

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

In the Matter of the Accusation Against:

BONAVENTURE UGONWA

Respondent.

Case No. C 101201-02

OAH No. 2012030106

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Director of the Office of Real Estate Appraisers as his decision in the above-entitled matter, except that, pursuant to the provisions of Government Code Section 11517(c)(2)(C), the OREA case number for this matter is changed, as reflected above, to correct a clerical error.

The pleadings in this matter were inadvertently assigned the wrong OREA case number (C 091027-02), and this technical error was not identified during the course of the proceeding. The Director's Decision and Order omits the erroneous case number (C 091027-02) and replaces it with the correct OREA case number (C101201-02) to ensure proper resolution and closure of this matter.

This Decision shall become effective on 3-20-13.

It is so ORDERED 2-19-13.

Original Signed

James S. Martin, Director

OFFICE OF REAL ESTATE APPRAISERS

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

In the Matter of the Accusation Against:

BONAVENTURE UGONWA

Real Estate Appraiser License No.
AL040685,

Respondent.

Case No. C091027-02
OAH No. 2012030106

PROPOSED DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 11 and 12, 2012, in Los Angeles, California.

Helene Swanson, Deputy Attorney General, represented Complainant Elizabeth Seaters, Supervising Property Appraiser Investigator (Complainant).

Respondent Bonaventure Ugonwa (Respondent) represented himself the first day of hearing and was represented by Sam Zisselman, attorney at law, on the second day of hearing¹

Oral and documentary evidence was received on September 11 and 12, 2012, and the matter was submitted on September 12, 2012.

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¹ Respondent made two motions to continue the hearing based upon a need to prepare for hearing. Both motions were denied for lack of good cause because Respondent was served with the Notice of Hearing on May 25, 2011 and had more than three months to prepare for the hearing.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant signed and filed the Accusation and Statement of Issues in Case No. C091027-02 (the Accusation) in her official capacity. The Accusation and other required jurisdictional documents were served on Respondent. Respondent timely filed a notice of defense and request for hearing.

2. On October 5, 2007, the Director of the Office of Real Estate Appraisers (OREA) issued real estate appraiser license number AL040685 to Respondent. The license expired on July 6, 2010. On October 28, 2010, OREA issued a new license certificate to Respondent retroactive to July 6, 2010.² The license expired on July 6, 2012.

3. On March 8, 2011, Respondent submitted an application to upgrade his license, from a residential license to a certified residential license. On May 19, 2011, OREA denied his application on the grounds that his appraisal services and work product did not conform to the laws and regulations governing licensed appraisers. On June 27, 2011, Respondent appealed the denial of his application for a license upgrade.

The Uniform Standards of Professional Appraisal Practice

4. The Appraisal Foundation was authorized by Congress to develop appraisal standards and appraiser qualifications in order to promote and preserve the public trust in the professional appraisal practice. In response, the Appraisal Foundation developed the *Uniform Standards of Professional Appraisal Practice* (USPAP). Business and Professions Code section 11319 provides that the USPAP constitutes the minimum standard of conduct for a licensee in any work or service performed that is addressed by those standards. California Code of Regulations, title 10, section 3701 provides that OREA licensees shall conform to and observe those standards when an appraisal is subject to the USPAP.

5. USPAP Standards Rule 1-1 requires that, 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; not commit a substantial error or omission that significantly affects an appraisal; and not render appraisal 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 an appraisal, in the aggregate affect the credibility of those results.

² Between July 6, 2010 and October 28, 2010, Respondent's license was not valid as his application for renewal had been placed on hold while his May 17, 2010 arrest for battery was investigated by OREA. Respondent was aware that his license had not been renewed. The misdemeanor criminal case against Respondent was dismissed on June 1, 2011, because of delay in prosecution caused by the unavailability of prosecution witnesses.

6. USPAP Standards Rule 1-2 requires that, in developing a real property appraisal, an appraiser must identify the characteristics of the property that are relevant to the purpose and intended use of the appraisal, including determining the scope of work necessary to produce credible assignment results in accordance with the property's location and physical, legal, and economic attributes.

7. USPAP Standards Rule 1-3 requires that, 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 existing land use regulations, reasonably probable modifications of such land use regulations, economic supply and demand, the physical adaptability of the real estate, and market area trends, and develop an opinion of the highest and best use of the real estate.

8. USPAP Standards Rule 1-4 requires that, in developing a real property appraisal, an appraiser must collect, verify, and analyze all information necessary for credible assignment results. When a sales comparison approach is applicable, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion. When a cost approach is applicable, an appraiser must develop an opinion of site value by an appropriate appraisal method or technique, and analyze such comparable cost data as are available to estimate the cost-new of the improvements and the present value of the improvements.

