THE ARIZONA BOARD OF APPRAISAL

In the Matter of : **SHAWKAT E. HALABU,** **Certified Residential Appraiser** **Certificate No. 21341,** Respondent.	Case Nos. 08F-2462-BOA; 08F-2463-BOA; 08F-2457-BOA; 08F-2464-BOA; 08F-2465-BOA; 08F-2466-BOA; 08F-2467-BOA; 08F-2468-BOA; 08F-2469-BOA **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF PROBATION**

On December 11, 2008, the Arizona Board of Appraisal ("Board") met to consider the Administrative Law Judge Decision of Brian Brenden Tully in the above-captioned matter. Shawkat E. Halabu appeared. The State was represented by Jeanne M. 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 Recommended Order in this matter, and having considered the written and/or 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 requested by the State to correct typographical errors and to be consistent with the testimony and evidence presented at the hearing.

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 to include the Board's standard language regarding probation decisions.

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

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FINDINGS OF FACT

1. The Arizona Board of Appraisal ("Board") is the authority for licensing, certifying and regulating the practice of appraisal in the State of Arizona.

2. There are three categories of appraisers: licensed appraiser; certified residential appraiser (who can appraise all residential real estate); and, certified general appraiser (who can appraise all residential and commercial real estate).

3. Shawkat E. Halabu ("Respondent") is the holder of Certified Residential Appraiser Certificate No. 21341 issued by the Board on March 10, 2006.

4. Respondent is a civil engineer and a licensed building contractor in Arizona and Michigan.

5. The practice of appraisal in Arizona is governed by the Uniform Standards of Professional Appraisal Practice ("USPAP") promulgated by The Appraisal Foundation. The USPAP edition adopted by the Board that is applicable in these consolidated matters is the USPAP 2006 edition ("USPAP 2006").

6. On or about August 1, 2007, the Board received a Real Estate Appraiser Violation Complaint ("Complaint") from Doron Jampolsky, president of Lending House Financial Corp. The Complaint was executed on June 8, 2007. The Complaint had been resubmitted to the Board after the first filing was returned as insufficient.

7. The Complaint alleged numerous violations by Respondent, who had been retained by Lending House Financial Corp. to perform appraisal services.

8. On or about September 16, 2008, the Board through its Executive Director, Deborah G. Pearson, issued a Complaint and Notice of Hearing in the following cases against Respondent: Case No. 2462; Case No. 2463; Case No. 2464; Case No. 2465; Case No. 2466; Case No. 2467; Case No. 2468, and, Case No. 2469.

9. The Board forwarded the above-described cases to the Office of Administrative Hearings, an independent agency, for a formal consolidated hearing.

10. Patricia Thoms testified as the Board's expert witness. Ms. Thoms is the holder of Arizona Certified General Appraiser Certificate No. 30731. She has been a certified general real estate appraiser since 1993. Ms. Thoms had been assigned as the investigator for the Complaint.

11. Marshall & Swift Residential Cost Handbook ("Marshall & Swift") is the industry standard for establishing costs.

Case No. 2462

12. The subject property is located at 2610 W. Lamar Road, Phoenix, Arizona.

13. The effective date of Respondent's Appraisal of Property is March 22, 2007.

14. Respondent incorrectly reported the zoning for the subject property. The correct zoning description is R 3 multiple. Respondent described it as "M-M Multi-family, medium density (2,500-3,999 SF) (100.00%)" Ms. Thoms testified that this is not a USPAP violation per se. However, she noted that multiple errors are a USPAP 2006 violation for being misleading.

15. The Board had the following additional criticism: "While a sale of the subject property two months prior to the appraisal was noted by Respondent, he did not analyze the sale or address why the price increased 19.5% in slightly less than two months."

16. Respondent failed to explain the 19½% increase in the appraised value of the subject property in two months.

17. The Board's next criticism was the following: "With respect to Comparable Sale #2, this sale had an Arizona Room/Lanai but the appraisal report fails to mention it."

18. Respondent's appraisal report did fail to mention that Comparable Sale #2 had an Arizona Room/Lanai.

19. The Board's next criticism is the following: "Respondent incorrectly reports that Comparable Sale #1 had not sold in the previous year."

20. Ms. Thoms testified that the effect on not listing the previous year's sale was to possibly overstate its value.

21. Respondent's appraisal report states "no prior sale" for Comparable Sale #1. However, an August 15, 2006 sale appears in the county records.

22. The Board's next criticism is the following: "All three comparable sales had some level of updating but Respondent does not provide any detail on updating, if any, to the subject property. Nor does Respondent discuss the condition of the subject property at the time of the prior sale (1/07) and at the time of appraisal."

23. There was some updating of the comparable sales. Respondent's appraisal report had no discussion for the subject property and the comparables. Respondent did not provide enough information.

24. The Board's next criticism is the following: "It is reasonably clear from the conclusions of the Cost Approach that the Respondent was plugging in numbers to permit the Cost Approach to equal or exceed the reported conclusion of value from the Sales Comparison Approach. Information in the Cost Approach Section is not supported by Marshall and Swift Residential Cost Handbook."

25. Respondent listed a valuation for dwelling of $120.00 per square foot. Ms. Thoms was unable to arrive at the value. Using Marshall & Swift, she gave a valuation of $79.38 per square foot for reproductive costs.

26. Respondent's valuation of $120.00 per square foot over values replacement costs using Marshall & Swift.

27. Respondent used the extraction method for establishing site value. However, Respondent's appraisal report does not establish support for his site value.

