

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

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IN THE MATTER OF:	)	CASE NO. 06-23
	)	DIA NO. 06DOCRE010
CHUCK A. FAZIO	)	
CERTIFICATE NO. CR01357	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
RESPONDENT	)	DECISION AND ORDER

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On April 21, 2006, the Iowa Real Estate Appraiser Examining Board (Board) found probable cause to file a Statement of Charges against Chuck A. Fazio (Respondent). Respondent was charged with:

- a. Violating an order of the Board imposing discipline, in violation of Iowa Code section 272C.3(2)(a)(2005); and
- b. Repeatedly failing to adhere to appraisal standards, including but not limited to the ethics and competence rules of the Uniform Standards of Professional Appraisal Practice, in the development, preparation, and communication of multiple appraisals; failure to exercise reasonable diligence in the development, preparation and communication of multiple appraisals; and negligence or incompetence in the development, preparation, and communication of multiple appraisals, in violation of Iowa Code sections 543D.17(1)(d), (e), and (f) (2003, 2005).

A prehearing conference was held by telephone on June 15, 2006 at 1:30 p.m. Respondent Chuck Fazio appeared for the prehearing conference and was self-represented. Assistant Attorney General Pamela Griebel appeared for the state of Iowa and presented a prehearing conference report. The hearing procedure was explained to Respondent and he was provided with a copy of the state's proposed exhibits.

The hearing was held before the Board on June 27, 2006 at 9:15 a.m. The Respondent did not appear and was not represented by counsel. Assistant Attorney General Pamela Griebel represented the state of Iowa. The following Board members presided at the hearing: Michael Lara, Appraiser, Chairperson; Richard Koestner, Appraiser; Amy Thorne, Appraiser; Judy Zwanziger, Appraiser; Debra Floyd, 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)(2005) 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)(2005) to deliberate its decision. The Board instructed the administrative law judge to prepare these Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

#### THE RECORD

The record includes the State's Prehearing Conference Report, the testimony of the witnesses, and State Exhibits 1-16.

#### FINDINGS OF FACT

1. Respondent is a certified residential real estate appraiser in the state of Iowa. Respondent's Certificate No. CR01357 was due to expire on June 30, 2006. As of the date of hearing, Respondent had not submitted his certificate renewal or proof of the continuing education required for renewal. (Testimony of Susan Griffel; State Exhibit 1)

##### Failure to Comply With Board Order

2. Respondent has a history of prior discipline by the Board. In 1998, Respondent agreed to complete a 15-hour tested USPAP course and a 30-hour classroom course on USPAP Principles and Methods.

On August 25, 2005, the Board and Respondent entered into a Consent Order, in resolution of a Statement of Charges alleging numerous violations of the Uniform Standards of Professional Appraisal Practice (USPAP). Respondent's certificate was placed on probation pending his full compliance with the terms of the Consent Order. Respondent agreed, in part, that he would:

- Complete a 15-hour tested USPAP course and a 30-hour pre-approved classroom course on the three approaches to value, by December 31, 2005;
- Enter into a desk review consultation agreement with a desk review appraiser, pre-approved by the Board, on or before January 15, 2006;

- Submit a monthly log of all appraisals completed by the 10<sup>th</sup> of the month, for each preceding month; and
- Submit a total of six appraisal reports for a Standard 3 desk review by the pre-approved desk reviewer for factual compliance with USPAP.

Respondent further agreed that if the desk review comments and appraisals revealed significant USPAP violations, his probation would continue and the Board would be authorized to order additional education, desk reviews, or other rehabilitative measures. (State Exhibit 2)

3. On October 25, 2005, the Board's Disciplinary Committee notified Respondent that it had received additional complaints concerning two appraisal reports prepared by him after he signed the Consent Order and that reviews of the two appraisal reports revealed significant USPAP violations. The Disciplinary Committee encouraged Respondent to promptly complete the 30-hour course on the three approaches to value, as required by the Consent Order. (State Exhibit 11)

On December 20, 2005, the Board's Executive Officer notified Respondent, in writing, that the Board had not received his appraisal logs for September, October, and November 2005. (State Exhibit 12)

