RECEIVED

MAY 05 2005

ARIZONA BOARD OF APPRAISAL

BEFORE THE ARIZONA STATE BOARD OF APPRAISAL

In the Matter of Joseph E. Kaneakua, Licensed Residential Appraiser License No. 10401	Case No. 1772 **CONSENT AGREEMENT AND ORDER OF DISCIPLINE**

In lieu of further litigation, and in resolution of the case herein, the Arizona State Board of Appraisal (the "Board") and Joseph E. Kaneakua ("Respondent") hereby enter into the following Consent Agreement and Order of Discipline.

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 is a Licensed Residential Appraiser in the State of Arizona, holder of License No. 10401, issued on January 18, 1996, pursuant to A.R.S. § 32-3612. This license permits Respondent to perform certain real property appraisals and appraisal reviews in the State of Arizona.

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

FINDINGS OF FACT

4. The subject property in this case is located at 320 West Llano Drive in Litchfield Park, Arizona. This report has an effective date of April 28, 2003.

5. Respondent denies preparing the appraisal report and has alleged that his electronic signature was used on the report without his approval or consent.

6. The appraisal report does not disclose that two of the comparable sales are located on a golf course or make appropriate downward adjustments for those sales in violation of Standards Rule 1-1(b), Standards Rule 1-1(c), and Standards Rule 2-1(a).

7. The appraisal report includes as Comparable #3 a sale of a model home. This home is newer than the subject, and, as a model home, it would have numerous upgrades. Inclusion of this sale in the appraisal report without appropriate disclosure and adjustment is a violation of Standards Rule 1-1(c), and Standards Rule 2-1(a).

8. The appraisal report contains an incorrect replacement cost figure for an average quality constructed residence in violation of Standards Rule 1-1(c).

9. The subject property is not located on a golf course. The appraiser used sales of golf course lots without comment or adjustments for superior site amenities. It would be preferable to utilize lots not on a golf course for comparison to the subject. One such sale was located at 565 East Estero Lane, Litchfield Park. Failure to utilize available sales not on a golf course is a violation of Standards Rule 1-4(a).

10. The appraisal report states that the subject property is subject to traffic, and adjusts each sale used as comparable downward $2,500 for this factor. This adjustment ranges from .4% to .5% of the unadjusted sale price for the three sales used as comparables. Additional analysis and discussion is necessary to explain this adjustment. This is a violation of Standards Rule 1-4(a) and Standards Rule 2-1(a).

11. The appraisal report utilizes a replacement cost figure of $96.32 per square foot of improvement area for average quality construction. The source quoted was Marshall & Swift Residential Cost Handbook. Multiplying this figure by the improvement size of 3,684 square foot indicates a replacement cost new of $354,843, not $382,211, as is indicated on the first line of the Cost Approach in the appraisal report. This error would result in an over statement of the value from the Cost Approach and a violation os Standards Rule 1-4(b)(ii).

12. It would have been prudent appraisal practice to analyze the October 22, 1999 sale of the subject property and the May 20, 2002 sale of Comparable Sale #2.

13. It would be very difficult, if not impossible, to properly understand the appraisal report without doing additional analysis relative to the subject's lot amenities and age versus the lot

amenities of Comparable Sales #1 and #2, and the age of Comparable Sale #3 in violation of Standards Rule 2-1(b).

14. The report does not include sufficient information and discussion for the reader (client and intended users) to adequately understand the rationale for the opinion and conclusions. The appraiser, by making substantial errors of omission and commission, would leave a reader of the report confused relative to the market value of the subject property in violation of Standards Rule 2-2(b)(ix).

15. The lack of discussion surrounding the use of golf course lots and a model home for comparison to the subject, and failure to support the traffic influence adjustment with additional discussion and analysis, indicates that the appraisal report attempted to reach a predetermined value in violation of the Management and Conduct Section of the Ethics Rule.

16. Respondent failed to maintain a file copy of the appraisal report in violation of the Record Keeping Section of the Ethics Rule.

CONCLUSIONS OF LAW

17. Pursuant to A.R.S. § 32-3635, a certified or licensed appraiser in the State of Arizona shall 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 conduct described.

18. The conduct described in paragraphs 4 through 15 above constitutes violations of the following provisions of the USPAP, 2002 edition: Ethics Rule - Conduct; Ethics Rule - Management; Ethics Rule - Record Keeping; Standards Rule 1-1(b); Standards Rule 1-1(c); Standards Rule 1-4(a); Standards Rule 1-4(b)(ii); Standards Rule 1-5(b)(i); Standards Rule 2-1(a); Standards Rule 2-1(b); and Standards Rule 2-2(b)(ix).