28. The term "economic life" is the life expectancy of property, which is usually 60 years.

29. The house located on the subject property was constructed in 1961.

30. The General Description in the Improvements category of Respondent's appraisal report lists the effective age of the house as 10 years. Respondent failed to explain his effective age in his appraisal report, which could be misleading.

31. The Board's next criticism is the following: "The Respondent did not provide an estimate of exposure period."

32. Respondent's appraisal report does not contain an estimate of exposure period, as required by USPAP 2006. Such information is important if the client is a lender.

33. The Board's next criticism is the following: "The Respondent states that the appraisal is a 'Complete Appraisal' as opposed to a 'Limited Appraisal.'" However, the terms "Complete" and "Limited" ceased to exist with the USPAP 2006.

34. Respondent admitted that he had not taken coursework for the USPAP 2006 and was unfamiliar with it.

35. At the hearing, the Board withdrew its criticism that "Respondent does not clearly identify the intended user of the appraisal report as required by USPAP."

Case No. 2463

36. The subject property is located at 13163 N. 75th Drive, Peoria, Arizona 85381-4006.

37. The effective date of Respondent's Appraisal of Property is April 20, 2007.

38. The Board's first criticism of Respondent's appraisal report is the following: "The Respondent incorrectly states the subject property zoning in the appraisal report.

39. Respondent's appraisal report describes the zoning classification for the subject property as "Residential." It further describes the zoning description as "R-8/Residential with 8,000 SF Minimum (100%)."

40. The subject property's correct zoning is R1-8 single family residential.

41. The Board's next criticism is the following: "With respect to Comparable Sale #1, the Respondent noted the incorrect sale price and recording date; Respondent notes the considerable updating and remodeling but does not discuss such detail on the property."

42. Respondent's appraisal report states that there had been no prior sales of Comparable Sale #1. However, that property had actually been sold on March 23, 2007.

43. Respondent failed to support his conclusion that considerable updating and remodeling of that property had taken place.

44. The Board's next criticism is the following: "The Respondent incorrectly notes the number of bedrooms and bathrooms for Comparable Sale #3.

45. Respondent's appraisal report lists Comparable Sale #3 with four bedrooms and 2.5 bathrooms. The Multiple Listing Service ("MLS") listed the property as having three bedrooms with two bathrooms.

46. The Board's next criticism is the following: "None of the comparable sales appear to have sold within one year prior to the date of sale used in the appraisal report." The Board withdrew this criticism at the hearing.

47. The Board's next criticism is the following: "An adjustment was not made to the three comparable sales for what is believed to be superior quality relating to the concrete roof."

48. Ms. Thoms testified that the concrete tile roof is more expensive to install, and has a higher value than an asphalt roof; and if not, it should be discussed. [1]

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[1] Transcript, p. 88, lines 11-17. The Board makes this modification to be consistent with the evidence presented at the hearing.

49. Respondent's appraisal report states that the subject property has an asphalt shingle roof in good condition. However, the MLS described the subject property as having a concrete tile roof. Respondent failed to discuss this issued in his appraisal report.

50. The Board's next criticism of Respondent's appraisal report is the following: "It is reasonable to expect the Respondent should have considered other comparable sales from the immediate Book and Map as a result of the fact it appears the overall price level of the subject Book and Map is lower than the price level of homes from other nearby subdivisions. Other comparable data would be considered highly comparable date, relative to immediate location, for comparison to the subject property."

51. Respondent did go outside the Book and Map for the subject property. Respondent contends that he still was within a one mile radius of the subject property.

52. Ms. Thoms testified that she found comparables within the subject property's Book and Map that should have been considered by Respondent. She opined that by going outside the subject property's Book and Map, Respondent used higher value comparables that could be misleading.

53. The Board's next criticism of Respondent's work is the following: "It is reasonably clear from the conclusion of the Cost approach that the Respondent was plugging in numbers to permit the Cost Approach conclusion to equal or exceed the reported conclusion of value from the Sales Comparison approach."

54. Respondent contends that he used Marshall & Swift to arrive at a value of $120.00 per square foot.

55. Ms. Thoms reviewed Respondent's work file and opined that there is no basis for Respondent's $120.00 per square foot valuation.

56. The Board's next criticism is the following: "The appraisal report does not contain an estimate of exposure period."

57. Respondent admits a lack of exposure period discussion in his appraisal report.

58. The Board's next criticism is the following: "The Respondent states that the appraisal is a 'Complete Appraisal' as opposed to a 'Limited Appraisal' but the terms 'Complete' and 'Limited' ceased to exist with the 2006 version of USPAP."

59. Respondent admits that the above criticism was an error on his part.

60. The following criticisms were addressed with the Cost Approach: "The Respondent's conclusion of unsupported cost data would conceivably be misleading to a client; Information in the Cost Approach Section of the appraisal is not supported by Marshall & Swift Residential Cost Handbook; and, as the report is written, the Respondent does not reconcile sufficient data and properly analyze the data in the Sales Comparison approach to value. The report, as written and using the comparable sales included in the appraisal report, however, omitting other seemingly relevant data, is not reasoned to support the market value opinion provide by the Respondent."

61. The following last criticism was withdrawn by the Board at the hearing: "The Respondent identifies the client; however, does not clearly identify the intended user of the appraisal report, as required by USPAP."

Case No. 2464

62. The subject property is located at 4843 North 89th Avenue, Phoenix, Arizona 85037.

63. The effective date of Respondent's Appraisal of Property is November 21, 2006.

64. The Board's first criticism of Respondent's appraisal report is the following: "There is a discrepancy between the public records and the appraisal report relating to the square footage of the subject improvement. Nor does Respondent comment on when the addition would have been completed."

