

1
2
3
4
5
6 **BEFORE THE**
7 **DIRECTOR OF THE OFFICE OF REAL ESTATE APPRAISERS**
8 **STATE OF CALIFORNIA**

9 In the Matter of the Accusation Against:

Case No. C081022-03

10 **MALIK M. MILES**
11 **15681 Lasselle Street, No. 68**
12 **Moreno Valley, CA 92551**

DEFAULT DECISION AND ORDER

13 **Real Estate Appraiser License No.**
14 **AT039972**

[Gov. Code, §11520]

15 Respondent.

16
17 FINDINGS OF FACT

18 1. On or about April 4, 2012, Elizabeth Seaters, in her official capacity as the Chief of
19 Enforcement of the Office of Real Estate Appraisers (Complainant), filed Accusation No.
20 C081022-03 against Malik M. Miles (Respondent) before the Director of the Office of Real
21 Estate Appraisers. (Accusation attached as Exhibit A.)

22 2. On or about December 31, 2008, the Director of the Office of Real Estate Appraisers
23 (Director) issued Real Estate Appraiser License No. AT039972 to Respondent. The Real Estate
24 Appraiser License expired on December 30, 2010, and has not been renewed.

25 3. On or about April 9, 2012, Respondent was served by Certified and First Class Mail
26 copies of the Accusation No. C081022-03, Statement to Respondent, Notice of Defense, Request
27 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
28 11507.7) at Respondent's address of record which, pursuant to Title 10, California Code of

1 Regulations, section 3527, is required to be reported and maintained with the Director.

2 Respondent's address of record was and is:

3 15681 Lasselle Street, No. 68, Moreno Valley, CA 92551.

4 4. Service of the Accusation was effective as a matter of law under the provisions of
5 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
6 124.

7 5. The aforementioned documents were returned by the U.S. Postal Service marked
8 "Not Deliverable as Addressed, Unable to Forward." The address on the documents was the same
9 as the address on file with the Director. Respondent failed to maintain an updated address with
10 the Director and the Director has made attempts to serve the Respondent at the address on file.
11 Respondent has not made himself available for service and therefore, has not availed himself of
12 his right to file a notice of defense and appear at hearing.

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

14 (c) The respondent shall be entitled to a hearing on the merits if the respondent
15 files a notice of defense, and the notice shall be deemed a specific denial of all parts
16 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.

17 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
18 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
19 C081022-03.

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

21 (a) If the respondent either fails to file a notice of defense or to appear at the
22 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
23 respondent.

24 9. Pursuant to its authority under Government Code section 11520, the Director finds
25 Respondent is in default. The Director will take action without further hearing and, based on the
26 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
27 taking official notice of all the investigatory reports, exhibits and statements contained therein on
28 file at the Director's offices regarding the allegations contained in Accusation No. C081022-03,

1 finds that the charges and allegations in Accusation No. C081022-03, are separately and
2 severally, found to be true and correct by clear and convincing evidence.

3 DETERMINATION OF ISSUES

4 1. Based on the foregoing findings of fact, Respondent Malik M. Miles has subjected his
5 Real Estate Appraiser License No. AT039972 to discipline.

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

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

11 a. Uniform Standards of Professional Appraisal Practice ("USPAP") Standard Rules 1-
12 1(a), 1-1(b), 1-4(b)(i), 1-5(b), 2-1(a), 2-1(b), 2-2(b)(viii), 2-3, and the Conduct section of the
13 Ethics Rule; California Code of Regulations, title 10, sections 3702(a)(1) and (a)(3), 3721(a)(2),
14 (a)(4) and (a)(6), 3722(a)(3) and (a)(7).

15 ORDER

16 IT IS SO ORDERED that Real Estate Appraiser License No. AT039972, heretofore issued
17 to Respondent Malik M. Miles, is revoked.

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

22 This Decision shall become effective on July 27, 2012.

23 It is so ORDERED July 11, 2012

24
25 [Signature] **Original Signed**
26 FOR THE DIRECTOR OF THE OFFICE OF REAL
ESTATE APPRAISERS

27 default decision_LIC.rtf
DOJ Matter ID:SF2012401971
Attachment:
28 Exhibit A: Accusation

Exhibit A

Accusation

1 Kathleen S. Chovan
2 Department Counsel, State Bar No. 18325
3 Office of Real Estate Appraisers
4 1102 "Q" Street, Suite 4100
5 Sacramento, CA 95811
6 Telephone: (916) 552-9000
7 Facsimile: (916) 552-9008
8 *Attorney for Complainant*

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

In the Matter of the Accusation Against:

Case No. C 081022-03

MALIK M. MILES
15681 Lasselle Street, No. 68
Moreno Valley, CA 92551

A C C U S A T I O N

Trainee Appraiser License No. AT039972

Respondent.

