

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 GILLIAN E. FRIEDMAN
Deputy Attorney General
4 State Bar No. 169207
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2564
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

10
11 In the Matter of the Accusation Against:
12 **TUPPER LIENKE**
13 **1101 S. Ridgeley Drive**
14 **Los Angeles, CA 90019**
15 **Certified General Appraiser License No. AG**
001740
16 Respondent.

Case No. C110513-04

A C C U S A T I O N

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about December 17, 1991, the Director of the Office of Real Estate Appraisers
24 issued Certified General Appraiser License Number AG 001740 to Tupper Lienke (Respondent).
25 The Certified General Appraiser License was in full force and effect at all times relevant to the
26 charges brought herein and will expire on May 9, 2014, unless renewed.

27 ///
28 ///

1 JURISDICTION

2 3. This Accusation is brought before the Director of the Office of Real Estate
3 Appraisers, under the authority of the following laws.

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

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

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

13 6. Business and Professions Code section 11319 states:

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

19 7. Business and Professions Code section 11328 states:

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

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

28 Every holder of a license under this part shall conform to and observe the

1 Uniform Standards of Professional Appraisal Practice (USPAP) and any subsequent amendments
2 thereto as promulgated by the Appraisal Standards Board of The Appraisal Foundation which
3 standards are herein incorporated into these regulations by reference as if fully set forth herein.

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

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

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

11

12 10. California Code of Regulations, title 10, section 3705 states in pertinent part:

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

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

19 (a) The Director may issue a citation, order of abatement, assess a fine or private or
20 public reproof, suspend or revoke any license, and/or may deny the issuance or renewal of a
21 license of any person who has:

22

23 (6) Violated any provision of USPAP;

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

28

Uniform Standards of Professional Appraisal Practice

12. USPAP Standard 1 states:

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

13. USPAP Standards Rule 1-1 states:

In developing a real property appraisal, an appraiser must:

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

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

.....

14. USPAP Standards Rule 1-2 states:

In developing a real property appraisal, an appraiser must:

(a) identify the client and other intended users;

(b) identify the intended use of the appraiser's opinions and conclusions;

.....

(e) identify the characteristics of the property that are relevant to the purpose and intended use of the appraisal, including:

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

.....

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

15. USPAP Standards Rule 1-3 states:

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

.....

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

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

16. USPAP Standard 2 states:

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

17. USPAP Standards Rule 2-1 states:

Each written or oral real property appraisal report must:

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

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

....

18. USPAP Standards Rule 2-2 states:

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.

....

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

(i) state the identity of the client and any intended users, by name or type;

(ii) state the intended use of the appraisal;

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

....

(vii) summarize the scope of work used to develop the appraisal;

19. USPAP Standards Rule 2-3 states:

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

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

— the statements of fact contained in this report are true and correct.

1 — the reported analyses, opinions, and conclusions are limited only by the
2 reported assumptions and limiting conditions and are my personal, impartial, and unbiased
3 professional analyses, opinions, and conclusions.

4 — I have no (or the specified) present or prospective interest in the property that is
5 the subject of this report and no (or the specified) personal interest with respect to the parties
6 involved.

7 — I have no bias with respect to the property that is the subject of this report or to
8 the parties involved with this assignment.

9 — my engagement in this assignment was not contingent upon developing or
10 reporting predetermined results.

11 — my compensation for completing this assignment is not contingent upon the
12 development or reporting of a predetermined value or direction in value that favors the cause of
13 the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence
14 of a subsequent event directly related to the intended use of this appraisal.

15 — my analyses, opinions, and conclusions were developed, and this report has
16 been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.

17 — I have (or have not) made a personal inspection of the property that is the
18 subject of this report. (If more than one person signs this certification, the certification must
19 clearly specify which individuals did and which individuals did not make a personal inspection of
20 the appraised property.)

21 — no one provided significant real property appraisal assistance to the person
22 signing this certification. (If there are exceptions, the name of each individual providing
23 significant real property appraisal assistance must be stated.)

24 20. The USPAP ETHICS RULE states:

25 To promote and preserve the public trust inherent in professional appraisal practice, an
26 appraiser must observe the highest standards of professional ethics. This ETHICS RULE is
27 divided into four sections: Conduct, Management, Confidentiality, and Record Keeping. The first
28

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

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

9 Conduct:

10 An appraiser must perform assignments ethically and competently, in accordance with
11 USPAP.

12 An appraiser must not engage in criminal conduct.

13 An appraiser must perform assignments with impartiality, objectivity, and independence,
14 and without accommodation of personal interests.