65. Maricopa County records show that the subject property has an improvement size of 945 square feet. Respondent's appraisal report contains an improvement size of 1,346 square feet.

66. Respondent should have explained the variance between the improvement size shown in the Maricopa County records and his appraisal report. It appears that the variance is due to an addition to the house located on the subject property. Respondent failed to explain the addition in his appraisal report.

67. Respondent's failure to explain the variance in the improvement size of the subject property was an error affecting the credibility of the appraisal report.

68. The Board's next criticism is the following: "The Respondent incorrectly states the subject property zoning in the appraisal report."

69. Respondent did not properly list the zoning for the subject property.

70. The Board's next criticism is the following: "Regarding the description of the property, the Respondent states that the home has an effective age of five years but this is in contrast to the actual physical age of the property of 23 years. The Respondent provides no information or detail in the appraisal explaining why the effective age is that of a near new home."

71. The house on the subject property was built in 1983.

72. Respondent gave an effective age of the home as five years.

73. Respondent gave no explanation or analysis for his assessing the effective age of the home as five years.

74. The Board's next criticism is the following: "The Respondent used a depreciation factor of 8% in the Cost Approach which would be in line with an effective age of five years; however, the report is lacking in providing an understanding for the basis for the stated effective age." See Finding No. 73 above.

75. The Board's next criticism is the following: "With respect to Comparable Sale #1, the address was noted incorrectly on the report, there was no adjustment for the Arizona Room/Lanai, nor was there an adjustment for the evaporative cooling system in addition to the central air conditioning."

76. Respondent did list the wrong street address for Comparable Sale #1 in his appraisal report.

77. Respondent failed to discuss the Arizona Room/Lanai, the evaporative cooling system and the central air conditioning in his appraisal report.

78. Respondent testified that if an evaporative cooling system is calcified, then he does not include it in his appraisal report. However, he could not recall if the subject property's evaporative cooling system was calcified. In any case, Respondent should have addressed the evaporative cooling system in his appraisal report.

79. Respondent failed to make adjustments for the Arizona Room/Lanai, the evaporative cooling system and the central air conditioning.

80. The Board's next criticism is the following: "The Respondent states that Comparable Sale #2 was in 'average condition' when in fact it had been extensively remodeled and updated. This Comparable had also been sold during the past year but the Respondent indicated on the FNMA form that it had not."

81. The Comparable had been extensively remodeled and the appraisal report should have noted that fact.

82. County records reflect that Comparable Sale #2 had sold on August 11, 2005 for $95,000.00. Since Comparable Sale #2 sold more than a year from the effective date of Respondent's appraisal report, he was not required to disclose that sale. Therefore, the Board's criticism that he failed to disclose the sale is not justified.

83. At the hearing, the Board withdrew the following criticism: "Respondent does not clearly identify the intended user on the appraisal report as required by USPAP."

84. The Board's next criticism is the following: "The Respondent does not discuss whether in fact, the subject property was updated or remodeled but did state the subject property had an effective age of five years which suggest the property underwent a very significant amount of updating and modernization which would help justify Respondent's conclusion of value (near the upper end). However, because Respondent was silent with respect to the subject property's updating/remodeling, it is not known if it was updated."

85. Respondent's appraisal report should have contained an analysis for the effective age of five years for the subject property's residence.

86. The following is the Board's next criticism: "It is clear from the conclusion of the Cost Approach that the Respondent was plugging in numbers to permit the Cost Approach conclusion to equal or exceed the reported conclusion of value from the Sales Comparison approach."

87. There is no support for the valuation of $110.00 per square foot for the dwelling in either the appraisal report or Respondent's work file.

88. There is no support for the site valuation of $80,000.00. Ms. Thoms testified that each comparable has to be looked at individually, but Respondent failed to do that analysis.

89. The Board's next criticism is the following: "The appraisal report does not contain an estimate of exposure period." The evidence of record supports this criticism.

90. The Board's next criticism is the following: "The Respondent states that the appraisal is a 'Complete Appraisal' as opposed to a 'Limited Appraisal' but the terms 'Complete' and 'Limited' ceased to exist with the 2006 version of USPAP." Respondent has admitted to this criticism.

91. The Board's next criticism is the following: "It does not appear that the Comparable Sales were confirmed by a party to the transaction." The evidence of record does not support this criticism.

Case No. 2465

92. The subject property is located at 2113 E. Harvard, Phoenix, Arizona 85006.

93. The effective date of Respondent's Appraisal of Property is August 25, 2006.

94. The Board's first criticism is the following: "There is a discrepancy between Maricopa County records and the appraisal report regarding the amount of the 2005 property taxes."

95. Respondent's appraisal report states that 2005 property taxes for the subject property was $1,172.50. However, Ms. Thoms' research revealed that the 2005 property taxes were $867.48.

96. The Board's second criticism is the following: "There is a discrepancy between Maricopa County records and the appraisal report relating to the square footage of the subject improvement. While respondent acknowledges the discrepancy, he does not comment on the nature of the addition or when the addition would have been completed."

97. Respondent's appraisal report lists the subject property's improvement as 1,598 square feet. However, Maricopa County records show the same improvement as 1,003 square feet. Respondent failed to explain the differences in the size of the improvement.

98. The Board's next criticism is the following: "The Respondent incorrectly states the subject's property [*sic*] zoning."

99. Respondent's appraisal report states that the subject property's zoning is 0131-R3 Single Family Residential. The correct zoning is R1-6 Single Family Residential.