Complainant alleges:

FINDINGS OF FACT

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 April 5, 2006, the Director of the Office of Real Estate Appraisers issued Trainee Appraiser License Number AT039972 to Malik M. Miles (Respondent). The Residential Appraiser License was in full force and effect at all times relevant to the charges brought herein and expired on December 30, 2010.

3. On or about February 27, 2009, Penny Bulmer, an employee of the Office of Real Estate Appraisers sent by Certified Mail a demand letter to Respondent's address of record with the Director, which was and is:

///

1 15681 Lasselle Street, No. 68

2 Moreno Valley, CA 92551

3 4. On or about March 3, 2009, Aaron Klinger, an employee of the Office of Real Estate
4 Appraisers telephoned Respondent out of state at (951) 224-4776 and was told that Respondent
5 would be back in town on March 6, 2009. Respondent asked for extension to demand response
6 and was granted until March 13, 2009.

7 5. On or about March 12, 2009, Respondent telephoned Aaron Klinger, an employee of
8 the Office of Real Estate Appraisers informing him that he just mailed out response to the
9 demand that day via U.S. mail and our office may not get it by tomorrow (the extension date we
10 had granted him).

11 6. On or about March 23, 2009, Aaron Klinger, an employee of the Office of Real Estate
12 Appraisers telephoned Respondent and left voice mail asking for a returned call in regards to the
13 response to the demand that had not been received yet.

14 7. On or about March 26, 2009, Aaron Klinger, an employee of the Office of Real Estate
15 Appraisers had yet to receive a returned phone call from Respondent so Mr. Klinger called once
16 again and left another voice mail asking for a returned call as soon as possible and informing
17 Respondent how imperative the matter was. Respondent finally returned call and informed Mr.
18 Klinger that he had already mailed in the report and work file. Mr. Klinger asked Respondent to
19 send it once again, but certified and once that was done to email him the certified letter
20 confirmation number. The conversation was interrupted by many dropped calls and Respondent
21 left a voice mail for Mr. Klinger to return his call, however when Mr. Klinger attempted to do so,
22 he reached his voice mail and requested a call back.

23 8. On or about March 30, 2009, Respondent telephoned Aaron Klinger, an employee of
24 the Office of Real Estate Appraisers and left a voice mail asking for a returned call. Mr. Klinger
25 returned the call on or about April 1, 2009 and Respondent informed Mr. Klinger that the had
26 mailed the response to the demand for the second time, again not certified, as they had previously
27 discussed on or about March 26, 2009. Mr. Klinger informed Respondent that our office needed a
28

1 statement from him under Penalty of Perjury (POP). Respondent asked Mr. Klinger to email the
2 POP once again.

3 9. On or about April 6, 2009, Aaron Klinger, an employee of the Office of Real Estate
4 Appraisers received an email from Respondent with the report and related workfile and a
5 statement in which Respondent testified to using Laron Hall's signature without his authorization,
6 along with a signed POP attached. Mr. Klinger then emailed Respondent a confirmation that he
7 had received the material and let him know that he may follow up with a telephone call.

8 10. On or about June 15, 2009, Respondent provided a statement that he used Laron
9 Hall's signature. Aaron Klinger call Respondent back whether he had permission to use Hall's
10 signature, however business number (951) 224-4746 was no longer in service and home number
11 (951) 833-5083 had a greeting message recorded by a woman. Mr. Klinger left a voice mail for a
12 returned call back.

13 14 JURISDICTION

15 11. This Accusation is brought before the Director of the Office of Real Estate
16 Appraisers, under the authority of the following laws.

17 18 STATUTORY PROVISIONS

19 12. Business and Professions Code section 11313 states in pertinent part:

20 The duty of enforcing and administering provisions of the Real Estate Appraisers' Licensing
21 and Certification Law is vested in the director. The director shall adopt and enforce rules and
22 regulations as are determined reasonably necessary to carry out the purposes of this part. Those
23 rules and regulations shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340)
24 of Part 1 of Division 3 of Title 2 of the Government Code.

