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NEVADA COMMISSION OF APPRAISERS

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6 Attorneys for Thomas L. Witherby

7 STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY REAL  
 8 ESTATE DIVISION - APPRAISERS

9 STATE OF NEVADA

10 SHARATH CHANDRA, Administrator,  
 11 REAL ESTATE DIVISION,  
 12 DEPARTMENT OF BUSINESS AND  
 INDUSTRY, STATE OF NEVADA,

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

13 Petitioner,

**MOTION TO RECONSIDER  
REVOCATION ORDER**

14 vs.

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

16 Respondent.

17  
 18  
 19 Thomas Witherby ("Mr. Witherby"), by and through his attorneys  
 20 Lesley Miller and Ellsie Lucero of the law firm Kaempfer Crowell, moves for  
 21 reconsideration of the revocation of his expired Nevada appraiser's license and the  
 22 \$63,897.22 fine imposed in the Commission's October 10, 2023 Findings of Fact,  
 23 Conclusions of Law and Order.

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**POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Mr. Witherby moves for reconsideration of the Commission’s October 10, 2023 Order to ask the Commission to reconsider the revocation of his expired appraiser’s license and \$63,897.22 fine. Mr. Witherby does not dispute the Commission’s authority to issue an order upon default against him under NAC 645C.500(13). Mr. Witherby simply asks for reconsideration of the severity of the disciplinary action imposed pursuant to the Commission’s discretion under NRS 645C.460(2).

**II. FACTUAL BACKGROUND**

**A. The Underlying Complaint.**

The Division filed a complaint against Mr. Witherby on May 19, 2023 for case no. 2020-492, AP21.045.S alleging violations of his duties as an appraiser under NRS 645C. *See* Ex. 1, Complaint. The complaint alleges “[t]he Respondent’s Appraisal Report appraised for \$300,000 which was less than the Property sold for two years prior at \$310,000.” *Id.* at ¶ 13. Absent from the complaint is any allegation of harm as a result of the violations. *See generally id.* The appraisal report confirms the contract for the sale of the property was dated March 20, 2020 for a sale price of \$300,000. Ex. 2, Appraisal Report at 1.(NRED ROA 018-24). Mr. Witherby’s appraisal of the property was for \$300,000 on March 31, 2020. *Id.* at 2. According to the appraisal report, “the intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.” *Id.* at 4. Therefore, the appraisal report did not cause any harm to any party to the sale of the property.

1           **B.     The Administrative Proceeding**

2           The complaint was set to be heard by the Commission at its meeting on  
3 July 18–20, 2023. In response to the Complaint, on May 30, 2023, Mr. Witherby  
4 represented to the Division that he had turned in his license in May 2021 and did not  
5 intend to reactivate it in Nevada. A few days prior, the Division had presented  
6 confidential settlement terms to Mr. Witherby which he rejected and contested the  
7 case against him.

8           As a result of the contested case proceeding, Mr. Witherby notified  
9 OREP, his errors and omissions insurance, of the pending case. On July 12, 2023,  
10 the Division subsequently sent Mr. Witherby the final agenda for the meeting. On  
11 July 13, 2023, Craig M. Capilla, national claims counsel for OREP insureds  
12 requested a continuance on Mr. Witherby’s behalf because he was in the process of  
13 vetting the claims and assigning local counsel to represent him. The Division agreed  
14 to the continuance because it was the first request to continue.

15           On August 30, 2023, the Division sent a notice to Mr. Witherby for the  
16 October Commission meeting. Unfortunately for Mr. Witherby, about a week before  
17 the October hearing he still had not heard from Mr. Capilla about local counsel for  
18 the hearing. Ex. 3, Witherby Decl. at ¶ 12. When Mr. Witherby followed up, Mr.  
19 Capilla responded that he was busy and forgot but that an attorney would call Mr.  
20 Witherby to help him. *Id.* at ¶ 13. The attorney Mr. Witherby spoke to advised that  
21 she could not prepare his case in one week and stated the only thing he could do was  
22 travel to Las Vegas, but Mr. Witherby could not attend in person due to the cost and  
23 his father’s health at the time. *Id.* at ¶¶ 14–15. The attorney also strongly advised  
24

1 against appearing at the hearing remotely by calling in. *Id.* at ¶ 16. Based on this  
2 advice, Mr. Witherby did not appear remotely at the October 3, 2023 hearing.

3 **C. The Commission’s October 10, 2023 Order**

4 The Commission entered a default against Mr. Witherby for his failure  
5 to appear at the October 3, 2023 hearing. In its October 10, 2023 written Order, the  
6 Commission revoked Mr. Witherby’s appraiser license and imposed the maximum  
7 fine (\$10,000) for each alleged violation in addition to costs for a total fine of  
8 \$63,897.22. Ex. 4, October 10, 2023 Order. At the time of the October 3, 2023  
9 hearing, Mr. Witherby’s license had already been expired for over a year meaning  
10 he could not have reinstated it. *See* Ex. 5, Transcript at WIT00020:16–22.

11 **III. ARGUMENT**

12 **A. The Commission Should Reconsider the Revocation of Mr.**  
13 **Witherby’s Expired Appraiser’s License and the \$63,897.22 Fine**  
14 **In Its’ October 10, 2023 Order.**

15 A party may move for reconsideration of an agency’s decision under  
16 NRS 233B. 130(4). NRS 233B.130(4) provides that a petition for rehearing or  
17 reconsideration must be filed within 15 days after the date of service of the final  
18 decision. An order granting or denying the petition must be served on all parties at  
19 least 5 days before the expiration of the time for filing the petition for judicial review.  
20 If the petition is granted, the subsequent order shall be deemed the final order for the  
21 purpose of judicial review.

22 Mr. Witherby asks that the Commission consider this untimely request  
23 for reconsideration of the severity of the disciplinary action imposed in the  
24

1 October 10, 2023 Order in light of the significant hardship Mr. Witherby has  
2 suffered as a result of the Order. The harm is described below in section 2.

3 **1. The Commission has discretion to impose a less severe punishment.**

4 Under NRS 645C.460(2), if the grounds for disciplinary action against  
5 an appraiser or intern exist, the Commission *may do one or more of the following*:

- 6 (a) Revoke or suspend the appraiser's or intern's certificate, license or  
7 registration card.  
8 (b) Place conditions upon his or her certificate, license or registration  
9 card, or upon the reissuance of a certificate, license or registration  
10 card revoked pursuant to this section.  
11 (c) Deny the renewal of his or her certificate, license or registration  
12 card.  
13 (d) Impose a fine of not more than \$10,000 for each violation.

14 *See* NRS 645C.460(2) (emphasis added).

15 Here, Mr. Witherby asks for reconsideration of the Commission's  
16 imposition of a \$63,897.22 fine and revocation of his already expired appraiser's  
17 license based on the Commission's discretion to impose a less severe punishment in  
18 light of the lack of harm to the public as a result of the alleged violations in the  
19 Division's complaint and the significant harm Mr. Witherby has already suffered.

20 **2. Mr. Witherby has suffered significant harm as a result of the  
21 Commission's October 10, 2023 Order.**

22 Mr. Witherby has suffered significant harm as a result of the  
23 Revocation Order based on the significant impacts it has had on his ability to make  
24 a living. He cannot be hired as a real estate appraiser in Florida, where he resides,  
nor can he pursue his livelihood in any of the 50 United States. The revocation of  
his already expired Nevada expired license is depriving him of his livelihood and  
ability to make a living. The Nevada revocation prevents him from being hired as

1 an appraiser because the revocation has been recorded in the national database  
2 ASC.gov, which every lender checks prior to hiring an appraiser. Given this record,  
3 Mr. Witherby is not being hired as an appraiser. Additionally, Mr. Witherby has  
4 already been denied the ability to become an insurance adjuster in Florida due to the  
5 Nevada revocation. Ex. 6, Notice of Denial.

6           Mr. Witherby will imminently suffer more harm because the Florida  
7 Real Estate Appraisal Board will soon revoke his Florida license based on the  
8 Nevada Revocation Order. *See* Ex. 7, Florida Admin. Complaint. In addition to all  
9 of this, the Division is requiring a \$63,897.22 fine. If Mr. Witherby is forced to pay  
10 this large fine, he will suffer significant financial harm as he cannot afford the fine  
11 and will be sent to collections. This will devastate his credit while he is struggling  
12 financially without the ability to make a living as an appraiser or insurance adjuster.  
13 Therefore, Mr. Witherby has suffered significant harm and will imminently suffer  
14 further harm as result of the severity of the punishment in the Commission's  
15 October 10, 2023 Order.

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1 **IV. CONCLUSION**

2 For the reasons set forth above, the Commission should reconsider the  
3 revocation of Mr. Witherby's expired Nevada appraiser's license and the \$63,897.22  
4 fine in the October 10, 2023 Order. Mr. Witherby respectfully requests that the  
5 Commission remove the revocation from his record and issue a lesser fine that Mr.  
6 Witherby can pay while he attempts to get back on his feet financially. In the least,  
7 Mr. Witherby requests that a payment plan be arranged.

