

FILED 12/7/09 (Date)

BEFORE THE REAL ESTATE APPRAISER EXAMINING BOARD, SP2AEB
OF THE STATE OF IOWA

Signature, Executive Officer

IN THE MATTER OF:)	CASE NO. MS 07-010
)	DIA NO. 09DOCRE013
PHYLLIS COLLIER)	
CERTIFICATE NO. CR01584)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
RESPONDENT)	DECISION AND ORDER

On August 17, 2009, the Iowa Real Estate Appraiser Examining Board (Board) found probable cause to file a Statement of Charges against Phyllis Collier (Respondent). Respondent was charged with : (a) repeated failure to adhere to appraisal standards in the development and communication of appraisals; (b) failure to exercise reasonable diligence in the development, preparation and communication of appraisals; and (c) demonstrating negligence or incompetence in the development, preparation, and communication of appraisals, in violation of Iowa Code sections 543D.17(1)(d),(e), and (f) and 543D.18(1)(2009) and 193F IAC 7.2(2), 7.3(2)(c), (d), 7.3(6)(a), (b), and 7.3(7).

A telephone prehearing conference was held with the attorneys on October 9, 2009. The hearing was held on October 22, 2009 at 1:30 p.m. Assistant Attorney General Pamela Griebel represented the state of Iowa. Respondent was represented by attorney Kevin Hitchins. The following Board members presided at the hearing: Michael Lara, Appraiser, Chairperson; Gregory Moorhead, Appraiser; James Kesterson, Appraiser; Amy Thorne, Appraiser; Judy Zwanziger, Appraiser; and Maxine Moore Ballard, Public Member. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. A certified court reporter recorded the proceedings.

The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(2009) and 193 IAC 7.25(2). After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2009), to deliberate its decision. The Board instructed the administrative law judge to prepare Findings of Fact, Conclusions of Law, Decision and Order for their review, in conformance with their deliberations.

THE RECORD

The record includes the State's Prehearing Conference Report, the testimony of the witnesses, State Exhibits 1-7, and Respondent Exhibit A.

FINDINGS OF FACT

1. Prior to obtaining certification in 1992, Respondent had a number of years of appraisal experience through her employment as a manager of a finance company and as a banker. When the state started requiring certification for appraisers, Respondent was given credit for her prior appraisal experience. Respondent took the required real estate appraisal courses and was issued Iowa residential real estate appraiser certificate number CR01584 on December 22, 1992, following examination. Respondent's certification is active and will next expire on June 30, 2010.

Respondent was also licensed as a real estate salesperson in 1996 and as a real estate broker in 2001. Respondent currently owns and operates Central Iowa Realty and Appraisal Service in State Center, Iowa. Respondent primarily performs real estate appraisals in Story and Marshall Counties. (Testimony of Toni Bright; Respondent; State Exhibits 1, 2)

2. On January 11, 2008, Respondent and the Board entered into a Combined Statement of Charges and Consent Order after Standard Three reviews of three of Respondent's appraisal reports identified multiple, serious violations of the Uniform Standards of Professional Appraisal Practice (USPAP).¹ The Consent Order placed Respondent's certificate on probationary status and required Respondent to:

- Complete a 15-hour tested USPAP course, a 30-hour classroom course on residential sales comparison and income approach, a 15-hour course on appraiser site valuation and cost approach; and a pre-approved classroom course on narrative report writing of at least 7 hours by April 1, 2008;
- Enter into a desk review consultation agreement with a desk review appraiser, pre-approved by the Board, on or before December 15, 2007, and submit a copy of the consultation agreement to the Board no later than December 30, 2008;

¹ USPAP regulations apply to appraisers nationwide. Standard 1 of USPAP establishes minimum standards for the development of an appraisal and Standard 2 establishes minimum standards for the reporting of an appraisal. (State Exhibit 7; Testimony of Terri Selberg)

- Submit a total of six appraisal reports for review by the pre-approved desk reviewer for facial compliance with USPAP by June 30, 2008;
- Submit a copy of the appraisal reports as submitted for desk review, a copy of the desk reviewer's review reports, work files on all submitted appraisals, and a copy of any reissued appraisal report by July 15, 2008; and
- Submit monthly logs of all appraisals completed while on probation by the 10th of each month for the preceding month.

