

ORDER

IT IS SO ORDERED that Real Estate Appraiser License No. AL034469, heretofore issued to Respondent James H. Ankenbruck, is revoked.

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

This Decision shall become effective on 7-12-13.

It is so ORDERED 6-11-13

Original Signed

FOR THE DIRECTOR OF THE OFFICE OF REAL
ESTATE APPRAISERS

Attachment: Exhibit A: Accusation

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

11
12 In the Matter of the Accusation Against:

13 **JAMES H. ANKENBRUCK**

14 **P.O. Box 282**
15 **Merced, CA 95341**

16 **5220 Tip Top Road**
17 **Mariposa, CA 95338**

18 **Real Estate Appraiser License No.**
19 **AL034469**

20 **Respondent.**

Case No. C110503-02

OAH No. C110503-02

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

21 **FINDINGS OF FACT**

22 1. On or about March 20, 2013, Elizabeth Seaters, in her official capacity as the Chief of
23 Enforcement of the Office of Real Estate Appraisers (Complainant), filed Accusation No.
24 C110503-02 against James H. Ankenbruck (Respondent) before the Director of the Office of Real
25 Estate Appraisers. (Accusation attached as Exhibit A.)

26 2. On or about August 5, 2005, the Director of the Office of Real Estate Appraisers
27 (Director) issued Real Estate Appraiser License No. AL034469 to Respondent. The Real Estate
28

1 Appraiser License was in full force and effect at all times relevant to the charges brought in
2 Accusation No. C110503-02 and will expire on June 29, 2014, unless renewed.

3 3. On or about March 22, 2013, Respondent was served by Certified and First Class
4 Mail copies of Accusation No. C110503-02, Statement to Respondent, Notice of Defense,
5 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
6 and 11507.7) at Respondent's address of record which, pursuant to Title 10, California Code of
7 Regulations, section 3527, is required to be reported and maintained with the Director.

8 Respondent's addresses of record was and is:

9 P.O. Box 282
10 Merced, CA 95341

11 In addition, Respondent was also served with the aforementioned documents on his
12 prior address of record which was:

13 5220 Tip Top Road
14 Mariposa, CA 95338

15 4. Service of the Accusation was effective as a matter of law under the provisions of
16 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
17 124.

18 5. On or about April 12, 2013, the aforementioned documents that were served on the
19 Tip Top Road address were returned by the U.S. Postal Service marked "Returned to Sender,"
20 after noting three attempted delivery dates of "3/25," "4/2," and "4/12." On or about April 9,
21 2012; Respondent signed a return receipt of the Accusation package that was sent via certified
22 mail to P.O. Box 282, which return receipt was received by the Office of the Attorney General on
23 April 11, 2013, confirming receipt of the Accusation package by Respondent. As of June 7,
24 2013, Respondent has not submitted a Notice of Defense or otherwise requested a hearing in
25 order to present a defense to the charges contained in the Accusation.

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

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

7. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. C110503-02.

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

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

9. Pursuant to its authority under Government Code section 11520, the Director finds Respondent is in default. The Director will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Director's offices regarding the allegations contained in Accusation No. C110503-02, finds that the charges and allegations in Accusation No. C110503-02, are separately and severally, found to be true and correct by clear and convincing evidence.

10. Taking official notice of its own internal records, pursuant to Business and Professions Code section 11409, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$ 3,410.32 as of June 7, 2013.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent James H. Ankenbruck has subjected his Real Estate Appraiser License No. AL034469 to discipline.

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

3. The Director of the Office of Real Estate Appraisers is authorized to revoke Respondent's Real Estate Appraiser License based upon the following violations alleged in the

1 Accusation which are supported by the evidence contained in the Default Decision Evidence
2 Packet in this case, as follows:

3 a. Respondent failed to complete an appropriate scope of work necessary to produce a
4 credible report and failed to identify the intended use of the report in violation of Regulation
5 sections 3701, 3702(a)(1) and (a)(3) and USPAP S.R. 1-2(h) and USPAP S.R. 2-2(b)(vii) and the
6 Scope of Work Rule.

