

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

In the Matter of the Accusation Against:

CURTIS D. HARRIS,

Real Estate Appraiser's License No. 002574,

Respondent.

Case No. C20130614-04

OAH No. 2015060734

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Office of Real Estate Appraiser as its Decision in the above-entitled matter.

This Decision shall become effective 5-20-16.

IT IS SO ORDERED 4-20-16.

Original Signed

ref

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BUREAU OF REAL ESTATE APPRAISERS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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002574

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PROPOSED DECISION

Administrative Law Judge Thomas Heller, State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California on February 22, 24, and 26, 2016.

Susan Melton Wilson, Deputy Attorney General, represented complainant Elizabeth Seaters, Chief of Enforcement, Bureau of Real Estate Appraisers (Bureau), Department of Consumer Affairs.

Respondent Curtis D. Harris represented himself. He was not present for the scheduled start of the hearing on February 22, 2016, but arrived about two hours after it began.

During the hearing, complainant amended page 26, lines 8-9 of the Accusation to change "307 San Pasquale Avenue" to "307/221 San Pasquale Avenue."

The Administrative Law Judge closed the record on February 26, 2016, but then reopened it and ordered complainant to identify the legal source authorizing use of the Bureau's purported disciplinary guidelines. Respondent objected and asserted the record should remain closed.

On March 7, 2016, complainant filed a brief conceding the disciplinary guidelines could not be used, because they had not been adopted as a regulation. The brief was marked as Exhibit 30. Respondent was given until March 14, 2016 to file a responsive brief on the issue, but did not.

The matter was submitted on March 14, 2016.

REDACTION OF PRIVATE INFORMATION

After submission of the matter, the Administrative Law Judge redacted Exhibit 23 to obscure social security numbers and a date of birth.

SUMMARY

Complainant alleges the Bureau should take disciplinary action against respondent's appraiser's license, while respondent denies he has done anything to warrant discipline. Despite his denial, there is clear and convincing evidence he committed multiple acts of misconduct warranting disciplinary action. The proper level of discipline for the misconduct is revocation of his appraiser's license.

FACTUAL FINDINGS

Parties and Jurisdiction

1. On November 18, 1992, the Office of Real Estate Appraisers (now the Bureau) licensed respondent as a real estate appraiser, license number 002574. His license expired on November 24, 2014, but the Bureau still has jurisdiction to proceed with this disciplinary action. (Bus. & Prof. Code, §§ 118, subd. (b), 11315.3.)¹

2. On April 17, 2015, complainant filed an Accusation to revoke or suspend respondent's license, assess a fine against him, and recover costs.

3. Complainant served respondent with the Accusation on April 22, 2015. On May 7, 2015, he submitted a Notice of Defense.

Conduct at Issue

4. The Accusation is based on 11 complaints to the Bureau about respondent between 2010 and 2014, when he was a self-employed appraiser. Complainant gave timely notice of intent to introduce declarations from all but one of the persons who complained, and respondent did not make a timely request to cross-examine them. (See Gov. Code, § 11514.)² Those declarations and other evidence establish the following facts:

¹ Undesignated statutory references are to the Business and Professions Code.

² A purported declaration from appraisal client J.C. was unsigned.

490 WEST ROSECRANS AVE., GARDENA

5. On March 26, 2010, R.A., the president of a financial company, paid respondent \$600 for a "rush re-certification of value" on commercial property at 490 West Rosecrans Avenue, Gardena, California. Respondent cashed the check, but never sent the recertification. The financial company sued him in small claims court, but was unable to serve him at the business address listed on his website (5780 West Centinela Avenue, Building 1, Suite 408, Los Angeles, California 90045), because he was no longer at that address.

6. Respondent asserted he was not obligated to provide the recertification of value, but offered no persuasive justification for the assertion. He claimed the financial company was unethical, but offered no supporting evidence.

