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ARIZONA BOARD OF APPRAISAL

1 **BEFORE THE ARIZONA STATE BOARD OF APPRAISAL**

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4 In the Matter of:

5 **THOMAS M. KITTELMANN**
6 Certified Residential Appraiser
7 Certificate No. 20662

Case No. 2434

CONSENT AGREEMENT AND ORDER

8 In the interest of a prompt and judicious settlement of the above-captioned matter
9 before the Arizona Board of Appraisal ("Board") and consistent with public interest,
10 statutory requirements and responsibilities of the Board, and pursuant to A.R.S. § 32-3601
11 *et seq.* and A.R.S. § 41-1092.07(F)(5), Thomas M. Kittelmann, ("Respondent"), holder of
12 certificate no. 20662 and the Board enter into this Consent Agreement, Findings of Fact,
13 Conclusions of Law and Order ("Consent Agreement") as the final disposition of this
14 matter.

15 On April 17, 2008, the Board held an Informal Hearing to discuss Case No. 2434;
16 Respondent appeared personally and on his own behalf. At the conclusion of the
17 Informal Hearing, the Board voted to offer the Respondent a Consent Agreement and
18 Order of Discipline in lieu of further administrative proceedings.

19 **JURISDICTION**

20 1. The Arizona State Board of Appraisal ("Board") is the state agency
21 authorized pursuant to A.R.S. § 32-3601 *et seq.*, and the rules promulgated thereunder,
22 found in the Arizona Administrative Code ("A.A.C." or "rules") at R4-46-101 *et seq.*, to
23 regulate and control the licensing and certification of real property appraisers in the State
24 of Arizona.
25
26

1 of the report was modified from the original version (not contained in the Board's file) to
2 reflect the purchase contract information.

3 6. The Respondent received the purchase contract in the form of escrow
4 instructions on or about March 18, 2006.

5 7. The Respondent issued another version of the appraisal report with a
6 signature date of 3/18/2006. This report was substantially the same as the 2/14/2006
7 report version provided to the Board, with a different signature date.
8

9 8. Based upon the report and the information in the workfile, the Respondent
10 must have known that the report was for a mortgage finance transaction and that a lender
11 would likely be relying on the report. The client appears to be a mortgage brokerage firm.
12 It is unlikely the Respondent knew which specific lender would be relying upon the
13 report.
14

15 9. The Respondent reported that "The subject property was in good to average
16 overall condition at the time of inspection. There were no apparent items of inadequacy,
17 major repairs needed, or modernizations required at the time of inspection." The
18 Respondent did not address the fact that the remodeling was not complete on the effective
19 date of the appraisal. The Respondent reported the value "As is" on the effective date of
20 the appraisal, not "subject to" completion of the remodeling. These items misrepresented
21 the condition of the property at the time of the effective date of the report, and resulted in
22 an overestimate of the subject's "as is" value at that time.
23

24 10. The Respondent failed to report the seller's contribution toward the buyer's
25 closing costs that were stated in the escrow instructions.
26

1 11. The Respondent failed to adequately support the information on the
2 structural costs in the Cost Approach, and cited an out of date data source.

3 12. The Respondent searched for comparable sales using sales price as the
4 primary criterion. According to the MLS information in the workfile, the Respondent did
5 not search for any sales less than \$1,000,000. There is no evidence in the workfile that
6 the Respondent looked for sales under \$1,000,000 at any time during the appraisal
7 process. This search is inherently biased and leads to a biased opinion of the subject's
8 value.
9

10 13. The Respondent did not research the overall residential market in the
11 subject's immediate area at the time the 2006 appraisal was developed.
12

13 14. According to the Tucson MLS, the highest sale of a single family residence
14 in the subject's township, range and section (a 1 square mile area) was \$878,000 in the 12
15 months preceding the January 31, 2006 inspection date. Because the Respondent failed to
16 research the overall residential market in the subject's immediate area at the time of the
17 2006 appraisal, the Respondent did not utilize sales that were arguable more comparable
18 to the subject than the sales used in the report.
19

