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8 **BEFORE THE**
9 **DIRECTOR OF THE OFFICE OF REAL ESTATE APPRAISERS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. C110503-02

12 **JAMES H. ANKENBRUCK**

13 P.O. Box 282
14 Merced, CA 95314

A C C U S A T I O N

15 **Residential Appraiser License No.**
AL034469

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about August 5, 2005, the Director of OREA issued Residential Appraiser
24 License Number AL034469 to James H. Ankenbruck (Respondent). The Residential Appraiser
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on June 29, 2014, unless renewed.

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JURISDICTION

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

5 4. Code section 11313 requires OREA to adopt and enforce rules and regulations as are
6 determined reasonably necessary to carry out the purposes of the Real Estate Appraisers’
7 Licensing and Certification law.

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

11 6. Code section 11319 states:

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

18 7. Code section 11328 states, in pertinent part:

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

FINES

25 8. Business and Professions Code section 11316, subdivision (a) states that the director
26 may assess a fine against a licensee, applicant for licensure, person who acts in a capacity that
27 requires a license under this part, course provider, applicant for course provider accreditation, or a
28 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.

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1 COST RECOVERY

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

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

11 REGULATORY PROVISIONS

12 10. California Code of Regulations, title 10, ("Regulation") section 3701 states:

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

18 11. Regulation section 3702 (a) states, in pertinent part:

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

20 (1) That the profession of real estate appraisal is vested with a fiduciary
21 relationship of trust and confidence as to clients, lending institutions, and both
22 public and private guarantors or insurers of funds in federally-related real estate
23 transactions and that the qualifications of honesty, candor, integrity, and
24 trustworthiness are directly and substantially related to and indispensable to the
25 practice of the appraisal profession;...

26 (3) Every holder of a license to practice real estate appraisal... shall be
27 required to demonstrate by his or her conduct that he or she possesses the
28 qualifications of honesty, candor, integrity and trustworthiness...

12. Regulation section 3705 (a) states:

Every appraisal report subject to the Uniform Standards of Professional
Appraisal Practice upon final completion shall bear the signature and license
number of the appraiser and of the supervising appraiser, if appropriate. The
affixing of such signature and number constitute the acceptance by the appraiser and
supervising appraiser of full and personal responsibility for the accuracy, content,
and integrity of the appraisal under Standards Rules 1 and 2 of USPAP.

13. Regulation 3721 states, in pertinent part:

(a) The Director may issue a citation, order of abatement, assess a fine or
private or public reproof, 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:

1 (6) Violated any provision of USPAP;

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

7 **UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP)**

8 **(EFFECTIVE JULY 1, 2006)**

9 14. USPAP Standard Rule 1 states, in pertinent part:

10 In developing a real property appraisal, an appraiser must identify the problem to be solved,
11 determine the scope of work necessary to solve the problem, and correctly complete research and
12 analyses necessary to produce a credible appraisal.

13 15. USPAP Standards Rule 1-1 states:

14 In developing a real property appraisal, an appraiser must:

15 (a) be aware of, understand, and correctly employ those recognized methods and
16 techniques that are necessary to produce a credible appraisal;

17 (b) not commit a substantial error of omission or commission that significantly
18 affects an appraisal; and

19 16. USPAP Standards Rule 1-2 states:

20 In developing a real property appraisal, an appraiser must:

21 (a) identify the client and other intended users;

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23 (e) identify the characteristics of the property that are relevant to the type and
24 definition of value and intended use of the appraisal, including:

25 (i) its location and physical, legal, and economic attributes;

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27 (h) determine the scope of work necessary to produce credible assignment results
28 in accordance with the SCOPE OF WORK RULE.

1 17. USPAP Standards Rule 1-3 states:

2 When necessary for credible assignment results in developing a market value opinion,
3 an appraiser must:

4 (b) develop an opinion of the highest and best use of the real state.

5 18. USPAP Standards Rule 1-4 states:

6 (a) When a sales comparison approach is necessary for credible assignment results,
7 an appraiser must analyze such comparable sales data as are available to indicate a value
8 conclusion.

9 19. USPAP Standard 2 states:

10 In reporting the results of a real property appraisal, an appraiser must communicate
11 each analysis, opinion, and conclusion in a manner that is not misleading.

12 20. USPAP Standards Rule 2-1 states:

13 Each written or oral real property appraisal report must:

14 (a) clearly and accurately set forth the appraisal in a manner that will not be
15 misleading;

16 (b) contain sufficient information to enable the intended users of the appraisal to
17 understand the report properly; and

18 21. USPAP Standards Rule 2-2 states:

19 Each written real property appraisal report must be prepared under one of the
20 following three options and prominently state which option is used: Self-Contained Appraisal
21 Report, Summary Appraisal Report, or Restricted Use Appraisal Report.

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

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26 (iii) summarize information sufficient to identify the real estate involved in
27 the appraisal, including the physical and economic property characteristics relevant to
28 the assignment;

1 23. The Competency Rule in USPAP states, in pertinent part:

2 Prior to accepting an assignment or entering into an agreement to perform
3 any assignment, an appraiser must properly identify the problem to be addressed
4 and have the knowledge and experience to complete the assignment competently; or
5 alternatively, must:

- 6 1. disclose the lack of knowledge and/or experience to the client before
7 accepting the assignment;
- 8 2. take all steps necessary or appropriate to complete the assignment
9 competently; and
- 10 3. describe the lack of knowledge and/or experience and the steps taken
11 to complete the assignment competently in the report.