8 DATED April 9, 2024

9 KAEMPFER CROWELL

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Elva Castaneda, No. 15717  
1980 Festival Plaza Drive, Suite 650  
Las Vegas, Nevada 89135

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Attorneys for Thomas L. Witherby

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**CERTIFICATE OF SERVICE**

I served the attached **MOTION TO RECONSIDER REVOCATION ORDER** by electronic mail and by placing a true copy of it in a sealed envelope with postage prepaid in the U.S. Mail addressed to:

CHARVEZ FOGER, Deputy  
Administrator  
Deputy Attorney General  
3300 West Sahara Avenue, Suite 350  
Las Vegas, NV 89102  
[cfoger@red.nv.gov](mailto:cfoger@red.nv.gov)

CHRISTAL P. KEEGAN, ESQ.  
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Nevada Bar No. 12725  
5420 Kietzke Lane, #202  
Reno, Nevada 89511  
(775) 687-2141  
[ckeeagan@ag.nv.gov](mailto:ckeeagan@ag.nv.gov)  
Attorney for Real Estate Division

DATED April 9, 2024

*s/Kimberly Rupe*  
Kimberly Rupe  
An employee of Kaempfer Crowell



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**EXHIBIT INDEX**

- Exhibit 1 Complaint, dated May 19, 2023
- Exhibit 2 Appraisal Report
- Exhibit 3 Declaration of Thomas Witherby
- Exhibit 4 Revocation Order, dated October 10, 2023
- Exhibit 5 Transcript - APPR CARE Commission Meeting on October 3, 2023
- Exhibit 6 Notice of Denial from State of Florida, dated November 19, 2023
- Exhibit 7 Administrative Complaint by State of Florida, dated April 4, 2024

# EXHIBIT 1

## Complaint

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,

7                                           Petitioner,

8 vs.

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

11                                           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 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.

28 ///



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 4<sup>th</sup> 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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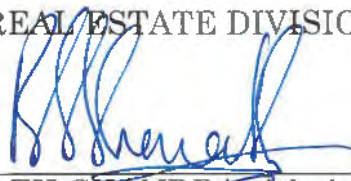
1 evidence. Other important rights you have are listed in NRS Chapter 645C, NRS  
2 Chapter 233B, and NAC Chapter 645C.

3  
4 DATED the 18 day of May, 2023.

DATED the 18<sup>th</sup> day of May, 2023.

5  
6 NEVADA REAL ESTATE DIVISION

AARON D. FORD  
Attorney General

7  
8 By:   
9 SHARATH CHANDRA, Administrator  
3300 W. Sahara Avenue, Suite 350  
10 Las Vegas, Nevada 89102  
Telephone: (702) 486-4033

By:   
11 CHRISTAL PARK KEEGAN, ESQ.  
12 Deputy Attorney General  
13 Bar No. 12725  
14 5420 Kietzke Lane #202  
15 Reno, Nevada 89511  
16 Telephone: (775) 687-2141  
17 Email: [ckeegan@ag.nv.gov](mailto:ckeegan@ag.nv.gov)  
18 *Attorney for Real Estate Division*

# EXHIBIT 2

## Appraisal Report

Appraisal Report

Uniform Residential Appraisal Report

20-284  
File # 5722857

The purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property.

Property Address: 3183 Mura Del Prato Ave, City: Henderson, State: NV, Zip Code: 89044  
 Borrower: Madeline Elizabeth Carlson, Owner of Public Record: Marc & Lucy Gelormini, County: Clark  
 Legal Description: Lot 117, Block 20, South Edge Inspirada Village 1 Pod 1 Phase 1, Plat Book 134, Page 7  
 Assessor's Parcel #: 191-11-812-117, Tax Year: 2020, R.E. Taxes \$: 2,471  
 Neighborhood Name: Inspirada, Map Reference: Metro 95-D6, Census Tract: 0057.12  
 Occupant: Owner, Tenant,  Vacant, Special Assessments \$: 4,210,  PUD, HOA \$: 175 per year,  per month  
 Property Rights Appraised:  Fee Simple, Leasehold, Other (describe):  
 Assignment Type:  Purchase Transaction, Refinance Transaction, Other (describe):  
 Lender/Client: Academy Mortgage Corporation, Address: 339 W 13490 S, Draper, UT 84020  
 Is the subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of this appraisal?  Yes, No  
 Report data source(s) used, offering price(s), and date(s): DOM 164; The subject is listed through the Greater Las Vegas Association of Realtors Multiple Listing Service (GLVARMLS) #2140945 as a contingent typical market sale at a list price of \$315,000. Original list date 10/04/2019.  
 I  did not analyze the contract for sale for the subject purchase transaction. Explain the results of the analysis of the contract for sale or why the analysis was not performed. Arms length sale; The subject is under contract and appears to be in line with the market as compared to similar properties in the subject market area. No abnormal conditions or concessions exist. Please refer to the attached addendum for more details.  
 Contract Price \$: 300,000, Date of Contract: 03/21/2020, Is the property seller the owner of public record?  Yes, No Data Source(s): Clark County Record  
 Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? Yes  No  
 If Yes, report the total dollar amount and describe the items to be paid. \$0.;

Note: Race and the racial composition of the neighborhood are not appraisal factors.

| Neighborhood Characteristics                                                                               | One-Unit Housing Trends                                                                                                                                      |                                                                                                         |               | One-Unit Housing |              | Present Land Use % |  |
|------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|---------------|------------------|--------------|--------------------|--|
|                                                                                                            | Location                                                                                                                                                     | Property Values                                                                                         | Demand/Supply | PRICE            | AGE          | One-Unit           |  |
| Urban <input checked="" type="checkbox"/> Suburban <input checked="" type="checkbox"/> Rural               | Increasing <input checked="" type="checkbox"/> Stable <input checked="" type="checkbox"/> Declining                                                          | Shortage <input checked="" type="checkbox"/> In Balance <input checked="" type="checkbox"/> Over Supply | \$ (DM)       | (yrs)            | 2-4 Unit     | 5%                 |  |
| Built-Up Over 75% <input checked="" type="checkbox"/> 25-75% <input checked="" type="checkbox"/> Under 25% | Marketing Time <input checked="" type="checkbox"/> Under 3 mths <input checked="" type="checkbox"/> 3-6 mths <input checked="" type="checkbox"/> Over 6 mths | 250                                                                                                     | Low           | 0                | Multi-Family | 5%                 |  |
| Growth Rapid <input checked="" type="checkbox"/> Stable <input checked="" type="checkbox"/> Slow           | Neighborhood Boundaries: North by St Rose Parkway, South by The Black Mountains, East by Eastern Avenue, and to the by West by The I-15 Freeway.             | 6,000                                                                                                   | High          | 35               | Commercial   | 15%                |  |
| Neighborhood Description: See attached addendum for neighborhood description.                              |                                                                                                                                                              | 410                                                                                                     | Pred.         | 15               | Other        | 25%                |  |

Present Land Use other 25% = vacant/parks  
 Market Conditions (including support for the above conclusions): See attached addendum for market analysis. Typical marketing times are between 30 to 90 days with a typical list to sell ratio of approximately 3-7%. Prevalent financing is the standard FHA, VA and Conventional mortgages, with some sellers taking back vendor liens.

Dimensions: 24 x 74.47, Area: 1787 sq ft, Shape: Rectangular/see plat, View: N, Res;  
 Specific Zoning Classification: P-C, Zoning Description: Planned Community  
 Zoning Compliance:  Legal,  Legal Nonconforming (Grandfathered Use), No Zoning,  Illegal (describe):  
 Is the highest and best use of subject property as improved (or as proposed per plans and specifications) the present use?  Yes, No, If No, describe:

Utilities: Public, Other (describe):  
 Electricity:  Water:  Off-site Improvements - Type: Street Asphalt, Public, Private  
 Gas:  Sanitary Sewer:  Alley Asphalt,   
 FEMA Special Flood Hazard Area: Yes  No, FEMA Flood Zone: X, FEMA Map #: 32003C2910F, FEMA Map Date: 11/16/2011  
 Are the utilities and off-site improvements typical for the market area?  Yes, No, If No, describe:  
 Are there any adverse site conditions or external factors (easements, encroachments, environmental conditions, land uses, etc.)? Yes  No, If Yes, describe:  
 No apparent adverse easements, encroachments, or other conditions noted at time of inspection. The site has average ingress/egress and parking. No visible negative factors were observed.

| General Description                                                                                                                                                                                                                                                                                                                                      | Foundation                                                                                                                                                                                                                                                                 | Exterior Description                                                                                                                                                                                                           | materials/condition                                                                                                                                                                                                                                                                                                                                                                                       | Interior | materials/condition |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|---------------------|
| Units: <input checked="" type="checkbox"/> One, <input checked="" type="checkbox"/> One w/ll Accessory Unit<br># of Stories: 2<br>Type: Det. <input checked="" type="checkbox"/> Att., S-Det./End Unit<br><input checked="" type="checkbox"/> Existing, Proposed, Under Const.<br>Design (Style): Townhome<br>Year Built: 2011<br>Effective Age (Yrs): 9 | <input checked="" type="checkbox"/> Concrete Slab, <input checked="" type="checkbox"/> Craw Space<br>Full Basement, Partial Basement<br>Basement Area: 0 sq.ft.<br>Basement Finish: 0 %<br>Outside Entry/Exit: Sump Pump<br>Evidence of: Infestation, Settlement, Dampness | Foundation Walls: Concrete/average<br>Exterior Walls: Frame/stucco/good<br>Roof Surface: Tile/good<br>Gutters & Downspouts: Partial/good<br>Window Type: Insulated/good<br>Storm Sash/Insulated: None<br>Screens: Screens/good | Floors: Carpet/tile/good<br>Walls: Drywall/good<br>Trim/Finish: Wood/paint/good<br>Bath Floor: Tile/good<br>Bath Wainscot: Fiberglass/good<br>Car Storage: None<br><input checked="" type="checkbox"/> Driveway # of Cars: 2<br>Driveway Surface: Concrete<br><input checked="" type="checkbox"/> Garage # of Cars: 2<br>Carport # of Cars: 0<br>Att., Det., <input checked="" type="checkbox"/> Built-in |          |                     |
| Attic: None<br>Drop Stair: Stairs<br>Floor: <input checked="" type="checkbox"/> South, Heated<br>Finished: Heated                                                                                                                                                                                                                                        | Heating: <input checked="" type="checkbox"/> FWA, <input checked="" type="checkbox"/> HWBB, <input checked="" type="checkbox"/> Radiant<br>Other: Fuel Gas<br>Cooling: <input checked="" type="checkbox"/> Central Air Conditioning, Individual<br>Other: Other            | Amenities: Woodstove(s) # 0<br>Fireplace(s) # 0, Fence: None<br>Patio/Deck: None, <input checked="" type="checkbox"/> Porch, Frnt Covd<br>Pool: None, Other: None                                                              |                                                                                                                                                                                                                                                                                                                                                                                                           |          |                     |

