

1 **BEFORE THE COMMISSION OF APPRAISERS OF REAL ESTATE**
2 **STATE OF NEVADA**

3 SHARATH CHANDRA, Administrator,
4 REAL ESTATE DIVISION,
5 DEPARTMENT OF BUSINESS AND
6 INDUSTRY,
7 STATE OF NEVADA,

8 Petitioner,

9 vs.

10 KAY J. DESPOSATO,
11 (License No. A.0205605-CR),

12 Respondent.

Case No. 2021-773

**COMPLAINT AND NOTICE OF
HEARING**

FILED
SEP 06 2024
NEVADA COMMISSION OF APPRAISERS
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13 The REAL ESTATE DIVISION OF THE DEPARTMENT OF BUSINESS AND
14 INDUSTRY OF THE STATE OF NEVADA (“the Division”), by and through counsel,
15 Attorney General Aaron D. Ford and Senior Deputy Attorney General Phil W. Su, hereby
16 notifies Respondent KAY J. DESPOSATO (“RESPONDENT”) of an administrative
17 complaint and hearing which is to be held pursuant to Chapter 233B and Chapter 645C of
18 the Nevada Revised Statutes (“NRS”) and Chapter 645C of the Nevada Administrative
19 Code (“NAC”). The purpose of the hearing is to consider the allegations stated below and
20 to determine if the Respondent should be subject to a disciplinary penalty as set forth in
21 NRS 645C and or NAC 645C, if the stated allegations are proven at the hearing by the
22 evidence presented.

23 **JURISDICTION**

24 RESPONDENT is a Certified Residential Appraiser licensed by the Division,
25 License No. A.0205605-CR, and therefore is subject to the Jurisdiction of the Division and
26 the provisions of NRS and NAC Chapter 645C. By availing herself of the benefits and
27 protections of the laws of the State of Nevada, the RESPONDENT has submitted to the
28 jurisdiction of the Division.

PROCEDURAL HISTORY

1
2 1. On July 26, 2021, the Division received a complaint/statement of fact from
3 Complainant Carlon Burt asserting that RESPONDENT Kay J. Desposato's appraisal
4 report (hereinafter "Appraisal Report") of Burt's property at 12668 New Providence St.,
5 Las Vegas, NV 89141, ("the Property") improperly ignored amenities on the Property and
6 unfairly drew incorrect adjustments from comparables, effectively lowering the appraised
7 value of the Property.¹ [NRED 0002-0005; 0185].

8 2. On or about August 4, 2021, the RESPONDENT provided a response to the
9 Division's investigation initiated based on the Complaint. [NRED 0084-0085].

10 3. On August 5, 2021, the RESPONDENT provided her work file on the
11 Property. [NRED 0047-0141].

12 4. On August 29, 2023, the Division commissioned a Standard 3 Review of the
13 RESPONDENT's Appraisal Report, which was completed on October 27, 2023. [NRED
14 0143-0183].

15 5. Following the investigation and Standard 3 Review, the investigator
16 recommended the case be heard by the Appraisal Advisory Review Committee ("AARC").
17 [NRED 0185-0194].

18 6. Following hearing before the AARC, the AARC unanimously voted to
19 remand the case to the Commission of Appraisers of Real Estate. [NRED 0195].

FACTUAL ALLEGATIONS

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21 7. The RESPONDENT prepared an Appraisal Report for a 3,069 sq. ft., one-
22 story, 4 br/4 bath single family residence, built in 2017 and located at 12668 New
23

24 ¹ One of Complainant Burt's primary allegations was that the appraised value reached by
25 RESPONDENT demonstrated racial bias; he termed his complaint an "Appraisal
26 Discrimination Claim" and provided links to news articles regarding systematic racial
27 discrimination in the appraisal industry. [NRED 0003-0005]. As noted in the Standard 3
28 Review commissioned by the Division, under the section discussing Ethics Rule entitled
"Reviewer's Comments regarding complaint/bias," the reviewer noted that "while there
are multiple USPAP errors... there was no verbiage in the report, or documentation in
the work file, implying violations were due to bias, which would be related to the Conduct
portion of the Ethics rule." [NRED 0147-0149].

1 Providence St., Las Vegas, NV 89141, APN # 191-08-313-18 (the "Property"). [NRED
2 0006-0042; 0049-0083].

3 8. The Appraisal Report indicated assignment type as "Refinance Transaction,"
4 Lender/Client as UBS Bank USA, and indicated a value conclusion of \$750,000.00 by
5 Sales Comparison Approach. [NRED 0049-0050].