9. USPAP Standards Rule 1-5 requires that, when the value opinion to be developed is market value, an appraiser must, if such information is available in the normal course of business, analyze all agreements of sale, options, and listings of the subject property current as of the effective date of the appraisal; and analyze all sales of the subject property that occurred within the three years prior to the effective date of the appraisal.

10. USPAP Standards Rule 2-1 requires that each written or oral real property appraisal report must clearly and accurately set forth the appraisal in a manner that will not be misleading; and contain sufficient information to enable the intended users of the appraisal to understand the report properly.

11. USPAP Standards Rule 2-2 requires that each written real property appraisal report must be prepared under one of the following three options and prominently state which option is used: Self-Contained Appraisal Report, Summary Appraisal Report or Restricted Use Appraisal Report. The content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum, summarize information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristic relevant to the assignment; state the real property appraised; state the effective date of the appraisal and the date of the report; describe the scope of work used to develop the appraisal; describe 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; state the use of the real estate as of the date of value and the use of the real estate

reflected in the appraisal; and, when an opinion of highest and best use was developed by the appraiser, describe the support and rationale for that opinion.

12. USPAP Standards Rule 2-3 requires that each written real property appraisal report must contain a signed certification that certifies that: (1) to the best of the appraiser's knowledge and belief the statements of fact contained in the report are true and correct; (2) the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are the appraiser's personal, impartial, and unbiased professional analyses, opinions, and conclusions; (3) the appraiser has no 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, (4) no bias with respect to the property that is the subject of this report or to the parties involved with the assignment, (5) the engagement was not contingent upon developing or reporting predetermined results, the analyses, opinions, and conclusions were developed, and the report had been prepared, in conformity with the USPAP; (6) the appraiser made (or did not make) a personal inspection of the property (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); and (7) that there was no significant real property appraisal assistance to the person signing the certification (If there are exceptions, the name of each individual providing significant real property appraisal assistance must be stated).

13. The USPAP also contains an Ethics Rule, which requires appraisers to observe the highest standards of professional ethics. The Ethics Rule is divided into four sections: Conduct, Management, Confidentiality, and Record Keeping.

14. The Conduct section of the Ethics Rule states that an appraiser must perform assignments ethically, competently, with impartiality, objectivity, and independence without accommodation of personal interests in accordance with the USPAP. An appraiser must not communicate results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report or knowingly permit an employee or other person to communicate a misleading or fraudulent report.

15. The USPAP Competency Rule provides that if an appraiser determines that he or she is not competent prior to accepting an assignment, he or she must disclose the lack of knowledge and/or experience to the client before accepting the assignment; take all steps necessary or appropriate to complete the assignment competently and describe, in the report, the lack of knowledge and/or experience and the steps taken to complete the assignment competently.

16. The USPAP Scope of Work Rule provides that for each appraisal, appraisal review, and appraisal consulting assignment, an appraiser must identify the problem to be solved, determine and perform the scope of work necessary to develop credible assignment results; and disclose the scope of work in the report. The appraiser must properly identify

the problem to be solved in order to determine the appropriate scope of work. The appraiser must be prepared to demonstrate that the scope of work is sufficient to produce credible assignment results.

17. The Record Keeping section of the Ethics Rule requires an appraiser to prepare a work file for each appraisal, appraisal review, or appraisal consulting assignment. The work file must include: the name of the client and the identity, by name or type, of any other intended users; true copies of any written reports, documented on any type of media; all other data, information, and documentation necessary to support the appraiser's opinions and conclusions and to show compliance with the Ethics Rule and all other applicable standards or references to the location of such other documentation. An appraiser must have custody of his or her work file, or make appropriate retention, access, and retrieval arrangements with the party having custody of the work file.

Appraisal of 44028 Calston Avenue

18. On August 25, 2010, homeowner David Dyke (Dyke) contacted various appraisal companies. Of the companies he contacted, Respondent doing business as Golden State Appraisals gave him the lowest price for an appraisal of his home located at 44028 Calston Avenue, Lancaster, California (the subject property). Dyke spoke with Respondent by telephone and advised him that he wanted an appraisal of the subject property for use in his bankruptcy proceeding. Dyke personally paid Respondent \$300 by check made payable to Golden State Appraisals on August 25, 2010. Respondent took photographs of the subject property when he picked up the check at the subject property on August 25, 2010.

19. When Respondent failed to return Dyke's calls on August 26, 2010, Dyke went to the address listed for Golden State Appraisals. Dyke observed that the address was for an apartment building, became concerned that Respondent was not a legitimate appraiser, and placed a stop payment on his August 25, 2010 check.

