BEFORE THE
DIRECTOR OF THE OFFICE OF REAL ESTATE APPRAISERS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **AMY CHENG** **Post Office Box 298** **Oakland, CA 94604** **Real Estate Appraiser License No. AL032931** Respondent.	Case No. C110210-05 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about October 1, 2012, Elizabeth Seaters, acting solely in her official capacity as the Chief of Enforcement, acting on behalf of the Office of Real Estate Appraisers (Complainant), filed Accusation No. C110210-05 against Amy Cheng (Respondent) before the Director of the Office of Real Estate Appraisers. (Accusation attached as Exhibit A.)

2. On or about January 23, 2004, the Director of the Office of Real Estate Appraisers issued Real Estate Trainee License Number AT032931 to Amy Cheng (Respondent). On or about June 8, 2007, Trainee License Number AT032931 for Amy Cheng was upgraded to Real Estate Appraiser License Number AL032931. Real Estate Appraiser License Number AL032931 expired on January 22, 2008, and was renewed on January 23, 2008. Real Estate Appraiser

License Number AL032931 expired on January 22, 2010, and was not renewed until February 14, 2012. The license will expire on February 13, 2014.

3. On or about October 4, 2012 and November 13, 2012, Respondent was served by Certified and First Class Mail copies of the Accusation No. C110210-05, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Title 10, California Code of Regulations, section 3527, is required to be reported and maintained with the Director. Respondent's address of record was and is: 1932 5th Avenue, Oakland, CA 94606. Respondent was also served at Post Office Box 298, Oakland, CA 94604.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.

5. On or about December 10, 2012, the aforementioned documents were returned by the U.S. Postal Service marked "Unclaimed."

6. Government Code section 11506 states, in pertinent part:

> (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

7. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. C110210-05.

8. California Government Code section 11520 states, in pertinent part:

> (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

9. Pursuant to its authority under Government Code section 11520, the Director finds Respondent is in default. The Director will take action without further hearing and, based on the

relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Director's offices regarding the allegations contained in Accusation No. C110210-05, finds that the charges and allegations in Accusation No. C110210-05, are separately and severally, found to be true and correct by clear and convincing evidence.

10. Taking official notice of its own internal records, pursuant to Business and Professions Code section 11409, it is hereby determined that the reasonable costs for Investigation and Enforcement is $9,385.14 as of February 21, 2013.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Amy Cheng has subjected her Real Estate Appraiser License No. AL032931 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Director of the Office of Real Estate Appraisers is authorized to revoke Respondent's Real Estate Appraiser License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case.:

a. California Business and Professions Code section 11328, Title 10, California Code of Regulations, sections 3702(a)(3), 3721(a)(2) and 3721 (a)(5).

/ /

/ /

/ /

/ /

/ /

/ /

/ /

/ /

/ /

/ /

ORDER

IT IS SO ORDERED that Real Estate Appraiser License No. AL032931, heretofore issued to Respondent Amy Cheng, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on 3-29-13.

It is so ORDERED 2-26-13

Original Signed

FOR THE DIRECTOR OF THE OFFICE OF REAL ESTATE APPRAISERS

default decision_LIC.rtf
DOJ Matter ID:SF2012401391
Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

KAMALA D. HARRIS
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General
MARETTA WARD
Deputy Attorney General
State Bar No. 176470
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-1384
Facsimile: (415) 703-5480
Attorneys for Complainant

BEFORE THE
DIRECTOR OF THE OFFICE OF REAL ESTATE APPRAISERS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **AMY CHENG** **1932 5th Avenue** **Oakland, CA 94606** **Real Estate Appraiser License No. AL032931** Respondent.	Case No. C110210-05 **ACCUSATION**

Complainant alleges:

PARTIES

1. Elizabeth Seaters, acting on behalf of the Office of Real Estate Appraisers (Complainant), brings this Accusation solely in her official capacity as Chief of Enforcement for Complainant.

2. On or about January 23, 2004, the Director of the Office of Real Estate Appraisers issued Real Estate Trainee License Number AT032931 to Amy Cheng (Respondent). On or about June 8, 2007, Trainee License Number AT032931 for Amy Cheng was upgraded to Real Estate Appraiser License Number AL032931. Real Estate Appraiser License Number AL032931 expired on January 22, 2008, and was renewed on January 23, 2008. Real Estate Appraiser License Number AL032931 expired on January 22, 2010, and was not renewed until February 14, 2012. The license will expire on February 13, 2014.

JURISDICTION

3. This Accusation is brought before the Director of the Office of Real Estate Appraisers (Director), under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Business and Professions Code section 11313 states, in pertinent part:

"The office [Office of Real Estate Appraisers] is under the supervision and control of the secretary [secretary of the Business, Transportation and Housing Agency]. The duty of enforcing and administering this part is vested in the director [director of the Office of Real Estate Appraisers] and he or she is responsible to the secretary therefore. The director shall adopt and enforce rules and regulations as are determined reasonably necessary to carry out the purposes of this part."

