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Arizona Board of Appraisal

In the Matter of:

**Nos. 14F-3366-BOA
14F-3510-BOA**

Frank Rose

**Certified Residential Appraiser
Certificate No. 20676**

Findings of Facts, Conclusions of Law
and Order of Revocation

Respondent.

On June 20, 2014, the Arizona Board of Appraisal ("Board") met to consider the Administrative Law Judge Decision of Sondra J. Vanella in the above-captioned matter. Despite having been properly noticed, the Respondent, Frank Rose, did not appear. The State was represented by Jeanne M. Galvin, Assistant Attorney General.

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

1. The Board hereby adopts the Findings of Fact of the Administrative Law Judge.
2. The Board hereby adopts the Conclusions of the Administrative Law Judge.
3. The Board hereby adopts the Order of the Administrative Law Judge.

Based on evidence and argument at hearing, the following Findings of Fact, Conclusions of Law and Recommended Order are made:

FINDINGS OF FACT

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, to regulate

1 and control the licensing and certification of real property appraisers in the State of
2 Arizona.

3 2. Respondent Frank Rose ("Mr. Rose") holds Certificate No. 20676, as a Certified
4 Residential Appraiser in the State of Arizona, issued by the Board on or about October
5 21, 1994. Certificate No. 20676 will expire on October 31, 2014.¹

6 3. On February 26, 2014, the Board issued a Complaint and Notice of Public
7 Hearing, setting a hearing on April 23, 2014, at 8:00 a.m., to determine whether Mr. Rose
8 has violated any applicable statutory or regulatory provisions regulating his Certificate and
9 whether disciplinary action should be imposed against Mr. Rose's Certificate. The Board
10 sent via regular and certified mail copies of the Complaint and Notice of Public Hearing to
11 Mr. Rose at his address of record.

12 4. A hearing was held on April 23, 2014. The Board submitted eleven exhibits and
13 presented the testimony of Kelly Luteijn, its Regulatory Compliance Officer, and Linda
14 Beatty, its Chief Investigator.

15 5. Mr. Rose did not request to appear telephonically at the hearing and did not
16 request that the hearing be continued. Although the start of the duly noticed hearing was
17 delayed thirty minutes to allow Mr. Rose additional travel time, Mr. Rose did not appear,
18 and did not contact the Office of Administrative Hearings to request that the start of the
19 hearing be further delayed. Consequently, Mr. Rose did not present any evidence to
20 defend his Certificate.

21 **COMPLAINT NO. 3366**

22 6. On or about July 24, 2012, Mr. Rose voluntarily entered into a Consent Agreement
23 and Order ("Agreement") with the Board as a means of resolving Case No. 3366, which
24 involved a complaint regarding an appraisal conducted and report written by Mr. Rose of
25 a detached single family residence located at 1740 South 46th Avenue, Yuma, Arizona
26 85367.² The Board investigated the matter and determined that Mr. Rose failed to
27 comply with certain Standards of Practice in the appraisal of the property.

28 7. The Agreement placed Mr. Rose's Certificate on probation for a minimum period of
29 six months during which time Mr. Rose was to complete certain continuing education

30 ¹ See Exhibit 1.

² See Exhibit 4.

1 requirements, obtain a Mentor, and complete at least twelve appraisal reports under the
2 Mentor.³ Another term of the Agreement required Mr. Rose and his Mentor to submit
3 monthly appraisal logs.⁴ According to the Agreement, it was Mr. Rose's responsibility to
4 ensure that his Mentor provided the Board with the required monthly logs.⁵

5 8. As part of the Agreement, Mr. Rose was to complete the following continuing
6 education on or before January 24, 2013:

- 7 a. 7 hour course in the Cost Approach;
- 8 b. 15 hour course in Basic Appraisal (with an exam);
- 9 c. 7 hour 2012-2013 USPAP [Uniform Standards of Professional Appraisal
10 Practice] Update Course; and
- 11 d. 7 hour course in Appraisal Review.⁶

12 9. As of the hearing date, Mr. Rose had not completed the 7 hour Cost Approach
13 Course, the 15 hour Basic Appraisal Course, or the 7 hour course in Appraisal Review.
14 Ms. Luteijn testified that Mr. Rose completed the 7 hour 2012-2013 USPAP Update
15 Course on April 14, 2012, prior to the execution of the Agreement. However, the Board
16 accepted that course as being in compliance with the Agreement notwithstanding the fact
17 that it was completed prior to the execution of the Agreement. Ms. Luteijn testified that
18 Mr. Rose did not submit any of the required logs to the Board, and Mr. Rose's Mentor
19 submitted logs for the months of September 2012 through January 2013.

20 10. Ms. Luteijn testified that the Board received email correspondence from Mr. Rose
21 on May 21, 2013, stating that that he wanted to surrender his Certificate.⁷ The email
22 further states that "[f]ailing health and age have made it difficult to comply with the
23 board[']s wishes."⁸ Mr. Rose did not surrender his Certificate to the Board.