20. On August 28, 2010, Respondent delivered an appraisal report dated August 25, 2010, which had only the signature and license number of certified residential real estate appraiser Homayoun Kiani (Kiani) to Dyke (the Appraisal Report). Upon receipt of the Appraisal Report, Dyke gave Respondent a replacement check for \$300 payable to Golden State Appraisals.

21. Dyke provided the Appraisal Report to his bankruptcy attorney, Eliza Ghanooni (Ghanooni), for use in valuation of his assets in his personal bankruptcy case. In November of 2010, Ghanooni sent a declaration to be signed under penalty of perjury regarding the preparation of the Appraisal Report to Kiani at the Golden State Appraisals address. The declaration was for use in the bankruptcy court. The declaration was returned to Ghanooni with the signature of Respondent Bonaventure Ugonwa and stated under penalty of perjury that Respondent Ugonwa had prepared the Appraisal Report.

22. Ghanooni was perplexed by Respondent's signature on the declaration because the Appraisal Report bore Kiani's signature. She located an email address for Kiani, and on November 10, 2010, sent an email message to Kiani with a copy to Dyke and Respondent. The email contained a declaration for Kiani to sign stating that he prepared the Appraisal Report for the subject property.

23. On November 10, 2010, Kiani sent Ghanooni an email response stating that he did not have a copy of the Appraisal Report in his computer and requested that she send him a copy. Ghanooni scanned the Appraisal Report and sent it to Kiani by email. After reviewing the Appraisal Report, Kiani advised her that he did not prepare the Appraisal Report and his signature had been forged. Kiani filed a police report and wrote a letter to Respondent on November 15, 2010 demanding that Respondent stop signing his name to documents. Kiani had supervised Respondent when Respondent was an appraiser trainee and thus, was familiar with Respondent.

24. On November 10, 2010, Ghanooni informed Respondent that Dyke needed an appraisal report for the subject property with his signature since he was the one that prepared the Appraisal Report and was paid by Dyke. Respondent provided her with an appraisal report dated August 27, 2010 for the subject property which was identical to the Appraisal Report except for the date and Respondent's signature instead of Kiani's signature (Second Appraisal Report).

The Investigation

25. On November 24, 2010, Kiani filed a complaint with OREA about Respondent's unauthorized use of his signature on the Appraisal Report. Subsequently, on December 9, 2010, OREA Senior Investigator/Property Appraiser Randy McKay (McKay)³ wrote a letter to Respondent requesting complete and accurate copies of the appraisal report and work file for the subject property (Demand Letter). The Demand Letter described the "appraisal report" OREA sought as the "exact replication of the report(s) provided to the clients." The Demand letter also specifically described the work files sought as "anything and everything that you used and considered in you appraisal assignments." It further instructed the Respondent that updates or responses to requests from the client as well as any other appraisals completed for the subject property (and work files) should be included in the work file and submitted. Respondent Ugonwa did not respond to the Demand Letter.

26. On January 10, 2011, McKay sent a second letter to Respondent requesting the aforementioned documents (Second Demand Letter). In response, Respondent provided McKay with an appraisal report dated November 1, 2010, for the subject property (Third Appraisal Report). The Third Appraisal Report used the same comparable sales properties as the Appraisal Report and Second Appraisal Report, but contained additional adjustments and completed entries that were blank in First Appraisal Report and Second Appraisal Report. The Third Appraisal Report was signed by Respondent on November 1, 2010 and indicated a

3 McKay is a licensed certified real estate appraiser with 20 years of experience.

property inspection date of October 28, 2010 which coincided with the date that Respondent's license was renewed. The Third Appraisal Report was never provided to Dyke or Ghanooni. It was created solely for submission to OREA and to mislead McKay.

27. Investigator McKay attempted to contact Respondent by email and telephone numerous times to obtain Respondent's versions of the events. In a statement signed under penalty of perjury on April 22, 2011, Respondent insisted that the Third Appraisal Report was the only appraisal report that he had ever prepared, denied signing a declaration concerning the Appraisal Report and denied inspecting the subject property until October 28, 2010. He also insisted that he appraised the subject property for a client named James Johnson of GFA Financial Corporation.

28. From April 28, 2010 to May 4, 2010, McKay again attempted to contact Respondent by telephone and by email to discuss Kiani's allegations and the investigation of the complaint. On May 4, 2010, Respondent contacted McKay by email. In his email message, Respondent admitted that he had initially lied to McKay and that in fact, he had prepared the Appraisal Report. However, he denied signing Kiani's name to the Appraisal Report. Instead, he asserted that he had given the report to someone named James Johnson to have Kiani sign because he was not able to sign it himself at that time. Respondent did not provide an explanation of why he needed to go through James Johnson to have Kiani sign the Appraisal Report and did not provide contact information for James Johnson.⁴ Similarly, he had no explanation for the discrepancy in dates on the three appraisal reports.