5. Business and Professions Code section 11314 states, in pertinent part: "The office is required to include in its regulations requirements for licensure and discipline of real estate appraisers that ensure protection of the public interest."

6. Business and Professions Code section 11316, subdivision (a) states:

"(a) The director may assess a fine against a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation for violation of this part or any regulations adopted to carry out its purposes."

MINIMUM STANDARDS FOR CONDUCT AND PERFORMANCE

7. Business and Professions Code section 11319 states:

"Notwithstanding any other provision of this code, the Uniform Standards of Professional Appraisal Practice constitute the minimum standard of conduct and performance for a licensee in any work or service performed that is addressed by those standards. If a licensee also is certified by the Board of Equalization, he or she shall follow the standards established by the Board of Equalization when fulfilling his or her responsibilities for assessment purposes."

8. Business and Professions Code section 11325, subdivision (a) states:

"The director shall adopt regulations which determine the parameters of appraisal work which may be performed by licensed appraisers."

9. Business and Professions Code section 11328 states, in pertinent part:

"To substantiate documentation of appraisal experience, or to facilitate the investigation of illegal or unethical activities by a licensee, applicant, or other person acting in a capacity that requires a license, that licensee, applicant, or person shall, upon the request of the director, submit copies of appraisals, or any work product which is addressed by the Uniform Standards of Professional Appraisal Practice, and all supporting documentation and data to the OREA.".

COST RECOVERY

10. Business and Professions Code section 11409, subdivision (a) states:

"Except as otherwise provided by law, any order issued in resolution of a disciplinary proceeding may direct a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, registrant, applicant for a certificate of registration, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation found to have committed a violation or violations of statutes or regulations relating to real estate appraiser practice to pay a sum not to exceed the reasonable costs of investigation, enforcement, and prosecution of the case."

REGULATORY PROVISIONS

11. California Code of Regulations, title 10, section 3701 states:

"Every holder of a license under this part shall conform to and observe the Uniform Standards of Professional Appraisal Practice (USPAP) and any subsequent amendments thereto as promulgated by the Appraisal Standards Board of The Appraisal Foundation which standards are herein incorporated into these regulations by reference as if fully set forth herein."

12. California Code of Regulations, title 10, section 3702 states in pertinent part:

"(a) The Director finds and declares as follows:

(3) Every holder of a license to practice real estate appraisal, Registrant, Controlling Person of an Appraisal Management Company, or person or entity in a capacity requiring a license or Certificate of Registration shall be required to demonstrate by his or her conduct that he or she possesses the qualifications of honesty candor, integrity and untrustworthiness.

13. California Code of Regulations, title 10, section 3721 states:

"(a) The Director may issue a citation, order of abatement, assess a fine or private or public reproval, suspend or revoke any license or Certificate of Registration, and/or may deny the issuance or renewal of a license or Certificate of Registration of any person or entity acting in a capacity requiring a license or Certificate of Registration who has:

. . .

"(2) Done any act involving dishonesty, fraud or deceit with the intent to benefit himself or another, or to injure another;

. . .

"(4) Done any act which if done by the holder of a license to practice real estate appraisal would be grounds for revocation or suspension of such license;

"(5) Knowingly made a false statement of material fact required to be disclosed in an application for a license authorizing the practice of real estate appraisal;

"(6) Violated any provision of USPAP;

"(7) Violated any provision of the Real Estate Appraisers' Licensing and Certification Law, Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code, or regulations promulgated pursuant thereto; or any provision of the Business and Professions Code applicable to applicants for or holders of licenses authorizing appraisals;

14. Title 10, California Code of Regulations section 3702 states that:

"(a) The Director finds and declares as follows:

"(1) That the profession of real estate appraisal is vested with a fiduciary relationship of trust and confidence as to clients, lending institutions, and both public and private guarantors or insurers of funds in federally-related real estate transactions and that the qualifications of honesty,

candor, integrity, and trustworthiness are directly and substantially related to and indispensable to the practice of the appraisal profession;

"(2) That registered Appraisal Management Companies are vested with a relationship of trust and confidence as to their clients, lending institutions, and both public and private guarantors or insurers of funds in federally-related real estate transactions and that the qualifications of honesty, candor, integrity, and trustworthiness are directly and substantially related to and indispensable to their business operations; and

"(3) Every holder of a license to practice real estate appraisal, Registrant, Controlling Person of an Appraisal Management Company, or person or entity acting in a capacity requiring a license or Certificate of Registration shall be required to demonstrate by his or her conduct that he or she possesses the qualifications of honesty, candor, integrity, and trustworthiness.