On December 30, 2005, Respondent called the Board's Executive Officer to request an extension of time to complete the education required by the Consent Order. Respondent claimed that he was too ill to complete the courses. Respondent agreed to put his request in writing and to submit his missing logs. (State Exhibits 13, 14) Respondent's logs revealed that in recent months he had managed to complete a large number of appraisals throughout the state of Iowa. The Board refused Respondent's request for an extension of time to complete the education. The Board deferred its decision whether to charge Respondent for failure to comply with the Consent Order and gave him until March 15, 2006 to submit six appraisal reports to the pre-approved desk reviewer. (State Exhibit 15; Testimony of Susan Griffel)

4. As of the date of the hearing, Respondent had not completed the 45 hours of education required by the Consent Order nor had he submitted six appraisal reports to his pre-approved desk reviewer. (Testimony of Susan Griffel)

Additional Complaints Received After Consent Order

5. In September 2005, the Board received complaints about two appraisal reports that Respondent had recently completed for a property located at 518 N. 11<sup>th</sup> Street, in Missouri Valley, Iowa and for a property located at 3116 Scott Avenue, in Des Moines, Iowa. Terry Culver, a certified residential appraiser retained by the Board as a peer reviewer, reviewed the two appraisal reports and submitted written review reports documenting numerous USPAP violations. (State Exhibits 3, 4A, 5 and 6A)

6. In January 2006, the Board received an additional complaint about a third appraisal report that Respondent completed on September 15, 2005 for a property located at 2901 Fair Avenue, Davenport, Iowa. Terry Culver had passed away, and the Board submitted Respondent's three appraisal reports to Nancy Larson, an experienced certified residential appraiser retained by the Board to perform peer review and investigative functions. Larson reviewed all three appraisal reports and prepared her own written reports. (Testimony of Nancy Larson; State Exhibits 3, 5, 7, 8, 4B, 6B, 10)

7. In her written report and at the hearing, Nancy Larson described the following USPAP violations found in Respondent's appraisal report for the property located at 518 N. 11<sup>th</sup> Street in Missouri Valley, Iowa:

- Failed to identify the report option used. [USPAP 2-2, Comment]
- Failed to sufficiently identify and report the site description, i.e. comments about the zoning classification and description is very general; no flood hazard date is included. [USPAP 1-2(e) (i-v) and 2-2(b) (iii)]
- Failed to identify and report relevant characteristics of improvements i.e., stated that the subject is a one-story home with asphalt shingles, double hung windows, and is on a 100% slab but photographs of the subject and the appraiser's floor plan indicate that it is a two story home with wood shake shingles and casement windows. In addition, the neighborhood description is general and does not explain why the subject's estimated value of \$171,000 is well outside the upper range of value for the area. [USPAP 1-2(e) (i-iv) and 2-2(b) (iii)]
- Failed to identify and consider the effect on value of any personal property that is not real property but was included in the appraisal. [USPAP 1-4(g), 2-2(b) (iii) (ix)]

- Failed to appropriately value the site; no comment on how site value was arrived at and no support for the value shown. [USPAP 1-4(b)(i), 2-2(b)(iii)(vii)(ix)]
- Failed to collect, verify, analyze, and reconcile the cost of new improvements and accrued depreciations, e.g. no value was given to the subject's two car attached garage and the depreciation as stated and the depreciation taken are inconsistent. [USPAP 1-4(b)(i)(ii), 2-2(b)(iii)(vii)(ix)].
- Failed to correctly employ recognized methods and techniques; failed to select and identify sales similar to and from the same or similar market area as the subject's market area. [USPAP 1-1(a), 2-2(b)(iii)(vii)(ix), 1-4(a)] Two of the sales were ranch style and all three were acreages. While appraiser said these were the best sales available, the reviewer found five additional sales within the community that were better comparables.
- Failed to collect, verify, analyze and reconcile comparable sales, adequately identified and described, i.e. Respondent's adjustments for site square footage are not market oriented, and he used an incorrect date for sale no. 2, incorrect square footage for sale no. 1, and incorrect basement finish information for sale no. 3. Respondent failed to support his \$2500 adjustment for a ¼ bath or his \$3500 adjustment for a fireplace. [USPAP 1-4(a), 2-2(b)(iii)(vii)(ix)]
- Failed to consider the quality and quantity of the data in the approaches, the applicability of the approaches, and failed to comment in the reconciliation, i.e. Respondent states that the Sales Comparison Analysis and the Cost Approach support the final conclusion of value but the Sales Comparison Approach should have been used to arrive at a conclusion, not support it. [USPAP 1-6(a)(b), 2-2(b)(iii)(vii)(ix)]
- Failed to clearly and accurately set forth the appraisal in a manner that will not be misleading. [USPAP 2-1(a)(b)(c)]
- Failed to include sufficient information to enable the persons who are expected to receive it or rely on it to understand it properly, i.e. the Respondent's approaches had no credibility because he appears unaware of the community and its values and because he poorly and incorrectly describes the subject property. [USPAP 1-1(a)(b)(c), 2-1(a)(b)(c)]