29. On May 5, 2010, Respondent advised McKay that he had spoken to James Johnson and that he had confirmed that James Johnson had delivered the Appraisal Report to Dyke. He told McKay that James Johnson did not want to discuss the case and could not be reached. After some discussion, Respondent admitted to McKay that the reason he needed Kiani to sign the Appraisal Report was that he had not received his license renewal from OREA at the time of the Appraisal Report. Then, Respondent asked McKay, "How can I make this go away?" McKay advised Respondent that he had no authority to make an investigation go away, but OREA management could give him his options. Respondent confirmed in an email dated May 5, 2010 that he prepared the Appraisal Report. He insisted that he did not sign Kiani's name to the Appraisal Report and that James Johnson had obtained Kiani's signature.

30. Through investigation, McKay learned that Kiani's signature on the Appraisal Report was a digital signature that was placed on the Appraisal Report using proprietary Lighthouse Software from the ACI Company. Lighthouse Software is appraisal software designed to prepare appraisals for electronic submission and transmission. George Olpeka,

⁴ Respondent had been a trainee and protégé of Kiani and had obtained Kiani's signature as a supervising appraiser many times in the past. Kiani did not supervise the appraisal of the subject property and there was therefore no reason for anyone to obtain Kiani's signature on the Appraisal Report for the subject property.

Senior Vice President for Sales and Marketing of Lighthouse Publications provided a declaration which was admitted into evidence. The Appraisal Report and Second Appraisal Report were prepared using Lighthouse software. According to Olpeka's declaration, there was no record of Kiani ever purchasing a digital signature or Lighthouse software. However, Respondent purchased Lighthouse Software in January of 2008. Respondent also purchased digital signatures in January of 2008 and on September 21, 2009.⁵ On January 13, 2011, just after receiving the Second Demand Letter, Respondent contacted ACI's Technical Solutions Department for assistance in removing a digital signature from his computer. Olpeka's declaration also stated that Lighthouse registered users are not required to purchase more than one copy of the same digital signature for use on multiple computers. (Declaration of Olpeka.) Therefore, Respondent had no reason to purchase more than one signature for his own use.

The Deficiencies

31. Investigator McKay conducted a review of the Appraisal Report⁶ to evaluate its compliance with USPAP. He conducted an independent review and also consulted Douglas Stephens of Stephens Appraisals, a certified residential appraiser in Lancaster, California for additional local expertise about the Lancaster property market. Stephens testified as an expert witness at the administrative hearing. Stephens has conducted more than 1,500 residential appraisals in Lancaster, California. Stephens demonstrated an in-depth knowledge of real estate appraisal and the history of real estate values in the Lancaster area.

Client Identity, Assignment Conditions and Work Files

32. The Appraisal Report was prepared on a form that is intended for use in mortgage transactions. In the space for indication of "Assignment Type," Respondent checked the box "other" and wrote in "For Asset Valuation Purposes." The Appraisal Report did not identify the client or its intended user. Respondent's work file contained only the Third Appraisal and some printouts of Multiple Listing Service (MLS) listings. These deficiencies are violations of the Record Keeping section of the USPAP Ethics Rule which requires the information to be maintained in an appraiser's work file and USPAP Standards Rule 1-2 which requires the Appraiser to identify the intended use of the appraisal.

5 Olpeka was not able to confirm that either of the signatures purchased by Respondent was a signature for Kiani. However, the purchase of the second signature coincided with the implementation of the Federal Housing Administration (FHA) requirement that all appraisals be completed by certified appraisers. Kiani was a certified appraiser; Respondent was not.

6 McKay analyzed the Appraisal Report because it was the only version that was provided to Dyke. It also had the same content, except for the date and signature, as the Second Appraisal Report that was provided to Dyke's attorney.

Neighborhood and Market

33. Respondent reported that the subject property was in a neighborhood with a stable real estate market and a balance of supply and demand, when in fact the local real estate market was in decline, and there were many unsold properties, bank-owned properties and city owned properties for sale. This deficiency was a violation of USPAP Standards Rules 1-1, 1-2, 1-3, and 2-2.