7 b. Respondent failed to adequately describe the subject properties or otherwise provide
8 sufficient information to enable the intended users of the appraisal to understand the report in
9 violation of Regulation sections 3701, 3702(a)(1) and (a)(3) and USPAP S.R. 1-1(a), S.R. 1-1(b),
10 S.R. 1-2(e)(i), S.R. 2-1(b) and S.R. 2-2 (b) (iii).

11 c. Respondent failed to report the zoning restriction of the subject properties in violation
12 of Regulation sections 3701, 3702(a)(1) and (a)(3) and USPAP S.R. 2-2 (b)(iii) and the Conduct
13 Section of the Ethics Rule.

14 d. Respondent failed to analyze the highest and best use of the subject properties in a
15 creditable manner in violation of Regulation sections 3701, 3702(a)(1) and (a)(3) and USPAP
16 S.R. 1-1 (a), S.R. 1-3(b), S.R. 2-1(b), S.R. 2-2 (b)(ix), and Conduct Section of the Ethic Rule.

17 e. Respondent failed to value the properties or otherwise analyze the sales used in his
18 report in a creditable manner in violation of Regulation sections 3701, 3702(a)(1) and (a)(3) and
19 USPAP S.R. 1-1(a), S.R. 1-1(b), S.R. 1-4 (a), S.R. 2-1 (a), and the Competency Rule.

20 f. Respondent failed to cooperate with the Office of Real Estate Appraisal's
21 investigation and issued false statements, stating: the "appraisal [is] not mine" and the subject
22 properties were "not appraised by me" in violation of Code section 11328 and the Conduct
23 Section of the Ethics Rule.

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Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 JEFFREY M. PHILLIPS
Deputy Attorney General
4 State Bar No. 154990
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-6292
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. C110503-02

12 **JAMES H. ANKENBRUCK**

13 P.O. Box 282
14 Merced, CA 95314

A C C U S A T I O N

15 **Residential Appraiser License No.**
16 **AL034469**

Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

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

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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 reproof, 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
5 provision of the Business and Professions Code applicable to applicants for or holders
6 of licenses authorizing appraisals;...

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

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

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

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

13 15. USPAP Standards Rule 1-1 states:

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

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

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

19 16. USPAP Standards Rule 1-2 states:

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

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

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

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

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

1 17. USPAP Standards Rule 1-3 states:

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

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

5 18. USPAP Standards Rule 1-4 states:

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

9 19. USPAP Standard 2 states:

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

12 20. USPAP Standards Rule 2-1 states:

13 Each written or oral real property appraisal report must:

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

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

18 21. USPAP Standards Rule 2-2 states:

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

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

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

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

....
(ix) state the use of the real estate existing 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, summarize the support and rationale for that opinion;

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

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

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

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

Conduct:

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

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

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

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.

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

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

2 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
alternatively, must:

5 1. disclose the lack of knowledge and/or experience to the client before
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
to complete the assignment competently in the report.

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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
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
18 demonstrate that the scope of work is sufficient to produce credible assignment
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
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
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
the intended use.

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

28 ¹ This was a new rule incorporated in July 1, 2006, edition.

1 Disclosure Obligation

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

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

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

14 FIRST CAUSE FOR DISCIPLINE

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

16 26. Respondent is subject to disciplinary action under Regulation section 3721
17 subdivision (a)(6) and (a)(7), by and through his violation of Regulation sections 3701,
18 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
19 Scope of Work Rule in that he failed to complete an appropriate scope of work necessary to
20 produce a credible report and failed to identify the intended use of the report. Respondent only
21 stated who the user is and that the report is not to be used for financing.

22 SECOND CAUSE FOR DISCIPLINE

23 (Failure to Adequately Describe the Subject Properties)

24 27. Respondent is subject to disciplinary action under Regulation section 3721
25 subdivision (a)(6) and (a)(7), by and through his violation of Regulation sections 3701,
26 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)
27 and S.R. 2-2 (b) (iii) in that he failed to adequately describe the subject properties or otherwise
28 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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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 **PRAYER**

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.
15

16 DATED: 3/20/13

Original Signed

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

22 SA2012104840
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