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ARIZONA BOARD OF APPRAISAL

BEFORE THE ARIZONA STATE BOARD OF APPRAISAL

IN THE MATTER OF: **SCOTT A. GARY** Certified Residential Appraiser Certificate No. 21104	**CASE NOS. 2926, 2927, 2928, 2929 and 2930** **CONSENT AGREEMENT AND ORDER OF DISCIPLINE**

In the interest of a prompt and judicious settlement of the above-captioned matters before the Arizona Board of Appraisal ("Board") and consistent with public interest, statutory requirements and responsibilities of the Board, and pursuant to A.R.S.§ 32-3601 *et seq.* and A.R.S. §41-1092.07(F)(5), Scott A. Gary ("Respondent"), holder of certificate no. 21104 and the Board enter into this Consent Agreement, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as the final disposition of this matter.

On April 22, 2011, the Board held an Informal Hearing to discuss case nos. 2926, 2927, 2928, 2929 and 2930. Respondent appeared personally and on his own behalf. At the conclusion of the Informal Hearing, the Board voted to offer the Respondent a Consent Agreement and Order of Discipline in lieu of further administrative proceedings.

JURISDICTION

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

2. Respondent holds a certificate as a Certified Residential Appraiser in the State of Arizona, Certificate No. 21104 issued on February 3, 2004, pursuant to A.R.S. § 32-3612.

CONSENT AGREEMENT

Respondent understands and agrees that:

1. The Board has jurisdiction over Respondent and the subject matter pursuant to A.R.S. § 32-3601 *et seq.*

2. Respondent has the right to consult with an attorney prior to entering into this Consent Agreement.

3. Respondent has a right to a public hearing concerning this case. He further acknowledges that at such formal hearing he could present evidence and cross-examine witnesses. Respondent irrevocably waives his right to such a hearing.

4. Respondent irrevocably waives any right to rehearing or review or to any judicial review or any other appeal of this matter.

5. This Consent Agreement shall be subject to the approval of the Board and shall be effective only when signed by the Executive Director and accepted by the Board. In the event that the Board does not approve this Consent Agreement, it is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced in any action by any party, except that the parties agree that should the Board reject this Consent Agreement and this case proceeds to hearing, Respondent shall assert no claim that the Board was prejudiced by its review and discussion of this document or any records relating thereto.

6. The Consent Agreement, once approved by the Board and signed by the Respondent, shall constitute a public record which may be disseminated as a formal action of the Board.

FINDINGS OF FACT

2926

On or about November 24, 2010, the Board's investigation revealed the following:

1. This matter deals with an appraisal conducted and report written by Respondent of a single family residence located at 12083 East Pot O Gold Trail, Florence, AZ 85132 with an effective date of value of October 11, 2007.

2. The Respondent seemingly ignored several sales of acreage properties within Pinal County that would have been logically deemed appropriate to consider and analyze. Omission of these sales would, without consideration and discussion, logically result in misleading the client and intended user of the appraisal report. A possible explanation for the omission of this data may lie in the fact that the Respondent's search for comparable data was impacted by the fact that one search parameter was to locate sales that sold for over $550,000. None of the acreage sales in Pinal County sold for over $550,000. Failing to analyze readily available Pinal County acreage sales impacts the credibility of the conclusion of market value.

3. The appraisal report omits discussion and analysis of land value from the immediate area of the subject property and area of the comparable sales used for comparison to the subject site. The land value component of the subject property value, as appraised, represented 41.88% of the total opinion of market value. A discussion and analysis of land value leading to the conclusion of the site value and the adjustment between the comparable sales and the subject regarding land value would be considered necessary under the Scope of Work Rule. Similarly, an analysis of sales seemingly similar properties from Pinal County would also be considered appropriate.

4. The Appraisal uses an average quality Replacement Cost New figure of $126.05. The average quality Replacement Cost New, as of the third quarter 2007, would have been, according to Marshall & Swift Residential Cost Handbook, approximately $72.20 per square foot, including fireplace and built-in appliances. The Replacement Cost New of the garage would have been approximately $18.75 per square foot, not $34 per square foot, as was used in the appraisal report. While the Respondent gives secondary

support to the Cost Approach, it is important to be accurate in the information provided to the client and the intended user.