34. Stephens credibly testified that the real estate market in Lancaster was not stable in 2010. According to Stephens, the market was heavily influenced by lender owned properties that were rehabilitated and sold for less than the amount owed to the lenders. Additionally, the City of Lancaster purchased a number of foreclosed properties and substantially remodeled the properties. The city owned properties had special qualifications for low income buyers and restrictions on resale which affected the property values. An appraiser had to adjust for these factors and concessions in order to arrive at an accurate valuation of property. Respondent did not make adjustments for these factors and did not identify or analyze the reasons for the low, high and predominant prices and ages of the homes in the neighborhood. Respondent's omissions were violations of USPAP Standards Rules 1-1, 1-2, 1-3, and 2-2.

35. Stephens opined that external obsolescence would also have an effect on property value. In the case of the subject property, the property was located next to a school and playground and therefore the potential external obsolescence must be analyzed for its effect on property value. Respondent did not evaluate the effect of external obsolescence on the subject property's value. This omission was a violation of USPAP Standards Rules 1-1, 1-3 and 2-2.

36. Respondent reported that the zoning for the property was "LRRA7500" when in fact the property was zoned "R-7000." The "R-7000" zoning is for a single family home on a 7000 square foot lot. The subject property had only a 6710 square foot lot. Respondent failed to analyze the impact of the zoning and Respondent's non-conforming lot on the subject property value. This omission was a violation of USPAP Standards Rules 1-1, 1-3 and 2-2.

Sales Comparison Approach

37. In the Appraisal Report, Respondent reported the property value as \$130,000 in a stable real estate market using the Sales Comparison and Costs Approach. In fact, the fair market value of the property was in the range of \$102,000 to \$125,000. Stephens opined that the subject property value was at the lowest end of that range in August of 2010. At that time it was uncommon for properties in the area of the subject property to sell for more than \$100,000.

38. Respondent used 6 properties as comparable properties to derive a fair market value using the Sales Comparison Approach. A comparable property should be similar to that of the subject property and the sales price should be adjusted to account for differences in bathrooms, bedrooms, condition and other relevant factors such as special financing requirements, concessions, external factors and distance from the subject property. Respondent only made allowances for the differences in the number of bedrooms in the properties.

39. The first comparable sale used in the Appraisal Report was located at 44734 Calston Avenue. It was a rehabilitation property owned by the Lancaster Redevelopment Agency located more than a half mile from the subject property in a superior location. This property was subject to a special program with sale restrictions and income requirements that the typical buyer would not meet. Respondent also reported the sale closing date as July 2, 2010 when in fact, the sale closed on July 7, 2010. This property was not appropriate for consideration as a comparable sale because it was not a market sale and was subject to resale restrictions and a special financing qualification program.

40. The second comparable sale was located at 1329 Weber Way and sold for \$120,000. The property was superior to the subject property and had been completely rehabilitated after bank foreclosure. The sale closed on July 29, 2010, not on July 30, 2010 as reported in the Appraisal Report. Stephens and McKay both opined that the property was representative of the upper value range for the subject property.

41. The third comparable sale was located at 44020 Parkview Lane and sold for \$135,000. Respondent erroneously reported that the sales price was \$142,000. The home was built in 2003 and was much newer than the home on the subject property which was built in 1990. The property was more than one half mile from the subject property, was in superior condition, and had special financing and incentives. Respondent failed to analyze the effect of the age, condition, distance and special features.

42. The fourth comparable sale was located at 43469 Carol Drive, more than half of a mile from the subject property in a superior location and had been completely remodeled. The sales price was \$125,000. Respondent did not make any adjustments for condition or distance from the subject property.

43. The fifth comparable sale was located at 728 E. Avenue J6 and was completely remodeled and in superior condition. The fifth comparable sale was the highest priced property within a half mile of the subject property and was superior to the subject property in all respects. Respondent adjusted only for the fourth bedroom.

44. The sixth comparable sale was located at 1012 Chagral Avenue. The property was listed for \$139,900, but was never sold. The property was freshly painted. Respondent did not make any adjustments on this comparable.

45. There were 14 comparable sales that ranged in price from \$60,000 to \$130,000 within a half mile of the subject property for Respondent to analyze. None of the properties within a half mile of the subject property sold for more than \$135,000. Respondent unnecessarily expanded the radius of the comparable sales used from one half mile to one mile in order to include higher priced properties in his computation of market value for the subject property. Respondent's calculation of \$130,000 as the fair market value of the subject property was not supportable. (Testimony of Stephens and McKay)

46. Respondent violated USPAP Standards Rules 1-1, 1-4, and 2-2 as set forth in factual findings 37-45 above, when he failed to correctly perform the Sales Comparison Approach. Respondent considered comparable properties over a half mile from the subject property when other more similar properties were located less than a half mile from the subject property. He also incorrectly reported sales data and failed to adjust for measurable characteristics such as location and condition.