6 9. The effective date of the report was indicated as July 6, 2021, and the date of
7 signature of the report was July 11, 2021. [NRED 0054].

8 10. The sales grid listed six (6) comparable sales with adjusted sale prices
9 ranging from \$734,450.00 to \$788,700.00. [NRED 0050; 0055].

10 11. The Appraisal Report was completed on Fannie Mae form 1004/7 for a
11 mortgage finance transaction, and, accordingly, is subject to Fannie Mae guidelines,
12 which become part of the Report's scope of work when completed with the 1004/70 form.
13 [NRED 0052-0054; 0150].

14 12. Neither the work file or the Appraisal Report provide any data, information
15 or documentation to support Certification #9 of the Fannie Mae Form, which states "I
16 have reported adjustments to the comparable sales that reflect the market's reaction to
17 the differences between the subject and property and the comparable sales." [NRED 0053;
18 0150].

19 13. The sales grid contained numerous adjustments, including: electronic gated
20 subdivision v. non-gated subdivision (\$5,000), inconsistent lot size adjustments (ranging
21 from \$0.53 to \$1.15 per sq ft), age (\$1,000 per year), number of bedrooms (\$5,000),
22 number of baths (\$2,500 for half bath & \$5,000 for full bath), gla (\$50 per sf), garage
23 capacity (\$5,000), fireplace (\$1,000), pool (\$20,000) and spa (\$5,000). [NRED 0050-0055;
24 0150].

25 14. Site value adjustments were not consistent and ranging from \$0.86 per sq ft
26 (Comp #1) to \$1.15 per sq ft (Comps 3 & #5). [NRED 0050; 0055; 0153].

27 15. Page 2 of the addendum to the Appraisal Report states: "The paired sales
28 technique was utilized in determining market reaction" and, on the same page,

1 Comparable Search Data/Parameters Section sentence number six, states "All
2 adjustments made for comparable dissimilarities are market derived according to FNMA
3 guidelines. Comparable adjustments are made as warranted when market research
4 deems verifiable, justifiable and credible." [NRED 0058].

5 16. However, no paired sales analysis data was found in the work file. [NRED
6 0150].

7 17. Comp 1 was the most recent comp sale and very similar to the subject
8 (similar condition, age, gla, lot size, same builder/quality of construction) and located on
9 the same street, but was inferior to the Property because it lacks a pool and the gla
10 differential from the subject is large enough to result in an upward size adjustment,
11 which would presumably warrant an upward adjustment to the Property's appraised
12 value (for size and pool) above Comp 1's unadjusted sales price. [NRED 0050; 0054; 0154].

13 18. Instead, the concluded value of the Property was below Comp 1's unadjusted
14 sales price. [NRED 0050; 0054; 0154].

15 19. The Standard 3 Review noted several minor errors in the appraisal report
16 and/or work file that it opined, when taken as a whole, impact credibility of the report:

- 17 a. The special assessment on page one should have been noted as \$684,
18 instead of \$342.15, based on the semiannual payments of the special
19 assessment. [NRED 0049; 0093; 0162].
- 20 b. The Appraisal Report appears to only include the public record sketch,
21 rather than measurements taken at the actual property as required by
22 Fannie Mae guidelines. [NRED 0094; 0162].
- 23 c. The listed effective age (2 years) is inconsistent with the four-year-old
24 Property. [NRED 0049; 0162].
- 25 d. Lack of discussion that the Property was in a master planned community
26 with guard gate and golf course, consisting of a mixture of tract and
27 custom homes, instead simply stating that the Property was located in a
28 PUD. [NRED 0049; 0162].

1 e. The sales to price ratios listed in the 1004MC are inconsistent with the 2%
2 downward adjustment for comps #5 and #6. [NRED 0060; 0162].

3 20. The Standard 3 Review opined that a lack of data in the work file to support
4 land value or dwelling costs in the cost approach, indicating that the scope of work
5 necessary to develop cost approach was not completed. [NRED 0165].

6 21. There was no summary in the Appraisal Report of the scope of work used to
7 develop the appraisal; specifically, to support adjustments made in the sales grid, and no
8 paired sales analysis. [NRED 0176].

9 22. There was no summary in the Appraisal Report of the scope of work used to
10 develop the comp selection. [NRED 0176].