5. The subject property, according to information available in Pinal County records, sold on November 13, 2007. The appraisal report was dated October 11, 2007. It is logical that the subject property would have been, at a minimum, for sale at the time of appraisal, and may possibly have been under contract at the time of appraisal. If listing information is unavailable or unattainable, Standards Rule 2-2(b)(viii) requires an appraiser to make a statement on the efforts undertaken to obtain such information. If such information is irrelevant, a statement acknowledging the existence of the information and citing its lack of relevance should be included in the report.

6. According to Pinal County records, there had been two sales of the subject property (contained within larger parcels) during 2007. In addition, the appraisal report does not discuss the transfer of the property with a recording date of November 14, 2007 for $330,000.

7. The appraisal report states that the subject property would have public water, however based on available information there is no public water source available at this location.

8. Additionally, the appraisal report does not provide any information or statement on roadway surfacing. It could not be confirmed that there was ever an intention to hard surface the roadway. Also, stating that location of the subject property is suburban would be misleading to the client/intended user of the appraisal report.

9. The Respondent failed to maintain a "true copy" of the appraisal report in his records as required given that the copy he gave to the Board differed from the one supplied by the Complainant.

10. The Respondent also compared comparable data to the subject property that knowledgeable peers would not consider remotely comparable to the subject property as

considerably more comparable data was available for consideration for comparison to the subject property but was not considered by the Respondent.

2927

On or about November 24, 2010, the Board's investigation revealed the following:

11. This matter deals with an appraisal conducted and report written by Respondent of a single family residence located at 12321 East Pot O Gold Trail, Florence, AZ 85132 with an effective date of value of June 23, 2009.

12. The Respondent seemingly ignored several sales of acreage properties within Pinal County that would logically have been deemed appropriate to consider and analyze. Omission of these sales would, without consideration and discussion, logically result in misleading the client and intended user of the appraisal report. The Respondent's workfile showed no indication of consideration of any other sales in addition to the three sales used in the appraisal report. Failure to analyze readily available Pinal County acreage sales impacts the credibility of the conclusion of market value.

13. The Respondent states the subject property has electricity and public water, however the agent stated that as of the date of sale in 2010, subsequent to the date of appraisal, the subject property did not have power or a well. The Respondent states in his Reply letter to the Board "...were done as Drive-By Appraisals which do not include checking the electrical connections to the properties, but making an extraordinary assumption that the connections are completed." While the Respondent makes this statement, the Extraordinary Assumption regarding this item is not found in the appraisal report. Based upon available information, there is no public water source available at this location, nor is there a private water source or electricity at the subject property.

14. The Respondent states on Page 1 of the FNMA form, "therefore, an Extraordinary Assumption is made that the interior of the property is in average to good condition based on the condition of the exterior." Condition is not synonymous with

completion of the improvement. According to information received during the investigation, the subject property has never been occupied prior to the appraisal. Based on a drive-by, the Respondent would obviously not know if the interior was complete. As a result, an Extraordinary Assumption should have been made regarding the completion of improvements.

15. According to information contained in the Pinal County records, the subject property sold on June 30, 2007 (recorded July 31, 2007). The appraisal report was dated June 23, 2009 but Respondent failed to report and analyze this prior sale. Additionally, there had been two sales of the subject property (contained within larger parcels) during 2007 that were not reported or analyzed.

16. Respondent's statement that the subject's location is "suburban" is misleading.

17. Respondent's workfile does not include sufficient supporting information relative to compliance with Standards Rule 1 and 2 as it relates to other data, information and documentation necessary to support the Respondent' opinions and conclusions and to show compliance with the Recordkeeping requirements.

18. The Respondent also compared comparable data to the subject property that knowledgeable peers would not consider remotely comparable to the subject property as considerably more comparable data was available for consideration for comparison to the subject property but was not considered by the Respondent.

2928

On or about November 24, 2010, the Board's investigation revealed the following:

19. This matter deals with an appraisal conducted and report written by Respondent of a single family residence located at 12003 East Pot O Gold Trail, Florence, AZ 85123 with an effective date of value of June 23, 2009.

20. The Respondent seemingly ignored several sales of acreage properties within Pinal County that would logically have been deemed appropriate to consider and analyze. Omission of these sales would, without consideration and discussion, logically result in misleading the client and intended user of the appraisal report. The Respondent's workfile showed no indication of consideration of any other sales in addition to the three sales used in the appraisal report. Failure to analyze readily available Pinal County acreage sales impacts the credibility of the conclusion of market value. An analysis of this data would be necessary to provide a credible assignment result.

21. The Respondent states the subject property has electricity and public water, however the agent stated that as of the date of sale in 2010, subsequent to the date of appraisal, the subject property did not have power or a well. The Respondent states in his Reply letter to the Board "...were done as Drive-By Appraisals which do not include checking the electrical connections to the properties, but making an extraordinary assumption that the connections are completed." While the Respondent makes this statement, the Extraordinary Assumption regarding this item is not found in the appraisal report. Based upon available information, there is no public water source available at this location, nor is there a private water source or electricity at the subject property.

22. The Respondent states on Page 1 of the FNMA form, "therefore, an Extraordinary Assumption is made that the interior of the property is in average to good condition based on the condition of the exterior." Condition is not synonymous with completion of the improvement. According to information received during the investigation, the subject property has never been occupied prior to the appraisal. Based on a drive-by, the Respondent would obviously not know if the interior was complete. As a result, an Extraordinary Assumption should have been made regarding the completion of improvements.

23. According to information in the Pinal County records, the subject property sold on July 3, 2007. The appraisal report was dated June 23, 2009 but did not report or analyze this prior sale of the subject parcel. Additionally, according to public records there also had been two sales of the subject property (contained within larger parcels) during 2007.

24. Respondent's statement that the subject's location is "suburban" would be misleading to a client/intended user of the appraisal report.

25. Respondent's workfile does not include sufficient supporting information relative to compliance with Standards Rule 1 and 2 as it relates to other data, information and documentation necessary to support the Respondent' opinions and conclusions and to show compliance with the Recordkeeping requirements.

26. The Respondent also compared comparable data to the subject property that knowledgeable peers would not consider remotely comparable to the subject property as considerably more comparable data was available for consideration for comparison to the subject property but was not considered by the Respondent.

2929

On or about November 24, 2010, the Board's investigation revealed the following:

27. This matter deals with an appraisal conducted and report written by Respondent of a single family residence located at 12169 East Pot O Gold Trail, Florence, AZ 85132 with an effective date of value of June 23, 2009.

28. The Respondent seemingly ignored several sales of acreage properties within Pinal County that would logically have been deemed appropriate to consider and analyze. Omission of these sales would, without consideration and discussion, logically result in misleading the client and intended user of the appraisal report. The Respondent's workfile showed no indication of consideration of any other sales in addition to the three sales used in the appraisal report. Failure to analyze readily available Pinal County

acreage sales impacts the credibility of the conclusion of market value. An analysis of this data would be necessary to provide a credible assignment result.

29. The Respondent states the subject property has electricity and public water, however the agent stated that as of the date of sale in 2010, subsequent to the date of appraisal, the subject property did not have power or a well. The Respondent states in his Reply letter to the Board "...were done as Drive-By Appraisals which do not include checking the electrical connections to the properties, but making an extraordinary assumption that the connections are completed." While the Respondent makes this statement, the Extraordinary Assumption regarding this item is not found in the appraisal report. Based upon available information, there is no public water source available at this location, nor is there a private water source or electricity at the subject property.

30. The Respondent states on Page 1 of the FNMA form, "therefore, an Extraordinary Assumption is made that the interior of the property is in average to good condition based on the condition of the exterior." Condition is not synonymous with completion of the improvement. According to information received during the investigation, the subject property has never been occupied prior to the appraisal. Based on a drive-by, the Respondent would obviously not know if the interior was complete. As a result, an Extraordinary Assumption should have been made regarding the completion of improvements.

31. According to information in the Pinal County records, the subject property sold on July 3, 2007. The appraisal report was dated June 23, 2009 but did not report or analyze this prior sale of the subject parcel. Additionally, according to public records there also had been two sales of the subject property (contained within larger parcels) during 2007.