Cost Approach

47. Respondent also used the Cost approach in the Appraisal Report. The cost approach requires a calculation of physical depreciation. Respondent failed to analyze the external obsolescence caused by a nearby school playground and did not obtain the physical depreciation estimates from the source he identified in the Appraisal Report. Respondent noted in the Appraisal Report that he obtained physical depreciation figures from the Marshall and Swift depreciation tables. In fact, Respondent used appraisal software, not Marshall and Swift depreciation tables, to calculate depreciation based on a 10 year effective age, and a fifty year life, and arrived at a depreciation figure which was inappropriate in violation of USPAP Standards Rule 1-1, 1-4, and 2-2.

Scope of Work

48. The Appraisal Report identified the scope of work as "at a minimum (1) perform a complete visual inspection of the interior and exterior, (2) inspect the neighborhood, (3) inspect each of the comparable sales from at least the street, (4) research, verify, and analyze data from reliable public and/or private sources, and (5) report the analysis, opinions, and conclusions in the appraisal report." Respondent failed to perform the scope of work when he failed to use appropriate data sources to verify the sales prices and dates for sales of the comparable properties used in the sales comparison approach in violation of USPAP Standards Rule 2-1 and the Scope of Work Rule.

Mitigation/Rehabilitation

49. Respondent did not offer any evidence of rehabilitation or mitigation.

Aggravation

50. In aggravation, Respondent has previously been disciplined by OREA in Case Number C80711-01 wherein Respondent was issued a citation arising from a May 30, 2008 appraisal in which there were errors and omission in violation of USPAP Standards Rules 1-1, 1-2, 1-3, 1-4, 2-1, 2-2 and the Competency Rule. The errors and omissions included misrepresentation of market trends and conditions in a declining market, misleading use of comparable sales and listings, failure to adjust for external obsolescence and failure to reconcile values in the sales comparison approach. The citation was final on April 23, 2010 and pursuant to the citation, Respondent was ordered to complete 30 hours of OREA approved basic education within 12 months. Although Respondent did not comply with the time line specified by the citation, he submitted proof of completion of the education by December 6, 2011, and OREA deemed the matter closed.

Costs of Investigation and Prosecution

51. Deputy Attorney General Helene E. Swanson submitted a declaration of the charges to OREA made by the Office of the Attorney General in prosecution of this case. The total charges made from July 18, 2011 through September 7, 2012 are \$10,662.50 for 23 hours of attorney time billed at \$170 per hour and 2.25 hours of paralegal time billed at \$120 per hour. Given the complexity of the matter and the quality of the preparation and presentation made at hearing, the prosecution costs are reasonable.

LEGAL CONCLUSIONS

1. The burden of proof is on the applicant for a license or permit. (*Martin v. Alcoholic Beverage Control Appeals Bd.* (1959) 52 Cal. 2d 238.) Therefore, in the Statement of Issues matter, where Respondent is requesting an upgrade of his license, he has the burden of proving that he is entitled to that upgrade.

2. Complainant has the burden of proving discipline is warranted by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Med. Quality Assurance* (1982) 135 Cal. App. 3d 853, 857.)

3. Business and Professions Code (Code) section 11313 provides that OREA is under the supervision and control of the secretary of the Business, Transportation and Housing agency. The duty of enforcing and administering the law related to real estate appraisers is vested in the Director of OREA and she is responsible to the secretary. The director shall adopt and enforce rules and regulations as determined reasonably necessary to carry out the purposes of the law governing real estate appraisers.

4. Code section 11316, subdivision (a), provides that the director may assess a fine against a licensee or applicant for licensure, person who acts in a capacity that requires a license.

5. Code section 11319 provides that the Uniform Standards of Professional Appraisal Practice (USPAP) constitute the minimum standard of conduct and performance for a licensee in any work or service performed that is addressed by the USPAP.

6. Code section 11324 provides that an individual who is not a licensee may assist in the preparation of an appraisal if (a) the assistance is under the direct supervision of an individual who is a license appraiser and the final conclusion as to value is made by a licensed appraiser, and (b) the final appraisal document is approved and signed, with identifies the assisting individual, and identifies the scope of work performed by the individual who assisted in preparation of the appraisal.

7. Code section 11328 provides that an applicant or licensee shall upon request of the Director, submit copies of appraisals or any work product which is addressed by the USPAP and all supporting documentation and data to OREA 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.

8. Code section 11409 provides that except as otherwise provided by law, any order issued in resolution of a disciplinary proceeding may direct a licensee or applicant for licensure or certificate, found to have violated statute(s) or regulation(s) relating to real estate appraiser practice to pay a sum not to exceed the reasonable costs of investigation, enforcement, and prosecution of the case.