5269 ALHAMBRA AVE., LOS ANGELES

7. In early January 2011, L.H. hired respondent to appraise an auto repair facility at 5269 Alhambra Avenue, Los Angeles, California, for a \$1,500 fee, with half payable in advance and half due upon delivery of the report. L.H. paid the \$750 in advance, but respondent did not complete the appraisal within one or two weeks as promised. L.H. and her brother then contacted respondent several times, and he said he needed the other \$750 before delivering the appraisal. L.H. never received the appraisal or a refund, and had to hire another appraiser.

8. Respondent asserted he requires all fees to be paid before sending appraisals, and L.H.'s failure to pay the remaining \$750 excused his performance. But he presented no persuasive evidence he actually completed the appraisal. He testified the appraisal report was still "ready to be presented" upon payment, but did not produce it.

RIVERSIDE COUNTY, SAN BERNARDINO COUNTY, AND MALIBU PROPERTIES

9. On May 11, 2011, J.A. hired respondent to appraise vacant land in Riverside and San Bernardino Counties (APN 407-230-011 and APN 0462-102-02, respectively), and residential property at 20272 Inland Lane, Malibu, California for a \$2,750 fee, with half payable in advance and half due upon completion. J.A. paid the \$1,375 in advance. On June 6, 2011, J.A.'s daughter asked about the status of the appraisals, and respondent replied: "Maybe next week." He did not provide the appraisals the next week, or at all. J.A. filed a small claims case to force respondent to refund the \$1,375, but lost.

10. Respondent asserted he could not complete the assignment because one of the properties was inaccessible, and J.A. did not provide required property information. His small claims court victory provides some support for his assertions.

307/221 SAN PASQUALE AVE., SOUTH PASADENA

11. On October 27, 2011, M.B. paid respondent \$2,000 to appraise an irregularly-shaped parcel at 307/221 San Pasquale Avenue, South Pasadena, California. In November 2011, respondent asked M.B. for the parcel dimensions, and she told him to call her engineer. On December 6, 2011, he said he would move forward without the requested information and finish the appraisal within "the next few days." But two days later, he said he could not finish the appraisal without a legal description and boundary measurements. He refused her refund request, and when she said she would "let a judge decide," he said he would cease all future communications. He never provided the appraisal or a refund.

12. Respondent asserted he could not finish the appraisal without the correct legal description, and was entitled to keep the \$2,000 because he did considerable research and background work. Neither assertion was persuasive. He could have conducted more investigation, or addressed the alleged uncertain legal description in his appraisal report. Furthermore, M.B. paid \$2,000 to get a completed appraisal, not just research and background work.

5535 WALNUT AVE., CHINO

13. In April 2013, G.K. paid respondent \$1,750 to appraise 5535 Walnut Avenue, Chino, California, as a commercial property. The property was originally a single-family residence, but was converted to a medical office building in the 1980's.

14. On May 15, 2013, respondent emailed G.K. an appraisal valuing the property at \$340,000 as a single-family residence, not a commercial property. The appraisal also stated the property was worth \$285,000 as a medical building, but contained no commercial sales data or explanation for that commercial valuation. G.K. called to complain, and respondent said he assessed the property at its highest and best use. At first, he demanded another \$500 for a commercial appraisal, but later relented and said he would complete it. In late May 2014, he said he was done, but would not send the appraisal until the property's owner (G.K.'s father-in-law) signed a statement describing the appraisal's purpose. G.K. had already sent respondent an email describing the purpose, and by then had had enough, and complained to the Bureau. He never received the commercial appraisal or a refund.

15. In the residential appraisal, respondent listed the property's zoning as "CRD4.5/Multi Family Residential." But the property is actually zoned as Public (P), which precludes single-family residential use. William Drabick, the Bureau's investigator, persuasively testified the error was a departure from the Uniform Standards of Professional Appraisal Practice (USPAP). (USPAP, 2012-2013 ed.) Respondent's testimony the property looked like a single-family residence and had a residential kitchen was not a persuasive explanation for the error.