100. The Board's next criticism is the following: "Regarding the description of the property, the Respondent states that the home has an effective age of fifteen years but this is in contract to the actual physical age of the property of 61 years. The Respondent provides no information or detail in the appraisal explaining why the effective age is fifteen years other than to state it had been remodeled. While the Respondent does use a depreciation factor of 25% in the Cost Approach, this would be in general alignment with an effective age of fifteen years but the report does not provide an understanding of the basis for the effective age of fifteen years."

101. The house located on the subject property was constructed in 1945.

102. Respondent's appraisal report does not adequately explain the basis for his giving the property an effective age of 15 years.

103. The Board's next criticism is the following: "With respect to the Comparable Sales, the Respondent does not adequately discuss the total improvement area of Comparable Sale #3 that has both a main house and a guest house, nor is it clear what factors were considered when making adjustments. It is unclear if the adjustment Respondent made to Comparable Sale #1 recognized that there was no heat to the property and that the air conditioning did not work."

104. Comparable Sale #2 consists of a main house and a guest house. Respondent's appraisal report does not contain a discussion of a guest house. The appraisal report does not explain if the square footage being used includes the guest house.

105. MLS states that Comparable Sale #1 has no heating and that the air conditioning unit did not work. The grid used by Respondent has heat.

106. The Board's next criticism is the following: "While Respondent rates the subject property and all three Comparable Sales as being in 'average' condition, there was no detail regarding the fact that the subject was noted with an effective age of fifteen years compared to

the actual physical age of 61 years. Nor was there any information in the workfile [*sic*] or MLS sheets regarding condition or extent of updating/remodeling." See Finding No. 102 above.

107. The Board's next criticism is the following: "It is clear from the conclusion of the Cost Approach that the Respondent was plugging in numbers to permit the Cost Approach conclusion to equal or exceed the reported conclusion of value from the Sales Comparison approach."

108. Respondent's valuation of $100.00 per square foot for the dwelling is not supported by Marshall & Swift, which Respondent used to establish the value.

109. Respondent's appraisal report does not have support for his site value of $70,000.00.

110. Respondent's professional opinion and experience were not discussed in the Cost Approach.

111. The Board's next criticism is the following: "In the appraisal report, the Respondent did not provide an estimate of exposure period." The evidence of record supports this criticism.

112. The Board's next criticism is the following: "It does not appear that the Comparable Sales were confirmed by a party to the transactions." This criticism was not adequately addressed at the hearing.

113. The Board's next criticism is the following: "The Respondent's conclusion of unsupported cost data would conceivable be misleading to a client." The evidence of record would support this criticism since any unsupported data could be misleading to a client.

114. The Board's next criticism is the following: "Information in the Cost Approach Section of the appraisal is not supported by Marshall & Swift Residential Cost Handbook." This criticism is supported by the evidence of record.

115. The Board's next criticism is the following: "The Respondent does not clearly identify the intended user of the appraisal report as required by USPAP." The Board withdrew this criticism at the hearing.

116. The Board's last criticism is the following: "The Respondent states that the appraisal is a 'Complete Appraisal' as opposed to a 'Limited Appraisal"; however, the terms 'Complete' and 'Limited' ceased to exist with the 2006 version of USPAP." Respondent conceded to this criticism.

Case No. 2466

117. The subject property is located at 6262 North 89th Drive, Glendale, Arizona 85035.

118. The effective date of Respondent's Appraisal of Property is October 29, 2006.

119. The Board's first criticism is the following: "The Respondent incorrectly notes the zoning for the subject property." The evidence of record supports this criticism.

120. The Board's next criticism is the following: "Regarding the description of the property, the Respondent states that the home has an effective age of five years but this is in contract to the actual physical age of the property of 15 years. The Respondent provides no information or detail in the appraisal explaining why the effective age is that of a near new home. The Respondent uses a depreciation factor of 8% in the Cost Approach which would be in alignment with a property with an effective age of five years but the Respondent does not provide an understanding of the basis for the effective age of five years."

121. The house on the subject property was constructed in 1991.

122. Respondent failed to discuss how he arrived at an effective age of five years in either his appraisal report or his work documents.

123. The Board's next criticism is the following: "With respect to Comparable Sale #1, the property never closed as was stated by Respondent in the appraisal report."

124. The sale of Comparable #1 never closed. Respondent relied on MLS data which showed it had closed. Respondent did not further investigate the sale.

125. The Board's next criticism is the following: "It appears that Comparable Sale #2 was likely in superior condition compared to the subject property but the appraisal report lacked sufficient detail on the condition of the subject property other than to say it had an effective age of five years." The evidence of record supports this criticism.

126. The Board's next criticism is the following: "With respect to Comparable Sale #3, the Respondent does not mention that it is on a golf course or that it has a sports court in the backyard nor were adjustments made for these differences in comparison to the subject and therefore, would result in an indication above the correctly adjusted indicated market value of this comparable sale."

127. Respondent's appraisal report failed to mention that Comparable Sale #3 was on a golf course and had a sports court.

128. The Board's next criticism is the following: "It is reasonable to expect the Respondent should have considered other comparable sales from the immediate Book and Map. Comparable Sale #2 was from the subject Book and Map; however, at least three other sales were available from the subject Book and Map."

129. Ms. Thoms located three other Comparable Sales closer to the subject property, instead of the Comparable Sales used by Respondent within a mile radius of the subject property. The three Comparable Sales found by Ms. Thoms were not found in Respondent's work file.

130. The Board's next criticism is the following: "Although the Respondent notes the prior sale of the subject property on December 15, 2005, the Respondent fails to analyze this sale, particularly in view of the fact the appraised market value of $275,000 was 13.2% above the previous sale price in a market that was experiencing a cooling."