24 11. The Agreement provides that "[I]f [Mr. Rose] fails to comply with the terms of this
25 Consent Agreement, the Board shall properly institute proceedings for noncompliance
26 with this Consent Agreement, which may result in suspension, revocation, or other
27 disciplinary and/or remedial actions. [Mr. Rose] agrees that any violation of this Consent

28 ³ *Id.* at 4-5.

29 ⁴ *Id.* at 6.

30 ⁵ *Id.*

⁶ *Id.* at 4.

⁷ See Exhibit 6.

1 Agreement is a violation of A.R.S. § 32-3631(A)(8), which is willfully disregarding or
2 violating any of the provisions of the Board's statutes or the rules of the Board for the
3 administration and enforcement of its statutes."⁹

4 **COMPLAINT NO. 3510**

5 12. On or about December 17, 2012, Teresa Bledsoe filed a complaint with the Board
6 alleging that Mr. Rose failed to supply her with an appraisal report for her property located
7 at 14414 East 53rd Street, Yuma, Arizona 85367, notwithstanding having paid \$400.00 to
8 Mr. Rose for the appraisal report.¹⁰

9 13. Mr. Rose responded to Ms. Bledsoe's complaint in writing by stating the following:
10 "I have been appraising for 29 yrs. I have been a certified appraiser for 29 yrs. 4/14/12
11 USPAP class."¹¹ The Board investigated Ms. Bledsoe's complaint. Ms. Beatty was the
12 assigned investigator. Ms. Beatty testified that she reviewed the complaint, the response
13 to the complaint, the appraisal, and the entire work file which is comprised of MLS
14 (Multiple Listing Service) data sheets, public records, assessor records, flood and zoning
15 maps, and sales information. Ms. Beatty's investigation revealed that Mr. Rose's work file
16 contained inadequate information. Ms. Beatty testified that most appraisals are
17 completed on a form, but this appraisal was done in a narrative, which is unusual, but not
18 improper. Ms. Beatty testified that Mr. Rose's appraisal of the property did not comply
19 with USPAP because it did not identify the appraisal format, i.e., self-contained,
20 summary, or restricted use. Because the format is not identified, Ms. Beatty assumed
21 that the appraisal report is a restricted use report which is the lowest level of reporting
22 and contains the least amount of information because it is such a brief report. Ms.
23 Beatty testified that Mr. Rose's appraisal report did not contain the minimum elements
24 required of a restricted use report, such as the client is not identified, the intended
25 use/user is not identified, there is no scope of work listed, it is lacking a signed
26 certification, and Mr. Rose's Certificate number is not listed.

27 **CONCLUSIONS OF LAW**

28
29 ⁸ *Id.*

30 ⁹ See Exhibit 4 at 8-9.

¹⁰ See Exhibit 7.

1. This matter lies within the Board's jurisdiction under A.R.S. § 32-3601 *et seq.*

2. The Board bears the burden of proof and must establish cause to penalize Mr. Rose's Certificate by a preponderance of the evidence.¹²

3. "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."¹³ A preponderance of the evidence is "evidence which is of greater weight or more convincing than evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not."¹⁴

4. The Notice of Hearing that the Board mailed to Mr. Rose at his address of record was reasonable, and Mr. Rose is deemed to have received notice of the hearing.¹⁵

5. A.R.S. § 32-3631 authorizes the Board to discipline the holder of a Certificate who has committed any act in violation of the Board's statutes.

6. Pursuant to A.R.S. § 32-3635, a certified or licensed appraiser in the State of Arizona must comply with the standards of practice adopted by the Board. The Standards of Practice adopted by the Board are codified in the USPAP edition that is current at the time of the appraisal, in this case, the 2012-2013 Edition.

7. The Board established that Mr. Rose failed to abide by a Consent Agreement in violation of A.R.S. § 32-3631(A)(8).¹⁶

¹¹ See Exhibit 8.

¹² 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).

¹³ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

¹⁴ BLACK'S LAW DICTIONARY 1120 (8th ed. 2004).

¹⁵ See A.R.S. § 41-1092.04 and A.R.S. § 32-3621(D).

¹⁶ A.R.S. § 32-3631(A) provides as follows:

The rights of an applicant or holder under a license or certificate as a registered trainee appraiser or a state licensed or state certified appraiser may be revoked or suspended or the holder of the license or certificate may otherwise be disciplined in accordance with this chapter on any of the grounds set forth in this section. The board may investigate the actions of a registered trainee appraiser or a state licensed or state certified appraiser and may revoke or suspend the rights of a license or certificate holder or otherwise discipline a registered trainee appraiser or a state licensed or state certified appraiser for any of the following acts or omissions:

.....
8. Wilfully disregarding or violating any of the provisions of this chapter or the rules of the board for the administration and enforcement of this chapter.