5918 CLOVERLY AVE., TEMPLE CITY

16. In late August 2013, J.C. paid respondent \$1,500 to appraise a commercial building at 5918 Cloverly Avenue, Temple City, California. On October 15, 2013, respondent said J.C. would have to pay another \$1,500 for a separate appraisal for tax purposes. Although J.C. said he originally requested a tax appraisal, he paid the additional \$1,500, and respondent later sent an email with two attachments, identifying the attachments as the two appraisals. J.C. did not know how to access the attachments and asked for hard copies, but respondent refused.³

17. Bureau investigator Drabick asked J.C. to forward the email, but J.C. replied he did not know how to send emails. Respondent asserted he did not have to send J.C. hard copies when he already sent electronic copies.

2474 LINCOLN BLVD., VENICE

18. In late January or early February 2014, D.G. hired respondent to appraise a retail building at 2474 Lincoln Blvd., Venice, California, for a \$1,725 fee. D.G. paid respondent the full balance in two nearly equal installments, sending a check for the second installment after respondent said the appraisal was ready. Respondent cashed both checks, but did not send the appraisal, telling D.G. he never got the first check. D.G. demanded the appraisal, but respondent refused, asserting D.G. failed to make final payment and provide required information. D.G. then sued respondent, who thereafter sent the appraisal.

19. Respondent asserted he did not actually cash the first check, pointing to a copy of the check with a “void” watermark on the front of it. But D.G.’s declaration is persuasive evidence otherwise, and neither respondent’s testimony nor the “void” watermark proves it was never cashed.

27985 NORTH SHORE ROAD, LAKE ARROWHEAD

20. On February 22, 2014, R.R. paid respondent \$750 to appraise a single-family residence at 27985 North Shore Road, Lake Arrowhead, California. On March 8, 2014, respondent said the report should be completed later that day, but he did not deliver it, and later said a discrepancy between the assessor’s square footage and the measured square footage required resolution. R.R. said if respondent could not complete the job, he should refund the money. Respondent replied: “You and your wife [actually, R.R.’s bookkeeper] are becoming quite annoying. Send me the permits for the building structure and I will forward the appraisal. No other communications will be forthcoming.” Respondent never provided the appraisal or a refund.

³ Although J.C.’s purported declaration is unsigned, respondent did not object to the use of hearsay evidence to support a finding. (See Gov. Code, § 11513, subd. (d).)

21. Respondent's explanation for not completing the appraisal was unpersuasive, because he first gave it after he missed his own projected delivery date for the appraisal. Furthermore, he could have conducted more investigation, or addressed the alleged square footage discrepancy in his appraisal report.

2064 MAGNOLIA AVE., ONTARIO

22. On March 15, 2014, S.L. paid respondent \$1,750 to appraise 2064 Magnolia Avenue, Ontario, California, a 4.75 acre parcel of essentially vacant land. Respondent said the appraisal would take two or three weeks, but had still not delivered it over a month later. On April 18, 2014, he promised he would send it "Tomorrow," but did not. A few days later, S.L. told him to produce the appraisal or refund her money, or she would take him to court. He replied "I strongly disagree, and am surprised as you and your clients are responsible for all the delays. I will cease work immediately and await your law suit." He never provided the appraisal or refunded the money.

23. Respondent asserted there was a problem appraising the property for subdivision as S.L. requested, because he could not find similar real estate activity in the neighborhood. He blamed S.L. and her "clients" (she had no clients) for not providing enough information. But S.L.'s declaration establishes she promptly responded to his requests for information, and his testimony does not excuse his failure to deliver an appraisal report or a refund.

583 MARENGO AVE., PASADENA

24. On June 10, 2014, H.C. paid respondent \$950 to appraise an apartment complex at 583 Marengo Avenue, Pasadena, California. Respondent promised a "Complete Appraisal Summary Report" within two weeks, but did not provide it on time. Instead, on June 28, 2014, he gave H.B. a verbal opinion of value, and asked for another \$350 for a detailed "Summary Report," despite having already promised one. H.B. paid the extra \$350, and after several more weeks, respondent said he would most likely complete the report by July 21, 2014. But he did not, and on July 29, 2014, H.B. said he no longer wanted the report, and demanded a full refund. Respondent replied "you are being placed on our do not respond list," and terminated all contact.