(State Exhibit 2)

3. On July 31, 2008, Respondent's attorney filed a request for an extension of the deadlines to complete the education and desk reviews provided in the January 11, 2008 Consent Order. The Board granted the request and extended the deadlines to October 1, 2008. (State Exhibit 2)

4. Respondent completed all of the required education and submitted her monthly logs. (State Exhibit 3)

5. Respondent contracted with Terri Selberg to complete desk reviews on 6 appraisals. (State Exhibit 4). Ms. Selberg has been a certified appraiser since 1991 and is a certified USPAP instructor. The first five desk reviews by Ms. Selberg reveal a consistent pattern of USPAP violations and poor/atypical methodology, including but not limited to:

- Failure to properly describe neighborhoods and neighborhood boundaries;
- Inconsistent information concerning property values, i.e. stating that values are increasing when demand and supply are in balance and there are foreclosures occurring;
- Failure to provide sufficient detail and description of property features, condition, and upgrades;
- Failure to select appropriate comparable sales, failure to adequately describe comparable sales, and failure to adequately make and explain adjustments;
- Failure to use matched pair analysis to achieve market derived adjustments;
- Use of atypical terminology such as average, never, equal etc.;

The sixth appraisal submitted by Respondent was the least compliant of all of the appraisals that were desk reviewed by Ms. Selberg. The appraisal report failed to state that the purchase agreement was not arms length, failed to properly describe the condition of the roof, gutters, down spouts, siding, and windows, and failed to analyze

the effect of the steel roof on property value. Respondent provided atypical site adjustments, failed to properly describe the comparable sales, used atypical terminology, and provided a huge range of \$88,000-\$117,000 in her adjusted sales price, which indicated that additional comparables were necessary. Respondent's value for the property of \$99,700 was atypical and unsupported. The value was above the cost to build the improvements, and the market does not recognize an additional \$700. Respondent relied on the cost approach to support her value, which is atypical. Terri Selberg sent Respondent all of her desk reviews electronically and told her to call if she had any questions. However, Respondent never called Ms. Selberg to discuss the desk reviews, and the two of them did not meet until January 5, 2009. (Testimony of Terri Selberg; Respondent; State Exhibits 4, 5)

6. On December 19, 2008, the Board notified Respondent that it was continuing her probation and requiring her to meet one-on-one with Ms. Selberg for instruction in the development of an appraisal report. Respondent was notified that the Board would select 2-3 reports from her logs for January-March 2009 to be reviewed by one of the Board's peer reviewers. (State Exhibit 5)

7. Bill Pruett has been a certified appraiser since 1999 and is employed by Rally Appraisal. He has served as a peer reviewer for the Board for several years and was asked to serve as a peer reviewer for Respondent. Mr. Pruett reviewed two of Respondent's appraisals and sent his reports to the Board with a cover letter on May 21, 2009. He did not review any of Terri Selberg's desk reviews prior to conducting his own reviews.

In his cover letter to the Board, Mr. Pruett stated that Respondent's appraisal reports were very brief, contained little analysis on critical issues, and lacked market based adjustments. He found that in the cost approach Respondent arrived at land value by percentage of sale and/or "extraction," when there were sales available to determine land values by cost per acre or cost per square foot. There was no reasoning to support Respondent's adjustments in the sales approach. Mr. Pruett further found that the wide range of adjusted sales may indicate that Respondent is not using paired sales to arrive at adjustments or as part of her overall analysis. The reports do not explain how Respondent arrived at her value opinion. Mr. Pruett concluded that Respondent misunderstands basic methodology and report writing. (Testimony of Bill Pruett; State Exhibit 6)

Many of the Bill Pruett's findings in his review reports were similar to Terri Selberg's findings. In part, Mr. Pruett found that Respondent:

- Provided neighborhood descriptions that were very brief and inaccurate;
- Stated that site value was from "extraction" or percentage of total value but it is unclear which approach was used;
- Used price per square foot in the cost approach that was higher than Marshall and Swift indications;
- Provided very brief explanation of adjustments with no reasoning behind the amounts; it is unclear whether adjustments are market based;
- Provided a current market value for one property that was a 9.75% increase over the prior sale in May 2006 but failed to substantiate the increase based on a description of improvements or market conditions.

(Testimony of Bill Pruetz; State Exhibit 6)

8. Doug Swenson has been an appraiser since 1978 and performs appraisals in the Marshalltown area. He performed desk reviews for two of Respondent's appraisal reports: 1403 Summit Street in Marshalltown and 2713 Fairman Avenue in State Center, Iowa. Mr. Swenson conceded that he is not an expert on USPAP, although he tries to abide by USPAP. Mr. Swenson used a URAR Appraisal Desk Review form available through his software provider. This form is not designed to check for USPAP compliance.

With respect to the Summit Street property, Mr. Swenson found that the appraisal is acceptable, is properly supported, and that the property description is complete and accurate. With respect to the Fairman Avenue property, Mr. Swenson found that the appraisal required additional information to be acceptable and provided the following comments:

- On the sales comparison approach, the adjustment percentages were all very reasonable but there was very little explanation of the differences and similarities, including the land adjustments;
- There needs to be more detail regarding the reasoning for the estimated value;
- The estimated value appears to be an average of the sales;
- The value appears to be high based on sale #1, which has the least percentage adjustments.