1 8. The Board established as delineated in the above Findings of Fact, that Mr.
2 Rose violated USPAP Standards Rule 2-2, by failing to indicate the type of appraisal
3 report he prepared.¹⁷

4 9. The Board established as delineated in the above Findings of Fact, that Mr.
5 Rose violated USPAP Standards Rule 2-2(c)(i) and (ii) by failing to include the
6 identification of the client and failing to identify the intended use/user of the appraisal in
7 the report.¹⁸

8 10. The Board established as delineated in the above Findings of Fact, that Mr.
9 Rose violated USPAP Standards Rule 2-3 because his appraisal report failed to contain
10 a signed certification.¹⁹

11
12 ¹⁷ USPAP Standards Rule 2-2, 2012-2013 edition, provides as follows:

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

16 ¹⁸ USPAP Standards Rule 2-2(c), 2012-2013 edition, provides as follows:

17 The content of a Restricted Use Appraisal Report must be consistent with the intended
18 use of the appraisal and, at a minimum:

19 (i) state the identity of the client, by name or type; and state a prominent use restriction
20 that limits use of the report to the client and warns that the appraiser's opinions and
21 conclusions set forth in the report may not be understood properly without additional
22 information in the appraiser's workfile;

23 (ii) state the intended use of the appraisal.

24 ¹⁹ USPAP Standards Rule 2-3, 2012-2013 edition, provides as follows:

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

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

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

29 - the reported analyses, opinions, and conclusions are limited only by the reported
30 assumptions and limiting conditions and are my personal, impartial, and unbiased
professional analyses, opinions, and conclusions.

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

- I have performed no (or the specified) services, as an appraiser or in any other capacity,
regarding the property that is the subject of this report within the three-year period
immediately preceding acceptance of this assignment.

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

- my engagement in this assignment was not contingent upon developing or reporting
predetermined results.

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

1 11. The Board established as delineated in the above Findings of Fact, that Mr.
2 Rose violated A.R.S. § 32-3622(B) by failing to place his Certificate number on the
3 appraisal.²⁰

4 12. The Board established as delineated in the above Findings of Fact, that Mr.
5 Rose violated A.R.S. § 32-3635(A) and (B) by failing to comply with USPAP
6 Standards.²¹

7 **ORDER**

8 Based on the foregoing, the Board revokes Certified Residential Appraiser
9 Certificate No. 20676 issued to Mr. Rose.

10 **Right to Petition for Rehearing or Review**

11 Respondent is hereby notified that he has the right to petition for a rehearing or
12 review. Pursuant to A.R. S. 41-1092.09, as amended, the petition for hearing or review
13 must be filed with the Board's Executive Director within 30 days after service of this
14 Order and pursuant to A.A. C. R4-46-303; it must set forth legally sufficient reasons for
15 granting a rehearing or review. Service of this order is effective 5 days after mailing. If a
16 motion for rehearing or review is not filed, the Board's order becomes effective 35 days
17 after it is mailed to Respondent.
18

19 - my analyses, opinions, and conclusions were developed, and this report has been
20 prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.

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

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

25 ²⁰ A.R.S. § 32- 3622(B) states:

26 Each state licensed or state certified appraiser shall place the appraiser's license or
27 certificate number adjacent to or immediately below the title "state licensed appraiser" or
"state certified appraiser" and the number shall be included in an appraisal report or in a
contract or other instrument used by the license or certificate holder in conducting
appraisal activities."

28 ²¹ A.R.S. § 32- 3635 states:

29 A. A registered trainee appraiser or a state licensed or state certified appraiser shall
comply with the standards of professional appraisal practice adopted by the board.

30 B. An appraisal or appraisal report shall not be issued by a real estate appraiser unless it
meets the appraisal standards established by this chapter and rules adopted pursuant to
this chapter.

1 Respondent is further notified that the filing of a motion for rehearing or review is
2 required to preserve any rights of appeal to the Superior Court.

3
4 Dated this 23rd day of June, 2014.

7 Arizona State Board of Appraisal
8 By: Debra J. Rudd
9 Debra J. Rudd, Executive Director

10 Copy of the foregoing transmitted electronically on this
11 23rd day of June, 2014 to:

12 Office of Administrative Hearings
13 1400 West Washington St., Suite 101
14 Phoenix, AZ 85007

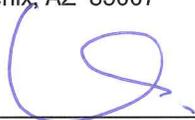
15 Copy of the foregoing mailed via regular and U.S. Certified Mail
16 # 7012 3050 0002 0740 9460 this 23rd day
17 of June, 2014 to:

18 FRANK ROSE
19 16316 S. AVENUE A
20 SOMERTON, AZ 85350

21 Copies of the foregoing sent by interagency mail this 23rd
22 day of June, 2014 to:

23 Jeanne M. Galvin
24 Assistant Attorney General
25 1275 W. Washington St.
26 Phoenix, AZ 85007

27 Chris Munns
28 Assistant Attorney General
29 Solicitor General's Office
30 1275 W. Washington St.
Phoenix, AZ 85007

By: 
Kelly Luteijn