(Testimony of Nancy Larson; State Exhibits 3, 4B)

8. In her written report and at the hearing, Larson described the following USPAP violations found in Respondent's appraisal report for the property located at 3116 Scott Avenue, Des Moines, Iowa:

- While photographs of the property indicate that remodeling work is still in process, Respondent does not identify or discuss a hypothetical condition in his report. [USPAP 1-2(g)(h), 2-2(b)(viii)]
- Respondent notes an effective age of 50 years of the subject property, but comments in the report that the home was remodeled inside and out, which indicates a lower effective age. Respondent indicates there is no basement, but courthouse records indicate a basement of 880 SF. In the neighborhood section of the appraisal report, Respondent describes the market area, not the specific neighborhood, and gives no boundaries for the neighborhood. The neighborhood comments are general and do not reflect the industrial or commercial usage in the area. [USPAP 1-2(e)(i-v), 2-2(b)(iii)]
- Respondent has not considered and reported that the area to the south and east of the subject area is being developed as an agribusiness park. [USPAP 1-4(f), 2-2(b)(iii)(ix)]
- Respondent identifies the subject property as owner occupied but it is vacant and being renovated at the time of the appraisal. [USPAP 1-3(b), 2-2(b)(x)]
- Respondent did not indicate how the site was valued. Respondent's Cost Approach makes no sense and shows that he has no concept of the proper development of the Cost Approach. [USPAP 1-4(b)(i), 2-2(b)(iii)(vii)(ix)].
- Respondent failed to identify the neighborhood and used comparable sales from outside the neighborhood when more recent sales were available within the neighborhood. The Respondent's adjustments were not supported or explained and do not appear to be market oriented. [USPAP 1-4(a), 2-2(b)(iii)(vii)(ix)]
- No analysis of the current agreement of sale even though the seller was paying 3% towards the buyer's closing costs. No discussion of the fact that the property was purchased during renovation rather than being exposed and offered on the market for a period of time. [USPAP 1-5(a), 2-2(b)(iii)(vii)(ix)]
- The final reconciliation states that the Sales Comparison Analysis and the Cost Approach support the final conclusion of value. The estimated value should be derived from one or both; it appears that the appraiser was searching for a

pre-determined value. [USPAP 1-6(a)(b), 2-  
2(b)(iii)(vii)(ix)]

(Testimony of Nancy Larson; State Exhibits 5, 6B)

9. Following her review, Nancy Larson concluded that Respondent's appraisal report for the property located at 2901 Fair Avenue in Davenport, Iowa contained so many USPAP violations that it should not even be called an appraisal. It was apparent to Larson that Respondent was not familiar with proper appraisal methodology, the subject market, or the community. For example, Respondent stated that the zoning compliance was "legal," but it should have been "legal non-conforming." While the subject property appears to be a 1.5 story home, Respondent only shows square footage for the first floor, even though the second floor appears to have 3 bedrooms and a full bath. Respondent states that the basement is 100% but does not provide the square footage. Respondent did not specify how he arrived at his site value. Respondent's Cost Approach made no sense and demonstrates that he does not understand the Cost Approach to value. After figuring the subject's cost new, Respondent applied physical depreciation, added the site and as-is value of site improvements, and calculated a Cost Approach value of minus \$2300. Later, Respondent reached a Sales Comparison Value of \$102,000 and nonsensically stated that the Cost Approach Value supported the Sales Comparison Value. Respondent's Sales Comparison Approach used incorrect information and completely lacked credibility. (Testimony of Nancy Larson; State Exhibits 7-10)

10. On May 1, 2006, Respondent was personally served with the Statement of Charges and the Notice of Hearing, which scheduled a telephone prehearing conference for June 15, 2006 at 1:30 p.m. and a hearing for June 27, 2006 at 9:00 a.m. Respondent participated in the telephone prehearing conference but failed to appear for the hearing. Respondent never filed a Motion to Continue. (Testimony of Susan Griffel; State Exhibit 1)

#### CONCLUSIONS OF LAW

##### *I. Failure to Appear*

If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of a party. 193 IAC 7.27(1).