25. Respondent asserted he had to put the appraisal "on hold" because he discovered the apartments may have been condominiums, and H.C. did not provide enough proof of the type of property being appraised. This testimony was unpersuasive, because respondent could have conducted more investigation, or addressed the alleged uncertainty in his appraisal report. Furthermore, he did not just place the appraisal "on hold;" he terminated all contact without refunding any of H.C.'s money.

3239 AND 3251 ROSECRANS AVE., AND 14150 LEMOLI AVE., HAWTHORNE

26. On August 21, 2014, K.F. hired respondent to appraise two vacant lots and an auto repair facility at 3239 and 3251 Rosecrans Avenue and 14150 Lemoli Avenue, Hawthorne, California. Respondent promised to complete the appraisals in two to three weeks for a \$4,500 fee, with \$2,500 up front and \$2,000 upon completion. K.F. paid the \$2,500, but respondent did not complete the appraisals as promised. Instead, on September 26, 2014, he said they were almost done, and told her to pay the remaining \$2,000, after which he would send them. When she did not pay immediately, he became increasingly strident, and threatened to close his file and charge \$1,000 to reopen it.

27. On October 13, 2014, respondent told K.F. he still needed a week or so to complete the assignment, but demanded the \$2,000 immediately. When she did not agree, he sent an email saying she had to pay the \$2,000 balance, a \$1,000 consultation fee, and \$250 per hour for any more emails and calls, or he would ignore her communications and sue her for damages. She refused, and he replied by saying her communications would be placed in his "junk file." He never provided the appraisals or a refund.

28. Respondent asserted he requires his fees be paid up front, and K.F.'s failure to pay excused his performance. His testimony was unpersuasive, because he demanded the \$2,000 before completing the appraisal as promised. He also had no basis for demanding additional fees from K.F., or for terminating contact with her.

RESPONSE TO BUREAU DEMAND LETTER

29. In November 2014, the Bureau sent respondent a letter demanding the appraisal reports and workfiles for all of the properties except 27985 North Shore Road, Lake Arrowhead. In response, respondent claimed a motel manager threw out the workfiles when respondent was evicted from the motel. Bureau investigator Drabick later interviewed the motel manager, who said the motel discarded nothing but trash from respondent's room. Respondent never sent the appraisals or any workfiles, and said he would not speak further with Drabick until he received copies of all the complaints against him.

30. At the hearing, respondent initially repeated his assertion the motel manager discarded all of his workfiles. He later testified he still has a workfile for 5535 Walnut Ave., Chino in a storage locker or in his car, and has other workfile documents in electronic form. But he failed to produce any workfile documents, which supports a finding he did not retain a workfile for each appraisal as required. His testimony a motel manager threw them out was unpersuasive, because the manager said he did not, and no other evidence corroborates respondent's testimony.

BUSINESS ADDRESS

31. Respondent's business address on file with the Bureau is 16174 Woodrow Court, Chino, California, but several Bureau letters to that address in 2014 were returned

unclaimed. In a November 2014 telephone call with Drabick, respondent said his business address was “630 Sepulveda, El Segundo.” The El Segundo address is actually the location of his Post Office Box, which is his mailing address on file with the Bureau.

WEBSITE

32. The record includes printouts of respondent’s website from 2010 and early 2014, which list him as a “CGREA” (i.e., Certified General Real Estate Appraiser). Complainant alleges respondent still uses this title on his website even though his license expired, but did not offer into evidence more recent website information.

Costs and Ability to Pay

33. Complainant provided statements certifying the Bureau incurred \$30,563.87 in investigation and prosecution costs before the hearing. This includes \$13,196.37 for 194.25 hours of Bureau investigation, and \$17,367.50 for 102.75 hours of hearing preparation by the California Department of Justice. The total hours (297) are high, given the nature of the allegations. While the Bureau investigated 11 complaints against respondent, none is particularly complex.

