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14

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

16

17 In the Matter of the Accusation Against: Case No. C110503-02

18 **JAMES H. ANKENBRUCK**

19 P.O. Box 282
20 Merced, CA 95314

21 **Residential Appraiser License No.**
22 **AL034469**

23 Respondent.

24 **ACCUSATION**

25 Complainant alleges:

26 **PARTIES**

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

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

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JURISDICTION

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

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

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

6. Code section 11319 states:

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

7. Code section 11328 states, in pertinent part:

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, that licensee, applicant, or person 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 OREA.

FINES

8. Business and Professions Code section 11316, subdivision (a) states that the director may assess a fine against a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation for violation of this part or any regulations adopted to carry out its purposes.

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COST RECOVERY

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

Except as otherwise provided by law, any order issued in resolution of a disciplinary proceeding may direct a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation 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.

REGULATORY PROVISIONS

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

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

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

(a) The Director finds and declares as follows:

(1) That the profession of real estate appraisal 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;...

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

12. Regulation section 3705 (a) states:

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

13. Regulation 3721 states, in pertinent part:

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

1 (6) Violated any provision of USPAP;

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

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

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

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

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

12 15. USPAP Standards Rule 1-1 states:

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

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

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

18 16. USPAP Standards Rule 1-2 states:

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

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

21

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

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

25

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

17. 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.

18. USPAP Standards Rule 1-4 states:

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

19. 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.

20. 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

21. 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:

....

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

1
2 (vii) summarize the scope of work used to develop the appraisal;

3
4 (ix) state the use of the real estate existing as of the date of value and the use
5 of the real estate reflected in the appraisal; and, when an opinion of highest and best
6 use was developed by the appraiser, summarize the support and rationale for that
7 opinion;

8 22. The Ethics Rule of USPAP provides, in part:

9 To promote and preserve the public trust inherent in professional
10 appraisal practice, an appraiser must observe the highest standards of professional
11 ethics. This ETHICS RULE is divided into four sections: Conduct, Management,
12 Confidentiality, and Record Keeping. The first three sections apply to all appraisal
13 practice, and all four sections apply to appraisal practice performed under
14 STANDARDS 1 through 10.

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

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

22 Conduct:

23 An appraiser must perform assignments ethically and competently, in
24 accordance with USPAP and any supplemental standards agreed to by the appraiser
25 in accepting the assignment. An appraiser must not engage in criminal conduct. An
26 appraiser must perform assignments with impartiality, objectivity, and independence,
27 and without accommodation of personal interests.

28 In appraisal practice, an appraiser must not perform as an advocate for any
29 party or issue.

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

32 An appraiser must not communicate results in a misleading or fraudulent
33 manner. An appraiser must not use or communicate a misleading or fraudulent
34 report or knowingly permit an employee or other person to communicate a
35 misleading or fraudulent report.

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

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

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

5 1. disclose the lack of knowledge and/or experience to the client before
5 accepting the assignment;

6 2. take all steps necessary or appropriate to complete the assignment
7 competently; and

8 3. describe the lack of knowledge and/or experience and the steps taken
8 to complete the assignment competently in the report.

9 10. 24. The Scope of Work Rule¹ in USPAP states:

11 For each appraisal, appraisal review, and appraisal consulting assignment, an
12 appraiser must:

13 1. identify the problem to be solved;

14 2. determine and perform the scope of work necessary to develop
14 credible assignment results; and

15 3. disclose the scope of work in the report

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

19 Problem Identification

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

22 Scope of Work Acceptability

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

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

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

27 1 This was a new rule incorporated in July 1, 2006, edition.
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Disclosure Obligation

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

Appraisal of 1310 Fulkerth Road, Turlock and 12419 Baldwin Road, Patterson, California

25. On or about May 22, 2007, Respondent co-issued an appraisal report with Dwight M. Ewing for two properties: 1310 Fulkerth Road, Turlock and 12419 Baldwin Road, Patterson, California, that were intended to be used by Calaveras Materials, Inc. Respondent failed to analyze each property separately, or explain how and why properties were analyzed in conjunction with each other. Subject Property One, located at 1301 Fulkerth Road, Turlock, was approximately forty-nine (49) years old and consisted of improvements of 15,691 square feet located on a site of 9.44 acres. Subject Property Two located at 12419 Baldwin Road, Patterson, was approximately fifty-three (53) years old and consisted of improvements of 800 square feet located on a site of 4.87 acres.

FIRST CAUSE FOR DISCIPLINE

(Failure to Determine the Intended Use and to Complete Scope of Work)

26. Respondent is subject to disciplinary action under Regulation section 3721 subdivision (a)(6) and (a)(7), by and through his violation of Regulation sections 3701, 3702(a)(1) and (a)(3) and violation of USPAP S.R. 1-2(h) and USPAP S.R. 2-2(b)(vii) and the Scope of Work Rule in that he failed to complete an appropriate scope of work necessary to produce a credible report and failed to identify the intended use of the report. Respondent only stated who the user is and that the report is not to be used for financing.

SECOND CAUSE FOR DISCIPLINE

(Failure to Adequately Describe the Subject Properties)

27. Respondent is subject to disciplinary action under Regulation section 3721 subdivision (a)(6) and (a)(7), by and through his violation of Regulation sections 3701, 3702(a)(1) and (a)(3) and violation of USPAP S.R. 1-1(a), S.R. 1-1(b), S.R. 1-2(e)(i), S.R. 2-1(b) and S.R. 2-2 (b) (iii) in that he failed to adequately describe the subject properties or otherwise provide sufficient information to enable the intended users of the appraisal to understand the

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

5 **THIRD CAUSE FOR DISCIPLINE**

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

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

13 **FOURTH CAUSE FOR DISCIPLINE**

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

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

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FIFTH CAUSE FOR DISCIPLINE

(Failure to Value the Properties in a Credible Manner)

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

SIXTH CAUSE FOR DISCIPLINE

(Failure to Cooperate with Investigation)

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

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

5 **PRAAYER**

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

9 1. Revoking or suspending Residential Appraiser License Number AL 034469, issued to
10 James H. Ankenbruck;

11 2. Ordering Respondent James H. Ankenbruck to pay the Director of the Office of Real
12 Estate Appraisers the reasonable costs of the investigation and enforcement of this case, pursuant
13 to Business and Professions Code section 11409;

14 3. Taking such other and further action as deemed necessary and proper.

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16 DATED: 3/20/13

Original Signed

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

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SA2012104840

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