131. Respondent provided no analysis of the subject property's prior sale

132. The Board's next criticism is the following: "The Respondent's conclusion of value of the subject property appears to be at the extreme upper limits of value when viewing other data." The Board failed to address this criticism at the hearing.

133. The Board's next criticism is the following: "In the appraisal report, the Respondent did not provide an estimate of exposure period." This criticism is supported by the evidence of record.

134. Respondent agreed with the Board's criticism of his use of the term "Complete Appraisal," which ceased to exist with the USPAP 2006.

135. The Board's further criticism that Respondent's "appraisal report is identified as both a Self-Contained and a Summary appraisal report; it would be one or the other but not both" is supported by the evidence of record.

136. The Board withdrew the criticism that Respondent failed to identify the intended user of the appraisal report.

137. There is insufficient evidence to support Complaint items 1(k), (l) and (n), which are incorporated herein by reference.

Case No. 2467

138. The subject property is located at 6644 W. Virginia Avenue, Phoenix, Arizona 85035.

139. The effective date of Respondent's Appraisal of Property is November 21, 2006.

140. The Board's first criticism is the following: "There is a discrepancy between Maricopa County records and the appraisal report relating to subject improvement size. The Respondent does not note or discuss the discrepancy but it appears from the photographs included in the appraisal report that the subject property has a garage that was converted into

living area. The Respondent does not discuss the garage conversion, the date of conversion or whether a building permit was issued for the conversion."

141. Maricopa County records show the subject site size as 6,813 square feet. Respondent's appraisal report lists the subject size as 6,811 square feet. The Maricopa County records show the subject improvement size to be 1.064 square feet. Respondent's appraisal report shows the subject improvement size to be 1,296 square feet. Respondent failed to comment on those variances.

142. Respondent testified that the Maricopa County records showed the subject improvement to have a one car carport. He opined that one knows that there is an addition at the end of the driveway and that such an addition is illegal. That is the exact type of discussion Respondent should have put in his appraisal report.

143. Respondent listing the zoning incorrectly for the subject property. Respondent's appraisal report lists the zoning as 0131-R3 Single Family Residential. The correct zoning is R1-6 Single Family Residential.

144. The Board's next criticism is the following: "Regarding the description of the subject property, the Respondent states that the home has an effective age of ten years but this is in contract to the actual physical age of the property of 35 years. The Respondent provides no information or detail in the appraisal explaining why the effective age is 10 years other than to state it had been remodeled. The Respondent does use a depreciation factor of 17% in the Cost Approach which would be in alignment with a property with an effective age of 10 years but the Respondent does not provide an understanding of the basis for the effective age of ten years."

145. Respondent's appraisal report and his work file contain no justification for an effective age of ten years for the subject improvement.

146. The Board's next criticism is the following: "The Respondent's conclusion of unsupported cost data would conceivably be misleading to a client." The evidence of record supports this criticism. Any unsupported data can be misleading to a client.

147. The evidence of record supports the criticism that Respondent's Cost Approach Section of the appraisal is not supported by Marshall & Swift.

148. The Board's next criticism is the following: "With respect to Comparable Sale #2, the Respondent does not comment or discuss the property's Arizona Room/Lanai nor is any type of adjustment made for the feature."

149. Respondent's appraisal report failed to disclose the Comparable Sale #2 Arizona Room/Lanai.

150. The Board's criticism that the Comparable Sales were not confirmed by a party to the transaction was not addressed at the hearing.

151. The Board's next criticism is the following: "It is reasonably clear from the conclusion of the Cost Approach that the Respondent was plugging in numbers to permit the Cost Approach to equal or exceed the reported conclusion of value from the Sales Comparison Approach. The Respondent falls short of leading the reader to his conclusion of market value." The evidence of records supports this criticism.

152. Respondent conceded that he incorrectly used the term "Complete Appraisal" since that term ceased with the USPAP 2006.

153. The evidence of record supports the Board's criticism that Respondent's appraisal is identified as both a Self-Contained and a Summary appraisal report, when it can only be one or the other.

154. There is insufficient evidence of record to support the following criticism by the Board: "The fact that Comparable Sales #1 and 2 had Lanai/Arizona Rooms and Comparable

Sale #1 had a sauna, yet they received no adjustment that would indicate errors were made that probably would have affected the results of the appraisal."

155. At the hearing the Board withdrew its criticism that Respondent did not identify the intended user of his appraisal report.

Case No. 2468

156. The subject property is located at 11023 North 45th Drive, Glendale, Arizona 85304.

157. The effective date of Respondent's Appraisal of Property is December 27, 2006.

158. The Board's first criticism is the following: "The Respondent notes the zoning of the subject property incorrectly."

159. Respondent's appraisal report states that the subject property zoning is 0132-R3 Single Family Residential. The correct zoning is R1-6 Single Family Residential.

160. The Board's next criticism is the following. "Regarding the description of the subject property, the Respondent states that the home has an effective age of ten years but this is in contract to the actual physical age of the property of 33 years. The Respondent provides no information or detail in the appraisal explaining why the effective age is 10 years. The Respondent uses a depreciation factor of 17% in the Cost Approach which would be in alignment with a property with an effective age of 10 years but the Respondent does not provide an understanding of the basis for the effective age of ten years."

161. Respondent failed to provide information or detail to support his effective age of 10 years in his appraisal report.

