

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 Petitioner,

9 vs.

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

12 Respondent.

Case No. 2020-950, AP21.020.S

**COMPLAINT AND NOTICE OF
HEARING**

FILED

MAR 03 2023

NEVADA COMMISSION OF APPRAISERS

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

22 **JURISDICTION**

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

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1 **PROCEDURAL HISTORY**

2 1. The Division received a complaint alleging that the Respondent under-
3 valued the Property by using comparables that did not reflect the Property's style,
4 technology, and/or finishes. *NRED 000002 - 000004.*

5 2. The Division commissioned a Standard 3 Review of the underlying appraisal
6 performed by the Respondent. *NRED 000069 - 000086.*

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

10 **FACTUAL ALLEGATIONS**

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

13 2. The Respondent prepared an Appraisal Report for 5305 Secluded Brook
14 Court, Las Vegas, Nevada 89149 ("Property"). *NRED 000008 - 000040.*

15 3. The Property 's condition was superior in materials and upgrades. *NRED*
16 *000008, and NRED 000010.*

17 4. The Respondent's Appraisal Report and work file lacked support of the
18 neighborhood and comparable analysis and calculations for abstraction and extraction.
19 *NRED 000009, NRED 000014 - 000015.*

20 5. The Respondent's Appraisal Report stated "Adjustments derived from simple
21 paired sales analysis. Developed as a range, calculated as a percentage, and adjusted in
22 rounded dollar amounts." *NRED 000010.*

23 6. The Respondent's work file did not contain the calculations, notations, or any
24 other evidence that paired sales were used for adjustments. *NRED 000041 - NRED*
25 *000062.*

26 7. The Respondent's work file and Appraisal Report did not provide the
27 necessary information or documentation to support the adjustments he made for lot size,
28 location, age, gross living area, garage/carport, patio, fireplace, and pool. *NRED 000009,*

1 and NRED 000014 – 000015.

2 8. The Respondent's Appraisal Report mentioned highest and best use of the
3 Property, but the report and work file do not discuss, analyze, support or rationale for
4 that opinion. *NRED 000010*.

5 9. The Respondent's Appraisal Report stated, "Land sales researched from
6 county records and multiple listing service and derived through the extraction method."

7 10. The Respondent's work file did not contain any information or
8 documentation of the extraction method. *NRED 000041 – NRED 000062*.

9 11. The Respondent's Appraisal and Report and work file did not discuss the
10 quality and quantity of data used or analyzed. *NRED 000009*.

11 VIOLATIONS OF LAW

12 The Respondent failed to prepare the appraisal report for the Property in
13 Compliance with the Standards of the Appraisal Foundation and the law. The Standards
14 are published in the Uniform Standards of Professional Appraisal Practice ("USPAP")
15 adopted by the Appraisal Standards Board of the Appraisal Foundation, as authorized by
16 Congress, and adopted in Nevada by NAC 645C.400(1).

17 First Violation

18 The USPAP ETHICS RULE requires that an appraiser promote and preserve the
19 public trust inherent in appraisal practice by observing the highest standards of
20 professional ethics. An appraiser must comply with USPAP when obligated by law or
21 regulation, or by agreement with the client or intended users. In addition to these
22 requirements, an individual should comply any time that individual represents that he or
23 she is performing the service as an appraiser.

24 The Respondent violated the USPAP ETHICS RULE when he violated the
25 requirements of the RECORD KEEPING RULE by failing to include support in the work
26 file for neighborhood and comparable analysis, as well as calculations for abstraction and
27 extraction.

28 The Respondent's actions constitute unprofessional conduct pursuant to NRS

1 645C.470(2), as determined by NAC 645C.405(1), (2) & (3), and grounds for disciplinary
2 action pursuant to NRS 645C.460(1)(a) & (b).

3 **Second Violation**

4 The USPAP RECORD KEEPING RULE requires the work file include all other
5 data, information, and documentation necessary to support the appraiser's opinions and
6 conclusions and to show compliance with USPAP, or references to the location of such
7 other data, information, and documentation.