15 An appraiser must not advocate the cause or interest of any party or issue.

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

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

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

25

26 ///

27 ///

28 ///

1 21. The USPAP Competency Rule states:
2 Prior to accepting an assignment or entering into an agreement to perform any assignment,
3 an appraiser must properly identify the problem to be addressed and have the knowledge and
4 experience to complete the assignment competently; or alternatively, must:

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

10 22. USPAP Scope of Work Rule, states:
11 For each appraisal, appraisal review, and appraisal consulting assignment, an appraiser
12 must:

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

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

20 Problem Identification

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

24 Scope of Work Acceptability

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

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

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

3 Disclosure Obligations

4 The report must contain sufficient information to allow intended users to understand the
5 scope of work performed.

6 COST RECOVERY AND FINES

7 23. Code section 11409, subdivision (a), states:

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

15 24. Code section 11316, subdivision (a) states:

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

21 FIRST CAUSE FOR DISCIPLINE

22 (Misleading and Inaccurate Appraisal Report)

23 25. Respondent is subject to disciplinary action under Business and Professions Code
24 sections 11313 and 11319, in conjunction with California Code of Regulations, title 10, section
25 3701, for violating Regulation section 3721, subdivisions (a)(6) and (a)(7) in that on or about
26 January 24, 2008, Respondent completed a real estate appraisal report, with an effective date of
27 January 23, 2008 and opinion of value of \$4.10 per square foot for market rent of improved
28 commercial units in a strip center commonly known as 711 Foothill Boulevard Units B, C, D, &

1 E, La Canada, California (Foothill Boulevard Property). The intended use of the report was for
2 arbitration to calculate the value of the rent of the space. The report contained errors or
3 omissions, in violation of Uniform Standards of Professional Appraisal Practice (USPAP) as
4 follows:

5 (a) Respondent failed to report the intended use of the appraisal report. Specifically, the
6 report fails to state that it will be used to determine the market value of the Foothill Boulevard
7 Property. (S.R. 1-2(b) and 2-2(b)(ii));

8 (b) Respondent failed to identify all of the intended users of his report in his appraisal.
9 Respondent identified only his client as an intended user; however, he omitted the names of
10 intended users in the arbitration that included Dale Donerkiel (Donerkiel) who was selected as the
11 arbitrator to serve in connection with the litigation matter. (S.R. 1-2(a), 2-2(b)(i) and Conduct
12 Section of the Ethics Rule);

13 (c) Respondent failed to accurately describe and complete the scope of work of the
14 appraisal for the Foothill Boulevard Property. Specifically, Respondent failed to show the
15 existing rent schedule for the subject commercial strip center; failed to obtain and analyze prior
16 leases for the subject property; failed to report that he did not research the data in his report; and
17 failed to state that he plagerized the valuation section prepared by Donerkiel. Respondent also
18 failed to review leases, interview brokers and tenants in competing strip centers. (S.R. 1-2(h), 2-
19 2(b)(vii) and Scope of Work Rule and Conduct Section of the Ethics Rule);

20 (d) Respondent failed to report and analyze relevant market conditions. The subject
21 appraisal report did not contain sufficient information regarding the demand and supply of
22 commercial space in the area. Moreover, it failed to analyze vacancy rates and rent rates (S.R. 1-
23 1(a), 1-1(b), 1-2(e)(i), and 2-2(b)(ii));

24 (e) Respondent failed to adequately describe and analyze the Foothill Boulevard
25 Property. Respondent included a site plan in the appraisal report; however, he failed to identify
26 the location of the subject property at the back of the commercial center, without any street
27 exposure. The report fails to include a sketch diagram, which shows that the subject consists of a
28 single suite, not three (3) suites. (S.R. 1-1(a), 1-2(e)(i), 2-2(b)(iii));

1 (f) Respondent failed to adequately describe the zoning for the Foothill Boulevard
2 Property and analyze the zoning restrictions on the property. Specifically, Respondent failed to
3 discuss that the zoning required a conditional use permit that included a limitation of the
4 occupancy of the property during certain hours of the day. The report also failed to discuss the
5 amount of parking needed for office and retail, and the amount of parking that was available (S.R.
6 1-1(a), 1-1(b), 1-2(e)(i), 2-1(a), 2-1(b), and 2-2(b)(iii));

7 (g) Respondent failed to complete a highest and best use analysis on the Foothill
8 Boulevard Property. The report failed to compare and analyze whether the best use of the space
9 was for office versus retail use and to support the conclusion of said analysis. Moreover,
10 Respondent failed to include a discussion regarding the demand for various sizes of lease spaces
11 in the report. In so far as the Foothill Boulevard Property involved a space that had been
12 converted into a single suite, the report should have discussed the cost of converting the property
13 back into multiple suites. It fails to discuss the demand for the tenant improvements which
14 convert the space from retail to office. It fails to discuss the necessity of a conditional use permit
15 for office use. (S.R. 1-1(a), 1-2(e)(i), 1-3(b), 2-2(b)(iii)); and

16 (h) Respondent rendered appraisal services in a grossly dishonest manner where he
17 copied the valuation section of Donerkiel's appraisal report. Respondent misrepresented that he
18 had no assistance in preparing the appraisal report for the Foothill Boulevard Property when in
19 fact most of the report was plagiarized. (Conduct Section of the Ethics Rule, California Code of
20 Regulations Sections 3702(a)(1)).

