
15 *000113.*

16 11. The Respondent's Appraisal Report and work file do not include data to
17 support the represented adjustments made or not made within the sales grid are derived
18 from the simple paired sales analysis. *NRED 000042, and NRED 000032 – 000126.*

19 12. The Respondent's Appraisal Report contains no summary of how the opinion
20 of site value or sales grid adjustments were made. *NRED 000041 – 000042, and NRED*
21 *000046.*

22 13. The Respondent's work file failed to include all written reports, as it was
23 missing a copy of the original appraisal report signed on August 16, 2019. *NRED 000010,*
24 *and NRED 000045, and NRED 000032 – 000126.*

25 14. The Respondent's Appraisal Report demonstrated a contract price of
26 \$149,000 and a contract date of August 1, 2019, but the report and work file contained no
27 analysis of the sales price or days on the market. *NRED 000039, and NRED 000032 –*
28 *000126.*

1 **Second Violation**

2 The USPAP RECORD KEEPING RULE requires that the work file must include
3 true copies of all written reports along with all other data, information, and
4 documentation necessary to support the appraiser's opinions and conclusions and to show
5 compliance with USPAP, or references to the location(s) of such other data, information,
6 and documentation.

7 The Respondent violated USPAP RECORD KEEPING RULE by failing to include
8 other data, information or documentation to support the adjustments to land value in the
9 Appraisal Report's Cost Approach.

10 The Respondent further violated USPAP RECORD KEEPING RULE by failing to
11 include support in the Appraisal Report or work file for how the adjustments in the sales
12 grid were derived.

13 The Respondent's actions constitute unprofessional conduct pursuant to NRS
14 645C.470(2), as determined by NAC 645C.405(1), (2) & (3), and grounds for disciplinary
15 action pursuant to NRS 645C.460(1)(a) & (b).

16 **Third Violation**

17 The USPAP COMPETENCY RULE requires an appraiser must: (1) be competent
18 to perform the assignment; (2) acquire the necessary competency to perform the
19 assignment; or (3) decline or withdraw from the assignment. The appraiser must
20 determine, prior to accepting an assignment, that he or she can perform the assignment
21 competently.

22 Respondent violated the USPAP COMPETENCY RULE by providing incomplete
23 Improvement Costs in the Cost Approach section of the Appraisal Report.

24 Respondent violated the USPAP COMPETENCY RULE by utilizing a majority of
25 comparables that were manufactured homes *not* converted to real property for the
26 Property which was a manufactured home converted to real property. (Emphasis added.)

27 Respondent further violated the USPAP COMPETENCY RULE by failing to
28 include data, information or documentation in the Appraisal Report or work file to

1 support land value in the Cost Approach section and for the adjustments made in the
2 sales grid.

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

6 **Fourth Violation**

7 The USPAP SCOPE OF WORK RULE requires an appraiser must properly
8 identify the problem to be solved in order to determine the appropriate scope of work. The
9 appraiser must be prepared to demonstrate that the scope of work is sufficient to produce
10 credible assignment results. The Scope of work includes but is not limited to: (1) the
11 extent to which the property is identified; (2) the extent to which tangible property is
12 inspected; (3) the type of extent of data researched; and (4) the type and extent of
13 analyses applied to arrive at opinions or conclusions. Credible assignment results require
14 support by relevant evidence and logic. The credibility of assignment results is always
15 measured in the context of intended use.

16 Respondent violated the USPAP SCOPE OF WORK RULE by failing to
17 demonstrate the type of extent of data researched when he did not use the same type of
18 real estate as the subject Property.

19 Respondent further violated the USPAP SCOPE OF WORK RULE by failing to
20 demonstrate the type and extent of analyses applied to arrive at opinions and/or
21 conclusions when the Improvement Costs were incomplete.

22 Respondent also violated the USPAP SCOPE OF WORK RULE by failing to
23 provide information in the work file or statement in the Appraisal Report explaining the
24 extent of analyses used to arrive at his opinions and/or conclusions.