12 24. The Scope of Work Rule¹ in USPAP states:

13 For each appraisal, appraisal review, and appraisal consulting assignment, an
14 appraiser must:

- 15 1. identify the problem to be solved;
- 16 2. determine and perform the scope of work necessary to develop
17 credible assignment results; and
- 18 3. disclose the scope of work in the report

19 An appraiser must properly identify the problem to be solved in order to
20 determine the appropriate scope of work. The appraiser must be prepared to
21 demonstrate that the scope of work is sufficient to produce credible assignment
22 results.

23 Problem Identification

24 An appraiser must gather and analyze information about those assignment
25 elements that are necessary to properly identify the appraisal, appraisal review, or
26 appraisal consulting problem to be solved.

27 Scope of Work Acceptability

28 The scope of work must include the research and analyses that are necessary
to develop credible assignment results.

An appraiser must not allow assignment conditions to limit the scope of
work to such a degree that the assignment results are not credible in the context of
the intended use.

An appraiser must not allow the intended use of an assignment or client's
objectives to cause the assignment results to be biased.

¹ This was a new rule incorporated in July 1, 2006, edition.

1 report properly. Respondent failed to provide adequate details regarding the improvements on the
2 subject properties, since it only states the building sizes, but not their use, and the report fails to
3 specify the over all use of the properties, which appear to have been for the production of
4 concrete products.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Failure to Report the Zoning Restrictions)**

7 28. Respondent is subject to disciplinary action under Regulation section 3721
8 subdivision (a)(6) and (a)(7), by and through his violation of Regulation sections 3701,
9 3702(a)(1) and (a)(3) and violation of USPAP S.R. 2-2 (b)(iii) and Conduct Section of the Ethics
10 Rule in that he failed to report the zoning restriction of the properties. The report states that the
11 subject properties are zoned industrial, miscellaneous, mixed, but did not report the associated
12 zoning restrictions.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Failure to Properly Analyze the Highest and Best Use)**

15 29. Respondent is subject to disciplinary action under Regulation section 3721
16 subdivision (a)(6) and (a)(7), by and through his violation of Regulation sections 3701,
17 3702(a)(1) and (a)(3) and violation of USPAP S.R. 1-1 (a), S.R. 1-3(b), S.R. 2-1(b), S.R. 2-2
18 (b)(ix), and Conduct Section of the Ethic Rule in that he failed to analyze the highest and best use
19 of the subject properties in a creditable manner. Respondent's analysis of the highest and best use
20 section is not based on factual information or any sound reasoning. Respondent concludes that
21 the highest and best use of the subject properties are industrial; however, the report provides no
22 factual support, reasoning, or analysis for this conclusion. The report fails to analyze each
23 property separately, or explain how and why they are being analyzed in conjunction with each
24 other.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Value the Properties in a Credible Manner)**

3 30. Respondent is subject to disciplinary action under Regulation section 3721
4 subdivision (a)(6) and (a)(7), by and through his violation of Regulation sections 3701,
5 3702(a)(1) and (a)(3) and violation of USPAP S.R. 1-1(a), S.R. 1-1(b), S.R. 1-4 (a), S.R. 2-1 (a),
6 and the Competency Rule in that he that he failed to value the properties or otherwise analyze the
7 sales used in his report in a creditable manner. The report states that the value of the properties
8 are based on a price per square foot of the land and price per square foot of the buildings. While
9 this is a common method of valuing properties, there is no analysis to explain how these figures
10 were derived, what they were based on, or why Respondent limited his report to this method.
11 Respondent failed to utilize other data or information necessary for a credible report. Respondent
12 described the cost approach in detail, but did not complete the cost approach analysis of the
13 subject properties in his report and did not discuss why this was not completed. Respondent did
14 not complete the income approach to value for the subject properties and did not discuss why this
15 was not done. Respondent valued the subject properties using four sales in the sales comparison
16 approach. Respondent limited his valuation to what the extracted land value from these sales
17 were, but failed to provide proper analysis of the value of these comparable properties, failed to
18 properly address what these sales actually consisted of, failed to describe what the comparable
19 improvements actually consisted of, and failed to adequately analyze the contributing value of
20 improvements to these comparable properties.

21 **SIXTH CAUSE FOR DISCIPLINE**

22 **(Failure to Cooperate with Investigation)**

23 31. Respondent is subject to disciplinary action under Code section 11328 and the
24 Conduct Section of the Ethics Rule in that he failed to cooperate with OREA's investigation by
25 refusing to comply with the demand letter send to him and failed to submit a copy of his appraisal
26 report and work file to OREA. Instead, Respondent wrote letters to OREA containing false
27 statements that the "appraisal [is] not mine" and the subject properties were "not appraised by
28 me." When ask about the subject properties, Respondent falsely stated that his only involvement

1 was to drive Mr. Ewing out to the properties to do the inspection and take pictures. In fact,
2 Respondent signed the appraisal report on or about May 22, 2007, and listed both properties on
3 his log of appraisal experience that was filed with OREA in order to take the real estate appraiser
4 examination.

5 PRAYER

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

- 9 1. Revoking or suspending Residential Appraiser License Number AL 034469, issued to
10 James H. Ankenbruck;
- 11 2. Ordering Respondent James H. Ankenbruck to pay the Director of the Office of Real
12 Estate Appraisers the reasonable costs of the investigation and enforcement of this case, pursuant
13 to Business and Professions Code section 11409;
- 14 3. Taking such other and further action as deemed necessary and proper.

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DATED: 3/20/13

Original Signed

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

SA2012104840