9. California Code of Regulations, title 10, section 3701 incorporates USPAP and provides that OREA licensees shall conform to and observe the USPAP and any subsequent amendments thereto as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

10. California Code of Regulations, title 10, section 3702, subdivision (a) (1), provides that that the real estate appraisal profession 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

11. California Code of Regulations, title 10, section 3702, subdivision (a)(3), provides that 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 possessed the qualifications of honesty, candor, integrity, and trustworthiness.

12. California Code of Regulations, title 10, section 3702, subdivision (b), provides that 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.

13. California Code of Regulations, title 10, section 3705, subdivision (a), provides that, upon final completion, every appraisal report subject to the USPAP shall bear the signature and license number of the appraiser and of the supervising appraiser, if any. The affixing of such signature and number constitutes the acceptance by the appraiser of full and personal responsibility for the accuracy, content, and integrity of the appraisal under the USPAP.

14. California Code of Regulations, title 10, section 3705, subdivision (b), provides that every review appraisal report shall bear the signature and license number of the reviewer. The affixing of such signature and number shall constitute acceptance by the reviewer of responsibility for the review under Standard Rule 3 of USPAP.

15. California Code of Regulations, title 10, section 3705, subdivision (c), provides that the license number of the appraiser and of the review appraiser if the report is a review, shall appear with each signature throughout the appraisal or review document.

16. California Code of Regulations, title 10, section 3721, subdivision (a) (2), provides that the director may issue a citation, order of abatement, assess a fine or private or public reproof, suspend or revoke any license, and/or may deny the issuance or renewal of a license of any person who has done any act involving dishonesty, fraud or deceit with the intent to benefit himself or another, or to injure another.

17. California Code of Regulations, title 10, section 3721, subdivision (a) (4), provides that the director may issue a citation, order of abatement, assess a fine or private or public reproof, suspend or revoke any license, and/or may deny the issuance or renewal of a license of any person who has 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.

18. California Code of Regulations, title 10, section 3721, subdivision (a) (6), provides that the director may issue a citation, order of abatement, assess a fine or private or public reproof, suspend or revoke any license, and/or may deny the issuance or renewal of a license if the licensee or applicant has violated any provision of USPAP.

19. California Code of Regulations, title 10, section 3721, subdivision (a) (7), provides that the director may issue a citation, order of abatement, assess a fine or private or public reproof, suspend or revoke any license, and/or may deny the issuance or renewal of a license if the licensee or applicant has violated any provision of the Real Estate Appraisers' Licensing and Certification Law or the regulations promulgated pursuant thereto or any provision of the Code applicable to applicant for or holders of licenses authorizing appraisals.

20. California Code of Regulations, title 10, section 3722, subdivisions (a)(1) and (a) (7), provide that 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 crimes or acts involving the use of fraud, deceit or dishonesty for profit or gain or violation of a relation of trust or confidence.

Discipline of Respondent's License

First Cause for Discipline (Misleading and Inaccurate Appraisal Report)

21. Respondent is subject to discipline pursuant to Code sections 11313 and 11319 in conjunction with California Code of Regulations, title 10, sections 3701 and 3721, subdivisions (a)(6) and (a)(7), in that Respondent failed to conform to and observe the provisions of the USPAP by reason of factual findings 18 through 48, inclusive, in the appraisal of the subject property.

Second Cause for Discipline (Dishonest Acts, Fraud or Deceit)

22. Respondent is subject to discipline pursuant to California Code of Regulations, title 10, sections 3702, subdivision (a)(1), and 3721, subdivisions (a)(2) and (a)(4), and the Conduct section of the USPAP Ethics Rules based upon his dishonest, fraudulent and deceitful practices with respect to the appraisal of the subject property, use of another appraiser's signature and license without the other appraiser's knowledge or permission, withholding evidence from OREA, misleading the OREA investigator and misrepresenting facts to the OREA investigator by reason of factual findings 4 through 48, inclusive.

Third Cause for Discipline (Failure to Cooperate with Investigation and OREA)

23. Respondent is subject to discipline pursuant to Code section 11328 and the Conduct Section of the Ethics Rule in that Respondent failed to cooperate with OREA's investigation and failed to provide OREA with the true facts about the appraisal reports he prepared for the subject property by reason of factual findings 18 through 30, inclusive.

Fourth Cause for Discipline (Failure to Use Cost Approach Correctly)

24. Respondent is subject to discipline pursuant to Code section sections 11313 and 11319, for violation of USPAP Standards Rules 1-1, 1-4, 2-1, 2-2 and the Competency Rule of USPAP, in that Respondent failed to correctly use the Sales Cost Approach to value the subject property by reason of factual findings 4, 5, 10, 11, 15, and 47.

