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BEFORE THE ARIZONA STATE BOARD OF APPRAISAL

IN THE MATTER OF:

**RODNEY L. MARTENSEN,**  
Licensed Residential Appraiser  
License No. 10079,

Respondent.

Case Nos. 08F-2542-BOA, 08F-2543-BOA,  
08F-2544-BOA, 08F-2632-BOA,  
08F-2750-BOA

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND ORDER OF REVOCATION**

On October 29, 2009, the Arizona Board of Appraisal met to consider the Administrative Law Judge Decision of Diane Mihalsky in the above-captioned matter. Rodney L. Martensen appeared, and was represented by Dan W. Montgomery, Esq. The State was represented by Jeanne Galvin, Assistant Attorney General. The Board received independent legal advice from Christopher Munns, Assistant Attorney General from the Solicitor General's Office.

The Board, having reviewed the administrative record and the Administrative Law Judge's Findings of Fact, Conclusions of Law and Order in this matter, and having considered the written and oral arguments of the parties and fully deliberating the same, takes the following actions on the recommended decision:

1. The Board hereby accepts the Findings of Fact of the Administrative Law Judge with modifications to correct typographical errors as identified in the State's Position Re: Recommended Decision filed by the State.

2. The Board hereby accepts the Conclusions of Law of the Administrative Law Judge.

3. The Board hereby accepts the Order of the Administrative Law Judge with modifications requested by State to include the Board's standard language regarding revocation decisions.

4. The Findings of Fact, Conclusions of Law and Order shall read as follows:

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**FINDINGS OF FACT**

**BACKGROUND AND PROCEDURE**

1. The Arizona State Board of Appraisal ("the Board") is the state agency authorized pursuant to A.R.S. § 32-3601 *et seq.* and the rules promulgated thereunder at A.A.C. R4-46-101 *et seq.* to regulate and control the licensing and certification of real property appraisers in the State of Arizona.

2. The Board issued Residential Real Estate Appraiser License No. 10079 to Respondent Rodney L. Martensen. Mr. Martensen's license is set to expire on December 31, 2010.

3. On July 19, 2009, the Board issued a Complaint and Notice of Hearing in these five consolidated matters, which alleged that Mr. Martensen had failed to comply with subpoenas that the Board had issued under the authority of A.R.S. § 32-3631(C) in Case Nos. 2542, 2543, 2544, 2632, and 2750, which constituted grounds for discipline under A.R.S. § 32-3631(A)(8).

4. A hearing was held on September 18, 2009. The Board presented the testimony of its Executive Director Deborah G. Pearson and submitted sixteen exhibits. Mr. Martensen testified on his own behalf and submitted three exhibits.

**HEARING EVIDENCE**

**Case Nos. 2542, 2543, and 2544**

5. The Board received information from the Arizona Mortgage Fraud Task Force of the Arizona State Department of Financial Institutions that various appraisals of certain real property were suspect. Mr. Martensen had prepared appraisals in May 2006 for three of the properties: (1) 202 N. Suntan Drive, Vail, AZ 85641; (2) 4550 E. Coronado Drive, Tucson, AZ 85718; and (3) 4600 N. Avenida Del Cazador, Tucson, AZ 85718.

6. On September 27, 2007, the Board requested Mr. Martensen to provide his appraisal reports for the three properties.

7. Mr. Martensen complied and provided his appraisal reports for the three properties to the Board.

8. The Board subsequently audited Mr. Martensen's three appraisal reports at one of its regular meetings and voted to open three complaints against Mr. Martensen's license.

9. At the Board's request, on January 9, 2008, the Board's Executive Director Deborah G. Pearson wrote letters to Mr. Martensen in each of the three complaints, informing him that the Board had opened complaints for possible violations of the Uniform Standards of

1 Professional Appraisal Practice ("USPAP") and requiring his written response within 30 days to  
2 the Board's concerns, in relevant part as follows:

- 3 1. The appraisal is false and misleading.
- 4 2. The appraisal estimates the market value to be far more than  
5 the true market value.
- 6 3. You were or should have been aware that the false and  
7 misleading appraisal benefitted others and you.

8 The Board also requested copies of Mr. Martensen's work files.

9 10. Ms. Pearson explained at the hearing that an appraiser's work file generally  
10 contains all the documentation to support the appraisal report.

11 11. After receiving notice of the three complaints, Mr. Martensen requested copies of  
12 the three complaints and an extension of time to respond to them. On February 8, 2008, Board  
13 staff sent an e-mail to Mr. Martensen, informing him as follows:

14 All three complaints 2542/2543/2544 were opened by the Board,  
15 no complaint form was filled out, and you have been given  
16 everything the Board has.