"(b) The Director may require such proof as he may deem advisable concerning the special qualifications of an applicant for or holder of an appraisers' license or a Certificate of Registration."

15. California Code of Regulations, title 10, section 3722, states:

"(a) A crime or act shall be deemed to be substantially related to the qualifications, functions or duties of an appraiser if, to a substantial degree, it evidences present or potential unfitness of a person holding a license to perform the functions authorized by his/her license. The crimes or acts include, but are not limited to, the following:

"(1) Crimes or Acts involving the use of fraud, deceit or dishonesty for profit or gain;

"(2) Taking, appropriating or retaining the funds or property of another;

"(3) Forging, counterfeiting or altering any instrument affecting the rights or obligations of another;

"(4) Evasion of a lawful debt or obligation, including but not limited to tax obligations;

"(5) Traffic in any narcotic or controlled substance in violation of law;

"(6) Driving under the influence of alcohol or drugs, while conducting business related to real estate appraisals; conviction of felony driving under the influence of alcohol or drugs; or

conviction of two or more misdemeanor driving under the influence of alcohol or drugs within any three year period, whether or not while conducting business:

"(7) Violation of a relation of trust or confidence;

"(8) Theft of personal property or funds;

"(9) Crimes or acts of violence or threatened violence against persons or property;

"(10) The commission of any crime or act punishable as a sexually related crime, if that crime or act is substantially related to the duties and functions of the licensee; or

"(11) Misrepresentation of facts or information on the appraisal license application and/or cheating on the examination.

"(b) An act or crime shall be deemed to be substantially related to the functions, duties or qualifications of an appraiser if it involves any willful violation of the Real Estate Appraisers' Licensing and Certification Act or provisions of the Business and Professions Code applicable to appraisers.

"(c) The weight to be accorded to a substantially related crime or act under (a) or (b) shall be determined by application of the following standards:

"(1) The extent to which the particular acts or omissions have adversely affected other persons, including but not limited to lenders, clients, employers or other persons; and the probability that such adverse effects will continue;

"(2) The recency or remoteness in time of the acts or omissions;

"(3) The type of license applied for or held by the person involved;

"(4) The extenuating or aggravating circumstances surrounding the acts or omissions;

"(5) The motivation of the acts or omissions, whether praiseworthy or blameworthy;

"(6) The probability that the questioned acts or omissions will continue or be repeated; and

"(7) The extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the person involved or other licensed persons."

16. Business and Professions Code section 11320, states, in pertinent part:

"No person shall engage in federally related real estate appraisal activity governed by this part or assume or use the title of or any title designation or abbreviation as a licensed appraiser in this state without first obtaining a license as defined in Section 11302."

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

17. Respondent is subject to disciplinary action under California Code of Regulations, title 10, section 3702(a)(3), title 10, section 3721 (a)(2) and California Code of Regulations, title 10 section 3721 (a)(5) in that Respondent knowingly misled the Office of Real Estate Appraisers by submitting fabricated work samples for review with her upgrade application that were not the true and correct copies that were submitted to the clients. Further, when the Respondent had the opportunity to tell the investigator the truth in a telephone conference held on February 10, 2011, that the work samples submitted were not true and correct copies, she did not. Instead, Respondent stated there were software problems with her computer, or she had problems transferring the data to her reports. As a result, Respondent failed to demonstrate by her presentation that she possesses the qualifications of honesty, integrity and trustworthiness. The circumstances are as follows:

18. On or about December 7, 2009, Respondent submitted to the Office of Real Estate Appraisers an application to upgrade her license from Residential (AL) to Certified Residential (AR). On December 10, 2009, Respondent was sent a deficiency letter from OREA requesting additional information including hours of appraisal experience, based on education and proof of Associates Degree or higher.

19. On December 7, 2010, OREA received a response from Respondent submitting the requested information. On December 21, 2010, OREA sent the Respondent a letter requesting work samples for review. The work samples requested were from Respondent's Log of Appraisal Experience and included property located at 1808 Walnut Street, Oakland California, report dated July 20, 2009, and 2863 Grand Vista, Oakland, California, report dated October 28, 2009. These items were received on or about January 24, 2011.

20. OREA review of the subject work sample at 1808 Walnut Street revealed the report had a value stated date of July 10, 2009 with the owners listed with the surname of Rettinghouse. In actuality, the subject property did not transfer to title to the Rettinghouses until July 24, 2009.

21. Further, the appraisal report for 1808 Walnut Street identified all three comparable sales as used in the Sales Comparison Approach segment of the report as having transferred in '2009, but all three sales recorded in mid to late 2010, which is after the date of value for the property at 1808 Walnut Street – July 10, 2009.

22. OREA review of the subject work sample at 2683 Grande Vista revealed the report had a value stated date of October 28, 2009.