Fifth Cause for Discipline (Failure to Use Sales Comparison Approach Correctly)

25. Respondent is subject to discipline pursuant to Code sections 11313 and 11319, for violation of USPAP Standards Rules 1-1, 1-4, 2-1, 2-2 and the Conduct Section of the Ethics Rule of USPAP, in that Respondent failed to correctly use the Sales Comparison Approach to value the subject property by reason of factual findings 4, 5, 10, 11, 13, 14, 31, and 33 through 46, inclusive.

Statement of Issues

First Cause for Denial (Fraudulent Appraisal)

26. Respondent's application for upgrade to a certified residential appraiser is subject to denial pursuant to Code sections 11313 and 11319, in conjunction with California Code of Regulations, title 10, section 3705, subdivision (a), and Code section 3721, subdivision (a)(2), (a)(6) and (a)(7), the Conduct Section of USPAP Ethics Rule, and the USPAP Competency Rule in that Respondent falsified appraisal reports on the Subject Property and was negligent and incompetent in preparing the Appraisal Report, by failing to take all of the necessary and appropriate steps to competently and accurately complete the appraisal of the Subject property by reason of factual findings 4, 13,14,15,18 through 24, inclusive, 29, and 31through 48, inclusive.

Second Cause for Denial (Act would be Grounds for Revocation or Suspension of Licensee)

27. Respondent's application for upgrade to a certified residential appraiser is subject to denial pursuant to California Code of Regulations, title 10, section 3721, subdivision (a)(2), (a)(4) and (a)(6) for violation of California Code of Regulations, title 10, section 3702, subdivision (a)(1) and (a)(3), USPAP Standard Rules 1-1 and 2-1 and the Conduct Section of the USPAP Ethics Rule by reason of factual findings 4, 5, 6, 10, 13,14, and 18 through 48, inclusive.

Third Cause for Denial (Dishonesty)

28. Respondent's application for upgrade to a certified residential appraiser is subject to denial pursuant to California Code of Regulations, title 10, sections 3702, subdivisions (a)(1) and (a)(3), 3721, subdivisions (a)(2) and (a)(6), 3722 (a)(1) and (a)(7), USPAP Standards Rules 1-1 and 2-1 and the Conduct Section of the USPAP Ethics Rule by reason of factual findings 4, 5, 10, 13-14 and 18-48, inclusive.

Disposition

29. Respondent's violations of USPAP as set forth in factual findings 4-50 and Legal Conclusions 21through 28, inclusive, constitute cause for discipline of his license. The violations are serious and are aggravated by the fact that Respondent has a history discipline for similar violations. Additionally, Respondent has had an opportunity to re-educate himself

on the basic tenets of real estate appraisal, but Respondent has failed to demonstrate improvement. Significantly, as set forth in factual findings 18 through 48, inclusive, Respondent was dishonest in the preparation of the three appraisal reports that he prepared for the subject property and throughout his dealings with the OREA investigator. Respondent's fraud and dishonesty throughout the handling of the appraisal of the subject property has demonstrated by clear and convincing evidence that he cannot be trusted to comply with the minimum standards of professional appraisal practice. Respondent lacks the qualifications of honesty, candor, integrity and trustworthiness that are necessary to the practice of real estate appraisal. In this case, the public will not be protected by placing Respondent on probation or by ordering further remedial education. Respondent demonstrated dishonest practices, incompetence and general lack of integrity in the practice of real estate appraisal require revocation of his license to protect the public by reason of factual findings 18 through 50, inclusive.

30. In light of the above findings, as well as Legal Conclusions 26-28, Respondent is not a suitable candidate for upgrade to a Certified Residential Real Estate Appraiser License. (Factual Findings 18-50)

Costs of Investigation and Prosecution

31. Code section 11409, subdivision (a) provides that any order issued in resolution of a disciplinary proceeding may direct a licensee or applicant for licensure found to have committed a violation or violations of statutes or regulations relating to real estate appraiser practice, to pay the reasonable costs of investigation, enforcement, and prosecution of the case. In this matter, it was established that costs in the amount of \$10,662.50 were reasonably incurred. (Factual Finding 51)

ORDER

1. Real Estate Appraiser License number AL040685, issued by the Office of Real Estate Appraisers to Bonaventure Ugonwa is revoked. If and when Respondent's license is reinstated, he shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 11409 in the amount of \$10,662.50.

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2. Respondent Bonaventure Ugonwa's application for a license upgrade to certified residential appraiser is denied.

DATED: January 28, 2013

 **Original Signed** 

GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative