BEFORE THE ARIZONA STATE BOARD OF APPRAISAL

IN THE MATTER OF:	CASE NOS. 2917, 2970, 2971, and 3052
BRAD G. GREGORY Certified Residential Appraiser Certificate No. 21418	**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), Brad G. Gregory ("Respondent"), holder of certificate no. 21418 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 February 18, 2011, the Board held an Informal Hearing in case nos. 2917, 2970, and 2971. The Board also considered case no. 3052 at the Initial File Review. Respondent appeared personally and on his own behalf. At the conclusion of the Board's consideration of these matters 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. 21418 issued on August 31, 2006, 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

2917

On or about October 23, 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 11034 N. Miler Rd, Scottsdale, AZ with an effective date of value of July 9, 2009.

2. In the Subject section of the report, the legal description is incomplete as the lot number is not provided. In the same section, the Respondent checked the "Yes" box indicating that the subject was offered for sale within the twelve months prior to the effective date of the report but in fact, the subject had not been listed for sale during the previous twelve months.

3. Respondent does not state the neighborhood boundaries in the Neighborhood section. Also in the Neighborhood Section, the Market Conditions were not accurately reported. While Respondent makes some generic Market Conditions comments in the Addendum, there is no supporting data for Declining Property Values or Over Supply of inventory for the neighborhood.

4. In the Sales Comparison Analysis of the report, Respondent states that comparables #5 and #6 have no swimming pools but the MLS listing for both of these comparables indicate a private pool.

5. The subject was built in 1975 and is therefore, 34 actual years but Respondent stated that the home has an effective age of 17 years or one-half of the actual age. According to Respondent, the improvements are in "Average" condition; he notes under Additional Features "New carpet, New vinyl floors in baths, New paint, etc." However, Respondent does not mention any major updating, remodeling, modernization or renovations of the improvements. In an older home to replace carpeting and vinyl flooring would not significantly reduce the effective age of the improvements. Reducing

the effective age of an older home would usually mean updating or renovations of kitchens, bathrooms, electrical, plumbing etc. or major components of the improvements.

6. Comparables #1, #3, #4, and #5 are not truly comparable to the subject property with respect to site size. There was no Scope of Work or assignment conditions regarding comparable sales within 90 days of the effective date of the report contrary to the assertion Respondent made in his written response to the Board. While these comparables are similar with respect to physical characteristics, age and features, they are built on significantly smaller sites, are much smaller in livable area and they do not have horse privileges like the subject.

7. The Respondent does not make time of sale adjustments to the sold comparables even though he indicates "declining" values in the Neighborhood section.

8. Additionally, in the Sales Comparison Analysis, Respondent incorrectly notes that comparable #3 is a closed sale; public records indicate that is was listed for sale on the effective date of the appraisal. Furthermore, there are additional inconsistencies between the MLS record for this sale and Respondent's appraisal report, including but not limited to the following discrepancies: site size, actual age, condition of improvements, gross living area and number of bedrooms. The photo used by Respondent in the report is not a photo of this comparable.

9. Also in the Sales Comparison Analysis, Respondent makes site size adjustments to comparables #1, #3, #4 and #5, with no explanation of how the adjustments were derived and with no support or justification.

10. With respect to comparables #2 and #4, Respondent notes the condition of the improvements to be "Up-date Average" which appears inconsistent with the MLS that notes "Fix-up Needs Repairs" and "This house needs some work...." There is no commentary in the reconciliation section of thee Sales Comparison Analysis for any of the comparables in this report.

11. While the Respondent noted the prior sale of the subject he did not analyze the sale. Similarly, in the Reconciliation Section of the report, Respondent states "the Cost Approach and Income Approach to value are considered not applicable for the subject property" but Respondent does not appropriately explain why the approaches are not applicable.

2970

On or about December 1, 2010, the Board's investigation revealed the following:

12. This matter deals with two appraisals conducted and reports written by Respondent of a single family residence located at 6747 East Camino De Los Ranchos, Scottsdale, AZ 85254 with an effective date of value of June 26, 2006 (first report) and August 21, 2006 (second report).

13. The first report cites the prior sale of the subject for $499,999 from Brock Anderson to North 40, LLC (Dr. Gray) but there was no analysis of this sale.