Appliances: Refrigerator  Range/Oven  Dishwasher  Disposal  Microwave  Washer/Dryer  Other (describe):  
 Finished area above grade contains: 7 Rooms, 3 Bedrooms, 2.1 Bath(s), 1,813 Square Feet of Gross Living Area Above Grade  
 Additional features (special energy efficient items, etc.): Energy efficient items include windows, appliances and mechanical systems.  
 Describe the condition of the property (including needed repairs, deterioration, renovations, remodeling, etc.): C3; No updates in the prior 15 years. The subject is in good condition with no repairs needed. The subject's quality of construction is typical for the development.  
 Are there any physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property? Yes  No, If Yes, describe:  
 Does the property generally conform to the neighborhood (functional utility, style, condition, use, construction, etc.)?  Yes, No, If No, describe:



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|           |    |                                                                                                          |         |       |         |
|-----------|----|----------------------------------------------------------------------------------------------------------|---------|-------|---------|
| There are | 16 | comparable properties currently offered for sale in the subject neighborhood ranging in price from \$    | 289,525 | to \$ | 349,900 |
| There are | 58 | comparable sales in the subject neighborhood within the past twelve months ranging in sale price from \$ | 270,000 | to \$ | 375,000 |

| FEATURE                               | SUBJECT                                        | COMPARABLE SALE #1                            | COMPARABLE SALE #2                            | COMPARABLE SALE #3                            |
|---------------------------------------|------------------------------------------------|-----------------------------------------------|-----------------------------------------------|-----------------------------------------------|
| Address                               | 3183 Mura Del Prato Ave<br>Henderson, NV 89044 | 1953 Via Firenze<br>Henderson, NV 89044       | 1961 Via Firenze<br>Henderson, NV 89044       | 1955 Via Firenze<br>Henderson, NV 89044       |
| Proximity to Subject                  |                                                | 0.06 miles NE                                 | 0.05 miles NE                                 | 0.06 miles NE                                 |
| Sale Price                            | \$ 300,000                                     | \$ 299,000                                    | \$ 336,500                                    | \$ 322,000                                    |
| Sale Price/Gross Liv. Area            | \$ 165.47 sq.ft.                               | \$ 159.38 sq.ft.                              | \$ 186.94 sq.ft.                              | \$ 169.47 sq.ft.                              |
| Data Source(s)                        |                                                | GLVARMLS #2124804;DOM 93                      | GLVARMLS #2104711;DOM 80                      | GLVARMLS #2128522;DOM 46                      |
| Verification Source(s)                |                                                | DOC #20191213-2478                            | DOC #20191017-1656                            | DOC #20191115-2375                            |
| VALUE ADJUSTMENTS                     | DESCRIPTION                                    | DESCRIPTION +/- \$ Adjustment                 | DESCRIPTION +/- \$ Adjustment                 | DESCRIPTION +/- \$ Adjustment                 |
| Sales or Financing                    |                                                | ArmLth                                        | ArmLth                                        | ArmLth                                        |
| Concessions                           |                                                | Conv;0                                        | Cash;1500                                     | Conv;0                                        |
| Date of Sale/Time                     |                                                | s12/19;c11/19                                 | s10/19;c09/19                                 | s11/19;c10/19                                 |
| Location                              | N;Res;                                         | N;Res;                                        | N;Res;                                        | N;Res;                                        |
| Leasehold/Fee Simple                  | Fee simple                                     | Fee simple                                    | Fee simple                                    | Fee simple                                    |
| Site                                  | 1787 sf                                        | 1742 sf                                       | 2178 sf                                       | 1742 sf                                       |
| View                                  | N;Res;                                         | N;Res;                                        | N;Res;                                        | N;Res;                                        |
| Design (Style)                        | AT2;Townhome                                   | AT2;Townhome                                  | AT2;Townhome                                  | AT2;Townhome                                  |
| Quality of Construction               | Q4                                             | Q4                                            | Q4                                            | Q4                                            |
| Actual Age                            | 9                                              | 9                                             | 6                                             | 9                                             |
| Condition                             | C3                                             | C3                                            | C3                                            | C3                                            |
| Above Grade                           | Total Bdrms. Baths                             | Total Bdrms. Baths                            | Total Bdrms. Baths                            | Total Bdrms. Baths                            |
| Room Count                            | 7 3 2.1                                        | 7 3 2.1                                       | 7 3 2.1                                       | 7 3 2.1                                       |
| Gross Living Area                     | 1,813 sq.ft.                                   | 1,876 sq.ft.                                  | 1,800 sq.ft.                                  | 1,900 sq.ft.                                  |
| Basement & Finished Rooms Below Grade | 0sf                                            | 0sf                                           | 0sf                                           | 0sf                                           |
| Functional Utility                    | Average                                        | Average                                       | Average                                       | Average                                       |
| Heating/Cooling                       | F/A-Central                                    | F/A-Central                                   | F/A-Central                                   | F/A-Central                                   |
| Energy Efficient Items                | Appl/windows                                   | Appl/windows                                  | Appl/windows                                  | Appl/windows                                  |
| Garage/Carport                        | 2gbi2dw                                        | 2gbi2dw                                       | 2gbi2dw                                       | 2gbi2dw                                       |
| Porch/Patio/Deck                      | Covered porch                                  | Covered porch                                 | Covered porch                                 | Covered porch                                 |
| Fireplace                             | No fireplace                                   | No fireplace                                  | No fireplace                                  | No fireplace                                  |
| Fence/Pool/Spa                        | Yes/none                                       | Yes/none                                      | Yes/none                                      | Yes/none                                      |
| Upgraded Features                     | Per inspection                                 | Similar                                       | Superior                                      | Similar                                       |
| Net Adjustment (Total)                |                                                | + X - \$ -2,200                               | + X - \$ -25,000                              | + X - \$ -3,000                               |
| Adjusted Sale Price of Comparables    |                                                | Net Adj. 0.7 %<br>Gross Adj. 0.7 % \$ 296,800 | Net Adj. 7.4 %<br>Gross Adj. 7.4 % \$ 311,500 | Net Adj. 0.9 %<br>Gross Adj. 0.9 % \$ 319,000 |

did not research the sale or transfer history of the subject property and comparable sales. If not, explain

My research did  did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data Source(s) Clark County Public Records and Greater Las Vegas Association of Realtors Multiple Listing Service.

My research did  did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale.

Data Source(s) Clark County Public Records and Greater Las Vegas Association of Realtors Multiple Listing Service.

Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).

| ITEM                                                                                    | SUBJECT              | COMPARABLE SALE #1   | COMPARABLE SALE #2                                 | COMPARABLE SALE #3   |
|-----------------------------------------------------------------------------------------|----------------------|----------------------|----------------------------------------------------|----------------------|
| Date of Prior Sale/Transfer                                                             |                      |                      |                                                    |                      |
| Price of Prior Sale/Transfer                                                            |                      |                      |                                                    |                      |
| Data Source(s)                                                                          | Clark County Records | Clark County Records | Clark County Records                               | Clark County Records |
| Effective Date of Data Source(s)                                                        | 03/15/2020           | 03/15/2020           | 03/15/2020                                         | 03/15/2020           |
| Analysis of prior sale or transfer history of the subject property and comparable sales |                      |                      | See attached addendum for a detailed sale history. |                      |

Summary of Sales Comparison Approach The comparables utilized in this appraisal report are felt to be the best and most reliable as of the date of this appraisal assignment. Overall, I had good comparable data considering the size of the subject site and residence. The sales and listings support the final opinion of value as indicated in this report. The sales comparison approach is the most reliable indicator of value. See attached addendum for comments on Sales Comparison. This appraisal must be accompanied by the attached addendum which is considered to be an important part in the determination of the subject's estimated market value.

|                                                  |         |                                 |         |                                   |  |
|--------------------------------------------------|---------|---------------------------------|---------|-----------------------------------|--|
| Indicated Value by Sales Comparison Approach \$  | 300,000 | Cost Approach (if developed) \$ | 300,348 | Income Approach (if developed) \$ |  |
| Indicated Value by: Sales Comparison Approach \$ | 300,000 | Cost Approach (if developed) \$ | 300,348 | Income Approach (if developed) \$ |  |

See attached addendum for final reconciliation of estimated value.

This appraisal is made  "as is", subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair.

Based on a complete visual inspection of the interior and exterior areas of the subject property, defined scope of work, statement of assumptions and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is \$ 300,000 as of 03/31/2020 which is the date of inspection and the effective date of this appraisal.

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See attached addendum.

ADDITIONAL COMMENTS

### COST APPROACH TO VALUE (not required by Fannie Mae)

Provide adequate information for the lender/client to replicate the below cost figures and calculations.  
 Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value)      The subject lot value was established by the extraction method since there have been no recent sales of similar sized lots within the subject neighborhood.