25 The Respondent's actions constitute unprofessional conduct pursuant to NRS
26 645C.470(2), as determined by NAC 645C.405(1), (2) & (3), and grounds for disciplinary
27 action pursuant to NRS 645C.460(1)(a) & (b).

28 **Fifth Violation**

1 USPAP Standards Rule 1-1(a), (b) and (c) requires that in developing an appraisal,
2 an appraiser must (a) be aware of, understand, and correctly employ those recognized
3 methods and techniques that are necessary to produce a credible appraisal; (b) not
4 commit a substantial error of omission or commission that significantly affects an
5 appraisal; and (c) not render appraisal services in a careless or negligent manner, such as
6 by making a series of errors that, although individually might not significantly affect the
7 results of an appraisal, in the aggregate affects the credibility of those results,
8 respectively.

9 Respondent violated USPAP Standards Rule 1-1(a), by (1) providing incomplete
10 Improvement Costs in the Cost Approach section of the Appraisal Report, (2) utilizing
11 comparables that were manufactured homes not converted to real property when the
12 Property is a converted manufactured home, and/or (3) failing to include data,
13 information or documentation in the Appraisal Report or work file to support adjustments
14 made in the sales grid.

15 Respondent violated USPAP Standards Rule 1-1(b), by omitting applicable
16 comparable sales that significantly affected the appraisal.

17 Respondent violated USPAP Standards Rule 1-1(c), through a series of errors, that
18 in their aggregate affect the credibility of results, that demonstrate carelessness or
19 negligence: (1) the Property's listing history is incorrectly stated, (2) the Improvement
20 Costs in the Cost Approach section are incomplete, (3) the functional utility adjustment in
21 the sales grid was not applied consistently, and/or (4) the condition of the property section
22 under the Improvements Section stated required repairs however in the sales grid the
23 condition makes no mention of repair items.

24 The Respondent's actions constitute unprofessional conduct pursuant to NRS
25 645C.470(2), as determined by NAC 645C.405(1), (2) & (3), and grounds for disciplinary
26 action pursuant to NRS 645C.460(1)(a) & (b).

27 **Sixth Violation**

28 USPAP Standards Rule 1-2(h) which requires an appraiser to (h) determine the

1 scope of work necessary to produce credible assignment results in accordance with the
2 SCOPE OF WORK RULE.

3 Respondent violated Standards Rule 1-2(h) by failing to demonstrate
4 compliance with the USPAP SCOPE OF WORK RULE (3) the type of extent of data
5 researched when he did not use the same type of real estate as the subject Property.

6 Respondent violated Standards Rule 1-2(h) by failing to demonstrate compliance
7 with the USPAP SCOPE OF WORK RULE (4) the type and extent of analyses applied to
8 arrive at opinions or conclusions when the Improvement Costs were incomplete based
9 upon the Manufactured Housing Costs for Square Foot Adjustment and Lump Sum
10 Adjustments as indicated by the Multiple Listing Service photos for the Property.

11 Respondent violated Standards Rule 1-2(h) by failing to demonstrate compliance
12 with the USPAP SCOPE OF WORK RULE (4) by failing to provide information in the
13 work file or statement in the Appraisal Report explaining the extent of analyses used to
14 arrive at his opinions and/or conclusions.

15 The Respondent's actions constitute unprofessional conduct pursuant to NRS
16 645C.470(2), as determined by NAC 645C.405(1), (2) & (3), and grounds for disciplinary
17 action pursuant to NRS 645C.460(1)(a) & (b).

18 **Seventh Violation**

19 USPAP Standards Rule 1-3(a) requires that, when necessary for credible
20 assignment results in developing market value opinion, an appraiser (a) identify and
21 analyze the effect on use and value of existing land use regulations, reasonably probable
22 modifications of such land use regulations, economic supply and demand, the physical
23 adaptability of the real estate, and market area trends.

24 Respondent violated Standards Rule 1-3(a) by failing to conduct additional
25 research and/or expanding criteria range and instead provided a majority of market data
26 on different type of real estate than the Property.