25 13. Business and Professions Code section 11314 states, in pertinent part:

26 The office is required to include in its regulations requirements for licensure and discipline of real
27 estate appraisers that ensure protection of the public interest.

28

1 14. Business and Professions Code section 11316 subdivision (a) states:

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

6 15. Business and Professions Code section 11319 states:

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

12 16. Business and Professions Code section 11328 states:

13 To substantiate documentation of appraisal experience, or to facilitate the investigation of
14 illegal or unethical activities by a licensee, applicant, or other person acting in a capacity that
15 requires a license, that licensee, applicant, or person shall, upon the request of the director, submit
16 copies of appraisals, or any work product which is addressed by the Uniform Standards of
17 Professional Appraisal Practice, and all supporting documentation and data to the office. This
18 material shall be confidential in accordance with the confidentiality provisions of Uniform
19 Standards of Professional Appraisal Practice.

20

21 **REGULATORY PROVISIONS**

22 17. Regulation section 3702 (a) states, in pertinent part:

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

24 (1) That the profession of real estate appraisal is vested with a fiduciary
25 relationship of trust and confidence as to clients, lending institutions, and both public
26 and private guarantors or insurers of funds in federally-related real estate transactions
27 and that the qualifications of honesty, candor, integrity, and trustworthiness are
28

1 directly and substantially related to and indispensable to the practice of the appraisal
2 profession;

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

8 18. Regulation 3721 states, in pertinent part:

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

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

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

17 (6) Violated any provision of USPAP;

18 19. Regulation 3722 states, in pertinent part:

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

24 (3) Forging, counterfeiting or altering an instrument affecting the rights or
25 obligations of another;

26 (7) Violation of a relation of trust or confidence.
27

28 **FINES**

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

3 (b) not commit a substantial error of omission or commission that significantly
4 affects an appraisal;

5 ...

6 24. USPAP Standards Rule 1-4 states, in pertinent part:

7 In developing a real property appraisal, an appraiser must collect, verify, and analyze
8 all information necessary for credible assignment results.

9 (a) when a sales comparison approach is necessary for credible assignment results,
10 an appraiser must analyze such comparable sales data as are available to indicate a value
11 conclusion;

12 (b) when a cost approach is necessary for credible assignment results, an appraiser
13 must:

14 (i) develop an opinion of site value by an appropriate appraisal method or
15 technique;

16 ...

17 ...

18 25. USPAP Standards Rule 1-5 states, in pertinent part:

19 When the value opinion to be developed is market value, an appraiser must, if such
20 information is available to the appraiser in the normal course of business:

21 ...

22 (b) analyze all sales of the subject property that occurred within the three (3) years
23 prior to the effective date of the appraisal.

24 26. USPAP Standard 2 states:

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

27 27. USPAP Standards Rule 2-1 states, in pertinent part:

28 Each written or oral real property appraisal report must:

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

3 (b) contain sufficient information to enable the intended users of the appraisal to
4 understand the report properly;

5 ...

6 28. USPAP Standards Rule 2-2 states, in pertinent part:

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

10 ...

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

13 ...

14 (viii) summarize the information analyzed, the appraisal methods and
15 techniques employed, and the reasoning that supports the analyses, opinions, and
16 conclusions; exclusion of the sales comparison approach, cost approach, or income
17 approach must be explained;

18 ...

19 29. USPAP Standards Rule 2-3 states:

20 Each written real property appraisal report must contain a signed certification that is
21 similar in content to the following form:

22 I certify that, to the best of my knowledge and belief:

- 23 - the statements of fact contained in this report are true and correct.
- 24 - the reported analyses, opinions, and conclusions are limited only by the
- 25 reported assumptions and limiting conditions and are my personal,
- 26 impartial, and unbiased professional analyses, opinions, and conclusions.

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- I have no (or the specified) present or prospective interest in the property that is the subject of this report and no (or the specified) personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- my engagement in this assignment was not contingent upon developing or reporting predetermined results.
- my compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- my analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standard of Professional Appraisal Practice*.
- I have (or have not) made a personal inspection of the property that is the subject of this report. (If more than one person signs this certification, the certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property.)
- no one provided significant real property appraisal assistance to the person signing this certification. (If there are exceptions, the name of each individual providing significant real property appraisal assistance must be stated.)