The Respondent was personally served with the Statement of Charges and Notice of Hearing on May 1, 2006, in accordance with 193 IAC 7.6(2). The Respondent was properly served but failed to appear. The Board was authorized to proceed with the hearing.

## ***II. Failure To Comply***

Iowa Code section 272C.3(2)(a)(2005) provides, in relevant part:

2. Each licensing board may impose one or more of the following as licensee discipline:

a. Revoke a license, or suspend a license either until further order of the board or for a specified period, ...upon failure of the licensee to comply with a decision of the board imposing licensee discipline.

The preponderance of evidence established that Respondent completely failed to comply with the Consent Order that he entered into with the Board on August 25, 2005, in violation of Iowa Code section 272C.3(2)(a)(2005). Respondent has not completed the required hours of education and has not submitted six appraisal reports for desk review. Respondent has not timely submitted his monthly appraisal logs.

## ***III. Repeated Failure To Adhere To Appraisal Standards***

Iowa Code sections 543D.17(1)(d), (e) and (f) (2005) 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.

The preponderance of the evidence established that the Respondent violated Iowa Code sections 543D.17(1)(d), (e), and (f) when he repeatedly failed to adhere to USPAP appraisal standards in the development and communication of three appraisals and when he failed to exercise reasonable diligence and demonstrated negligence or incompetence in the development, preparation and communication of three appraisals. Pursuant to Iowa Code section 543D.18(1), all certified appraisers are required to comply with the Uniform Standards of Professional Appraisal Practice (USPAP). The Board's peer reviewers reviewed three appraisal reports prepared by Respondent in September 2005. All three contained multiple violations of appraisal standards, carelessness, multiple errors, and intentional inflation of value or strong evidence of incompetence. In addition, Respondent's logs indicate that he is practicing state-wide, outside of a geographical area in which he could reasonably expect to be competent to practice. Respondent has violated Iowa Code Sections 543D.17(1)(d), (e), and (f) (2005).

#### DECISION AND ORDER

Respondent's complete failure to comply with the Board's Consent Order and the serious and repetitive nature of the USPAP violations in his appraisal reports warrants revocation of his certificate.

**IT IS THEREFORE ORDERED** that Iowa Real Estate Appraiser Certificate No. CR01357, issued to Chuck A. Fazio, is hereby **REVOKED**, effective immediately upon service of this Decision and Order.

**IT IS FURTHER ORDERED** that the Respondent may not apply for reinstatement of his certificate for at least one year from the date of this Decision and Order. **IT IS FURTHER ORDERED** that the

Respondent will be required to redo all of the education, examination, and experience requirements required for initial licensure. The required education, examination, and experience must be completed following the issuance of this Decision and Order and prior to filing an application for reinstatement.

**IT IS FURTHER ORDERED** that before any application for reinstatement is granted, the Respondent will be required to establish that the reason for the revocation no longer exists and it is in the public interest for his license to be reinstated. 193 IAC 7.38(5). The Board retains the right to set conditions of probation in connection with any order reinstating the Respondent's license.

**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.

**IT IS FURTHER ORDERED** that the Respondent shall notify all clients of the fact that his certification has been revoked within fifteen (15) days of receipt of this final decision, in accordance with 193 IAC 7.30(3). Within thirty days of receipt of this final order, the Respondent shall provide the Board with copies of the notice sent to clients.

Dated this *14<sup>th</sup>* day of *July*, 2006.

  
Michael Lara, Appraiser  
Chairperson   
Iowa Real Estate Appraiser Examining Board

cc: Chuck A. Fazio  
415 Walnut Street  
DeSoto, Iowa 50069  
(PERSONAL SERVICE)

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

This decision becomes final agency action, unless, within 15 days after the date of notification or mailing of this decision, a motion to vacate is filed and served on all parties. A motion to vacate shall state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit or a person with personal knowledge of each such fact attached to the motion. 193 IAC 7.27(3).

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