162. The Board's next criticism is the following: "The adjustment grid states that the subject property is in 'average condition' but data suggests that the subject property has apparently had considerable remodeling (tile, cabinets, etc.). Good appraisal practice would normally result in a discussion of the level of updating/remodeling. An effective age of 10 years

and a physical age of 33 years suggest the property, compared to other properties in the market area, may merit a 'good' condition rating. In addition, the subject property backs up to a canal and has a lot that is considerably larger than the typical lot in the subdivision."

163. Ms. Thoms opined that the subject property should have received a "'good condition" rating versus an "average condition" rating due to the extensive remodeling and Respondent's determination of an effective age of 10 years for an improvement with a physical age of 33 years. Ms. Thoms also testified that no MLS data was found in Respondent's work file.

164. The Board's next criticism is the following: "The Respondent fails to provide any detail or analysis on any of the prior sales of the subject property. For instance, the appraised value of $295,000 represents an increase of 18% over the prior sale in January 2006 for $250,000."

165. Respondent failed to analyze prior sales as required by USPAP 2006.

166. The Board's next criticism is the following: "With respect to Comparable Sale #3, the Respondent noted that there were no prior sales of the property in the last year and that is an incorrect statement."

167. Ms. Thoms' research disclosed that Comparable Sale #3 had been sold on February 3, 2006 for $200,000.00.

168. The Board's next criticism is the following: "The Respondent notes that the subject property is framed construction while the comparables are block but the does not adjust for this difference."

169. Each of the comparables is a block construction. Respondent failed to make any adjustment or discussion.

170. Marshall & Swift makes a distinction between framed construction and block construction.

171. Respondent admitted his error concerning the quality of construction between the subject property and the comparables.

172. Complaint item 1(g), which is incorporated herein by reference, is not supported by the evidence of record.

173. Respondent claims to have used Marshall & Swift in the Cost Approach Section of the appraisal. However, Ms. Thoms credibly testified that Marshall & Swift do not justify Respondent's valuation of $120.00 per square foot for the dwelling. She further testified that Respondent failed to justify that valuation.

174. The Board did not address Complaint items 1(i) and (j) at the hearing, the terms of which are incorporated herein by reference.

175. Respondent's appraisal report does not provide an estimate of exposure period as required by USPAP 2006.

176. Respondent admitted that he wrongly used the term "Complete Appraisal", which is a term that ceased to be used with USPAP 2006.

177. Respondent's appraisal report is identified as both a Self-Contained and a Summary Appraisal. It can be one or the other, but it cannot be both.

Case No. 2469

178. The subject property is located at 1222 North 39th Avenue, Phoenix, Arizona 85009.

179. The effective date of Respondent's Appraisal of Property is December 5, 2006.

180. Respondent did not accurately report the zoning of the subject property. Respondent's appraisal report states the subject property zoning is 0131-R3 Single Family Residential. The correct zoning is R1-6 Single Family Residential.

181. The Board's criticism of Respondent is as follows: "Regarding the description of the subject property, the Respondent states that the home has an effective age of ten years but

this is in contract to the actual physical age of the property of 42 years. The Respondent provides little explanatory information in the appraisal for this effective age except to say that the home has been completely remodeled."

182. Respondent's appraisal report fails to provide any detail to substantiate the conclusion that the subject improvement has an effective age of ten years other than to comment that it has been remodeled.

183. The Board's next criticism is as follows: "The Respondent uses a depreciation factor of 17% in the Cost Approach which would be in alignment with a property with an effective age of 10 years but the Respondent does not provide an understanding of the basis for the effective age of ten years."

184. See Finding No. 182. In addition, Ms. Thoms' report states that an "MLS sheet has apparently had considerable remodeling, including 'new interior/exterior paint, new berber carpet, new ceramic tile in kitchen and bathrooms, new light fixtures, new counter tops in kitchen, new bath tub/shower surround and vanity in hall bath, and newer heat pump unit.'"

185. Respondent's appraisal report states that the subject property is a "sub/average" location. The subject property is in the vicinity of Interstate 10 and one lot from an industrial property. Respondent's appraisal report fails to comment on the subject property's location in relationship to the freeway or the industrial property.

186. The Board's next criticism is the following: "The subject property is located in close proximity to Interstate 10 and therefore, would be subject to considerable traffic noise and fumes. However, the Respondent's appraisal report does not provide any comment on the subject's location in relationship to the freeway. See Finding No. 85.

187. The Board's next criticism is the following: "With respect to Comparable Sale #2, the Respondent failed to note in the appraisal report that the property had evaporative cooling in

addition to air conditioning. Additionally, Comparable Sale #2 is also in close proximity to Interstate 10 and the Respondent fails to comment on this fact."

188. Respondent did not mention the evaporative cooling unit in the appraisal report. See Finding No. 185.

189. The Board failed to adequately address Complaint items 1(f), (g) and (h) at the hearing.

190. Respondent's appraisal report does not contain an estimate of exposure time.

191. Respondent conceded that the appraisal report was incorrectly described as a 'Complete Appraisal," even though that term ceased to exist with the USPAP 2006.

192. Respondent's appraisal report is identified as both a Self-Contained and a Summary Appraisal, although it can only be one or the other, but not both.

193. At the hearing, the Board withdrew the criticism that Respondent did not clearly identify the intended user of the appraisal report.

Matters in Mitigation or Aggravation

194. Respondent freely admitted that he was not familiar with the USPAP 2006. However, he was responsible for being familiar with the USPAP 2006 as a certified real estate appraiser when he performed the above-provided appraisal reports.

195. On February 8, 2008, the Arizona School of Real Estate & Business[2] issued Respondent a Certificate of Education Session Completion for 7 hours of course work in 2008-2009 National USPAP (#ABA 0103-262). That course work was for continuing education and not a prerequisite education course requiring Respondent to complete a required examination.