32. Respondent's statement that the subject's location is "suburban" would be misleading to a client/intended user of the appraisal report.

33. Respondent's workfile does not include sufficient supporting information relative to compliance with Standards Rule 1 and 2 as it relates to other data, information and documentation necessary to support the Respondent' opinions and conclusions and to show compliance with the Recordkeeping requirements.

34. The Respondent also compared comparable data to the subject property that knowledgeable peers would not consider remotely comparable to the subject property as considerably more comparable data was available for consideration for comparison to the subject property but was not considered by the Respondent.

2930

On or about November 24, 2010, the Board's investigation revealed the following:

35. This matter deals with an appraisal conducted and report written by Respondent of a single family residence located at 12357 East Pot O Gold Trail, Florence, AZ 85132 with an effective date of value of June 23, 2009.

36. The Respondent seemingly ignored several sales of acreage properties within Pinal County that would logically have been deemed appropriate to consider and analyze. Omission of these sales would, without consideration and discussion, logically result in misleading the client and intended user of the appraisal report. The Respondent's workfile showed no indication of consideration of any other sales in addition to the three sales used in the appraisal report. Failure to analyze readily available Pinal County acreage sales impacts the credibility of the conclusion of market value. An analysis of this data would be necessary to provide a credible assignment result.

37. The Respondent states the subject property has electricity and public water, however the agent stated that as of the date of sale in 2010, subsequent to the date of appraisal, the subject property did not have power or a well. The Respondent states in his Reply letter to the Board "...were done as Drive-By Appraisals which do not include checking the electrical connections to the properties, but making an extraordinary

assumption that the connections are completed." While the Respondent makes this statement, the Extraordinary Assumption regarding this item is not found in the appraisal report. Based upon available information, there is no public water source available at this location, nor is there a private water source or electricity at the subject property.

38. The Respondent states on Page 1 of the FNMA form, "therefore, an Extraordinary Assumption is made that the interior of the property is in average to good condition based on the condition of the exterior." Condition is not synonymous with completion of the improvement. According to information received during the investigation, the subject property has never been occupied prior to the appraisal. Based on a drive-by, the Respondent would obviously not know if the interior was complete. As a result, an Extraordinary Assumption should have been made regarding the completion of improvements.

39. According to information in the Pinal County records, the subject property sold on July 31, 2007. The appraisal report was dated June 23, 2009 but did not report or analyze this prior sale of the subject parcel. Additionally, according to public records there also had been two sales of the subject property (contained within larger parcels) during 2007.

40. Respondent's statement that the subject's location is "suburban" would be misleading to a client/intended user of the appraisal report.

41. Respondent's workfile does not include sufficient supporting information relative to compliance with Standards Rule 1 and 2 as it relates to other data, information and documentation necessary to support the Respondent' opinions and conclusions and to show compliance with the Recordkeeping requirements.

42. The Respondent also compared comparable data to the subject property that knowledgeable peers would not consider remotely comparable to the subject property as

considerably more comparable data was available for consideration for comparison to the subject property but was not considered by the Respondent.

CONCLUSIONS OF LAW

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 applicable at the time of the appraisal.

2926

The conduct described above constitutes violations of the following provisions of the USPAP, 2006 edition:

Standards Rule 1-1(b); Standards Rule 1-2(h); Standards Rule 1-4(a) and (b)(i) and (ii); Standards Rule 1-5(a) and (b); Standards Rule 1-6(a); Standards Rule 2-1(a); Standard Rule 2-2(b)(viii); Standard Ethics Rule---Recordkeeping; the Competency Rule; Scope of Work Rule; and Scope of Work Rule---Acceptability.

2927

The conduct described above constitutes violations of the following provisions of the USPAP, 2008-2009 edition:

Standards Rule 1-1(b); Standards Rule 1-2(f) and (h); Standards Rule 1-4(a); Standards Rule 1-5(b); Standards Rule 1-6(a); Standards Rule 2-1(a) and (c); Standard Rule 2-2(b)(viii); Standard Ethics Rule---Recordkeeping; the Competency Rule; and Scope of Work Rule---Acceptability.