34. Respondent is currently homeless and unable to pay any of the Bureau’s costs. He is 66 years old, and has been homeless or living in hotels or motels for the last five years.

LEGAL CONCLUSIONS

Legal Standards

1. The Bureau licenses respondent under the Real Estate Appraisers’ Licensing and Certification Law. (§ 11300 et seq.) The Bureau’s director may take disciplinary action against respondent’s license for any violation of that law, the regulations supporting it, or the Uniform Standards for Professional Appraisal Practice (USPAP). (Cal. Code Regs., tit. 10 (Regs.), § 3721, subd. (a)(6), (7).) The director may also take disciplinary action for “any act involving dishonesty, fraud or deceit with the intent to benefit himself or another, or to injure another.” (*Id.*, subd. (a)(2).)

2. An appraiser’s license is a professional license, with extensive educational and experience requirements. (See Regs., § 3541 et seq.) The burden of proof to suspend or revoke a professional license is clear and convincing evidence to a reasonable certainty. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; *Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) “‘Clear and convincing evidence’ requires a finding of high probability. The evidence must be so clear as to leave no substantial doubt. It must be sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.]” (*In re David C.* (1984) 152 Cal.App.3d 1189, 1208.)

Grounds for Discipline

FIRST CAUSE FOR DISCIPLINE - 5535 WALNUT AVE., CHINO

3. Respondent violated USPAP Standards Rule 1-1 in his appraisal for 5535 Walnut Ave., Chino, by committing a substantial error in the property's zoning that significantly affected the appraisal. (USPAP p. U-16 (2012-2013 ed.)) As a result, respondent failed to develop a credible highest and best use analysis, cost approach, and sales comparison approach, in violation of USPAP Standards Rules 1-3 and 1-4. (*Id.* at pp. U-18-U-20.) In addition, respondent failed to provide clear reasoning for valuing the property at \$285,000 as a medical building, in violation of USPAP Standards Rules 1-3, 2-1, and 2-2. (*Id.* at pp. U-18-U-19, U-22-U-29; see Factual Findings 13-15.)

4. The Accusation also references various typographical errors in the appraisal, but those do not amount to USPAP violations. Furthermore, while respondent's zoning error was negligent, complainant did not prove by clear and convincing evidence the allegations he was grossly negligent, lacked the necessary competence for the assignment, or communicated assignment results in a misleading manner in violation of USPAP.

SECOND CAUSE FOR DISCIPLINE - 2064 MAGNOLIA AVE., ONTARIO

5. Respondent failed to demonstrate honesty, candor, integrity, and trustworthiness by agreeing to appraise a property for S.L. and collecting the entire fee, but not providing the appraisal or a refund. His actions were dishonest and intended to benefit himself. (Factual Findings 22-23; Regs., §§ 3702, subd. (a)(1), (3), 3721, subd. (a)(2).)

THIRD CAUSE FOR DISCIPLINE - 2474 LINCOLN BLVD, VENICE

6. Respondent failed to demonstrate honesty, candor, integrity, and trustworthiness by agreeing to appraise a property for D.G. and collecting the entire fee, but refusing to deliver the appraisal until D.L. sued him. (Factual Findings 18-19; Regs., § 3702, subd. (a)(1), (3).)

FOURTH CAUSE FOR DISCIPLINE - 583 MARENGO AVE., PASADENA

7. Respondent failed to demonstrate honesty, candor, integrity, and trustworthiness by agreeing to appraise a property for H.C. and collecting the entire fee, but not providing the appraisal or a refund. (Factual Findings 24-25; Regs., § 3702, subd. (a)(1), (3).)

