

1 Evidence and testimony were presented and the following Findings of Fact,
2 Conclusions of Law and Recommended Order are made:

3 **FINDINGS OF FACT**

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

9 2. Ms. Hastings is the holder of Certified Residential Appraiser Certificate No.
10 21954.¹ This certificate permits Ms. Hastings to perform real property appraisals and
11 appraisal reviews in the State of Arizona. The certificate was issued to Ms. Hastings on
12 September 30, 2008.

13 3. During July 2011, Ms. Hasting performed an appraisal of a single-family
14 residence located at 9700 E. Little Further Way, Gold Canyon, Arizona (hereinafter "the
15 property").

16 **Testimony of Debra Rudd**

17 4. Debra Rudd (hereinafter "Ms. Rudd") testified that she is the Executive Director
18 of the Board. Ms. Rudd stated that she is a certified general appraiser. Ms. Rudd
19 testified that she had been an appraiser since 1977.

20 5. Ms. Rudd testified that a Complaint was filed against Ms. Hastings on November
21 8, 2011.² Ms. Rudd stated that the Complaint alleged that Ms. Hastings utilized photos
22 from the MLS of comparable properties that Ms. Hastings did not inspect and that Ms.
23 Hastings utilized comparable properties that were from superior neighborhoods. Ms.
24 Rudd testified that the Complaint alleged that the comparables utilized by Ms. Hastings
25 for the property were not, in fact, comparable.

26 6. Ms. Rudd testified that notification of the Complaint was sent to Ms. Hastings'
27 address of record.³ Ms. Rudd stated that Ms. Hastings filed a written response to the
28

29 ¹ See Exhibit No. 1 (Certified Residential Appraiser Certificate No. 21954).

30 ² See Exhibit No. 2 (11/8/11 Complaint).

³ See Exhibit No. 3 (Notice of Filing of Complaint).

1 Complaint.⁴ Ms. Rudd testified that the Board conducted an initial review and then sent
2 the entire file, including Ms. Hastings' response, to a contract investigator for an
3 impartial investigation of the Complaint.

4 7. Ms. Rudd testified that once the investigation report was prepared, the Board set
5 the matter for an informal hearing. Ms. Rudd stated that notice of the informal hearing
6 before the Board was mailed to Ms. Hastings' address of record. Ms. Rudd testified
7 that Ms. Hastings failed to appear at the informal hearing.

8 8. Ms. Rudd testified that Ms. Hastings' Certified Residential Appraiser Certificate
9 had expired before the informal hearing of the Board.

10 9. Ms. Rudd testified that Ms. Hastings filed her certificate renewal within the 90
11 day grace period and a Certified Residential Appraiser Certificate was issued to Ms.
12 Hastings on December 28, 2012. Ms. Rudd stated that the Board had previously
13 issued a letter to Ms Hastings on December 7, 2012, wherein the Board informed Ms.
14 Hastings that the Board had voted to offer Ms. Hastings the opportunity to resolve the
15 Complaint by an attached Consent Agreement and Order.⁵ Ms. Rudd testified that after
16 Ms. Hastings did not sign the Consent Agreement, a Complaint and Notice of Public
17 Hearing was issued.

18 10. Ms. Rudd testified that the Complaint and Notice of Public Hearing was mailed to
19 Ms. Hastings' address of record.⁶ Ms. Rudd stated that the Complaint and Notice of
20 Public Hearing was sent to Ms. Hastings by both regular and certified mail. Ms. Rudd
21 testified that all of the mail sent to Ms. Hastings' address of record was returned to the
22 Board.⁷

23 **Testimony of Richard L. Kloc**

24 11. Richard L. Kloc (hereinafter "Mr. Kloc") testified that he is a certified general
25 appraiser in the State of Arizona. Mr. Kloc stated that he has been a certified appraiser
26 in the State of Arizona since 1982. Mr. Kloc testified that he holds an MAI issued by the
27 Appraisal Institute and an SRPA issued by the Society of Real Estate Appraisers.

28 ⁴ See Exhibit No. 4 (12/14/11 Response).

29 ⁵ See Exhibit No. 6 (12/7/12 Letter with attached Consent Agreement).