21 **SECOND CAUSE FOR DISCIPLINE**

22 (False Statements/Violation of fiduciary relationship)

23 26. Respondent is subject to disciplinary action under Business and Professions Code
24 sections 11313 and 11319, in conjunction with California Code of Regulations, title 10, section
25 3701, for violating Regulation section 3702, subdivisions (a)(1) in that on or about April 11,
26 2008, Respondent testified during a deposition regarding a real estate appraisal report for the
27 Foothill Boulevard Property. The testimony contains violations of the provisions of the violations
28 of the provisions of the USPAP, and the California Code of Regulations as follows:

1 (a) Respondent made false statement(s) during his testimony under oath regarding the
2 preparation of his appraisal report for the Foothill Boulevard Property. Specifically, Respondent
3 gave contradictory testimony where he initially denied the involvement of Donerkiel in his
4 appraisal report and subsequently acknowledged Donerkiel's contribution, but failed to admit that
5 he plagiarized portions of the report (Conduct Section of the Ethics Rule and the California Code
6 of Regulations Section 3702(a)(1)).

7 **THIRD CAUSE FOR DISCIPLINE**

8 (Misleading and Inaccurate Appraisal Report)

9 27. Respondent is subject to disciplinary action under Business and Professions Code
10 sections 11313 and 11319, in conjunction with California Code of Regulations, title 10, section
11 3701, for violating Regulation section 3721, subdivisions (a)(6) and (a)(7) in that Respondent
12 completed an Amended Report for the Foothill Boulevard Property dated January 24, 2008. The
13 report contains certain errors or omissions, listed below, which are violations of the provisions of
14 the violations of the provisions of the USPAP, the California Business and Professions Code, and
15 the California Code of Regulations as follows:

16 (a) Respondent produced an appraisal report titled as an Amended Report that disclosed
17 that Donerkiel had provided significant appraisal assistance. The amended report, however,
18 failed to convey that Respondent plagerized Donerkiel's report and that Respondent's appraisal
19 report was not an independent opinion of value (S.R. Conduct Section of the Ethics Rule,
20 California Code of Regulations Section 3702(a)(1));

21 (b) Respondent failed to state in his amended appraisal report that Donerkiel was an
22 intended user of his report as Donerkiel had been appointed to serve as the arbitrator over the
23 issue of the market valuation of the Foothill Boulevard Property (S.R. 2-3 and Conduct Section of
24 the Ethics Rule);

25 (c) Respondent failed to state his scope of work for producing his amended appraisal
26 report (S.R. 1-2(h), Scope of Work Rule and Conduct Section of the Ethics Rule); and

27 ///

28 ///

1 (d) By his amended report, Respondent failed to correct any of the errors mentioned in
2 paragraphs 24a-24h, which are incorporated herein by this reference. (Conduct Section of the
3 Ethics Rule).

4 **FOURTH CAUSE FOR DISCIPLINE**

5 (Misleading and Inaccurate Appraisal Report)

6 28. Respondent is subject to disciplinary action under Business and Professions Code
7 sections 11313 and 11319, in conjunction with California Code of Regulations, title 10, section
8 3701, for violating Regulation section 3721, subdivisions (a)(6) and (a)(7) in that Respondent
9 completed a review appraisal dated April 1, 2008 to critique the appraisal report prepared by
10 Catherine Morrissey (Morrissey) for the Foothill Boulevard Property. The review appraisal
11 report contains certain errors or omissions, listed below, which are violations of the provisions of
12 the violations of the provisions of the Uniform Standards of Professional Appraisal Practice
13 (USPAP), and the California Code of Regulations as follows:

14 (a) Respondent failed to state in his report that his conclusions in the review appraisal
15 were dependent upon data received from another appraiser, specifically from Donerkiel's
16 appraisal report and Respondent failed to place his name in the certification; (S.R. 2-3 and
17 Conduct Section of the Ethics Rule);

18 (b) Respondent failed to disclose in his review report that he had previously appraised the
19 Foothill Boulevard Property for the same intended use and had a predetermined opinion of value.
20 (Conduct Section of the Ethics Rule); and

21 (c) Respondent failed to limit the scope of his review report to commenting about the
22 data and methodology in Morrissey's report (Conduct Section of the Ethics Rule).

23 **PRAYER**

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

27 1. Revoking or suspending Real Estate Appraiser License Number AG 001740, issued
28 to Tupper Lienke

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

2. Ordering Tupper Lienke 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 Tupper Lienke 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: 12/11/12

Original Signed

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

LA2012507760
51180331.doc