COST APPROACH

|                                                                                    |                                                                          |                                  |                                       |
|------------------------------------------------------------------------------------|--------------------------------------------------------------------------|----------------------------------|---------------------------------------|
| ESTIMATED                                                                          | REPRODUCTION OR <input checked="" type="checkbox"/> REPLACEMENT COST NEW | OPINION OF SITE VALUE            | =\$ 45,000                            |
| Source of cost data                                                                | Local Developers/builders                                                | DWELLING                         | 1,813 Sq.Ft. @ \$ 135.00 = \$ 244,755 |
| Quality rating from cost service                                                   | Good Effective date of cost data 03/01/2020                              |                                  | 0 Sq.Ft. @ \$ = \$                    |
| Comments on Cost Approach (gross living area calculations, depreciation, etc.)     |                                                                          |                                  |                                       |
| Depreciation is calculated by effective age divided by total economic life.        |                                                                          |                                  |                                       |
| No significant functional/external obsolescence or deferred maintenance was noted. |                                                                          |                                  |                                       |
|                                                                                    | Garage/Carport                                                           | 462 Sq.Ft. @ \$ 95.00            | =\$ 43,890                            |
|                                                                                    | Total Estimate of Cost-New                                               |                                  | =\$ 288,645                           |
|                                                                                    | Less Physical Functional External                                        |                                  |                                       |
|                                                                                    | Depreciation                                                             | 43,297                           | =\$ 43,297                            |
|                                                                                    | Depreciated Cost of Improvements                                         |                                  | =\$ 245,348                           |
|                                                                                    | "As-is" Value of Site Improvements                                       |                                  | =\$ 10,000                            |
| Estimated Remaining Economic Life (HUD and VA only)                                | 51 Years                                                                 | INDICATED VALUE BY COST APPROACH | =\$ 300,348                           |

INCOME

### INCOME APPROACH TO VALUE (not required by Fannie Mae)

Estimated Monthly Market Rent \$      X Gross Rent Multiplier      = \$      Indicated Value by Income Approach  
 Summary of Income Approach (including support for market rent and GRM)

PUD INFORMATION

### PROJECT INFORMATION FOR PUDs (if applicable)

Is the developer/builder in control of the Homeowners' Association (HOA)?     Yes  No    Unit type(s)    Detached  Attached  
 Provide the following information for PUDs ONLY if the developer/builder is in control of the HOA and the subject property is an attached dwelling unit.  
 Legal Name of Project \_\_\_\_\_  
 Total number of phases      Total number of units      Total number of units sold  
 Total number of units rented      Total number of units for sale      Data source(s)  
 Was the project created by the conversion of existing building(s) into a PUD?    Yes    No    If Yes, date of conversion.  
 Does the project contain any multi-dwelling units?    Yes    No    Data Source  
 Are the units, common elements, and recreation facilities complete?    Yes    No    If No, describe the status of completion.  
 Are the common elements leased to or by the Homeowners' Association?    Yes    No    If Yes, describe the rental terms and options.  
 Describe common elements and recreational facilities.

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This report form is designed to report an appraisal of a one-unit property or a one-unit property with an accessory unit, including a unit in a planned unit development (PUD). This report form is not designed to report an appraisal of a manufactured home or a unit in a condominium or cooperative project.

This appraisal report is subject to the following scope of work, intended use, intended user, definition of market value, statement of assumptions and limiting conditions, and certifications. Modifications, additions, or deletions to the intended use, intended user, definition of market value, or assumptions and limiting conditions are not permitted. The appraiser may expand the scope of work to include any additional research or analysis necessary based on the complexity of this appraisal assignment. Modifications or deletions to the certifications are also not permitted. However, additional certifications that do not constitute material alterations to this appraisal report, such as those required by law or those related to the appraiser's continuing education or membership in an appraisal organization, are permitted.

**SCOPE OF WORK:** The scope of work for this appraisal is defined by the complexity of this appraisal assignment and the reporting requirements of this appraisal report form, including the following definition of market value, statement of assumptions and limiting conditions, and certifications. The appraiser must, at a minimum: (1) perform a complete visual inspection of the interior and exterior areas of the subject property, (2) inspect the neighborhood, (3) inspect each of the comparable sales from at least the street, (4) research, verify, and analyze data from reliable public and/or private sources, and (5) report his or her analysis, opinions, and conclusions in this appraisal report.

**INTENDED USE:** The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

**INTENDED USER:** The intended user of this appraisal report is the lender/client.

**DEFINITION OF MARKET VALUE:** The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

\*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

**STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS:** The appraiser's certification in this report is subject to the following assumptions and limiting conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it, except for information that he or she became aware of during the research involved in performing this appraisal. The appraiser assumes that the title is good and marketable and will not render any opinions about the title.
2. The appraiser has provided a sketch in this appraisal report to show the approximate dimensions of the improvements. The sketch is included only to assist the reader in visualizing the property and understanding the appraiser's determination of its size.
3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in this appraisal report whether any portion of the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand, or as otherwise required by law.
5. The appraiser has noted in this appraisal report any adverse conditions (such as needed repairs, deterioration, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the research involved in performing the appraisal. Unless otherwise stated in this appraisal report, the appraiser has no knowledge of any hidden or unapparent physical deficiencies or adverse conditions of the property (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) that would make the property less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, this appraisal report must not be considered as an environmental assessment of the property.
6. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that the completion, repairs, or alterations of the subject property will be performed in a professional manner.



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**APPRAISER'S CERTIFICATION:** The Appraiser certifies and agrees that:

1. I have, at a minimum, developed and reported this appraisal in accordance with the scope of work requirements stated in this appraisal report.
2. I performed a complete visual inspection of the interior and exterior areas of the subject property. I reported the condition of the improvements in factual, specific terms. I identified and reported the physical deficiencies that could affect the livability, soundness, or structural integrity of the property.
3. I performed this appraisal in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
4. I developed my opinion of the market value of the real property that is the subject of this report based on the sales comparison approach to value. I have adequate comparable market data to develop a reliable sales comparison approach for this appraisal assignment. I further certify that I considered the cost and income approaches to value but did not develop them, unless otherwise indicated in this report.
5. I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated in this report.
6. I researched, verified, analyzed, and reported on the prior sales of the comparable sales for a minimum of one year prior to the date of sale of the comparable sale, unless otherwise indicated in this report.
7. I selected and used comparable sales that are locationally, physically, and functionally the most similar to the subject property.
8. I have not used comparable sales that were the result of combining a land sale with the contract purchase price of a home that has been built or will be built on the land.
9. I have reported adjustments to the comparable sales that reflect the market's reaction to the differences between the subject property and the comparable sales.
10. I verified, from a disinterested source, all information in this report that was provided by parties who have a financial interest in the sale or financing of the subject property.
11. I have knowledge and experience in appraising this type of property in this market area.
12. I am aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records and other such data sources for the area in which the property is located.
13. I obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable sources that I believe to be true and correct.
14. I have taken into consideration the factors that have an impact on value with respect to the subject neighborhood, subject property, and the proximity of the subject property to adverse influences in the development of my opinion of market value. I have noted in this appraisal report any adverse conditions (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) observed during the inspection of the subject property or that I became aware of during the research involved in performing this appraisal. I have considered these adverse conditions in my analysis of the property value, and have reported on the effect of the conditions on the value and marketability of the subject property.
15. I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.
16. I stated in this appraisal report my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the assumptions and limiting conditions in this appraisal report.
17. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.
18. My employment and/or compensation for performing this appraisal or any future or anticipated appraisals was not conditioned on any agreement or understanding, written or otherwise, that I would report (or present analysis supporting) a predetermined specific value, a predetermined minimum value, a range or direction in value, a value that favors the cause of any party, or the attainment of a specific result or occurrence of a specific subsequent event (such as approval of a pending mortgage loan application).
19. I personally prepared all conclusions and opinions about the real estate that were set forth in this appraisal report. If I relied on significant real property appraisal assistance from any individual or individuals in the performance of this appraisal or the preparation of this appraisal report, I have named such individual(s) and disclosed the specific tasks performed in this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in this appraisal report; therefore, any change made to this appraisal is unauthorized and I will take no responsibility for it.
20. I identified the lender/client in this appraisal report who is the individual, organization, or agent for the organization that ordered and will receive this appraisal report.

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21. The lender/client may disclose or distribute this appraisal report to: the borrower; another lender; at the request of the borrower, the mortgagee or its successors and assigns; mortgage insurers, government sponsored enterprises; other secondary market participants; data collection or reporting services; professional appraisal organizations; any department, agency, or instrumentality of the United States; and any state, the District of Columbia, or other jurisdictions; without having to obtain the appraiser's or supervisory appraiser's (if applicable) consent. Such consent must be obtained before this appraisal report may be disclosed or distributed to any other party (including, but not limited to, the public through advertising, public relations, news, sales, or other media).

22. I am aware that any disclosure or distribution of this appraisal report by me or the lender/client may be subject to certain laws and regulations. Further, I am also subject to the provisions of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by me.

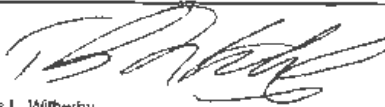
23. The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.

24. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

25. Any intentional or negligent misrepresentation(s) contained in this appraisal report may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq. or similar state laws.

**SUPERVISORY APPRAISER'S CERTIFICATION:** The Supervisory Appraiser certifies and agrees that:

1. I directly supervised the appraiser for this appraisal assignment, have read the appraisal report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
2. I accept full responsibility for the contents of this appraisal report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
3. The appraiser identified in this appraisal report is either a sub-contractor or an employee of the supervisory appraiser (or the appraisal firm), is qualified to perform this appraisal, and is acceptable to perform this appraisal under the applicable state law.
4. This appraisal report complies with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
5. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>APPRAISER</b></p> <p>Signature </p> <p>Name Thomas L. Witherby</p> <p>Company Name Witherby Appraisal, Inc.</p> <p>Company Address 1782 Pandora Drive<br/>Las Vegas NV 89123</p> <p>Telephone Number (702) 600-7111</p> <p>Email Address twitherby@witherbyappraisal.com</p> <p>Date of Signature and Report 04/01/2020</p> <p>Effective Date of Appraisal 03/31/2020</p> <p>State Certification # A-0001528-CR<br/>or State License #<br/>or Other (describe) State #</p> <p>State NV</p> <p>Expiration Date of Certification or License 03/31/2022</p> <p><b>ADDRESS OF PROPERTY APPRAISED</b></p> <p>3183 Mura Del Prado Ave<br/>Henderson, NV 89044</p> <p>APPRAISED VALUE OF SUBJECT PROPERTY \$ 300,000</p> <p><b>LENDER/CLIENT</b></p> <p>Name No AMC</p> <p>Company Name Academy Mortgage Corporation</p> <p>Company Address 339 W 13490 S, Draper, UT 84020</p> <p>Email Address</p> | <p><b>SUPERVISORY APPRAISER (ONLY IF REQUIRED)</b></p> <p>Signature</p> <p>Name</p> <p>Company Name</p> <p>Company Address</p> <p>Telephone Number</p> <p>Email Address</p> <p>Date of Signature</p> <p>State Certification #<br/>or State License #<br/>State<br/>Expiration Date of Certification or License</p> <p><b>SUBJECT PROPERTY</b></p> <p>Did not inspect subject property<br/>Did inspect exterior of subject property from street<br/>Date of Inspection<br/>Did inspect interior and exterior of subject property<br/>Date of Inspection</p> <p><b>COMPARABLE SALES</b></p> <p>Did not inspect exterior of comparable sales from street<br/>Did inspect exterior of comparable sales from street<br/>Date of Inspection</p> |
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# EXHIBIT 3

## Declaration of Thomas Witherby

1                                   **AFFIDAVIT OF THOMAS L. WITHERBY IN SUPPORT OF**  
2                                   **MOTION TO STAY ENFORCEMENT OF REVOCATION ORDER**

3                   I, Thomas L. Witherby, attest as follows in support of the Motion to Stay  
4 Enforcement of Revocation Order:

5 1.     I am the Plaintiff and am familiar with the events that form the basis of the  
6 allegations in this case.

7 2.     I currently live in the state of Florida having recently moved to care for my  
8 ailing parents. I have practiced as an appraiser in Nevada since 1993 and have had a  
9 clean record for 30 years, with the exception of this complaint.

10 3.     A filed a complaint was filed against me on May 19, 2023.

11 4.     The complaint was set to be heard by the Commission at its meeting on July  
12 18-20, 2023.

13 5.     On May 30, 2023, I represented to the Division that I had turned in my license  
14 in May of 2021 and did not intend to reactivate it in Nevada.

15 6.     The Division presented confidential settlement terms to me which I rejected  
16 and contested the case against me because I did not believe the complaint was an  
17 accurate reflection of the situation.

18 7.     In lieu of engaging in lengthy proceedings and in light of my parents situation  
19 in Florida, I offered to voluntarily surrender my license.

20 8.     As a result of the contested case proceeding, I notified OREP, my errors and  
21 omissions insurance company, of the pending case.

22 9.     On July 12, 2023, the Division sent me the final agenda for the meeting.

23 10.    On July 13, 2023, Craig M. Capilla, national claims counsel for OREP  
24 insureds, requested a continuance on my behalf because he was in the process of

1 reviewing the claims and assigning local counsel to represent me, which never  
2 happened.

3 11. On July 14, 2023, the Commission's secretary approved the request for  
4 continuance and set the hearing for the October Commission meeting.

5 12. A week before the October hearing, I had still not heard from Mr. Capilla  
6 about local counsel for the hearing and so I called him.

7 13. Mr. Capilla relayed that he was busy and forgot but had an attorney call me.

8 14. The attorney I spoke to advised that she could not prepare my case in one  
9 week so the only thing I could do was travel to Las Vegas to beg for my license.

10 15. I could not afford to travel to Las Vegas at the time and my father's health  
11 was failing so I relayed that I would call in to the October hearing.

12 16. The attorney strongly advised against calling in.

13 17. On October 10, 2023, the Commission entered the Revocation Order which  
14 revoked my license and ordered me to pay the maximum amount of fines and costs  
15 for a total of \$63,897.22.

16 18. None of the claims against me are based in fraud or dishonesty or a means for  
17 me to benefit financially nor was there any intent on my part to deceive anyone. By  
18 way of history, I prepared the Appraisal in early 2020 and the agent for the buyer,  
19 (who is not even an intended user of the report) filed the complaint.

20 19. The complaint stated several untrue things. The division opened an  
21 investigation because of it and I made my written rebuttal to the complaint.

22 20. The Complaint alleges 3 general things: First, I failed to report a prior sales  
23 history of the subject property (by law I am required to report sales history of last 3  
24 years but didn't). I self-reported this to the division, pointing it out before the

1 investigation began. Second, the division's software indicated one of my  
2 adjustments was off on a couple of counts. Third, a recordkeeping issue: there was  
3 no linear regression in the work file but the report stated there was, which was an  
4 error.

5 21. None of these violations would have changed the value of the property as  
6 assessed. In fact, my report included 58 comparable properties in the file in support  
7 of the property's value – which was a townhouse appraisal in Inspirada.

8 22. No where in the Complaint does it say I was incorrect or dishonest about the  
9 property value. The Complaint's allegations are based primarily in file-keeping  
10 issues, none of which were intentional and none of which impacted the ultimate  
11 conclusion of the report.

12 23. The Complaint does not infer I was dishonest, intentionally manipulated  
13 anything, nor did I. The complaint is based in clerical and housekeeping issues for  
14 an appraisal file.

15 24. I have had my livelihood stripped and license revoked, along with crippling  
16 fines as a result of an otherwise clean record.

17 25. The state infers prior discipline but cites to two prior instances - neither of  
18 which are "discipline": 1) Case number 2017-2344, AP18.004.S: case closed  
19 insufficient evidence of a violation. And, 2) Case number 2018-738, AP18.025-S, a  
20 letter of instruction was sent to the respondent on work file issues. Neither of these  
21 is discipline.

22 26. In my 30 years of practice as an appraiser, I have never been disciplined.

23 27. The impact on my household for the extreme penalties and revocation has  
24 been grave: I just completed taxes which reflect that my wife and I have lost tens of

1 thousands of dollars in income as a result of the revocation. I received no work the  
2 last 3 months of 2023 and the income deficit continues in to 2024.

3 28. Since 1993 there has been no discipline against me. However, the violation  
4 has dramatically impacted my life. The discipline is on record at ASC.gov which  
5 every lender has to check to make sure appraisers aren't on the list. Disciplinary  
6 action on my Nevada appraiser's license is preventing me from working.

7 29. Over the past year, I took a class to become an insurance appraiser, passed the  
8 test and am wanting to pursue this career. I am not able to pursue this career because  
9 of disciplinary action on the license.

10 30. I understand that there is a reciprocal agreement between states that  
11 administrative action in one state applies to every state which is why I cannot  
12 practice under my insurance adjuster license.

13 31. Right now, I am living off credit cards. In the least, I need to work to pay the  
14 fees.

15 32. Further, the division revoked a license that was expired and inactive and they  
16 nonetheless revoked it which is a punishment and disciplinary in and of itself, on top  
17 of the massive fines.

18 33. According to the Division, they served the Revocation Order on my "agent"  
19 on October 16, 2023 in Chicago; however, I never received a mailed copy of the  
20 Order from the Board or Division.

21 34. Additionally, I never received a copy of the order at my home address in  
22 Florida. I found out through a client, after the deadline to respond to the order had  
23 passed, that I had a disciplinary action noted on my record. This prompted me to  
24 retain my current counsel.



1 35. Further, I did not have an “agent” at any point during these proceedings until  
2 I retained Kaempfer Crowell on or about January 4, 2024.

3 36. It was made clear to the division, in writing, that I was still searching for  
4 counsel.

5 37. I currently still hold an appraiser license in Florida but the record of discipline  
6 in the database prevents me from practicing as an appraiser or as an insurance agent.

7 38. After the Order was entered against me, my longtime clients couldn’t use me.  
8 In fact, my biggest client has stopped sending me any orders since October 2022.

9 39. I have lost my ability to make a living.


10 40. As a result, my wife and I had to file for social security benefits to make ends  
11 meet.

12 41. I applied and took a course to be an insurance adjuster in Florida, but I was  
13 denied a license due to this action in Nevada.

14 42. I was advised that I would not be issued an adjuster license in Florida because  
15 the states have a reciprocal agreement for punishment of any license. I was also  
16 advised that I would likely not be able to renew my appraiser license in November.

17 43. I am currently doing very minimal work with my license as a result of this  
18 case which is not enough to make ends meet.

19 I declare that the foregoing is true and correct.

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23 Thomas L. Witherby

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# EXHIBIT 4

Revocation Order,  
dated October 10, 2023



1           Therefore, the Commission, having considered the evidence introduced by the Division and being  
2 fully advised, enters the following Findings of Fact, Conclusions of Law, and Order:

3 **I.     JURISDICTION**

4           At all times relevant to this Complaint, the Respondent was a Certified Residential Appraiser  
5 licensed by the Division, and therefore, is subject to the Jurisdiction of the Division and the provisions  
6 of NRS and NAC Chapter 645C. By availing himself of the benefits and protections of the laws of the  
7 State of Nevada, the Respondent has submitted to the jurisdiction of the Division.

8 **II.    FINDINGS OF FACT**

9           The matter having been submitted for decision based upon the allegations of the Complaint, the  
10 Commission now, based upon the evidence presented during the hearing, finds that there is substantial  
11 evidence in the record to establish each of the following:

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

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

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

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

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

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

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

27 ...

28 ...

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

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

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

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

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

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

16 **III. CONCLUSIONS OF LAW**

17          The Commission, based upon the preponderance of the evidence, makes the following  
18 legal conclusions:

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

23 **First Violation**

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

28 <sup>1</sup> The 2020-2021 edition of USPAP, effective January 1, 2020 through December 31, 2021, is applicable to and utilized for this Complaint.

1 to the workfile within a reasonable time after the issuance of the oral report. The workfile must include  
2 all other 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 other data,  
4 information, and documentation.

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

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

### 10 **Second Violation**

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

15 Respondent violated Standards Rule 1-1(c) by failing to contain documentation to support the  
16 \$25,000 adjustment for Comparable #2's upgraded features.