2928

The conduct described above constitutes violations of the following provisions of the USPAP, 2008-2009 edition:

Standards Rule 1-1(b); Standards Rule 1-2(f) and (h); Standards Rule 1-4(a); Standards Rule 1-5(b); Standards Rule 1-6(a); Standards Rule 2-1(a) and (c); Standard

Rule 2-2(b)(viii); Standard Ethics Rule---Recordkeeping; the Competency Rule; Scope of Work Rule--Acceptability.

2929

The conduct described above constitutes violations of the following provisions of the USPAP, 2008-2009 edition:

Standards Rule 1-1(b); Standards Rule 1-2(f) and (h); Standards Rule 1-4-(a); Standards Rule 1-5(b); Standards Rule 1-6(a); Standards Rule 2-1(a) and (c); Standard Rule 2-2(b)(viii); Standard Ethics Rule---Recordkeeping; the Competency Rule; and Scope of Work Rule---Acceptability.

2930

The conduct described above constitutes violations of the following provisions of the USPAP, 2008-2009 edition:

Standards Rule 1-1(b); Standards Rule 1-2(f) and (h); Standards Rule 1-4-(a); Standards Rule 1-5(b); Standards Rule 1-6(a); Standards Rule 2-1(a) and (c); Standard Rule 2-2(b)(viii); Standard Ethics Rule---Recordkeeping; the Competency Rule; and Scope of Work Rule---Acceptability.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the parties agree to the following:

1. **Upon the effective date of this Consent Agreement, Respondent's Certificate as a Certified Residential Appraiser shall be placed on probation for a minimum period of six (6) months.** During probation, Respondent shall (a) demonstrate resolution of the problems that resulted in this disciplinary action; (b) comply with the terms of this Consent Agreement and Order and (c) comply with USPAP, Arizona Revised Statutes and Appraisal Board rules. The effective date of this Consent

Agreement is the date that it is signed by the Board's Executive Director on behalf of the Board.

2. Respondent shall successfully complete the following education within **six (6) months** of the effective date of this Consent Agreement: **Five (5) hours of Business Practices and Ethics and fifteen (15) hours of Basic Appraisal (with exam).** The education under this paragraph **may not** be counted toward the continuing education requirements for the renewal of Respondent's certificate. The same class may not be repeated to fulfill the education requirements of this Consent Agreement

3. Proof of completion of the required education must be submitted to the Board within 3 weeks of completion of the required courses. Respondent shall bear all costs and expenses associated with completing the education required in paragraph 2.

4. During the period of probation, Respondent shall complete a minimum of **twelve (12) appraisal reports**. The Board reserves the right to audit any of Respondent's reports and conduct peer review, as deemed necessary, during the probationary period. The Board may, in its discretion, seek separate disciplinary action against the Respondent for any violation of the applicable statutes and rules discovered in an audit of the Respondent's appraisal reports provided to the Board under the terms of this Consent Agreement.

5. The Respondent shall file an appraisal log with the Board on a monthly basis listing every Arizona appraisal that he has completed within the prior calendar month by property address, appraisal type, valuation date, the date the appraisal was issued, and the number of hours worked on each assignment. The report log shall be filed monthly beginning the 15th day of the first month following the start of Respondent's probationary period and continuing each month thereafter until the Board terminates the probation. If the log reporting date falls on a Saturday, Sunday, or holiday, the report log is due on the next business day. **Even if Respondent performs no appraisals within a**

given month, he must still file an appraisal log with the Board showing that no appraisals were performed. The monthly log report may be filed by mail or facsimile.

6. Respondent's probation shall continue until: (a) Respondent petitions the Board for termination as provided in paragraph 7, and (b) the Board terminates the probation. Upon petition by the Respondent for termination of the probation, the Board will select and audit 3 of Respondent's appraisal reports.

7. At the end of **six (6) months** from the effective date of this Consent Agreement, the Respondent may petition the Board for termination of his probation. If the Board determines that Respondent has not complied with **all** the requirements of this Consent Agreement, the Board, at its sole discretion, may either: (a) continue the probation or (b) institute proceedings for noncompliance with this Consent Agreement, which may result in suspension, revocation, or other disciplinary and/or remedial action.