30 ⁶ See Exhibit No. 7 (Complaint and Notice of Public Hearing).

⁷ See Exhibit No. 8 (Copies of Envelopes returned re: unable to deliver Complaint to Ms. Hastings' address of record).

1 12. Mr. Kloc testified that he is a contract investigator for the Board. Mr. Kloc stated
2 that when he conducts an investigation for the Board, he is independent and impartial.
3 Mr. Kloc testified that he conducts his investigation in strict accordance with the Uniform
4 Standards of Professional Appraisal Practice ("USPAP").

5 13. Mr. Kloc testified that he conducted an investigation of the Complaint against Ms.
6 Hastings. Mr. Kloc stated that he prepared a written report of his investigation and
7 submitted the written report to the Board.⁸ Mr. Kloc testified that Ms. Hastings'
8 appraisal report for the property contained a number of errors and omissions.

9 14. Mr. Kloc testified that Ms. Hastings used MLS photos in her appraisal without
10 explanation. Mr. Kloc stated that the use of MLS photos was a violation because Ms.
11 Hastings failed to disclose that she was using MLS photos in her appraisal report. Mr.
12 Kloc testified that scope of work on Ms. Hastings' appraisal form states that at a
13 minimum, she had inspected every comparable property from the street. Mr. Kloc
14 testified that Ms. Hastings did not view comparable properties one and three from the
15 street.

16 15. Mr. Kloc testified that the common practice for appraisers when they are
17 prevented from gaining access to a comparable property by a gated community guard
18 gate is to take a photograph of the guard gate and disclose that MLS photos are being
19 utilized for the appraisal report. Mr. Kloc stated that Ms. Hastings failed to take photos
20 of the guard gates for the comparable properties and failed to disclose that she was
21 using MLS photos in her appraisal report.

22 16. Mr. Kloc testified that Ms. Hastings identified the property as being on a hillside
23 lot and made an upward adjustment for view. Mr. Kloc stated that the property is not on
24 a hillside lot. Mr. Kloc stated that the property was below the grade of the street.

25 17. Mr. Kloc testified that upper adjustments were made for view for four of the six
26 comparable properties utilized in Ms. Hastings' appraisal report. Mr. Kloc stated that
27 the view adjustments for comparable property numbers two, three, and six did not
28 appear to be warranted. Mr. Kloc testified that the value adjustments that Ms. Hasting
29 made to the values of the comparable properties for view were not warranted.

30 ⁸ See Exhibit No. 9 (5/29/12 Investigative Report).

1 18. Mr. Kloc testified that the comparable sale that Ms Hastings relied upon most
2 was from a gated community with superior amenities, larger homes, a higher average
3 price per square foot, and a higher average selling price. Mr. Kloc stated that Ms
4 Hastings failed to adjust the price of her sales comparable for location and that there
5 were more recent sales for comparables from the immediate neighborhood of the
6 property that Ms. Hastings did not include in her appraisal report of the property.

7 19. Mr. Kloc testified that Ms. Hastings inappropriately placed the most weight upon
8 the comparable with the largest gross adjustment and the largest difference in livable
9 area. Mr. Kloc stated that the adjustments that Ms. Hastings made for differences in
10 livable area for the comparables were inconsistent given the age, quality, and cost
11 approach utilized by Ms. Hastings. Mr. Kloc testified that the Market Conditions
12 Addendum attached to Ms. Hastings' appraisal failed to accurately reflect the defined
13 subject neighborhood of the property.

14 20. Mr. Kloc testified that the physical depreciation utilized by Ms. Hastings was
15 understated by 100%. Mr. Kloc stated that Ms. Hastings calculated the physical
16 depreciation of the property incorrectly. Mr. Kloc testified that Ms. Hastings' appraisal
17 incorrectly listed the physical depreciation of the residence as three percent rather than
18 six percent.

19 21. Mr. Kloc testified that the property was sold partially furnished. Mr. Kloc stated
20 that Ms. Hastings failed to include the value of the furnishings in her evaluation of the
21 property. Mr. Kloc testified that Ms. Hastings failed to properly analyze the pending
22 sale of the property to determine the contributory value of the personal property
23 included in the agreed-upon sales price.