8 The Respondent violated USPAP RECORD KEEPING RULE by failing to include
9 evidence in the work file of market increases as noted in the Appraisal Report.

10 The Respondent further violated USPAP RECORD KEEPING RULE by failing to
11 discuss or analyzes the four tests for highest and best use in the Appraisal Report or work
12 file.

13 The Respondent also violated USPAP RECORD KEEPING RULE by failing to
14 provide evidence that the paired sales was ever developed.

15 Lastly, the Respondent violated USPAP RECORD KEEPING RULE by failing to
16 provide support for adjustments on the sales grid, including but not limited to: lot size,
17 location, age, gross living area, garage count, covered patio, fireplace, and pool.

18 The Respondent's actions constitute unprofessional conduct pursuant to NRS
19 645C.470(2), as determined by NAC 645C.405(1), (2) & (3), and grounds for disciplinary
20 action pursuant to NRS 645C.460(1)(a) & (b).

21 **Third Violation**

22 USPAP Standards Rule 1-3(b) requires that, when necessary for credible
23 assignment results in developing market value opinion, an appraiser must (b) develop an
24 opinion of the highest and best use of the real estate.

25 Respondent violated Standards Rule 1-3(b) by discussing highest and best use
26 minimally within the Appraisal Report and failing to conduct further discussion and/or
27 analysis in the report or work file.

28 The Respondent's actions constitute unprofessional conduct pursuant to NRS

1 645C.470(2), as determined by NAC 645C.405(1), (2) & (3), and grounds for disciplinary
2 action pursuant to NRS 645C.460(1)(a) & (b).

3 **Fourth Violation**

4 USPAP Standards Rule 1-4(b) requires when a cost approach is necessary for
5 credible assignment results, an appraiser must: (i) develop an opinion of site value by an
6 appropriate appraisal method or technique; (ii) analyze such comparable cost data as are
7 available to estimate the cost new of the improvements (if any); and (iii) analyze such
8 comparable data as are available to estimate the difference between the cost new and the
9 present worth of the improvements (depreciation).

10 The Respondent violated Standards Rule 1-4(b) by failing to develop an opinion of
11 site value by the extraction method as indicated in the Appraisal Report, yet no evidence
12 of extraction is found within the report or work file.

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 **Fifth Violation**

17 USPAP Standards Rule 1-6(a) requires reconciliation of the quality and quantity of
18 data available and analyzed within the approaches used.

19 Respondent violated Standards Rule 1-6(a) by failing to discuss quality and
20 quantity of data in the Reconciliation section of the Appraisal Report.

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 **Sixth Violation**

25 USPAP Standards Rule 2-2(a)(xii) requires when an opinion of highest and best use
26 was developed by the appraiser, state that opinion and summarize the support and
27 rationale for that opinion.

28 In violation of Standards Rule 2-2(a)(xii), Respondent failed to summarize the

1 support and rationale for his highest and best use opinion.

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

5 **DISCIPLINE AUTHORIZED**

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

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

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

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

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

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

24 Nevada State Business Center	with Video Conference to:
25 3300 West Sahara Avenue	Department of Business & Industry
26 4 th Floor, Nevada Room	1818 E. College Parkway Suite 103
Las Vegas, Nevada 89102	Carson City, Nevada 89706

27 If you would like an email containing this information, before the hearing,
28 please contact Maria Gallo, Commission Coordinator, at (702) 486-4074 or

1 mgallo@red.nv.gov.

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

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

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

25 You have the right to request that the Commission issue subpoenas to compel
26 witnesses to testify and/or evidence to be offered on your behalf. In making this request,
27 you may be required to demonstrate the relevance of the witnesses' testimony and/or
28 evidence. Other important rights you have are listed in NRS Chapter 645C, NRS Chapter

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233B, and NAC Chapter 645C.

DATED the 1 day of March, 2023.

NEVADA REAL ESTATE DIVISION



By: _____
SHARATH CHANDRA
Administrator
3300 W. Sahara Avenue, Suite 350
Las Vegas, Nevada 89102
(702) 486-4033

DATED the 1st day of March, 2023.

AARON D. FORD
Attorney General



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