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

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

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

### 26 **Third Violation**

27 USPAP Standards Rule 1-2(c) required an appraiser, in developing a real property appraisal, must  
28 (c) not render appraisal services in a careless or negligent manner, such as by making a series of errors

1 that, although individually might not significantly affect the results of an appraisal, in the aggregate  
2 affects the credibility of those results.

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

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

#### 10 **Fourth Violation**

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

15 Respondent violated Standards Rule 1-5(b) by failing to report or analyze the publicly recorded  
16 prior sale of the Property which occurred June 21, 2018, for \$310,000, less than two (2) years prior to the  
17 effective date of the Appraisal Report.

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

#### 21 **Fifth Violation**

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

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

26 Respondent also violated Standards Rule 2-1(a) when he made a series of errors which in  
27 their aggregate can mislead the intended user, specifically, when Respondent failed to support  
28 the \$25,000 adjustment for Comparable #2's upgraded features; failed to adjust for differing



1 builders; used only one end-unit comparable, Comparable #2, and failed to make adjustments to the other  
2 non-end-unit comparables.

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

### 6 **Sixth Violation**

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

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

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

### 25 **ORDER**

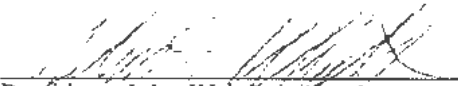
26 The Commission, being fully apprised in the premises and good cause appearing,  
27 hereby ORDERS:

- 28 1. Respondent's license (License No. A.0001528-CR) is revoked;

2. Respondent shall pay to the Division a fine of \$10,000 per violation for committing the above-stated six (6) violations of law for a total administrative fine of \$60,000;
3. Respondent shall pay the costs of the investigation and the hearing in the amount of \$3,897.22 which is actual, reasonable, and necessary;
4. The total amount the Respondent shall pay is \$63,897.22 and shall be paid in full within 180 days of this Order;
5. If the payment is not actually received by the Division on or before its due date, it shall be construed as an event of default by Respondent. In the event of default, the unpaid balance of the costs and fees, together with any attorney's fees and costs that may have been assessed, shall be due in full to the Division within ten (10) calendar days of the date of default. The Division may institute debt collection proceedings for failure to timely pay the total fine; and
6. The Commission retains jurisdiction for correcting any errors that may have occurred in the drafting and issuance of this document.


DATED this 10<sup>th</sup> day of October, 2023.

NEVADA REAL ESTATE COMMISSION

By:   
President, John Wright  
Nevada Real Estate Commission

DATED this 4th day of October, 2023.

AARON D. FORD  
Attorney General

By:   
CHRISTAL P. KEEGAN (Bar No. 12725)  
Deputy Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, Nevada 89511  
(775) 687-2141  
*Attorney for Real Estate Division*

# EXHIBIT 5

## Transcript

APPR CARE Commission Meeting  
on October 2, 2023

1 JOHN WRIGHT: Do I have a second?

2 SCOTT KRUEGER: A second.

3 JOHN WRIGHT: Any discussion? All in favor?

4 COMMISSION: Aye.

5 JOHN WRIGHT: Opposed? So the motion carries  
6 unanimately. Okay, now we're going to move on to the  
7 motion regarding proper service for the complaint.

8 SCOTT KRUEGER: I have a question for Ms. Gallo.

9 JOHN WRIGHT: Go ahead Commissioner Krueger.

10 SCOTT KRUEGER: So, do we have the last known  
11 address of where these documents were sent to?

12 MARIA GALLO: Yes.

13 SCOTT KRUEGER: And what is that?

14 MARIA GALLO: 5921 North, Glam Drive, Beverly  
15 Hills, Florida 34465.

16 JOHN WRIGHT: So, a question for you, because  
17 there was legal counsel involved, was legal counsel  
18 noticed?

19 MARIA GALLO: It wasn't his legal counsel per se,  
20 he was the attorney contact for his insurance, and he told  
21 us that a local attorney was going to be appointed for  
22 him. So in your question, yes, he was also noticed, but  
23 he's not his lawyer okay per se.

24 JOHN WRIGHT: Okay, so all of the contacts you  
25 have for this case on his side were noticed?

1 MARIA GALLO: Yes.

2 SCOTT KRUEGER: President Wright, if we could  
3 defer to Ms. Keegan for a minute please.

4 JOHN WRIGHT: Yes, go ahead.

5 CHRISTAL KEEGAN: Thank you, Commissioners.  
6 Yeah, just to clarify, when we first noticed the  
7 respondent, Mr. Thomas Witherby, he did not have legal  
8 counsel, and so, these notices were sent to him at his  
9 personal residence. He then retained legal counsel  
10 through his insurance company, and his attorney confirmed  
11 that the respondent provided the documents that were sent  
12 to the Respondent to his attorney, so just wanted to  
13 clarify that.

14 JOHN WRIGHT: Do we know who his local counsel  
15 was, though?

16 CHRISTAL KEEGAN: No, we do not. He had an  
17 attorney, through his insurance, who said that local  
18 counsel was -- the case was going to be deferred, but we  
19 followed up, and did not hear anything. No local counsel  
20 has made any formal appearance or made themselves known to  
21 the Division, nor to the State.

22 JOHN WRIGHT: Okay, thank you.

23 SCOTT KRUEGER: And just to clarify, Ms. Keegan,  
24 if counsel was assigned and they recused or left the case,  
25 it would be typical professional courtesy to notify you

1 that they were leaving the case, correct?

2 CHRISTAL KEEGAN: Yes.

3 SCOTT KRUEGER: Okay.

4 CHRISTAL KEEGAN: Alright, so I guess unless  
5 there's any further questions, we can just proceed as far  
6 as a default here, pursuant to NAC.645C.513.

7 JOHN WRIGHT: Excuse me, Ms. Keegan, we still  
8 need a motion to admit proof of service.

9 UNKNOWN SPEAKER: President Wright, I move that  
10 we accept the direct testimony of Maria Gallo, State of  
11 Nevada, as direct evidence of proof of service to the  
12 defendant.

13 JOHN WRIGHT: Do I have a second?

14 SCOTT KRUEGER: I second.

15 JOHN WRIGHT: Any further discussion? All in  
16 favor.

17 COMMISSION: Aye.

18 JOHN WRIGHT: Opposed? That motion carries  
19 unanimously. Okay, Ms. Keegan, if you would proceed,  
20 please.

21 CHRISTAL KEEGAN: Yes, thank you Commissioner,  
22 unless the Commissioners wish for me to read the filed  
23 complaint, otherwise, pursuant to NAC.645C.513, the  
24 Commission can just accept as true the factual allegations  
25 and legal violations in the Division's filed complaint.

1 Since it's part of the record, so you can now make a  
2 motion, to find -- to accept the factual allegations and  
3 legal violations in our filed complaint, please.

4 TIMOTHY O'BRIEN: President Wright, I'd like to  
5 pose a question before we make a decision on that, if I  
6 could, probably to Ms. Keegan and Ms. Staffen, what is the  
7 current license status of Mr. Witherby in the State of  
8 Nevada?

9 CHRISTY STAFFEN: He expired on March 31st, 2022.

10 TIMOTHY O'BRIEN: So, by expiration, for  
11 clarification, just for the record, he is still  
12 technically able to renew, correct?

13 CHRISTY STAFFEN: Correct.

14 TIMOTHY O'BRIEN: So, he's not active today, but  
15 really, we're going to have to look at this case to  
16 determine his permanent licensure status. At what point  
17 would he not be able to renew?

18 CHRISTY STAFFEN: If you revoke?

19 TIMOTHY O'BRIEN: No, I understand revocation,  
20 but is there a time period?

21 CHRISTY STAFFEN: Oh so, they can reinstate an  
22 inactive license.

23 SCOTT KRUEGER: Within a year.

24 CHRISTY STAFFEN: There is no time limit. It is  
25 just they have to do 15 hours of education per year, that

1 they are absent or inactive.

2 TIMOTHY O'BRIEN: Got it. One last logistical  
3 question, and thank you for indulging with President  
4 Wright. Since Witherby has not shown up, and if we're to  
5 choose to accept the factual allegations as true, and he  
6 was to appeal it at a later time, either through the  
7 courts or other items, he would have that avenue, but at  
8 this point, since he is not showing up, we have the option  
9 to just proceed as is, and take action on an absent  
10 respondent, correct?

11 CHRISTY STAFFEN: Correct.

12 TIMOTHY O'BRIEN: Alright. President Wright,  
13 that was the clarifications I needed. I defer back to  
14 you, sir, and my apologies for the time.

15 JOHN WRIGHT: Yeah, no problem.

16 CHRISTAL KEEGAN: If I may clarify, his license  
17 is closed. He cannot reinstate it.

18 CHRISTY STAFFEN: Okay.

19 CHRISTAL KEEGAN: You get one year from your  
20 expiration date to reinstate. His license expired in  
21 2022. He had until March of 2023 to reinstate it, renew  
22 it, pay it up, and he has not, so it is closed.

23 TIMOTHY O'BRIEN: So he would have to start as a  
24 new applicant, correct?

25 CHRISTAL KEEGAN: Correct.



1 JOHN WRIGHT: Do we know if he is licensed in any  
2 other jurisdiction?

3 CHRISTY STAFFEN: We do. He is licensed in  
4 Florida.

5 JOHN WRIGHT: So, anything we do here would be  
6 reflected and Florida would receive notification of?

7 CHRISTY STAFFEN: Yeah, so he would -- we would  
8 report the discipline to the ASC, and then through the  
9 National Registry, they would be notified, if Florida has,  
10 there's a thing you can sign up for notifications, which I  
11 know they do have, because I have been requested for  
12 public documents from them before, and then they can get  
13 on our website at any time, and pull the stipulated order.