24 22. Mr. Kloc testified that Ms. Hastings violated Standards Rule 1-1, Standards Rule
25 1-4, Standards Rule 1-5, and Standards Rule 2-1 of the 2010/2011 USPAP. Mr. Kloc
26 stated that Ms. Hastings violated Standards Rule 1-1 by not correctly understanding
27 and employing the recognized methods and techniques that are necessary to produce a
28 credible appraisal report. Mr. Kloc testified that Ms. Hastings committed a substantial
29 error of omission or commission that significantly affected the appraisal result. Mr. Kloc
30

1 stated that Ms. Hastings performed the appraisal of the property in a careless or
2 negligent manner.⁹

3 23. Mr. Kloc testified that Ms. Hastings violated USPAP Standards Rule 1-4 by
4 improperly preparing the sales-comparison approach that Ms. Hastings included in her
5 appraisal report.¹⁰ Mr. Kloc stated that Ms. Hastings failed to properly analyze the
6 comparable data that was available to indicate a value conclusion.

7 24. Mr. Kloc testified that Ms. Hastings violated Standards Rule 1-5(a) by not
8 analyzing the sale of the property to determine that there was personal property
9 involved.¹¹ Mr. Kloc stated that Ms. Hastings failed to determine the contributing value
10 of the personal property.

11 25. Mr. Kloc testified that Ms. Hastings violated Standards Rule 2-1 (a) and (b), by
12 preparing a misleading and incorrect evaluation report.¹² Mr. Kloc stated that Ms.

13
14 ⁹ USPAP Standards Rule 1-1 provides as follows:

15 In developing a real property appraisal, an appraiser must:

16 (a) be aware of, understand, and correctly employ those recognized methods
and techniques that are necessary to produce a credible appraisal.

17 (b) not commit a substantial error of omission or commission that significantly
affects an appraisal; and

18 (c) not render appraisal services in a careless or negligent manner, such as by
19 making a series of errors that, although individually might not significantly affect
the results of an appraisal, in the aggregate affects the credibility of those
results.

20 ¹⁰ USPAP Standards Rule 1-4 provides, in relevant part, as follows:

21 In developing a real property appraisal, an appraiser must collect, verify, and
22 analyze all information necessary for credible assignment results.

23 (a) When a sales comparison approach is necessary for credible assignment
24 results, an appraiser must analyze such comparable sales data as are available
to indicate a value comparison.

25 ¹¹ USPAP Standards Rule 1-5(a) provides as follows:

26 When the value opinion to be developed is market value, an appraiser must, if
such information is available to the appraiser in the normal course of business:

27 (a) analyze all agreements of sale, options, and listings for the subject property
current as of the effective date of the appraisal.

28 ¹² USPAP Standards Rule 2-1(a) and (b) provide as follows:

29 Each written or oral real property appraisal report must:

30 (a) clearly and accurately set forth the appraisal in a manner that will not be
misleading;

1 Hastings violated the provisions of A.R.S. § 32-3635 by failing to adhere to the
2 provisions of the USPAP.¹³

3 CONCLUSIONS OF LAW

- 4 1. The burden of proof at an administrative hearing falls to the party asserting a
5 claim, right, or entitlement and the standard of proof on all issues in these matters is
6 by a preponderance of the evidence. See A.A.C. R2-19-119.
- 7 2. A preponderance of the evidence is "such proof as convinces the trier of fact that
8 the contention is more probably true than not." MORRIS K. UDALL, ARIZONA LAW OF
9 EVIDENCE § 5 (1960).
- 10 3. Ms. Hastings used MLS Photographs of the comparable properties without
11 disclosing that the photographs were MLS photographs. Ms. Hastings wrongly
12 identified the property as a hillside lot. The comparable properties utilized by Ms.
13 Hastings had larger livable areas than the property. Ms. Hastings understated
14 adjustments for livable area for the comparable properties, resulting in a higher
15 adjusted price range. Ms. Hastings failed to include an estimate as to the
16 contributing value of the personal items included in the sale of the property. This
17 Tribunal concludes that Ms. Hastings violated the provisions of USPAP Standards
18 Rule 1-1; Standards Rule 1-4 (a), Standards Rule 1-5 (a), Standards Rule 2-1 (a
19 and b), and the charged provisions of A.R.S. § 32-3635.