[2]*See* Respondent's Exhibit 37. The Certification of Educational Session Completion was issued by the Arizona School of Real Estate & Business on a Board-approved form. The Board makes this modification to be consistent with evidence presented at the hearing.

196. On or about April 4, 2008, the Arizona School of Real Estate & Business[3] issued Respondent a Certification of Educational Session Completion for 15 hours of course work and successful examination in course title AP-03 2008 National USPAP – 1 (#ABA 0502-214-3) presented from March 25-27, 2008.

CONCLUSIONS OF LAW

1. These Board has jurisdiction over Respondent and the subject matter in this case.

2. Pursuant to the provisions of A.R.S. § 41-1092.07(G)(2) and A.A.C. R2-19-119(B), the Board has the burden of proof in this matter. The standard of proof is preponderance of the evidence. A.A.C. R2-19-119(A).

3. Pursuant to the provisions of A.R.S. § 32-3635, Respondent, as a certified residential appraiser, must comply with the standards of practice adopted by the Board. In these matters, the Standards of Practice adopted by the Board are codified in the USPAP 2006 edition applicable in the subject appraisals.

4. Respondent did identify the intended user in each of the above-referenced appraisal reports he issued. The Board withdrew those allegations against Respondent.

5. By Notice of Withdrawal of Allegation; Notice of Errata, the Board amended Case No. 2468 to provide that the allegation contained in paragraph 1(k) of Case No. 2467 should be an allegation in Case No. 2468. Respondent did not object to this amendment.

Case No. 2462

6. The conduct described in the above Findings for this case constitutes the following violations of USPAP 2006: Standards Rule 1-2(c)(iv); Standards Rule 1-4(b)(ii);

[3] *See* Respondent's Exhibit 37. The Certification of Educational Session Completion was issued by the Arizona School of Real Estate & Business on a Board-approved form. The Board makes this modification to be consistent with evidence presented at the hearing.

Standards Rule 1-5(b); Standards Rule 2-1(a); Standards Rule 2-2(b)(v); and Statement on Appraisal Standards No. 6.

Case No. 2463

7. The conduct described in the above Findings for this case constitutes violations of the following provisions of USPAP 2006: Standards Rule 1-1(b); Standards Rule 1-2(c)(iv); Standards Rule 1-4(a); Standards Rule 1-4(b)(ii); Standards Rule 1-6(a); Standards Rule 2-1(a); Standards Rule 2-1(b); Standards Rule 2-2(b)(v) and (viii); and Statement on Appraisal Standards No. 6.

Case No. 2464

8. The conduct described in the above Findings for this case constitutes violations of the following provisions of USPAP 2006: Standards Rule 1-2(c)(iv); Standards Rule 2-2(b)(v); and Statement on Appraisal Standards No. 6.

Case No. 2465

9. The conduct described in the above Findings for this case constitutes violations of the following provisions of USPAP 2006: Standards Rule 1-2(c)(iv); Standards Rule 1-4(b)(ii); Standards Rule 2-2(b)(v); and Statement on Appraisal Standards No. 6.

Case No. 2466

10. The conduct described in the above Findings for this case constitutes violations of the following provisions of USPAP 2006: Standards Rule 1-1(b) and (c); Standards Rule 1-2(c)(iv); Standards Rule 1-5(b); Standards Rule 1-6(a); Standards Rule 2-1(a) and (b); Standards Rule 2-2(b)(v) and (viii); and Statement on Appraisal Standards No. 6.

Case No. 2467

11. The conduct described in the above Findings for this case constitutes violations of the following provisions of USPAP 2006: Standards Rule 1-2(c)(iv); Standards Rule 1-

4(b)(ii); Standards Rule 2-1(a); Standards Rule 2-2(b)(v); and Statement on Appraisal Standards No. 6.

Case No. 2468

12. The conduct described in the above Findings for this case constitutes violations of the following provisions of USPAP 2006: Standards Rule 1-1(b); Standards Rule 1-1(c); Standards Rule 1-2(c)(iv); Standards Rule 1-4(b)(ii); Standards Rule 2-1(a); Standards Rule 2-1(b); Standards Rule 2-2(b)(v); and Statement on Appraisal Standards No. 6.

Case No. 2469

13. The conduct described in the above Findings for this case constitutes violations of the following provisions of USPAP 2006: Standards Rule 1-2(c)(iv); Standards Rule 2-2(b)(v); and Statement on Appraisal Standards No. 6.

ORDER OF PROBATION

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

1. **Upon the effective date of this Order, Respondent's Certificate as a Certified Residential Appraiser shall be placed on probation for a period of twelve (12) months commencing on the effective date of the Order.** During probation, Respondent shall comply with USPAP, Arizona Revised Statutes and Appraisal Board rules.

2. Respondent shall successfully complete the following education prior to the termination of probation: **a fifteen (15) hour USPAP qualifying course with an examination**[4]**; a minimum of six (6) hours in Mortgage Fraud; a minimum of seven (7) hours in Cost**

[4] *See* Respondent's Exhibit 37. The Board accepts the 15-hour USPAP qualifying course with examination taken by Respondent on 3/25-27/08 (examination 4/4/08) in satisfaction of the USPAP course requirement.

Approach; and a minimum of seven (7) hours in Sales Approach. The education required above **may not** be counted toward the continuing education requirements for the renewal of Respondent's certificate and shall be completed within six (6) months of the effective date of this Order. Proof of completion of the required education must be submitted to the Board within 3 weeks of completion of the required courses.