FIFTH CAUSE FOR DISCIPLINE - 5918 CLOVERLY AVE., TEMPLE CITY

8. Complainant presented insufficient evidence respondent acted dishonestly or without candor, integrity, or trustworthiness in appraising 5918 Cloverly Ave., Temple City. His demand for an additional \$1,500 from J.C. was questionable, but there is not clear and

convincing proof it was dishonest. His refusal to send hard copies of the appraisals was also questionable, but complainant did not prove respondent never really emailed them to J.C. J.C. did not testify or even sign his purported declaration, and the email was not offered into evidence. (See Factual Findings 16-17.)

SIXTH CAUSE FOR DISCIPLINE - 307/221 SAN PASQUALE AVE., SOUTH PASADENA

9. Respondent failed to demonstrate honesty, candor, integrity, and trustworthiness by agreeing to appraise a property for M.B. and collecting the entire fee, but not providing the appraisal or a refund. His actions were dishonest and intended to benefit himself. (Factual Findings 11-12; Regs., §§ 3702, subd. (a)(1), (3), 3721, subd. (a)(2).)

SEVENTH CAUSE FOR DISCIPLINE - 3239 AND 3251 ROSECRANS AVE., AND 14150 LEMOLI AVE., HAWTHORNE

10. Respondent failed to demonstrate honesty, candor, integrity, and trustworthiness by agreeing to appraise a property for K.F., collecting part of the fee, demanding the balance before it was due, demanding additional fees to deliver the appraisal, and not providing the appraisal or a refund. His actions were dishonest and intended to benefit himself. (Factual Findings 26-28; Regs., §§ 3702, subd. (a)(1), (3), 3721, subd. (a)(2).)

EIGHTH CAUSE FOR DISCIPLINE - 490 WEST ROSECRANS AVE., GARDENA

11. Respondent failed to demonstrate honesty, candor, integrity, and trustworthiness by agreeing to perform a recertification of value for R.A. and collecting the entire fee, but not providing the recertification or a refund. His actions were dishonest and intended to benefit himself. (Factual Findings 5-6; Regs., §§ 3702, subd. (a)(1), (3), 3721, subd. (a)(2).)

12. Complainant did not prove respondent's incorrect business address on his website warrants discipline as a USPAP violation. USPAP's Ethics Rule prohibits an appraiser from "advertis[ing] for or solicit[ing] assignment in a manner that is false, misleading, or exaggerated," but there is insufficient proof the misstatement was deliberate. (USPAP p. U-8 (2010-2011 ed.); see Factual Finding 5.)

NINTH CAUSE FOR DISCIPLINE - 5269 ALHAMBRA AVE., LOS ANGELES

13. Respondent failed to demonstrate honesty, candor, integrity, and trustworthiness by agreeing to appraise a property for L.H. and collecting part of the fee, but not finishing the appraisal or giving a refund. His actions were dishonest and intended to benefit himself. (Factual Findings 7-8; Regs., §§ 3702, subd. (a)(1), (3), 3721, subd. (a)(2).)

TENTH CAUSE FOR DISCIPLINE - RIVERSIDE COUNTY, SAN BERNARDINO COUNTY,
AND MALIBU PROPERTIES

14. Complainant did not prove by clear and convincing evidence respondent acted dishonestly or without candor, integrity, or trustworthiness regarding his appraisal assignment for these properties. There is some support for respondent's assertions he did not have to complete the appraisals or provide a refund. (See Factual Findings 9-10.)

ELEVENTH CAUSE OF DISCIPLINE - 27985 NORTH SHORE ROAD, LAKE ARROWHEAD

15. Respondent failed to demonstrate honesty, candor, integrity, and trustworthiness by agreeing to appraise a property for R.R. and collecting the entire fee, but not providing the appraisal or a refund. (Factual Findings 20-21; Regs., § 3702, subd. (a)(1), (3).)

FAILURE TO FACILITATE INVESTIGATION OF COMPLAINTS

16. "[T]o facilitate the investigation of illegal or unethical activities by a licensee, . . . that licensee . . . shall, upon the request of the director, submit copies of appraisals, or any work product which is addressed by the Uniform Standards of Professional Appraisal Practice, and all supporting documentation and data to the office." (§ 11328.) Respondent violated this requirement by refusing to submit any documents in response to the Bureau's November 2014 demand letter. Rather than cooperate, he said someone else threw out his workfiles, and refused to speak further with the Bureau until he received copies of all the complaints against him. He never sent the appraisals or any workfiles, despite now claiming he has some workfile documents and at least one appraisal "ready to be presented" if the client pays for it. (Factual Findings 8, 29-30.)