20 ORDER

21 In view of the foregoing, the Board issues the following Order against Ms.
22 Hastings' Certified Residential Appraiser Certificate No. 21954:

23 (b) contain sufficient information to enable the intended users of the appraisal to
24 understand the report properly.

25 ¹³ A.R.S. § 32-3635 (Standards of Practice) provides, in relevant part, as follows:

- 26 A. A state licensed or state certified appraiser shall comply with the standards of
27 professional appraisal practice adopted by the board.
28 B. An appraisal or appraisal report shall not be issued by a real estate appraiser
29 unless it meets the appraisal standards established by this chapter and rules
30 adopted pursuant to this chapter.
C. An appraisal review report shall clearly indicate the nature of the review
process undertaken and shall separate the review function from any other
functions.
D. All federally related appraisals shall be in writing.

1 That commencing on the date of the Board's decision in this matter, Ms. Hastings'
2 Certified Residential Appraiser Certificate No. 21954 shall be placed on probation for a
3 period of six (6) months subject to the following terms and conditions:

- 4 a. That Commencing on the date of the Board's decision in this matter, Ms.
5 Hastings shall actively work under the supervision of an Arizona Certified
6 Residential Appraiser or Certified General Appraiser who has been
7 approved by the Board. During the probationary period, Ms. Hastings'
8 supervisor shall sign every appraisal report prepared by Ms. Hastings.
- 9 b. That at a minimum Ms. Hastings must prepare at least six (6) appraisal
10 reports during the term of probation. The six (6) appraisal reports may be
11 demonstration reports.
- 12 c. That during the probationary period, Ms. Hastings shall be required to
13 successfully complete a fifteen (15) hour course on the USPAP with an
14 exam. This course work shall be in addition to any continuing education
15 required for Ms. Hastings to maintain her appraiser certification.
- 16 d. That during the probationary period Ms. Hastings shall comply with all
17 applicable Arizona statutes and the USPAP in performing all appraisals.
- 18 e. That if Ms. Hastings does not comply with the terms of her probation, her
19 Certified Residential Appraiser Certificate No. 21954 shall be revoked.
- 20 f. That Ms. Hastings shall bear all costs associated with her probation,
21 including the cost of the supervising appraiser.

22 **Right to Petition For Rehearing or Review**

23 Respondent is hereby notified that she has the right to petition for a rehearing or
24 review. Pursuant to A.R.S.41-1092.09, as amended, the petition for hearing or review
25 must be filed with the Board's Executive Director within 30 days after service of this
26 Order and pursuant to A.A.C. R4-46-303, it must set forth legally sufficient reasons for
27 granting a rehearing or review. Service of this order is effective 5 days after mailing. If
28 a motion for rehearing or review is not filed, the Board's order becomes effective 35
29 days after it is mailed to Respondent.

30 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.

1 Dated this 16th day of October, 2013.

2 Arizona State Board of Appraisal
3 By: Debra J. Rudd
4 Debra J. Rudd, Executive Director

5 Copy of the foregoing transmitted electronically on this
6 16th day of October, 2013 to:

7 Office of Administrative Hearings
8 1400 West Washington St., Suite 101
9 Phoenix, AZ 85007

10 Copy of the foregoing mailed via regular mail and U.S.
11 Certified Mail 7012 3050 0002 0740 5202
12 this 16th day of October, 2013 to:

13 Donna L. Hastings
14 2759 S. Sorrelle
15 Mesa, AZ 85209

16 Copies of the foregoing sent by interagency mail
17 this 16th day of October, 2013 to:

18 Jeanne M. Galvin
19 Assistant Attorney General
20 1275 W. Washington St.
21 Phoenix, AZ 85007

22 Christopher Munns
23 Assistant Attorney General
24 Solicitor General's Office
25 1275 W. Washington St.
26 Phoenix, AZ 85007

27 By: Nancy A. Inserra
28 Nancy A. Inserra
29
30