8. Respondent shall not act as a supervising appraiser for other appraisers or trainees, nor shall he act as a mentor, during the term of the probation. Respondent shall also not teach any course related to real estate appraisals during the term of the probation.

9. Respondent shall comply with the Uniform Standards of Professional Appraisal Practice in performing all appraisals and all Board statutes and rules.

10. If, between the effective date of this Consent Agreement and the termination of Respondent's probation by the Board, Respondent fails to renew his certificate while under this Consent Agreement and subsequently applies for a license or certificate, the remaining terms of this Consent Agreement, including probation and mentorship, shall be imposed if the application for license or certificate is granted.

11. Respondent has read and understands this Consent Agreement as set forth herein, and has had the opportunity to discuss this Consent Agreement with an attorney or has waived the opportunity to discuss this Consent Agreement with an attorney.

Respondent voluntarily enters into this Consent Agreement for the purpose of avoiding the expense and uncertainty of an administrative hearing.

12. Respondent understands that he has a right to a public administrative hearing concerning each and every allegation set forth in the above-captioned matter, at which administrative hearing he could present evidence and cross-examine witnesses. By entering into this Consent Agreement, Respondent freely and voluntarily relinquishes all rights to such an administrative hearing, as well as all rights of rehearing, review, reconsideration, appeal, judicial review or any other administrative and/or judicial action, concerning the matters set forth herein. Respondent affirmatively agrees that this Consent Agreement shall be irrevocable. Respondent further waives any and all claims or causes of action, whether known or unknown, that Respondent may have against the State of Arizona, the Board, its members, officers, employees and/or agents arising out of this matter.

13. Respondent understands that this Consent Agreement, or any part thereof, may be considered in any future disciplinary action against him.

14. The parties agree that this Consent Agreement constitutes final resolution of this disciplinary matter.

15. Time is of the essence with regard to this agreement.

16. If Respondent fails to comply with the terms of this Consent Agreement, the Board shall properly institute proceedings for noncompliance with this Consent Agreement, which may result in suspension, revocation, or other disciplinary and/or remedial actions. Respondent agrees that any violation of this Consent Agreement is a violation of A.R.S. § 32-3631(A)(8), which is willfully disregarding or violating any of the provisions of the Board's statutes or the rules of the Board for the administration and enforcement of its statutes.

17. Respondent understands that this Consent Agreement does not constitute a dismissal or resolution of other matters currently pending before the Board, if any, and does not constitute any waiver, express or implied, of the Board's statutory authority or jurisdiction regard any other pending or future investigation, action or proceeding. Respondent also understands that acceptance of this Consent Agreement does not preclude any other agency, subdivision or officer of this state from instituting other civil or criminal proceedings with respect to the conduct that is the subject of this Consent Agreement.

18. Respondent understands that the foregoing Consent Agreement shall not become effective unless and until adopted by the Board of Appraisal and executed on behalf of the Board. Any modification to this original document is ineffective and void unless mutually approved by the parties in writing.

19. Respondent understands that this Consent Agreement is a public record that may be publicly disseminated as a formal action of the Board.

20. Pursuant to the Board's Substantive Policy Statement #1, the Board considers the violations in the above-referenced matters to constitute to a **Level III Violation**.

DATED this 1st day of July, 2011.

Scott A. Gary
Respondent

Dan Pietropaulo
Executive Director
Arizona Board of Appraisal

ORIGINAL of the foregoing filed this 1st day of July, 2011 with:

Arizona Board of Appraisal
1400 West Washington Street, Suite 360
Phoenix, Arizona 85007

COPY of the foregoing mailed regular and certified mail 7009 1680 0000 7387 5670 this 1st day of July, 2011 to:

Mr. Scott A. Gary
10007 W. Potter Drive
Peoria, AZ 85382

COPY of the foregoing sent or delivered this 1st day of July, 2011 to:

Jeanne M. Galvin
Assistant Attorney General
Arizona Attorney General's Office
1275 West Washington, CIV/LES
Phoenix, Arizona 85007

By: _____
1874229 Rebecca M. Lowe