17 The Board can offer you a one-time 30 day extension. Your new  
18 due date to respond is 3/9/08 for all three complaints mentioned  
19 above.

20 12. Ms. Pearson testified that Mr. Martensen requested a second extension of time to  
21 respond to the three complaints but, unfortunately, Board rules do not allow more than one  
22 extension.

23 13. On March 17, 2008, Ms. Pearson sent a letter to Mr. Martensen acknowledging his  
24 request for a second extension and informing him that "[t]he three complaints will be placed on  
25 the Board's April 17<sup>th</sup> agenda. Please ensure that you reply to the complaints to reach the  
26 Board office on or before April 8<sup>th</sup>."

14. Mr. Martensen did not file a written response to the three complaints or provide a  
copy of his work file for the three appraisal reports to the Board.

15. On April 21, 2008, Mr. Martensen's attorney sent a letter to the Board, in relevant  
part as follows:

While I do not dispute your right to audit appraisal reports  
or investigate complaints, due process would require you to  
provide my client a copy of the complaint, so he may address any  
allegations made against him.

1 When an allegation as serious as making a false and  
2 misleading appraisal are [sic] made, it is imperative that the  
accused be provided the factual basis for said claims.

3 Specifically, my client should be apprised of the following:

- 4 1. The manner in which it is alleged his reports are false  
and misleading.
- 5 2. What is alleged to be the true market value, as it is my  
6 understanding the Board does not normally address  
opinions of value.
- 7 3. How you claim that he benefitted from the appraisal.

8 The absence of a complaint provides my client with no  
9 opportunity to meaningfully defend himself. It is submitted that if  
10 no formal complaint exists, pursuant to your own complaint review  
process, these matters should be dismissed.

11 In the event the Board proceeds, my client should  
12 immediately be provided a copy of the complaint together with any  
documentation which supports the complaint so that a meaningful  
response may be submitted.

13 16. On April 25, 2008, Ms. Pearson on behalf of the Board informed Mr. Martensen that  
14 it had voted to send the three complaints to an investigator and that, after reviewing the  
15 investigator's reports, the Board might "dismiss the complaint, direct further investigation, set  
16 the complaint for informal hearing, or refer it to formal hearing."

17 17. Because Mr. Martensen had not provided copies of his work files, on April 15, 2008,  
18 the Board also issued a subpoena duces tecum to Mr. Martensen, ordering him under the  
19 authority of A.R.S. §§ 32-3631(C) and 32-3631(A)(8) to produce his work files and appraisal  
reports on all three properties to the Board on or before May 7, 2008.

20 18. Ms. Pearson testified that the subpoenas were sent via regular mail to Mr.  
21 Martensen's address of record and were not returned by the U.S. Postal Service. The copy of  
22 the subpoena that was sent to Mr. Martensen's address of record via certified mail was returned  
as unclaimed.

23 19. Mr. Martensen did not comply with the Board's subpoena.

24 20. Mr. Martensen testified that he had "no problem" providing copies of his appraisal  
25 reports pursuant to the Board's September 27, 2007 request because "auditing is a proper  
function of the Board."



1 Scott Ave., Tucson, AZ 85701 ("the Scott Ave. property") after receiving a payment of \$1,500.00  
2 to do so.

3 31. On October 16, 2008, the Board provided to Mr. Martensen a copy of Ms. Hodgins'  
4 complaint regarding his alleged failure to provide an appraisal report on the Scott Ave. property  
5 and requested that he respond to the complaint within 30 days. The Board also asked Mr.  
6 Martensen to provide copies of his work file and appraisal report.

7 32. Mr. Martensen submitted at the hearing a letter dated November 13, 2008 in Case  
8 No. 2750, which he testified that he had mailed to the Board. In the letter, Mr. Martensen  
9 explained that the property was "an older home out of an estate sale" with "a lot of deferred  
10 maintenance." His fee agreement was that he would receive \$1,500 up front and the remainder  
11 of the \$3,500 fee at close of escrow. The lender had asked him to appraise the property "as is,"  
12 as well as "subject to" the hypothetical condition that the repairs and upgrades envisioned were  
13 completed." Because the hypothetical condition "greatly expanded the scope of the assignment  
14 essentially doubling it," Mr. Martensen felt that he was being pressured to report a certain value  
15 without being allowed to perform the appropriate investigations. He therefore declined to  
16 complete the appraisal report.

17 33. Ms. Pearson testified that the Board had no record of receiving Mr. Martensen's  
18 November 13, 2008 letter.

19 34. On December 17, 2008, the Board issued a subpoena duces tecum to Mr.  
20 Martensen for his work file and appraisal report on the Scott Ave. property, which he was  
21 required to produce to the Board on or before December 31, 2008.

22 35. Mr. Martensen did not comply with the Board's subpoena duces tecum for the Scott  
23 Ave. property.