27 The Respondent's actions constitute unprofessional conduct pursuant to NRS
28 645C.470(2), as determined by NAC 645C.405(1), (2) & (3), and grounds for disciplinary

1 action pursuant to NRS 645C.460(1)(a) & (b).

2 **Eighth Violation**

3 USPAP Standards Rule 1-4(a) states when a sales comparison approach is
4 necessary for credible assignment results, an appraiser must analyze such comparable
5 sales data as are available to indicate a value conclusion.

6 Respondent violated Standards Rule 1-4(a) by (1) using a majority of comparables
7 for unconverted manufactured homes when the Property is a converted manufactured
8 home, and/or (2) failing to include information in the work file or statement in the
9 Appraisal Report explaining the extent of analyses used to arrive at opinions and/or
10 conclusions.

11 The Respondent's actions constitute unprofessional conduct pursuant to NRS
12 645C.470(2), as determined by NAC 645C.405(1), (2) & (3), and grounds for disciplinary
13 action pursuant to NRS 645C.460(1)(a) & (b).

14 **Ninth Violation**

15 USPAP Standards Rule 1-5(a) & (b) requires that when the value opinion to be
16 developed is market value, an appraiser must: (a) analyze all agreements of sale, options,
17 or listings of the subject property current as of the effective date of the appraisal; and (b)
18 analyze all sales of the subject property that occurred within the three (3) years prior to
19 the effective date of the appraisal.

20 Respondent violated Standards Rule 1-5(a) by failing to analyze the sales price or
21 days on the market.

22 Respondent violated Standards Rule 1-5(b) by failing to analyze the Property's
23 prior sale and the great price difference from such with the contract price.

24 The Respondent's actions constitute unprofessional conduct pursuant to NRS
25 645C.470(2), as determined by NAC 645C.405(1), (2) & (3), and grounds for disciplinary
26 action pursuant to NRS 645C.460(1)(a) & (b).

27 **Tenth Violation**

28 USPAP Standards Rule 2-1(a) & (b) requires written appraisal report must, (a)

1 clearly and accurately set forth the appraisal in a manner that will not be misleading;
2 and (b) contain sufficient information to enable the intended users of the appraisal to
3 understand the report properly, respectively.

4 In violation of USPAP Standards Rule 2-1(a), Respondent provided no explanation
5 in the Appraisal Report or the work file regarding the determination of land value in the
6 Cost Approach data. Further, Respondent committed numerous omissions in determining
7 the site value when he utilized the cost guide and did not account for those supplemental
8 costs. Respondent failed to use the same type of real estate; most comparables
9 (Comparables #2 1, 2, 4 & 6) utilized were manufactured homes not converted to real
10 property which are different and not a direct comparison to the Property. Respondent
11 provided no information in the work file or statement in the Appraisal Report explaining
12 the extent of analyses used to arrive at opinions and/or conclusions.

13 In violation of USPAP Standards Rule 2-1(b), Respondent's Appraisal Report, Cost
14 Approach section, Summary of Cost Approach stated due to age the cost approach was not
15 a good indicator, but the cost approach results only differed from the concluded value by
16 \$100 without sufficient information for the intended user to understand this negligible
17 difference between the verbiage and results. Further, the comparables were chosen
18 incorrectly; the Respondent used different type of real estate compared to the Property.
19 The Respondent also failed to provide sufficient information regarding market derived
20 adjustments.

21 The Respondent's actions constitute unprofessional conduct pursuant to NRS
22 645C.470(2), as determined by NAC 645C.405(1), (2) & (3), and grounds for disciplinary
23 action pursuant to NRS 645C.460(1)(a) & (b).

24 **Eleventh Violation**

25 USPAP Standards Rule 2-2(a)(vii), & (viii), provides that each written real property
26 report must be prepared under one of the following options and prominently state which
27 option is used: (vii) summarize the scope of work used to develop the appraisal., (viii)
28 summarize the information analyzed, the appraisal methods and techniques employed,

1 and the reasoning that supports the analyses, opinions, and conclusions; exclusion of the
2 sales comparison approach, cost approach, or income approach must be explained.,
3 respectively.