30. The Ethics Rule of USPAP provides, in part:

To promote and preserve the public trust inherent in professional appraisal practice, an appraiser must observe the highest standards of professional ethics. This ETHICS RULE is divided into four sections: Conduct, Management, Confidentiality, and Record Keeping. The

1 first three sections apply to all appraisal practice, and all four sections apply to appraisal practice
2 performed under STANDARDS 1 through 10.

3 Compliance with USPAP is required when either the service or the appraiser is
4 obligated by law or regulation, or by agreement with the client or intended users, to comply. In
5 addition to these requirements, an individual should comply any time that individual represents
6 that he or she is performing the service as an appraiser.

7 An appraiser must not misrepresent his or her role when providing valuation services
8 that are outside of appraisal practice.

9 Conduct:

10 An appraiser must perform assignments ethically and competently, in accordance
11 with USPAP and any supplemental standards agreed to by the appraiser in accepting the
12 assignment. An appraiser must not engage in criminal conduct. An appraiser must perform
13 assignments with impartiality, objectivity, and independence, and without accommodation of
14 personal interests.

15 An applied property appraiser must not perform as an advocate for any party or issue.

16 An appraiser must not accept an assignment that includes the reporting of
17 predetermined opinions and conclusions.

18 An appraiser must not communicate results in a misleading or fraudulent manner. An
19 appraiser must not use or communicate a misleading or fraudulent report or knowingly permit an
20 employee or other person to communicate a misleading or fraudulent report.

21 An appraiser must not use or rely on unsupported conclusions relating to
22 characteristics such as race, color, religion, national origin, gender, marital status, familial status,
23 age, receipt of public assistance income, handicap or an unsupported conclusion that homogeneity
24 of such characteristics is necessary to maximize value.

25 ...

26 **PROPERTY APPRAISED**

27 31. On May 7, 2007, Respondent completed a real estate appraisal report for the property
28 located at 13865 Lost Trail, Rough and Ready, California.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIRST CAUSE FOR DISCIPLINE

(Failure to support conclusions made in the Sales Comparison Approach)

32. Respondent failed to support conclusions made in the Sales Comparison Approach. The use of much newer home sales was not justified by analysis presented in the appraisal report. The residence age adjustments made to the comparable sales were inadequate to account for the value differences for those newer homes relative to the subject residence. The site size for Comparable Sale Four was grossly underreported resulting in an overvaluation indication via that comparable sale (S.R. 1-4(a) and 2-2(b)(viii)).

SECOND CAUSE FOR DISCIPLINE

(Unsupported Cost Approach)

33. The value indication via the Cost Approach was not supported. Respondent opined an inflated subject site value (S.R. 1-4(b)(i) and 2-2(b)(viii)).

THIRD CAUSE FOR DISCIPLINE

(Failure to disclose and analyze the sale of the subject property within the three years prior to the effective date of appraisal)

34. Respondent failed to disclose and analyze the sale of the subject property within the three years prior to the effective date of appraisal (S.R. 1-5(b)).

FOURTH CAUSE FOR DISCIPLINE

(Forgery)

35. Respondent placed the signature of Laron Hall in the supervisory appraiser portion of the report certification without Hall's knowledge or permission, which constitutes a forgery (California Code of Regulations Sections 3702(a)(1) and (3); 3721(a)(2), (4), and (6); 3722(a)(3) and (7); and USPAP S.R. 2-3).

1 SIXTH CAUSE FOR DISCIPLINE

2 (Failure to correctly employ those recognized methods and techniques necessary
3 to produce a credible appraisal)

4 36. Based on the findings noted in paragraph 32, 33, and 34 above, Respondent failed
5 to correctly employ those recognized methods and techniques necessary to produce a credible
6 appraisal. The report contained errors of omission and commission that displayed an inflated
7 valuation bias. Respondent's forgery indicated his lack of honesty and integrity (S.R. 1-1(a), 1-
8 1(b), 2-1(a), 2-1(b), and the Conduct section of the Ethics Rule).

9
10 PRAYER

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

- 14 1. Revoking or suspending Trainee Appraiser License Number AT039972, issued to
- 15 Malik M. Miles.
- 16 2. Ordering Malik M. Miles to pay the Director of the Office of Real Estate Appraisers a
- 17 fine pursuant to section 11316, subdivision (a); and
- 18 3. Taking such other and further action as deemed necessary and proper.

19
20
21 DATED: 4/4/12

Original Signed

22 Elizabeth Seaters
23 Chief of Enforcement
24 Office of Real Estate Appraisers
25 State of California
26 Complainant