14 TIMOTHY O'BRIEN: But just to clarify his current  
15 status, we wouldn't report to Florida that he just didn't  
16 renew. They would be able to see that on a ASC, but that  
17 would not be considered discipline.

18 CHRISTAL KEEGAN: Correct.

19 TIMOTHY O'BRIEN: So it would just be like if he  
20 moved to Florida and said, I'm never studying, put in the  
21 state again because I moved. So really, the point that it  
22 appears that we're acting on is, do we move from that  
23 closed status to potentially revocation, which would  
24 trigger, or discipline there to thus create a notification  
25 event across the country.

1 CHRISTAL KEEGAN: Right.

2 JOHN WRIGHT: Okay. Any other questions before  
3 we move forward with a motion? Do I have a motion, or,  
4 based on the motion of finding regarding the violations  
5 alleged in the complaint.

6 SCOTT KREUGER: We go through first the factual  
7 allegations, all as one, and then after that, the  
8 violations, all as one, that kind of thing.

9 TIMOTHY O'BRIEN: President Wright, I make a  
10 motion to accept the factual allegations as presented in  
11 the Case No. 2020-492 AP21.045.S NRED v. Thomas L.  
12 Witherby, License No. A.0001528-CR.

13 JOHN WRIGHT: Do I have a second?

14 SCOTT KRUEGER: President Wright I second.

15 JOHN WRIGHT: Any discussion? So, down here,  
16 both of you asked if those shouldn't be read into the  
17 record. Was that not what you were saying?

18 LARRY GANDY: No, no, I was saying, I think, for,  
19 well, I didn't say anything, personally, but my personal  
20 opinion is, I think that the factual allegations need to  
21 be accepted, if they're not in, in contention, and then we  
22 go into the allegations, and again, if they're not  
23 defended.

24 TIMOTHY O'BRIEN: That was the motion just now,  
25 we're accepting all.

# EXHIBIT 6

Notice of Denial from State of  
Florida, dated November 19, 2023



CHIEF FINANCIAL OFFICER  
**JIMMY PATRONIS**  
STATE OF FLORIDA

November 27, 2023

THOMAS WITHERBY  
**PERSONAL AND CONFIDENTIAL**  
5921 N LAMPPOST DRIVE  
BEVERLY HILLS FL 34465

CERTIFIED MAIL  
RETURNED RECEIPT REQUESTED  
ARTICLE #: 9489 0090 0027 6485 2654 35

### **NOTICE OF DENIAL**

Dear Mr. Witherby,

The Department has received and reviewed your application for licensure. You are notified that the Department intends to deny your application for licensure as a Resident All Lines (06-20) adjuster, based upon the following:

#### **FACTUAL BASIS**

The denial is based upon the following factual allegations:

On October 10, 2023, the Nevada Commission of Appraisers of Real Estate issued a Findings of Fact, Conclusions of Law and Order, Case Number 2020-492-AP20.045.S against you, Thomas Witherby, alleging failure to include statistical analysis to support the adjustments made in the sales grid within the Appraisal Report or work file, failure to contain documentation to support the \$25,000 adjustment for Comparable #2's upgraded features, failed to use more than one end-unit comparable, failed to provide support for the opinion that seller concessions of 3% or less do not affect pricing and failing to update the boilerplate, failed to report or analyze the publicly recorded prior sale of the property and failure to analyze the previous sale in the Appraisal report. You were ordered to pay \$60,000.00 in fines and \$3,897.22 in investigatory costs for a total of \$63,897.22. Your license was also revoked for failure to file a response to the Findings of Fact.

#### **APPLICABLE STATUTES AND RULES**

The denial is also based on the Department's authority and duties under the following statutory and rule provisions:

Section 626.207, Florida Statutes, including but not limited to the following provisions:

(2) An applicant who has been found guilty of or has pleaded guilty or nolo contendere to any of the following crimes, regardless of adjudication, is permanently barred from licensure under this chapter:

- (a) A felony of the first degree;
- (b) A capital felony;
- (c) A felony involving money laundering;
- (d) A felony embezzlement; or
- (e) A felony directly related to the financial services business.

(3) An applicant who has been found guilty of or has pleaded guilty or nolo contendere to a crime not included in subsection (2), regardless of adjudication, is subject to:

- (a) A 15-year disqualifying period for all felonies involving moral turpitude which are not specifically included in the permanent bar contained in subsection (2).
- (b) A 7-year disqualifying period for all felonies to which neither the permanent bar in subsection (2) nor the 15-year disqualifying period in paragraph (a) applies. Notwithstanding subsection (4), an applicant who served at least half of the disqualifying period may reapply for a license if, during that time, the applicant has not been found guilty of or has not pleaded guilty or nolo contendere to a crime. The department may issue the applicant a license on a probationary basis for the remainder of the disqualifying period. The applicant's probationary period ends at the end of the disqualifying period.
- (c) A 7-year disqualifying period for all misdemeanors directly related to the financial services business.

(4) The department shall adopt rules to administer this section. The rules must provide for additional disqualifying periods due to the commitment of multiple crimes and may include other factors reasonably related to the applicant's criminal history. The rules shall provide for mitigating and aggravating factors. However, mitigation may not result in a period of disqualification of less than 7 years and may not mitigate the disqualifying periods in paragraphs (3)(b) and (c).

(5) For purposes of this section, the disqualifying periods begin upon the applicant's final release from supervision or upon completion of the applicant's criminal sentence. The department may not issue a license to an applicant unless all related fines, court costs and fees, and court-ordered restitution have been paid.

(6) After the disqualifying period has expired, the burden is on the applicant to demonstrate that the applicant has been rehabilitated, does not pose a risk to the insurance-buying public, is fit and trustworthy to engage in the business of insurance pursuant to s. 626.611(1)(g), and is otherwise qualified for licensure.

(7) Notwithstanding subsections (2) and (3), upon a grant of a pardon or the restoration of civil rights pursuant to chapter 940 and s. 8, Art. IV of the State Constitution with respect to a finding of guilt or a plea under subsection (2) or subsection (3), such finding or plea no longer bars or disqualifies the applicant from licensure under this chapter unless the clemency specifically excludes licensure in the financial services business; however, a pardon or restoration of civil rights does not require the department to award such license.

(9) Section 112.011 does not apply to any applicants for licensure under the Florida Insurance Code, including, but not limited to, agents, agencies, adjusters, adjusting firms, or customer representatives.

Section 626.611, Florida Statutes, including but not limited to the following provisions:

(a) Lack of one or more of the qualifications for the license or appointment as specified in this code.

(n) Having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

### NOTICE OF RIGHTS

You have the right to request a proceeding to contest this action by the Department of Financial Services (“Department”) pursuant to sections 120.569 and 120.57, Florida Statutes, and Rule 28-106, Florida Administrative Code. The proceeding request must be in writing, signed by you, and must be filed with the Department within twenty-one (21) days of your receipt of this notice. Completion of the attached Election of Proceeding form and a petition for administrative hearing are both required as part of your written response.

The request must be filed with DFS Agency Clerk, at the Florida Department of Financial Services, 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0333. The response may be submitted electronically at [DFSAgencyClerk@myfloridacfo.com](mailto:DFSAgencyClerk@myfloridacfo.com). Your written response must be received by the Department no later than 5:00 p.m. on the twenty-first day after your receipt of this notice. Mailing the response on the twenty-first day will not preserve your right to a hearing.

FAILURE TO ENSURE THAT YOUR WRITTEN RESPONSE IS RECEIVED BY THE DEPARTMENT WITHIN TWENTY-ONE (21) DAYS OF YOUR RECEIPT OF THIS NOTICE WILL CONSTITUTE A WAIVER OF YOUR RIGHT TO REQUEST A PROCEEDING ON THE MATTERS ALLEGED HEREIN AND THE DENIAL OF YOUR APPLICATION SHALL BE FINAL

If a proceeding is requested and there is no dispute of material fact, the provisions of section 120.57(2), Florida Statutes, apply. In this regard, you may submit oral or written evidence in opposition to the action taken by the Department or a written statement challenging the grounds upon which the Department has relied. While a hearing is normally not required in the absence of a dispute of fact, if you feel that a hearing is necessary, one will be conducted in Tallahassee, Florida, or by telephonic conference call upon your request.

THOMAS WITHERBY

November 27, 2023

Page Four

However, if you dispute material facts which are the basis for the Department's action, you must request an adversarial proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes. These proceedings are held before a State administrative law judge of the Division of Administrative Hearings. Unless the majority of witnesses are located elsewhere, the Department will request that the hearing be conducted in Tallahassee, Florida.

If you request a proceeding, whether or not you dispute issues of material fact, you must provide information that complies with the requirements of Rule 28-106.201, Florida Administrative Code. Specifically, your response must contain:

- a. The name and address of each agency affected and each agency's file or identification number, if known;
- b. The name, address, and telephone number of the petitioner (For the purpose of requesting hearing in this matter, you are the "petitioner"); the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- c. A statement of when and how the petitioner received notice of the agency decision;
- d. A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- e. A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- f. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action; and
- g. A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

If a hearing of any type is requested, you have the right to be represented by counsel or other qualified representative at your expense, to present evidence and argument, to call and cross-examine witnesses, and to compel the attendance of witnesses and the production of documents by subpoena.

Failure to follow the procedure outlined with regard to your response to this notice may result in the request being denied. All prior oral communication or correspondence in this matter shall be considered freeform agency action, and no such oral communication or correspondence shall operate as a valid request for an administrative proceeding. Any request for an administrative proceeding received prior to the date of this notice shall be deemed abandoned unless timely renewed in compliance with the guidelines as set out above. Mediation of this matter pursuant to section 120.573, Florida Statutes, is not available.

If you fail to timely request a hearing, this notice will be deemed an effective denial twenty-one (21) days after the date hereof, and will be so recorded in the Department's and the National Association of Insurance Commissioners (NAIC) records, without further notice or communication to you.