14. It should also be stated that the original buyer of the subject is Alton Henry as he is buyer in Sale No. 1 and the seller is North 40, LLC. The subsequent buyer for the subject is Kenneth Hinrichs, the same buyer for Sale No. 2 and again the same seller is North 40, LLC/Dr. Gray. These names were in Respondent's workfile within the Net Value Central.

15. The first appraisal request stated "Please complete Page 3 of 6 cost analysis." However, Respondent failed to develop and report the site value and Cost Approach.

16. Two net Value Central sale searches dated 6/16/06 and 8/17/06 show prevailing price levels at $400,000 to $600,000. There was no indication in the workfile that any other sale than Sale No. 1 was pulled up on MLS and/or analyzed.

17. According to Respondent, the client requested an income and expense report but yet Respondent did not complete an Income Approach to Value in the first report.

The following Findings of Fact are applicable to both reports.

18. With respect to Sale No. 1 on E. Eugie Terrace, this was a sale from North 40 LLC (Dr. Gray) to Mr. Alton Henry (original buyer of the subject) for $750,000 with no down payment. Respondent failed to analyze the prior sale of $500,000. There was no statement in the MLS that the home had been remodeled and nothing in the report or the workfile indicated the home had been remodeled. Given the terms and condition of this sale, the results are not credible.

19. Comparable Sale No. 2 is located on East Sweetwater Ave and it sold on 5/5/06 for $935,000; it was sold by North 40, LLC (Dr. Gray) to Kenneth Hinrichs (the buyer of the subject) with no down payment. This sale's terms and conditions were not analyzed by Respondent and no adjustments were made. Further, Respondent did not analyze the prior sale in 9/05 for $572,000. The home was built by a superior quality builder and was on a larger lot. The $1 per square foot for lot size was not supported and is not credible. Similarly, the gross living area adjustment at $30 per square foot was not supported and is not credible. The indicated value results for this sale at $915,660 are not credible.

20. With respect to Comparable Sale No. 3 located on East Aster Drive, this home is also on a larger lot and is a custom home. Respondent adjusted this ale $1 per square foot for the larger site size without explanation or support. The $30 per square foot for gross living area also was made without explanation or support. The terms and conditions of the sale was zero down payment; the indicated results of this sale are not credible.

21. The summary of the Sales Comparison Approach states "All comparables are situated within the subject's market and reflect prevailing values for the area and appear arm's length transactions....There are a limited number of sales which are directly competitive to the subject property. The sales cited in this report are the result of a through data search, both within and beyond the subject subdivision. They are considered to be the most recent, relevant and reliable value indicators currently available or evaluation." However, in the workfile data for alternative sales, prior remodeling and sale at $499,000, the identity of the parties to the transaction, and terms and information from Realquest and Net Value Central sales data renders those statements incredible.

2971

On or about December 1, 2010, the Board's investigation revealed the following:

22. This matter deals with an appraisal conducted and report written by Respondent of a single family residence located at 4607 West August Avenue, Glendale, AZ 85301 with an effective date of value of September 21, 2006.

23. The buyer of the subject is Kenneth Hinrichs (the same as in case no. 2170); there was no down payment in this sale. The subject is a rental property. Respondent completed an Operating Income Statement and a Single-Family Comparable Rent Schedule. His completion of these reports is inconsistent with statements made in the report, such as: "The Cost Approach and Income Approach to Value are considered not applicable for the subject property."; "The Income Approach is not applicable due to a lack of quantitative of supportable data."; under additional comments Respondent stated "The Income Approach is considered not applicable because there is inadequate data to develop meaningful Gross Rent Multiplier."

24. Moreover, there was no site valuation data in the workfile or the report but yet all three sales were adjusted $1 per square foot difference in site size. This is not explained or supported and is not credible.

25. Respondent's field drawing is missing dimensions and the Apex calculation has an apparent error, therefore the results are not credible.

26. Under the Improvement section, Respondent fails to note the deferred maintenance that is evident in the picture of the rear yard. In addition, there was no discussion of the quality and quantity of the garages conversion or remodeling or replacements. This becomes significant in contrast and comparison to the sales cited in the report.

27. With respect to Sale No. 1 located on North 46th Avenue, this is tri-level home with a great deal of remodeling but there was no adjustment for quality, quantity or condition. The adjustment for site size at $1 per square foot is not supported nor is it credible. Similarly, the adjustment for the 2-car garage at -$3,000 is not explained or supported and is not credible. The adjustment for the pool is not explain or supported and the final indicated result for this sale was not credible.

