

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 THOMAS L. WITHERBY
9 (License No. A.0001528-CR),

10 Respondent.

Case No. 2020-492, AP21.045.S

FILED

MAY 19 2023

NEVADA COMMISSION OF APPRAISERS

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12 **COMPLAINT AND NOTICE OF HEARING**

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 THOMAS L. WITHERBY
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 At all times relevant to this Complaint, the Respondent was a Certified Residential
24 Appraiser licensed by the Division, and therefore, is subject to the Jurisdiction of the
25 Division and the provisions of NRS and NAC Chapter 645C. By availing himself of the
26 benefits and protections of the laws of the State of Nevada, the Respondent has submitted
27 to the jurisdiction of the Division.

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1 **PROCEDURAL HISTORY**

2 1. The Division received a complaint alleging that the Respondent's Appraisal
3 Report contained inaccuracies and omissions that negatively impacted the value of the
4 Property. *0002 - 0056.*

5 2. The Division commissioned a Standard 3 Review of the underlying appraisal
6 performed by the Respondent. *0335 - 0354.*

7 3. The Respondent requested his case to be heard by the Appraisal Advisory
8 Review Committee ("AARC"). *0363.*

9 4. The Respondent did not appear at the May 24, 2022, AARC meeting,
10 therefore, the Division determined that this matter should be heard by the Nevada
11 Commission of Appraisers of Real Estate ("Commission"), now comes herewith. *0363.*

12 **FACTUAL ALLEGATIONS**

13 1. The Respondent's Nevada Certified Residential Appraiser, License No.
14 A.0001528-CR, has been in closed, expired status for over a year as of March 31, 2022.

15 2. The Respondent prepared an Appraisal Report for 3183 Mura Del Prato,
16 Henderson, Nevada 89044 ("Property"). *0057 - 0103.*

17 3. The Respondent's Appraisal Report represented use of linear regression
18 modules to support the adjustments made in the sales grid but admitted lack of
19 understanding of how to properly complete a linear regression. *0067.*

20 4. Further, the Respondent's Appraisal Report and workfile do not contain
21 statistical analysis to support the adjustments made in the sales grid. *0057 - 0329.*

22 5. The Complainant alleged the Respondent failed to support adjustments
23 made for upgraded features. *0002.*

24 6. The Respondent's Appraisal Report and workfile failed to support the
25 \$25,000 adjustment made to Comparable Sale #2's upgraded features. *0059.*

26 7. The Complainant alleged homes built by Toll Brothers are premium but the
27 Respondent failed to note such benefit for Comparables #s 1-3 built by Toll Brothers.
28 *0002.*

1 8. The Respondent’s Appraisal Report did not make adjustments for differing
2 builders when data indicates a resale townhome built by Toll Brothers commands a
3 higher premium. *0059, 0064, and 0343.*

4 9. The Complainant alleged the RESPONDENT misrepresented Comparables
5 #s 1, 3, 4, 5, and 6 as end-units and made no adjustments or comments about the impact
6 of this feature. *0002.*

7 10. The Property is an end-unit townhome but the Respondent’s Appraisal
8 Report contained only one end-unit comparable, Comparable #2, with no adjustments
9 made to the other non-end-unit comparables. *0059 and 0064.*

10 11. The Respondent’s Appraisal Report and workfile provided no evidence to
11 support the opinion that seller concessions do not affect pricing, even if under 3% of the
12 sales price. *0067, and 0057 – 0329.*

13 12. The Respondent’s Appraisal Report failed to report and analyze a prior sale
14 of the Property that occurred within the prior three years despite such information
15 publicly recorded. *0350.*

16 13. The Respondent’s Appraisal Report appraised for \$300,000 which was less
17 than what the Property sold for two years prior at \$310,000. *0350, and 0063.*

18 **VIOLATIONS OF LAW**

19 The Respondent failed to prepare the appraisal report for the Property in
20 Compliance with the Standards of the Appraisal Foundation and the law. The Standards
21 are published in the Uniform Standards of Professional Appraisal Practice (“USPAP”)
22 adopted by the Appraisal Standards Board of the Appraisal Foundation, as authorized by
23 Congress, and adopted in Nevada by NAC 645C.400(1).

24 **First Violation**

25 The USPAP RECORD KEEPING RULE requires an appraiser must prepare a
26 workfile for each appraisal or appraisal review assignment. A workfile must be in
27 existence prior to the issuance of any report or other communication of assignment
28 results. A written summary of an oral report must be added to the workfile within a

1 reasonable time after the issuance of the oral report. The workfile must include all other
2 data, information, and documentation necessary to support the appraiser's opinions and
3 conclusions and to show compliance with USPAP, or references to the location(s) of such
4 other data, information, and documentation.

5 The Respondent violated USPAP RECORD KEEPING RULE by failing to include
6 statistical analysis to support the adjustments made in the sales grid within the
7 Appraisal Report or workfile.

8 The Respondent's actions constitute unprofessional conduct pursuant to NRS
9 645C.470(2), as determined by NAC 645C.405(1) and grounds for disciplinary action
10 pursuant to NRS 645C.460(1)(a) and/or (b).

11 **Second Violation**

12 USPAP Standards Rule 1-1(c) requires that an appraiser in developing a real
13 property appraisal must (c) not render appraisal services in a careless or negligent
14 manner, such as by making a series of errors that, although individually might not
15 significantly affect the results of an appraisal, in the aggregate affects the credibility of
16 those results.

17 Respondent violated Standards Rule 1-1(c) by failing to contain documentation to
18 support the \$25,000 adjustment for Comparable #2's upgraded features.