11 23. There was no summary in the Appraisal Report of the scope of work used to
12 analyze market conditions despite conflicting information in the Appraisal Report.
13 [NRED 0176].

14 24. Following the hearing before the AARC, the AARC unanimously voted to
15 remand the case to the Commission of Appraisers of Real Estate and the Division
16 assigned the matter to its assigned attorney general for prosecution. [NRED 0195].

17 VIOLATIONS OF LAW

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

23 First Violation

24 The USPAP ETHICS RULE requires that an appraiser perform assignments with
25 impartiality, objectivity, and independence, and without accommodation of personal
26 interests. Specifically, an appraiser must not communicate assignment results with an
27 intent to mislead or defraud.

28 Respondent violated the USPAP ETHICS RULE, as codified in NAC 645C.405(1),

1 by stating in scope of work that she performed paired sales analysis, when that analysis
2 was not actually performed and/or supported in the work file. Accordingly, the stated
3 scope of work was intentionally misleading.

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

7 **Second Violation**

8 The USPAP RECORD KEEPING RULE requires that each appraisal and appraisal
9 review assignment must include: all other data, information, and documentation
10 necessary to support the appraiser's opinion and conclusions and to show compliance with
11 USPAP, or references to the location(s) of such other data, information, and
12 documentation.

13 The Respondent violated the USPAP RECORD KEEPING RULE, as codified in
14 NAC 645C.405(1), by failing to provide any data regarding paired sales analysis and by
15 utilizing numerous small adjustments, implying that the adjustments were automatically
16 based on arbitrary amounts.

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

20 **Third Violation**

21 The USPAP COMPETENCY RULE requires that the appraiser must determine,
22 prior to agreeing to perform an assignment, that he or she can perform the assignment
23 competently, and includes such factors as an appraiser's familiarity with a specific type of
24 property or asset, a market, a geographic area, an intended use, specific laws and
25 regulations, or an analytical method.

26 The Respondent violated the USPAP COMPETENCY RULE, as codified in NAC
27 645C.405(1), by failing to provide any data regarding paired sales analysis; by providing
28 inconsistent data in the site value adjustment; and by providing no data to support land

1 value, dwelling costs, physical depreciation, and functional depreciation in the cost
2 approach.

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

6 **Fourth Violation**

7 The USPAP SCOPE OF WORK RULE requires that for each appraisal and
8 appraisal review assignment, an appraiser must: (1) identify the problem to be solved; (2)
9 determine and perform the scope of work necessary to develop credible assignment
10 results; and (3) disclose the scope of work in the report. The SCOPE OF WORK RULE
11 requires description of the type and extent of data researched; and the extent of analyses
12 applied to arrive at opinions or conclusions. Credible assignment results require support
13 by relevant evidence and logic.

14 The Respondent violated the USPAP SCOPE OF WORK RULE, as codified in NAC
15 645C.405(1), by failing to provide any data regarding paired sales analysis; by providing
16 inconsistent data in the site value adjustment; and by failing to provide adequate
17 information in the 1004MC to support the stated market condition trends.

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

21 **Fifth Violation**

22 USPAP Standards Rule 1-1(a) requires an appraiser to (a) be aware of, understand,
23 and correctly employ those recognized methods and techniques that are necessary to
24 produce a credible appraisal.

25 Respondent violated Standards Rule 1-1(a) by including numerous adjustments not
26 supported by the work file; and by failing to provide necessary information in the 1004MC
27 grid and radius search to produce a credible appraisal and adequate data results.

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

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

3 **Sixth Violation**

4 USPAP Standards Rule 1-1(c) requires an appraiser to (c) not render appraisal
5 services in a careless or negligent manner, such as by making a series of errors that,
6 although individually might not significantly affect the results of an appraisal, in the
7 aggregate affects the credibility of those results.

8 RESPONDENT violated Standards Rule 1-1(c) by committing several minor errors
9 that, as a whole, impacted the credibility of the appraisal report.

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 **Seventh Violation**

14 USPAP Standards Rule 1-2(h) requires an appraiser to (h) determine the scope of
15 work necessary to produce credible assignment results in accordance with the SCOPE OF
16 WORK RULE.

17 RESPONDENT violated Standards Rule 1-2(h) by failing to provide any data
18 regarding paired sales analysis and by providing inconsistent site value adjustments; by
19 relying on comps taken from different market areas and targeting different buyers; and
20 by failing to provide adequate information in the 1004MC to support the stated market
21 condition trends.