28. Comparable Sale No. 2 on West Sheldon Lane is located on a cul-de-sac lot. This home has a number of new features and improvements but Respondent failed to address or adjust for the quality, quantity and condition of the improvements. The cul-de-sac site size difference was adjusted at $1 per square foot without explanation or support and is not credible. The gross living area adjustment at $20 per square foot is not credible and the garage adjustment for the 3-car garage at -$4,000 is not credible; nor is the -$10,000 adjustment for the pool and enclosed gazebo with heated spa credible.

29. With respect to Comparable Sale No. 3 on West Lane Avenue, it also is on a cul-de-sac lot and was the lowest priced of the sales cited at $325,000 and after adjustments resulted in the lowest indication of value for the subject at $302,946. There

was no evidence that this sale's features which appeared on the MLS were inquired about for the verification or analysis process. The cul-de-sac site size difference was adjusted at $1 per square foot without explanation or support and is not credible. The gross living area adjustment at $20 per square foot is not credible and the garage adjustment for the 3-car garage at -$4,000 is not credible. There was inconsistent adjustment for the half-bath with Sale No. 2 adjusted at +$3,000 but this sale had no adjustment.

30. The summary of the Sales Comparison Approach states "There are a number of sales which are directly competitive to the subject property. The sales cited in this report are the result of a thorough data search, both within and beyond the subject subdivision." These statements are factually incorrect as there are other sales in the subject's subdivision that would indicate a different value of opinion.

3052

On or about February 18, 2011, the Board's investigation revealed the following:

31. This matter deals with an appraisal conducted and report written by Respondent of a single family residence located at 9750 Natchez Trial, Flagstaff, AZ 86004-3308 with an effective date of value of April 23, 2009.

32. The subject is located in Flagstaff, AZ but in the URAR Respondent cited research from ARMLS, which is a Maricopa County source and tax records from Maricopa County and not Coconino County where the subject is located. .

33. There were approximately 36 other sales that could have been considered by Respondent as comparable sales.

34. Respondent stated that he was under the "extraordinary assumption" that the addition was completed with the City of Flagstaff building permits but yet, on page 2 of 6 he stated that the appraisal is made "as is" when he should have confirmed the permits were obtained.

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.

2917

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

Standards Rule 1-1(a); Standards Rule 1-4; Standards Rule 1-5(b); Standards Rule 1-6(a) and (b); Standards Rule 2-1(a) and (b); Standards Rule 2-2(b)(viii) and Standard Ethics Rule---Recordkeeping.

2970

The conduct described above constitutes violations of the following provisions of the USPAP, 2005 and 2006 editions:

Standards Rule 1-1(a) and (b); Standards Rule 1-2(h); Standards Rule 1-5(b); Standards Rule 2-1(a); Standards Rule 2-2(b)(ix) (2005); Standards Rule 2-2(b)(viii) (2006); Scope of Work Rule (2006); the Departure Rule (2005); and Standard Ethics Rule---Recordkeeping.

2971

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

Standards Rule 1-1(a), (b) and (c); Standards Rule 1-4(a), (b)(i) and (c); Standards Rule 2-1(a); Standards Rule 2-2(b)(viii); and Standard Ethics Rule---Recordkeeping and the Scope of Work Rule.

3052

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

Standards Rule 1-1(a) and (c); Standards Rule 1-4(b); and Standards Rule 2-1(a).

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: **Fifteen (15) hours of Basic Appraisal (with an exam). The Board recognizes Respondent's recent completion of the fourteen (14) hour Report Writing class.** The education under this paragraph **may not** be counted toward the continuing education requirements for the renewal of Respondent's license except for the Report Writing class may be counted for renewal purposes. The same class may not be repeated to fulfill the education requirements of this Consent Agreement. The education required pursuant to paragraph 2 may be completed through distance learning.

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, <u>and</u> (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 license 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 <u>if</u> 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.

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.

Violation.

DATED this 25 day of March, 2011.

Brad G. Gregory
Respondent

Dan Pietropaulo
Executive Director
Arizona Board of Appraisal

ORIGINAL of the foregoing filed this 25 day of March, 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 7124 this 25 day of March, 2011 to:

Mr. Brad G. Gregory
3941 E. Chandler Blvd.
Ste. 106-222
Phoenix, AZ 85048

COPY of the foregoing sent or delivered this 25 day of March, 2011 to:

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

By: Rebecca M. Loar
1676436