Sincerely,  
Bureau of Licensing  
Enclosures

# EXHIBIT 7

Administrative Complaint by State  
of Florida, dated April 4, 2024



**Melanie S. Griffin, Secretary**

**Ron DeSantis, Governor**

April 4, 2024

Thomas Leroy Witherby  
5921 N. Lamp Post Drive  
Beverly Hills, FL 34465

Re: DBPR v. Thomas Leroy Witherby  
Case No. 2023-057938

Dear Thomas Leroy Witherby:

Please review the enclosed Administrative Complaint, which charges you with violations of license law.

The Administrative Complaint describes the alleged violations and will be handled by the attorney that signed it. In addition, attached to the Administrative Complaint, you will find an Election of Rights form, stating your rights and three options available to you.

Please return the election of rights form within twenty-one days from the date of receipt. If you fail to respond in writing within twenty-one days of receipt of this letter, you may be deemed in default. In such event, the Department will present this matter to the Florida Real Estate Appraisal Board, which could result in disciplinary action against you.

Sincerely,

/s/Mackenzie Medich  
Mackenzie Medich  
Deputy Chief Attorney  
Florida Bar No. 289198  
Office of the General Counsel  
2601 Blair Stone Rd.  
Tallahassee, Florida 32399  
Telephone: 850.717.1722  
Mackenzie.medich@myfloridalicense.com

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

**ELECTION OF RIGHTS**

DBPR v. Thomas Leroy Witherby

Case No. 2023-057938

**PLEASE CHECK ONLY ONE OF THE THREE OPTIONS.**

**Option (1)**  **I do not dispute the allegations** of material fact in the Administrative Complaint. I wish to submit oral and written evidence in mitigation at a hearing pursuant to section 120.57(2), Florida Statutes (“informal hearing”) and that this oral and written evidence be considered before any penalty and fines are imposed.

**Option (2)**  **I do dispute the allegations** of material fact in the Administrative Complaint. This is a petition for a hearing involving disputed material facts pursuant to sections 120.569(2)(a) and 120.57(1), Florida Statutes, (“formal hearing”) before an Administrative Law Judge of the Division of Administrative Hearings. **I specifically dispute the following paragraphs in the Administrative Complaint** (attach extra pages or write on the back if needed):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**In addition to the above election for formal hearing, if you wish to enter into settlement negotiations, check the box below:**

Section 120.569(2)(a), Florida Statutes, requires the Department to send this case to the Division of Administrative Hearings (DOAH) for a formal bearing within 15 days after receiving your Election of Rights. I am interested in settling this case and waive the 15-day requirement in order to enter into settlement negotiations with the Department.

**Option (3)**  **I do not dispute the allegations** of material fact in the Administrative Complaint and **waive my right** to any form of hearing. I request that a Final Order imposing a penalty and fines be entered in this case.

**THIS IS A LEGALLY BINDING DOCUMENT. SEEK LEGAL ADVICE BEFORE SIGNING IF YOU DO NOT FULLY UNDERSTAND THE TERMS.**

\_\_\_\_\_  
Thomas Leroy Witherby

\_\_\_\_\_  
ATTORNEY OR QUALIFIED REPRESENTATIVE

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Street Address (where service shall be made)

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Telephone Number Facsimile Number (if any)

\_\_\_\_\_  
Telephone Number Facsimile Number (if any)

\_\_\_\_\_  
E-mail

\_\_\_\_\_  
E-mail

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**THE ELECTION OF RIGHTS FORM AND ANY ATTACHMENTS SHOULD BE RECEIVED BY  
THE DEPARTMENT WITHIN 21 DAYS AND MAILED TO:**

**ATTN: Service of Process Unit**

Office of the General Counsel

Department of Business and Professional Regulation

2601 Blair Stone Road, Tallahassee, FL 32399-2202

Telephone: 850.488.0062 Fax: 850.488.5700

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

**EXPLANATION OF THE ELECTION OF RIGHTS**

Please read the Administrative Complaint before choosing one of the three options. The Election of Rights is a **legally binding** document. Consult an attorney or call the Department's attorney named in the cover letter if you do not understand your options.

You can only select **ONE** of the options numbered (1), (2) and (3) on the Election of Rights form. You must sign the form. The form must be **received** by the Department at the address at the bottom of the form within 21 days after the date **you receive** the complaint.

The three options are:

1. Check option (1) if you **do not dispute** any material fact alleged in the Administrative Complaint. You will be given a hearing pursuant to section 120.57(2), Florida Statutes ("informal hearing") and have the opportunity to present written and oral evidence in mitigation at the informal hearing.

2. Check option (2) if you **do dispute** any material fact alleged in the Administrative Complaint. This is considered a petition for an evidentiary administrative hearing ("formal hearing") pursuant to sections 120.569(2)(a) and 120.57(1), Florida Statutes, and requires the Department to send this case to the Division of Administrative Hearings (DOAH) within 15 days of your completed petition requesting a formal hearing. This election is made by checking the box marked (2) on the Election of Rights. Pursuant to Rule 28-106.201, F.A.C., you must also state which material fact(s) alleged in the Administrative Complaint you dispute. Use the space provided on the form and attach additional pages or use the back of the form if needed.

**After** electing option (2) explained above and **regardless** of whether you dispute any material fact alleged in the Administrative Complaint, you may **also** request the opportunity to discuss settlement of the case pursuant to section 120.57(4), Florida Statutes.

3. Check option (3) if you **do not dispute** any material fact and waive your right to any form of hearing. This means that the Department will recommend a penalty on the charges set forth in the Administrative Complaint without input from you.

If the Department does not **receive** your Election of Rights within **21** days after you **receive** the Administrative Complaint, this will be considered a waiver of your right to elect any form of hearing and a Final Order may be entered against you imposing a penalty and fines.

**You must let the Department know if your mailing address changes.**

**THE ELECTION OF RIGHTS FORM AND ANY ATTACHMENTS SHOULD BE RECEIVED BY  
THE DEPARTMENT WITHIN 21 DAYS AND MAILED TO:**

**ATTN: Service of Process Unit**

Office of the General Counsel

Department of Business and Professional Regulation

2601 Blair Stone Road, Tallahassee, FL 32399-2202

Telephone: 850.488.0062 Fax: 850.488.5700



STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

FLORIDA DEPARTMENT OF BUSINESS  
AND PROFESSIONAL REGULATION,

Petitioner,

v.

Case No. 2023-057938

THOMAS LEROY WITHERBY,

Respondent.

\_\_\_\_\_ /

ADMINISTRATIVE COMPLAINT

Petitioner, Department of Business and Professional Regulation (“Petitioner”) files this Administrative Complaint before the Florida Real Estate Appraisal Board, against Respondent, THOMAS LEROY WITHERBY (“Respondent”), and alleges:

1. Petitioner is the state agency charged with regulating the practice of real estate appraisal pursuant to Section 20.165, Florida Statutes, and Chapters 120, 455, and 475 of the Florida Statutes.
2. At all times material to this Complaint, Respondent was licensed as a state certified residential real estate appraiser in the State of Florida, having been issued license number RD 8455.
3. Respondent’s address of record with Petitioner is 5921 N. Lamp Post Dr., Beverly Hills, Florida 34465.
4. On or about October 10, 2023, the Nevada Commission of Appraisers of Real Estate issued a final order (“Final Order”) imposing discipline against Respondent’s real estate appraisal license A.0001528-CR.

5. Per the Final Order, Respondent's Nevada real estate appraisal license is revoked.

COUNT ONE

6. This is an action for violation of Section 475.624(6), Florida Statutes.

7. Petitioner re-alleges and incorporates by reference the allegations set forth in paragraphs one (1) through five (5).

8. Section 475.624(6), Florida Statutes, subjects a real estate appraiser licensee to discipline if s/he "[h]as had a registration, license, or certification as an appraiser revoked, suspended, or otherwise acted against; has been disbarred; has had her or his registration, license, or certificate to practice or conduct any regulated profession, business, or vocation revoked or suspended by this or any other state, any nation, or any possession or district of the United States; or has had an application for such registration, licensure, or certification to practice or conduct any regulated profession, business, or vocation denied by this or any other state, any nation, or any possession or district of the United States."

9. Based on the foregoing, Respondent violated Section 475.624(6), Florida Statutes.

WHEREFORE, Petitioner respectfully requests the Board of Real Estate Appraisal enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine,

issuance of a reprimand, placement of Respondent on probation, assessment of costs, corrective action and/or any other relief that the Board deems appropriate.

SIGNED this 21<sup>st</sup> day of March, 2024.

Melanie S. Griffin, Secretary  
Department of Business and  
Professional Regulation

By: /s/Mackenzie K. Medich  
Mackenzie K. Medich  
Deputy Chief Attorney  
Division of Real Estate  
Florida Bar No. 289198  
Department of Business and  
Professional Regulation  
Office of the General Counsel  
2601 Blair Stone Road  
Tallahassee, FL 32399-2202  
(850)717-1722  
Mackenzie.Medich@MyFloridaLicense.com

PC Found: 03/21/2024  
PC Found By: Wilson/Rabin

### NOTICE OF RIGHTS

PLEASE BE ADVISED that mediation under section 120.573, Florida Statutes, is not available for administrative disputes involving this type of agency action.

PLEASE BE FURTHER ADVISED that Respondent has the right to request a hearing to be conducted in accordance with sections 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses, and to have subpoenas and subpoenas duces tecum issued on his or her behalf if a hearing is requested. Rule 28-106.111, Florida Administrative Code, provides in part that if Respondent fails to request a hearing within twenty-one (21) days of receipt of an agency pleading, Respondent waives the right to request a hearing on the facts alleged.

### NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to section 455.227(3)(a), Florida Statutes, the Board, or the Department when there is no Board, may assess costs related to the investigation and prosecution of the case excluding costs associated with an attorney's time, against Respondent in addition to any other discipline imposed.