These same two appraisal reports were also reviewed by Terri Selberg for USPAP compliance and found to be deficient. Mr. Swenson did not review Ms. Selberg's reports before conducting his own review. (Testimony of Douglas Swenson;

Respondent Exhibit A) The Board found Terri Selberg's desk reviews of the two properties to be more thorough and more credible than the reviews performed by Mr. Swenson.

CONCLUSIONS OF LAW

Iowa Code sections 543D.17(1)(d), (e) and (f) (2009) provide, in relevant part:

543D.17 Disciplinary proceedings.

1. The rights of a holder of a certificate as a certified real estate appraiser may be revoked or suspended, or the holder may be otherwise disciplined in accordance with this chapter. The board may investigate the actions of a certified real estate appraiser and may revoke or suspend the rights of a holder or otherwise discipline a holder for violation of provisions of this chapter, or chapter 272C, or of a rule adopted under this chapter or commission of any of the following acts or omissions:

...

d. Violation of any of the standards for the development or communication of real estate appraisals as provided in this chapter.

e. Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal.

f. Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal.

Iowa Code section 543D.18(1)(2009) provides, in relevant part:

1. A certified real estate appraiser shall comply with the uniform appraisal standards adopted under this chapter. The reliance of the public in general and of the financial business community in particular on sound, reliable real estate appraisal practices imposes on persons engaged in the practice of real estate appraising as certified real estate appraisers or as registered associate real estate appraisers certain obligations both to their clients and to the public. These obligations include the obligation to maintain independence in thought and action, to adhere to the uniform appraisal standards adopted under this chapter, and to maintain high

standards of personal conduct in all matters impacting one's fitness to practice real estate appraising...

The legislature has vested the Board with authority to adopt rules establishing uniform appraisal standards and appraiser certification requirements and other rules necessary to enforce Iowa Code chapter 543D.18 and its responsibilities under chapter 272C. Iowa Code section 543D.5(1)(2009).

In accordance with this authority, the Board has adopted, by rule, the Uniform Standards of Professional Appraisal Practice (USPAP). 193F IAC 7.2. See State Exhibit 7. A number of USPAP Standards Rules (2008-2009 Edition) are specifically relevant to this contested case, including but not limited to:

In developing a real property appraisal:

An appraiser must be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal, must not commit a substantial error of omission or commission that significantly affects the appraisal, and must not render services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of the appraisal, in the aggregate affects the credibility of those results. SR 1-1(a)-(c).

...

An appraiser must identify the characteristics of the property that are relevant to the purpose and intended use of the appraisal, including its location and physical, legal, and economic attributes. SR 1-2(e)(i).

When necessary for credible assignment results in developing a market value opinion, an appraiser must identify and analyze the effect on use and value of...economic supply and demand, the physical adaptability of the real estate, and market area trends. SR 1-3(a).

When a cost approach is necessary for credible assignment results, an appraiser must develop an opinion of site value by an appropriate appraisal method or technique, analyze such comparable cost data as are available to estimate the cost new of the improvements (if any), and analyze such comparable data as are available to estimate the difference between the cost new and the present worth of improvements (accrued depreciation). SR 1-4(b)(i)-(iii).

Each written or oral real property appraisal report must clearly and accurately set forth the appraisal in a manner that will not be misleading, contain sufficient information to enable the intended users of the appraisal to understand the report properly, and clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions in the use of the assignment. SR 2-1(a)-(c).

The content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:

Summarize the information sufficiently to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment. SR 2-2(b)(iii)

Summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions; exclusion of the sales comparison approach, cost approach, or income approach must be explained. SR 2-2 (b)(viii).

Clearly and conspicuously state all extraordinary assumptions and hypothetical conditions; and state that their use might have affected the assignment results. SR 2-2(b)(x).

193F IAC 7.3 provides, in relevant part:

193F-7.3(17A, 272C,543D) Grounds for discipline. The board may initiate disciplinary action against a registered associate appraiser or a certified real property appraiser based on any one or more of the following grounds:

7.3(2). Professional incompetence. Professional incompetence includes, but is not limited to:

...

c. A failure to exercise the degree of care which is ordinarily exercised by the average practitioner acting in the same or similar circumstances.

d. Failure to conform to the minimal standards of acceptable and prevailing practice of registered associated appraisers or certified real property appraisers in this state.

...