19 Respondent further violated Standards Rule 1-1(c) by failing to adjust for differing
20 builders in the Appraisal Report when Comparables #s 1, 2, and 3 are Toll Brother built
21 units, and Comparables #s 4, 5, and 6 are KB Homes built units.

22 Respondent also violated Standards Rule 1-1(c) by failing to use more than just one
23 end-unit comparable, Comparable #2, and failing to make adjustments to the other non-
24 end-unit comparables, Comparables #s 1, 3, 4, 5, and 6.

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

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1 **Third Violation**

2 USPAP Standards Rule 1-2(c) required an appraiser, in developing a real property
3 appraisal, must (c) not render appraisal services in a careless or negligent manner, such
4 as by making a series of errors that, although individually might not significantly affect
5 the results of an appraisal, in the aggregate affects the credibility of those results.

6 The Respondent violated Standards Rule 1-2(c) by failing to provide support for the
7 opinion that seller concessions of 3% or less do not affect pricing and failing to update the
8 boiler plate Definition of Value language stating “the seller pays these costs in virtually
9 all sales transactions” which contradicted his opinion that there were seller concessions.

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

13 **Fourth Violation**

14 USPAP Standards Rule 1-5(b) provides that when the value opinion to be
15 developed is market value, an appraiser must, if such information is available to the
16 appraiser in the normal course of business: (b) analyze all sales of the subject property
17 that occurred within the three (3) years prior to the effective date of the appraisal.

18 Respondent violated Standards Rule 1-5(b) by failing to report or analyze the
19 publicly recorded prior sale of the Property which occurred June 21, 2018, for \$310,000,
20 less than two (2) years prior to the effective date 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) and grounds for disciplinary action
23 pursuant to NRS 645C.460(1)(a) and/or (b).

24 **Fifth Violation**

25 USPAP Standards Rule 2-1(a) requires each written or oral real property appraisal
26 report must: (a) clearly and accurately set forth the appraisal in a manner that will not be
27 misleading.

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1 In violation of Standards Rule 2-1(a), Respondent failed to change his Definition of
2 Value to match his opinion that there were seller concessions, even if under 3% of the sale
3 price.

4 Respondent also violated Standards Rule 2-1(a) when he made a series of errors
5 which in their aggregate can mislead the intended user, specifically, when Respondent
6 failed to support the \$25,000 adjustment for Comparable #2's upgraded features; failed to
7 adjust for differing builders; used only one end-unit comparable, Comparable #2, and
8 failed to make adjustments to the other non-end-unit comparables.

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

12 **Sixth Violation**

13 USPAP Standards Rule 2-2(a)(x) requires each written real property appraisal
14 report must be prepared under one of the following options and prominently state which
15 option is used: Appraisal Report or Restricted Appraisal Report. (a) The content of an
16 Appraisal Report must be appropriate for the intended use of the appraisal and, at a
17 minimum (x) provide sufficient information to indicate that the appraiser complied with
18 the requirements of STANDARD 1 by: (1) summarizing the appraisal methods and
19 techniques employed; (2) stating the reasons for excluding the sales comparison, cost, or
20 income approach(es) if any have not been developed; (3) summarizing the results of
21 analyzing the subject sales, agreements of sale, options, and listings in accordance with
22 Standards Rule 1-5; [Comment: If such information is unobtainable, a statement on the
23 efforts undertaken by the appraiser to obtain the information is required. If such
24 information is irrelevant, a statement acknowledging the existence of the information and
25 citing its lack of relevance is required.]; (4) stating the value opinion(s) and conclusion(s);
26 and (5) summarizing the information analyzed and the reasoning that supports the
27 analyses, opinions, and conclusions, including reconciliation of the data and approaches.

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1 Respondent violated Standards Rule 2-2(a)(x) by failing to analyze the previous
2 sale in the Appraisal Report.

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

6 **DISCIPLINE AUTHORIZED**

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

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

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

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

21 **THE HEARING WILL TAKE PLACE** at the Commission meeting scheduled
22 for July 18- 20, 2023, beginning at approximately 9:00 a.m. each day, or until
23 such time as the Commission concludes its business. The Commission meeting
24 will be held at the Nevada State Business Center, 3300 W. Sahara Avenue,
25 Nevada Room 4th Floor, Las Vegas, Nevada 89102, with video conference to:
26 Department of Business & Industry 1818 E. College Parkway Suite 103, Carson
27 City, Nevada 89076.

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1 **STACKED CALENDAR:** Your hearing is one of several hearings that may
2 be scheduled at the same time as part of a regular meeting of the Commission
3 that is expected to take place on July 18-20, 2023. Thus, your hearing may be
4 continued until later in the day or from day to day. It is your responsibility to
5 be present when your case is called. If you are not present when your case is
6 called, a default may be entered against you, and the Commission may decide
7 the case as if all allegations in the complaint were true. If you need to negotiate
8 a more specific time for your hearing in advance, because of coordination with
9 out-of-state witnesses or the like, please call Maria Gallo, Commission
10 Coordinator, at (702) 486-4074.

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

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

24 You have the right to request that the Commission issue subpoenas to compel
25 witnesses to testify and/or evidence to be offered on your behalf. In making this request,
26 you may be required to demonstrate the relevance of the witnesses' testimony and/or

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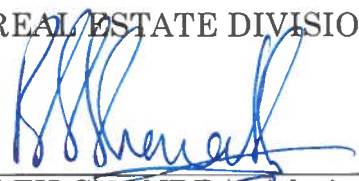
1 evidence. Other important rights you have are listed in NRS Chapter 645C, NRS
2 Chapter 233B, and NAC Chapter 645C.

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4 DATED the 18 day of May, 2023.

DATED the 18th day of May, 2023.

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6 NEVADA REAL ESTATE DIVISION

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