#### **Mr. Martensen's History and Policy Statement #1**

24 36. Mr. Martensen has been appraising real estate since 1989 in California. He is up-  
25 to-date of the Board's continuing education requirements.

26 37. On July 15, 2002, the Board issued a non-disciplinary due diligence letter in Case  
No. 1221, in which the Board agreed to resolve the matter without any admission of violation by  
Mr. Martensen if he "agree[d] to exercise greater due diligence in appraising similar properties in  
the future." Mr. Martensen had agreed to the Board's terms.

38. On March 20, 2006, the Board issued Findings of Fact, Conclusions of Law, and its  
final Order in Case Nos. 1646 and 1766.

1 39. The Board found no violations based on the evidence presented at the hearing and  
2 dismissed Case No. 1646.

3 40. The Board found that Mr. Martensen had violated A.R.S. § 32-3631(A)(8) by failing  
4 to comply with the Board's subpoena duces tecum issued under the authority of A.R.S. § 32-  
5 3621(C) in Case No. 1766, which provided grounds for discipline. The Board determined that  
6 the violation was a Level III violation under its Substantive Policy Statement #1. As a result, the  
7 Board placed Mr. Martensen on probation for six months.

8 41. On July 21, 2005, the Board had adopted Substantive Policy Statement #1, which  
9 under A.A.C. R4-46-301 set forth five levels of violations based on escalating levels seriousness  
10 and severity of penalty, ranging from non-disciplinary letters of concern to license revocation.

11 42. Ms. Pearson testified that the Board considered the five charged violations in these  
12 consolidated matters to be Level V violations, which Policy Statement #1 defined as  
13 "[s]ignificant violations found. Willful disregard of USPAP, A.R.S. or A.A.C. found." As a result,  
14 the Board requested revocation.

15 43. Mr. Martensen argued that he and Ms. Pearson had "buted heads" during the  
16 Board's investigation and that, as a result, Mr. Martensen had "gotten his hackles up." Mr.  
17 Martensen suggested that he be allowed additional time to provide his work files and other  
18 documents after he "got the details" of the Board's complaints.

#### 19 CONCLUSIONS OF LAW

20 1. This matter lies within the Board's jurisdiction.<sup>1</sup>

21 2. The Board bears the burden of proof and must establish cause to penalize Mr.  
22 Martensen's license by a preponderance of the evidence.<sup>2</sup> Mr. Martensen bears the burden to  
23 establish affirmative defenses by the same evidentiary standard.<sup>3</sup>

24 3. "A preponderance of the evidence is such proof as convinces the trier of fact that the  
25 contention is more probably true than not."<sup>4</sup> A preponderance of the evidence is "[t]he greater  
26 weight of the evidence, not necessarily established by the greater number of witnesses  
testifying to a fact but by evidence that has the most convincing force; superior evidentiary

<sup>1</sup> See A.R.S. § 32-3601 *et seq.*

<sup>2</sup> See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also *Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

<sup>3</sup> See A.A.C. R2-19-119(B)(2).

<sup>4</sup> Morris K. Udall, ARIZONA LAW OF EVIDENCE § 5 (1960).

1 weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still  
2 sufficient to incline a fair and impartial mind to one side of the issue rather than the other.”<sup>5</sup>

3 4. The Arizona legislature created the Board to prescribe and enforce standards of  
4 professional appraisal practice.<sup>6</sup> The Arizona legislature charged the Board with initiating and  
5 investigating complaints against licensed appraisers and, if violations of applicable statute,  
6 regulation, or standard are established, disciplining appraisers’ licenses.<sup>7</sup>

7 5. “Procedural due process requires notice and an opportunity to be heard in a  
8 meaningful manner and at a meaningful time” before a professional license may be disciplined.<sup>8</sup>  
9 To enable Mr. Martensen to prepare his defense for the hearing, the Board was required to  
10 include in its notice of hearing “[a] short and plain statement of the matters asserted” and “[a]  
11 reference to the particular sections of the statutes and rules involved.”<sup>9</sup> The Board’s Complaint  
12 and Notice of Hearing complied with this requirement.

13 6. The February 9, 2008 notice of complaint letters in Case Nos. 2542, 2543, 2544  
14 were not a notice of hearing or of the Board’s decision to discipline Mr. Martensen’s license, but  
15 only notice of the Board’s concern and potential investigation. The Administrative Law Judge  
16 has not been cited and has not found any authority that requires an administrative licensing  
17 agency to give notice of complaints or of the initiation of investigations in a particular manner or  
18 with particular detail.<sup>10</sup>

19 7. Although the language and tone of the letters may have caused any reasonable  
20 licensee to feel dismay or chagrin, on February 9, 2008, the Board had not decided to take any  
21 action against Mr. Martensen’s license. He was not entitled to notice of the bases of the  
22 Board’s concern or for a more neutral or polite tone in the Board’s letters requesting information  
23 and his work file.