7.3(6) Negligence by the registrant or certificate holder in the practice of the profession. Negligence by the registrant or certificate holder in the practice of the profession includes:

a. Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal.

b. A failure to exercise due care including negligent delegation of duties to or supervision of other employees, agents, or persons, in developing an appraisal, preparing an appraisal report, or communicating an appraisal, whether or not injury results.

7.3(7) Professional misconduct.

a. A violation of any of the standards applicable to the development or communication of real estate appraisals as provided in 193F-7.2(543D).

The grounds for revocation and suspension of certificates and associate registrations and other disciplinary actions are set out in Iowa Code section 543D.17 and Iowa Code chapter 272C in both specific and general terms. The general terms of those provisions of the Iowa Code include the following particular grounds for such disciplinary action:

The preponderance of the evidence established that the Respondent violated Iowa Code sections 543D.17(1)(d), (e), and (f), 543D.18(1) and 193F IAC 7.2, 7.3(2)"c" and "d," 7.3(6)"a" and "b," and 7.3(7) by repeatedly failing to adhere to appraisal standards in the development, preparation and communication of appraisals and by failing to exercise reasonable diligence and by demonstrating negligence or incompetence in the development, preparation and communication of appraisals. The desk reviews and testimony of Terri Selberg and Bill Pruett persuasively established that Respondent does not understand and/or utilize basic methodology and continues to fail to comply with USPAP standards in the development and communication of her appraisal reports. The appraisal reports reviewed consistently fail to provide adequate and detailed neighborhood descriptions; fail to explain or justify the adjustments, which do not appear to be market based; and fail to include sufficient information to explain how Respondent arrived at her value opinion. Respondent's own expert witness conceded that he was not a USPAP expert and was not reviewing Respondent's appraisals for USPAP compliance. Nevertheless, Respondent's expert agreed with the state's experts that Respondent's appraisal reports contained insufficient information and that he could not identify her analysis.

Respondent has completed numerous tested USPAP courses in recent years but still does not appear to understand how to apply the basic principles taught in these courses in her appraisal practice. The Board doubts that Respondent would benefit from additional class room education at this time. However, the Board is convinced that Respondent requires supervision and mentoring equivalent to that provided to an associate appraiser, in order to learn how to properly apply USPAP requirements in the development and communication of appraisals.

DECISION AND ORDER

IT IS THEREFORE ORDERED that Iowa Real Estate Appraiser Certificate No. CR01584, issued to Phyllis Collier, is hereby placed on **INDEFINITE PROBATION**, effective immediately upon service of this Decision and Order, and subject to the following terms and conditions:

1. For as long as Respondent is on probationary status, she shall submit a monthly log of all appraisals she has completed and shall provide the written log to the Board by the 10th of each month for the preceding month.
2. For at least the first six (6) months of probation, all of Respondent's appraisal reports shall be prepared under the direct supervision of a certified residential real property appraiser, pre-approved by the Board. Respondent will be responsible for all costs associated with this supervision. Although Respondent will retain her status as a certified residential appraiser, the level of supervision provided to her must comply with the requirements for the supervision of associate appraisers, as provided by 193F IAC 4.2 and 193F IAC chapter 15.

While on probation, Respondent shall prepare a minimum of 30 appraisal reports under direct supervision of her pre-approved supervisor. If Respondent has not completed 30 appraisal reports under supervision at the end of six months, her supervised practice will continue until she has completed thirty appraisal reports under direct supervision. The Board may request periodic progress reports from Respondent's supervisory appraiser.

3. After Respondent has completed a significant number of appraisals under supervision, Board staff will begin the process of selecting a minimum of three of Respondent's appraisal reports to be submitted to desk reviewer chosen by the Board. Respondent will be responsible for all costs associated with these


reviews. The desk review process will continue until the Board has received at least three (3) residential appraisal reports with associated review reports that do not have significant USPAP violations.

4. The Board may file additional charges if one or more of the appraisal reports submitted for desk review demonstrate probable cause to take such action on an appraisal that was issued to the public. Upon successful completion of the supervised practice *and* upon receipt of three appraisal reports for which the desk review comments do not reveal significant USPAP violations, Respondent will be required to retake and pass the certified residential appraiser examination.

5. Upon successful completion of the certified residential appraiser examination, Respondent will be discharged from indefinite probation.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 193 IAC 7.41, that the Respondent shall pay \$75.00 within thirty (30) days of receipt of this decision for fees associated with conducting the disciplinary hearing.

Dated this *7th* day of *December*, 2009.


Michael Lara, Appraiser
Chairperson
Iowa Real Estate Appraiser Examining Board

cc: Kevin Hitchins
Grines, Buck, Schoell, Beach & Hitchins
102 E. Church Street P.O. Box 776
Marshalltown, Iowa 50158 (Restricted Certified)

Pamela Griebel
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A. 193 IAC 7.37.