3. During the term of probation, Respondent shall: (a) demonstrate resolution of the problems that resulted in this disciplinary action; and (b) otherwise comply with the terms of this Order.

4. During the period of probation, Respondent shall complete a minimum of **twelve (12) appraisal reports** under the supervision of an Arizona Certified Residential or Certified General Appraiser who shall serve as Respondent's Mentor ("Mentor"). The Mentor shall be either an Arizona Certified Residential or Certified General Appraiser.

5. **During the probationary period, the Respondent shall not issue a verbal or written appraisal, appraisal review, or consulting assignment without prior review and approval by a Mentor**. Each report shall be signed by the Mentor as a supervisory appraiser. In the event that Respondent's client will not accept the signature of the Mentor affixed to an assignment as a supervisory appraiser, the Mentor need not co-sign the report, but must complete a written review of each report ensuring that the report complies with USPAP and the Board's statutes and rules. The Mentor's review shall comply with the requirements of Standard 3 of the USPAP. The Mentor's Standard 3 review shall be completed before the report is issued to the client. Any changes the Mentor requires to ensure the report complies with the USPAP shall be completed by the Respondent and approved by the Mentor before the report is issued. The Mentor's written Standard 3 review shall be maintained by the Mentor and made available to the Board upon request. In order to invoke these provisions, the Respondent must submit proof to the Board with his monthly log showing that his client's policies prevent co-signature by

the Mentor. After twelve months, the requirement of pre-approval of appraisals by a Mentor may be terminated upon approval by the Board if Respondent has complied with the conditions set out in this Order.

6. The Mentor must be approved by the Board and is subject to removal by the Board for nonperformance of the terms of this Order. The Mentor may not have a business relationship with Respondent except for the Mentor/Mentee relationship nor may the Mentor be related to Respondent. Any replacement Mentor is subject to the Board's approval and the remaining terms of this Order. The Board's Executive Director may give temporary approval of the Mentor until the next regular meeting of the Board.

7. Not more than **30 days** after the effective date of this Order, Respondent shall submit to the Board the name and resume of an Arizona Certified Residential or Arizona Certified General Appraiser who is willing to serve as Respondent's Mentor together with a letter from the potential Mentor agreeing to serve as Respondent's Mentor. If requested by Board staff, Respondent shall continue to submit names, resumes, and letters agreeing to serve as Mentor until a Mentor is approved by the Board. Any Mentor must be approved in writing by the Board.

8. Respondent shall bear all costs and expenses associated with the mentorship and incurred in attended the required courses.

9. The Mentor shall submit monthly reports to the Board for each calendar month during Respondent's probationary period reflecting the quantity and quality of Respondent's work, including, but not limited to, improvement in Respondent's practice and resolution of those problems that prompted this action. The Mentor's report 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 termination of the probationary period by the Board. **Even if the Mentor reviews no appraisals during a given month, a report stating that no appraisals**

were reviewed or approved must be submitted. It is the Respondent's responsibility to ensure that the Mentor submits his/her reports monthly. If the monthly reporting date falls on a Saturday, Sunday, or holiday, the report is due on the next business day. The monthly report may be filed by mail or facsimile.

10. 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 Mentor's review 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.

11. 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.

12. Respondent's probation, including mentorship, shall continue until: (a) Respondent petitions the Board for termination as provided in paragraph 13, and (b) the Board terminates the probation and mentorship. Upon petition by the Respondent for termination of the probation and mentorship, the Board will select and audit 3 of Respondent's appraisal reports.

13. At the end of **twelve (12) months** from the effective date of this Order, the Respondent must petition the Board for termination of his mentorship and probation. If the Board determines that Respondent has not complied with **all** the requirements of this Order, the Board, at its sole discretion, may institute proceedings for noncompliance with this Order, which may result in suspension, revocation, or other disciplinary and/or remedial action.

14. 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.

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

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

17. Respondent understands that this Order, or any part thereof, may be considered in any future disciplinary action against him.

18. If Respondent fails to comply with the terms of this Order, the Board shall properly institute proceedings for noncompliance with this Order, which may result in suspension, revocation, or other disciplinary and/or remedial actions. Respondent understands that any violation of this Order 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.

19. Respondent understands that this Order 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

20. Respondent understands that this Order is a public record that may be publicly disseminated as a formal action of the Board.

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

RIGHT TO PETITION FOR REHEARING OR REVIEW

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

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

DATED this 11th day of December, 2008.

ARIZONA STATE BOARD OF APPRAISAL

By: Deborah G. Pearson

Deborah G. Pearson, Executive Director

Copy of the foregoing personally served this 11th day of December, 2008, on:

Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, AZ 85007

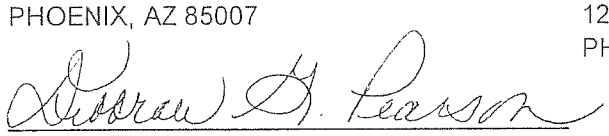
Copy of the foregoing mailed via regular U.S. & Certified Mail #7007 2560 0001 3358 8720 this 11th day of December, 2008, to:

SHAWKAT E. HALABU
4301 N. 75TH ST., STE 203
SCOTTSDALE, AZ 85251

Copies of the foregoing sent by interagency
this 10th day of December, 2008, to:

JEANNE M. GALVIN
ASSISTANT ATTORNEY GENERAL
1275 W. WASHINGTON
PHOENIX, AZ 85007

CHRISTOPER MUNNS
ASSISTANT ATTORNEYS GENERAL
SOLICITOR GENERAL'S OFFICE
1275 W. WASHINGTON
PHOENIX, AZ 85007



Deborah G. Pearson