23. The appraisal report for 2683 Grande Vista identified all three comparable sales in the Sales Comparison Approach segment of the reports as having transferred in 2009, but all three sales actually recorded in mid-2010, which is after the date of value for the property at 2683 Grande Vista – October 28, 2009.

24. The examination of Respondent's work samples demonstrated that the appraisal reports were not USPAP compliant and could have only been completed in mid to late 2010, which is when the stated comparable sales occurred and is after the expiration of the Respondent's Real Estate Appraiser License (January 22, 2010).

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

25. Respondent is subject to disciplinary action under California Code of Regulations, title 10, section 3702(a)(3), title 10, section 3721 (a)(2) and title 10 section 3721 (a)(5) in that Respondent failed to make honest and full disclosure regarding her professional disciplinary history on her license renewal application for Residential License. The circumstances are as follows:

26. On or about August 29, 2011, Respondent submitted an application to OREA requesting to renew her expired Residential (AL) appraiser license. On Part B of the application, question eight, the Respondent was asked "Have you ever been disciplined or had a penalty

imposed by any governmental agency including OREA, with respect to your activities as a licensee of the agency?" The Respondent answered the question by checking the box marked "No."

27. Respondent's answer to question eight is contradicted by her true professional disciplinary history. Specifically, Respondent had previously been disciplined in the OREA Complaint Matter C060330-02 wherein the findings stated Respondent had committed acts involving dishonesty, fraud or deceit with the intent to benefit her by forging the signature of her supervising appraiser, on multiple appraisal reports that were completed from January 19, 2006 through February 27, 2006.

28. Respondent's answer to question eight is further contradicted by a disciplinary action from the Department of Real Estate (DRE). Specifically, on September 5, 2001, Respondent submitted to DRE an initial application for real estate salesperson license. On March 5, 2002, The Department of Real Estate issued the Respondent a Statement of Issues denying the issuance of a real estate sales person license, which was based upon the grounds that she failed to disclose on her application the February 1992 conviction for petty theft which involved stealing a leather jacket from a Nordstrom store. After an administrative hearing, a decision dated September 16, 2002, was issued denying Respondent's license application. The Judge noted Respondent did not present as a good citizen with an abiding commitment to truthfulness. The decision stated Respondent's demeanor while testifying shows a tendency towards evasion, exaggeration and fabrication. After being adopted by the Department of Real Estate, the decision became effective on November 6, 2002.

29. Respondent's answer to question eight is further contradicted by previous disciplinary action in that Respondent submitted an application to DRE for a real estate sales person license on or about January 29, 2003. Respondent again failed to disclose on her license application the fact of her February 1992 conviction for petty theft. On August 28, 2003, DRE filed a Statement of Issues involving the act of failure to disclose a criminal conviction on an application for a license. On November 18, 2003, DRE filed a dismissal of the case as the Respondent withdrew her application for a real estate salesperson license.

30. Respondent's answer to question eight is further contradicted by disciplinary action in that Respondent submitted an application to DRE for a real estate salesperson license on or about January 13, 2004. On September 2, 2004, DRE filed a Statement of Issues involving her history at DRE including her failure to disclose a criminal conviction on prior applications for a license. On September 28, 2004, DRE filed a Stipulation and Waiver granting the Respondent a two-year restricted real estate sales person license. On or about April 7, 2006, DRE issued the Respondent an unrestricted broker's license.

DISCIPLINARY CONSIDERATIONS

31. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about November 27, 2006, in a prior OREA disciplinary action entitled In the Matter of the Notice of Allegations Against Amy Cheng before the Office of Real Estate Appraisers, in Case Number C 060330-02, Respondent's license was suspended for 30 days with the suspension being stayed. Respondent was placed on probation for one (1) year. That decision is now final and is incorporated by reference as if fully set forth.

32. To further determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about November 6, 2002 in a DRE action entitled, In the Matter of the Application of Amy M. Chen, in Case Number H-8060 SF, Respondent's application for a real estate salesperson license was denied.

/ /

/ /

/ /

/ /

/ /

/ /

/ /

/ /

/ /

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of the Office of Real Estate Appraisers issue a decision:

1. Revoking or suspending Real Estate Appraiser License Number AL032931, issued to Amy Cheng

2. Ordering Amy Cheng to pay the Director of the Office of Real Estate Appraisers the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 11409;

3. Ordering Amy Cheng to pay the Director of the Office of Real Estate Appraisers a fine pursuant to Business and Professions Code section 11316; and

4. Taking such other and further action as deemed necessary and proper.

DATED: 10/1/12

Original Signed

ELIZABETH SEATERS
Chief of Enforcement
Office of Real Estate Appraisers
State of California
Complainant

SF2012401391
accusation.rtf