4 Respondent violated USPAP Standards Rule 2-2(a)(vii), by failing to provide a
5 summary of how land value or adjustments in the Cost Approach section were
6 determined.

7 Respondent violated USPAP Standards Rule 2-2(a)(viii), by failing to include
8 information in the Appraisal Report or work file for the site value in the Cost Approach
9 section, and support for grid adjustments in the Sales Comparison Approach section.

10 The Respondent's actions constitute unprofessional conduct pursuant to NRS
11 645C.470(2), as determined by NAC 645C.405(1), (2) & (3), and grounds for disciplinary
12 action pursuant to NRS 645C.460(1)(a) & (b).

13 **DISCIPLINE AUTHORIZED**

14 1. Pursuant to NRS 645C.460(2), if grounds for disciplinary action against an
15 appraiser are found to exist for unprofessional conduct, the Commission may revoke or
16 suspend the certificate, place conditions upon the certificate, deny the renewal of his or
17 her certificate, and/or impose a fine up to \$10,000.00 per violation.

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

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

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

28 **THE HEARING WILL TAKE PLACE at the Commission meeting scheduled**

1 for April 4 – 6, 2023, beginning at approximately 9:00 a.m. each day, or until such
2 time as the Commission concludes its business.

3 The meeting will be located at the following locations:

4 Nevada State Business Center	with Video Conference to:
5 3300 West Sahara Avenue	Department of Business & Industry
6 4 th Floor, Nevada Room	1818 E. College Parkway Suite 103
Las Vegas, Nevada 89102	Carson City, Nevada 89706

7 If you would like an email containing this information, before the hearing,
8 please contact Maria Gallo, Commission Coordinator, at (702) 486-4074 or
9 mgallo@red.nv.gov.

10 **STACKED CALENDAR:** Your hearing is one of several hearings that may
11 be scheduled at the same time as part of a regular meeting of the Commission
12 that is expected to take place on April 4-6, 2023. Thus, your hearing may be
13 continued until later in the day or from day to day. It is your responsibility to
14 be present when your case is called. If you are not present when your case is
15 called, a default may be entered against you, and the Commission may decide
16 the case as if all allegations in the complaint were true. If you need to negotiate
17 a more specific time for your hearing in advance, because of coordination with
18 out of state witnesses or the like, please call Maria Gallo, Commission
19 Coordinator, at (702) 486-4074.

20 **YOUR RIGHTS AT THE HEARING:** Except as mentioned below, the hearing is an
21 open meeting under Nevada's open meeting Law (OML) and may be attended by the
22 public. After the evidence and arguments, the Commission may conduct a closed meeting
23 to discuss your alleged misconduct or professional competence. You are entitled to a copy
24 of the transcript of the open and closed portions of the meeting, although you must pay for
25 the transcription.

26 As the Respondent, you are specifically informed that you have the right to appear
27 and be heard in your defense, either personally or through your counsel of choice. At the
28 hearing, the Division has the burden of proving the allegations in the complaint and will

1 call witnesses and present evidence against you. You have the right to respond and to
2 present relevant evidence and argument on all issues involved. You have the right to call
3 and examine witnesses, introduce exhibits, and cross-examine opposing witnesses on any
4 matter relevant to the issues involved.

5 You have the right to request that the Commission issue subpoenas to compel
6 witnesses to testify and/or evidence to be offered on your behalf. In making this request,
7 you may be required to demonstrate the relevance of the witnesses' testimony and/or
8 evidence. Other important rights you have are listed in NRS Chapter 645C, NRS Chapter
9 233B, and NAC Chapter 645C.

10 DATED the 1 day of March, 2023.

DATED the 1st day of March, 2023.

11
12 NEVADA REAL ESTATE DIVISION

AARON D. FORD
Attorney General

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14
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