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

25 **Eighth Violation**

26 USPAP Standards Rule 1-4(a) requires an appraiser to (a) analyze such
27 comparable sales data as are available to indicate a value conclusion.

28 RESPONDENT violated Standards Rule 1-4(a) by failing to provide any data

1 indicating the adjustments were extracted from the market (e.g. by paired sales analysis);
2 and by failing to provide data to support land value or dwelling costs in the cost approach.

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

6 **Ninth Violation**

7 USPAP Standards Rule 1-6(a) requires an appraiser to (a) reconcile the quality and
8 quantity of data available and analyzed within the approaches used.

9 RESPONDENT violated Standards Rule 1-6(a) by failing to consider market
10 conditions when reconciling value, even if quantifiable adjustments were not made,
11 because the most recent sale and contracted comps had prices above the older comps used
12 (comps #2 through #4).

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

16 **Tenth Violation**

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

20 The RESPONDENT violated Standards Rule 2-1(a) by failing to provide any data
21 indicating the adjustments were extracted from the market (e.g. by paired sales analysis)
22 and by utilizing numerous small adjustments, implying that the adjustments were
23 automatically based on arbitrary amounts.

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

27 **Eleventh Violation**

28 USPAP Standards Rule 2-1(b) requires each written or oral real property appraisal

1 report to (b) contain sufficient information to enable the intended user(s) of the appraisal
2 to understand the report properly.

3 The RESPONDENT violated Standards Rule 2-1(b) by failing to include market
4 derived adjustments; and by failing to consistently apply market condition adjustments to
5 the sales grid.

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

9 **Twelfth Violation**

10 USPAP Standards Rule 2-2(a)(viii) requires that the content of the Appraisal
11 Report be consistent with the intended use of the appraisal and, at a minimum describe
12 or summarize the information analyzed, the appraisal methods and techniques employed,
13 and the reasoning that supports the analyses, opinions, and conclusions; exclusions of the
14 sales comparison approach, cost approach, or income approach must be explained.

15 The RESPONDENT violated Standards Rule 2-1(a)(viii) by failing to summarize
16 the scope of work used to develop the appraisal; the scope of work utilized to develop the
17 comp selection; and the scope of work utilized to analyze market conditions.

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

21 **Thirteenth Violation**

22 USPAP Standards Rule 2-2(a)(x) requires each written or oral real property
23 appraisal report to provide sufficient information to indicate that the appraiser complied
24 with the requirements of Standard 1 by 1) summarizing the appraisal methods and
25 techniques employed; and (5) summarizing the information analyzed and the reasoning
26 that support the analyses, opinions, and conclusions, including reconciliation of the data
27 and approaches.

28 The RESPONDENT violated Standards Rule 2-2(a)(x) by failing to provide

1 explanation and support for adjustments, including lack of market condition adjustments
2 considered on a quantitative or qualitative basis.

3 The RESPONDENT's actions constitute unprofessional conduct pursuant to NRS
4 645C.470(2), as determined by NAC 645C.405(1) and (2) and grounds for disciplinary
5 action 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 October 8-10, 2024, beginning at approximately 9:00 a.m. each day, or until
23 such time as the Commission concludes its business. The Commission meeting
24 will be held at the Nevada State Business Center, 3300 W. Sahara Avenue,
25 Nevada Room 4th Floor, Las Vegas, Nevada 89102, with video conference to:
26 Department of Business & Industry, 1818 E. College Parkway, Suite 103, Carson
27 City, Nevada 89076.

28 **STACKED CALENDAR:** Your hearing is one of several hearings that may

1 be scheduled at the same time as part of a regular meeting of the Commission
2 that is expected to take place on October 8-10, 2024. Thus, your hearing may be
3 continued until later in the day or from day to day. It is your responsibility to
4 be present when your case is called. If you are not present when your case is
5 called, a default may be entered against you, and the Commission may decide
6 the case as if all allegations in the complaint were true. If you need to negotiate
7 a more specific time for your hearing in advance, because of coordination with
8 out-of-state witnesses or the like, please call Maria Gallo, Commission
9 Coordinator, at (702) 486-4074.

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

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

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

6 DATED the 5 day of September, 2024.

DATED the 6th day of September, 2024.

7
8 NEVADA REAL ESTATE DIVISION

AARON D. FORD
Attorney General

9
10 By: 
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