ORDER OF DISCIPLINE

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

20. Beginning on the effective date of this Consent Agreement, Respondent's Residential License No. 10401 shall be placed on probation for a period of at least 12 months. During the term of probation, Respondent shall: (a) successfully complete at least 30 hours of qualifying (with a test) education in appraisal principles; (b) successfully complete at least 30 hours of qualifying (with a test) education in appraisal procedures; (c) successfully complete the 15 hour qualifying (with a test) USPAP course; (d) actively work under the supervision of an Arizona Certified Residential or Certified General Appraiser who shall serve as Respondent's mentor ("Mentor"); and (e) demonstrate resolution of the problems which resulted in this disciplinary action.

21. The courses in appraisal principles and procedures required under paragraph 19 may be counted toward the continuing education requirements for the renewal of Respondent's License. The 15 USPAP course may be used toward Respondent's 28 hour continuing education requirement, but may not be used to satisfy the 14 hour USPAP requirement for the renewal of Respondent's license.

22. 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 the Mentor. Each report shall be signed by the Mentor as a supervisory appraiser.

23. The Mentor must be approved by the Board and is subject to removal by the Board for nonperformance of the terms of this Order. 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.

24. The Respondent shall bear all costs and expenses associated with the mentorship and incurred in attending the courses.

25. 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.

26. 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.

27. 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 Order.

28. Respondent's probation, including mentorship, shall continue until Respondent petitions of the Board for termination as provided in paragraphs 29 and 30. Upon petition by the Respondent for termination of the probation and mentorship, the Board will select and audit 3 of Respondent's appraisal reports.

29. At the end of 6 months from the beginning of the probationary period, the Respondent may petition the Board for early termination of his probation and mentorship, provided he has completed at least 24 appraisal reports under the supervision of a Mentor **and** successfully completed **all** requirements of paragraph 20 as determined by the Board.

30. If not terminated earlier, at the conclusion of the 12 month probationary period, Respondent may petition the Board for termination of his probation. If the Board determines that Respondent has not complied with all the requirements of paragraph 20, the Board, at its sole discretion, may either: (a) continue the probation, including mentorship; or (b) institute proceedings for noncompliance with this Order, which may result in suspension, revocation, or other disciplinary and/or remedial action.

31. Respondent shall comply with the Uniform Standards of Professional Appraisal Practice in performing all appraisals.

32. Respondent acknowledges that he has the right to retain counsel and has done so. Further, Respondent acknowledges that by this settlement, he waives all present and future rights to administrative or court appeal of this matter, including the right to hearing, rehearing, or judicial review.

33. The parties agree that this Consent Agreement and Order of Discipline constitutes final resolution of this disciplinary matter.

34. Time is of the essence as to the terms of this agreement.

35. If Respondent fails to comply with the terms of this Consent Agreement and Order of Discipline, the Board shall properly institute proceedings for non-compliance with this Consent Agreement and Order of Discipline, which may result in suspension, revocation, or other disciplinary and/or remedial actions.

36. Any violation of USPAP resulting from an appraisal performed prior to the effective date of this Order shall not be deemed a violation of this Consent Agreement and Order of Discipline;

however, the Board may, in its discretion, seek separate disciplinary action against the Respondent for such violations.

37. The Consent Agreement and Order of Discipline is effective upon execution on behalf of the Board of Appraisal.

Dated this 5th day of May, 2005.

Joseph E. Kaneakua
Respondent

Deborah G. Pearson, Executive Director
Arizona State Board of Appraisal

Original of the foregoing filed
this 5th day of May, 2005, with:

The Arizona State Board of Appraisal
1400 W. Washington, Suite 360
Phoenix, Arizona 85007

Copy of the foregoing mailed
this 5th day of May, 2005, to:

Joseph E. Kaneakua
5008 W. Glendale Ave.
Glendale, Arizona 85301
Respondent

via Certified Mail # 7003 1010 0002 2401 9642
and regular US mail

Richard L. Klauer, Esq.
301 E. Bethany Home Road, Suite C-250
Phoenix, Arizona 85012-1279
Attorney for Respondent

Copy of the foregoing mailed or delivered
this 5th day of May, 2005, to:

Elizabeth A. Campbell, Esq.
Assistant Attorney General
1275 W. Washington - CIV/LES
Phoenix, Arizona 85007
Attorney for the State of Arizona

443184.1