FAILURE TO RETAIN WORKFILES

17. Respondent had to prepare and keep a workfile for each appraisal, appraisal review, or appraisal consulting assignment for at least five years. (USPAP p. U-10 (2012-2013 ed. & 2014-2015 ed.), pp. U-9-U-10 (2010-2011 ed.).) A workfile must include items such as copies of written reports, summaries or oral reports or testimony, and all other data, information, and documentation necessary to support the appraiser's opinions and conclusions. (*Ibid.*) Respondent violated this requirement by not keeping a workfile for most, if not all, of the appraisal assignments in the Bureau's November 2014 demand letter. His testimony someone else threw out his workfiles was unpersuasive. (Factual Findings 29-30.)

FAILURE TO NOTIFY OF CHANGE OF ADDRESS

18. Respondent failed to give the Bureau written notice within 10 days of his change in business address as required. (Regs., § 3527, subd. (a)(5).) His business address

on file is still 16174 Woodrow Court, Chino, California, but he has not used the address since at least 2014. (See Factual Finding 31.)

Respondent's Defenses

19. During the hearing, respondent asserted parts of the Accusation were barred by a statute of limitations, without identifying which parts. But he did not cite a specific statute of limitations, and there is no limitations period in the Real Estate Appraisers' Licensing and Certification Law. Therefore, he is not entitled to prevail on statute of limitations grounds.

20. Respondent also asserted the Accusation is racially motivated, and part of a pattern of Bureau discrimination against African-American appraisers. But he presented no evidence supporting either assertion, and is not entitled to prevail on the basis for discriminatory enforcement.

Level of Discipline

21. Respondent's misconduct evidences his "present or potential unfitness . . . to perform the functions authorized by his[] license," and is therefore "substantially related to the qualifications, functions, or duties of an appraiser." (Regs., § 3722, subd. (a).) The weight to be accorded to the misconduct is substantial, because it had significant adverse effects on clients, and continued into late 2014, just before respondent's license expired. (See *id.*, subd. (c)(1), (2); Factual Findings 1, 26-28.) He denies all wrongdoing and presented no evidence of rehabilitation, making it probable the questioned acts will be repeated if he remains licensed. (Regs., §§ 3722, subd. (c)(6), 3723.) To protect the public, the proper level of discipline is revocation, not suspension or a restricted license.

Fine

22. The Accusation also includes a request for a fine under Business and Professions Code section 11316. But complainant's counsel never mentioned the request at the hearing, proposed a fine amount, or said anything else about a fine. Therefore, the request is deemed abandoned.

Costs

23. Complainant also requests \$30,563.87 in costs. "Except as otherwise provided by law, any order issued in resolution of a disciplinary proceeding may direct a licensee . . . found to have committed a violation or violations of statutes or regulations relating to real estate appraiser practice to pay a sum not to exceed the reasonable costs of investigation, enforcement, and prosecution of the case." (§ 11409, subd. (a).) The total of 297 hours spent investigating and preparing the case is high, given the nature of the allegations at issue. (Factual Finding 33.) But more importantly, before assessing costs against respondent, the Bureau must determine he "will be financially able to make later payments." (*Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.) His testimony and the

outcome below suggest he will be financially unable to pay the Bureau's costs. (See Factual Finding 34.) Based on his inability to pay, complainant's request for costs is denied.

ORDER

All licenses and licensing rights of respondent Curtis D. Harris under the Real Estate Appraisers' Licensing and Certification Law are revoked.

DATED: April 13, 2016

DocuSigned by:

Original Signed

THOMAS HELLER
Administrative Law Judge
Office of Administrative Hearings