24 <sup>5</sup> BLACK’S LAW DICTIONARY at page 1220 (8<sup>th</sup> ed. 1999).

25 <sup>6</sup> A.R.S. § 32-3605(B)(1).

26 <sup>7</sup> A.R.S. § 32-3631(A)(2) and (6); see also A.A.C. R4-46-301 (concerning complaints and investigations)  
and R4-46-302 (concerning formal hearing procedures, investigations, and penalties).

<sup>8</sup> *Webb v. Arizona Board of Medical Examiners*, No. 1 CA-CV 01-0010 at ¶ 9 (Arizona Court of Appeals,  
Division One, June 25, 2002) (citing *Comeau v. Arizona State Board of Dental Examiners*, 196 Ariz. 102,  
106, ¶ 18, 993 P.2d 1066, 1070 (App. 1999)).

<sup>9</sup> See A.R.S. § 41-1092.05(D)(3) and (4).

<sup>10</sup> *Cf. Ward et al. v. Anderson et al.*, 494 F.3d 929, 935 (10<sup>th</sup> Cir. 2007) (Licensed day-care provider had  
no right to hearing or notice of charges where licensing agency did not intend to discipline its license, no  
matter how scurrilous the announced results of its investigation).

1 8. Because Mr. Martensen was not taken into custody or ever charged criminally, he  
2 was not entitled to invoke his right against self-incrimination.<sup>11</sup> Because the right against self-  
3 incrimination only exists in criminal proceedings, in an administrative licensing proceeding, Mr.  
4 Martensen's refusal to produce his work file or the appraisal reports for the complaints at issue  
5 could have provided grounds for the Board to draw an adverse inference that the work file and  
6 appraisal reports would not have helped Mr. Martensen or would have established his  
7 misconduct.<sup>12</sup> Mr. Martensen had no legal right to refuse to comply with the Board's subpoenas  
8 duces tecum.

9 9. The Board therefore has borne its burden to establish that Mr. Martensen's refusals  
10 to comply with the Board's subpoenas duces tecum in Case Nos. 2452, 2543, 2544, 2632, and  
11 2750, issued under the authority of A.R.S. § 32-3631(C),<sup>13</sup> violated A.R.S. § 32-3631(A)(8).<sup>14</sup>

12 10. With respect to the penalty, Mr. Martensen has violated the same statute by  
13 committing the same behavior in Case No. 1766. Mr. Martensen's repeated defiance of the  
14 Board's orders demonstrates that he is not capable of regulation by the Board at this time.

#### 15 ORDER OF REVOCATION

16 In issuing this order of discipline, the Board considers its obligations to fairly and  
17 consistently administer discipline, its burden to protect the public welfare and safety, as well as  
18 all aggravating and mitigating factors presented in the case. Based on the foregoing Findings of  
19 Fact and Conclusions of Law, **IT IS HEREBY ORDERED:**

- 20 1. That licensed residential appraiser license No. 10079 issued to Mr. Martensen to  
21 practice as a licensed residential appraiser is revoked as of the effective date of this Order.
- 22 2. That Mr. Martensen shall immediately surrender his license by returning it to the  
23 Board office.
- 24 3. That Mr. Martensen may not accept fees for or perform appraisals, appraisal  
25 reviews, consulting assignments, or any services governed by the Uniform Standards of  
26 Professional Appraisal Practice, A.R.S. § 32-3601, *et seq.*, or the rules promulgated thereunder.

21 <sup>11</sup> See, e.g., *Beckwith v. United States*, 425 U.S. 341, 347, 96 S. Ct. 1612 (1976). Custody means formal  
22 arrest or the loss of freedom of movement to the same degree as formal arrest. *California v. Beheler*, 463  
23 U.S. 1121, 1125, 103 S. Ct. 3517 (1983).

24 <sup>12</sup> See, e.g., *Smyser v. City of Peoria*, 215 Ariz. 428, 439-40 ¶¶ 36-37, 160 P.3d 1186, 1197-98 (App.  
25 2007); *Ponce v. Industrial Comm'n*, 120 Ariz. 134, 136, 584 P.2d 598, 600 (App. 1978).

26 <sup>13</sup> This statute provides that the Board "may issue subpoenas for the attendance of witnesses and the  
production of books, records, documents and other evidence necessary and relevant to an investigation  
or hearing."

<sup>14</sup> This statute includes among the grounds for discipline against an appraisal license or certificate  
"[w]illfully disregarding or violating any of the provisions of this chapter or the rules of the board for the  
administration and enforcement of this chapter."