20 15. The Respondent failed to adequately address all the relevant physical
21 characteristics for Comparable 1. Comparable 1 was built in 1936 while the subject was
22 built in 1974. In the subject's market area houses built prior to the WWII tend to have a
23 historical character that appeals to a different subset of the market than houses built in the
24 1950's and newer. In addition, Comparable 1 was designed by Joesler, an architect
25 whose work typically commands a premium in the local market. The architect was
26

1 prominently disclosed in the MLS listing for Comparable 1. The Respondent failed to
2 address the age and architect differences in the report. As a result, Comparable 1 leads to
3 a probable overestimate of the subject's value.

4
5 16. The Respondent failed to support and grossly understated the value
6 difference between Comparable 2's 3.95 acre site and the subject's 0.87 acre site. As a
7 result, Comparable 2 leads to a significant overestimate of the subject's value.

8
9 17. The Respondent failed to address the fact that Comparable 3 was located in
10 Catalina Foothills Estates no. 10, a guard-gated community which typically has
11 significantly higher property values than the subject's non-gated area. As a result,
12 Comparable 3 leads to an overestimate of the subject's value. In addition, the Respondent
13 failed to address the substantial view differences between Comparable 3 and the subject.
14 As a result, Comparable 3 leads to an overestimate of the subject's value.

15
16 18. The Respondent failed to support and grossly underestimated the value
17 difference between Comparable 4's 2.7 acre site and the subject's 0.87 acre site. As a
18 result, Comparable 4 leads to a significant overestimate of the subject's value. In
19 addition, the Respondent failed to address the fact that Sale 4 was designed by Joesler, an
20 architect whose houses typically command a premium in the local market. The architect
21 was prominently disclosed in the MLS listing for Comparable 4.

22
23 19. The Respondent failed to address the fact that Sale 5 was located in a
24 subdivision with an electronic security gate. In addition, the Respondent failed to address
25 the fact that Sale 5 was a new, recently completed custom house. As a result, Comparable
26 5 leads to a probable overestimate of the subject's value.

1 20. The Respondent failed to address the fact that Comparable 6 was located
2 outside the boundaries of the neighborhood as described in the Neighborhood section of
3 the report. In addition, the Respondent failed to address the fact that Comparable 6 was
4 located much higher in the foothills with unobstructed city views that were significantly
5 superior to the subject's views.
6

7 21. The Scope of Work statement that is a standard, integral part of the URAR
8 form states that the appraiser must, at a minimum: "(3) inspect each of the comparable
9 sales from the street". Based on the Respondent's use of MLS photos for five of the six
10 comparable sales, his lack of disclosure regarding the use of MLS photos, his use of a
11 photo of the wrong house for Comparable 2 (which had no MLS photo available), and his
12 failure to address any of the relevant view and locational differences, the Respondent did
13 not inspect the comparable sales from the street.
14

15 22. The Respondent failed to explain how he reconciled the subject's value to
16 \$1,339,000 when the adjusted range of the comparables used was \$1,238,525 to
17 \$1,432,975. This is an unusual level of accuracy given the numerous differences between
18 the subject and the comparables used. It implies 99.9% accuracy, which is equivalent to
19 being within 10 cents of the value on a \$100 item. It is not clear how he arrived at a
20 value opinion resolved to the nearest \$1,000.
21

22 23. The Respondent made numerous additional errors that affected the
23 credibility of the 2006 appraisal. The Respondent misrepresented the degree to which the
24 neighborhood is developed. In the sales history section he failed to report all the details of
25 the subject's prior sale. For example, he cited the sales price but not the sale data or data
26

1 source. In the Reconciliation Section the Respondent stated that the Income Approach
2 supported the value, when no Income Approach had been developed. He amended reports
3 without changing the signature date or noting what the changes were and how they might
4 have affected the value.

5
6 24. The Respondent attempted to explain the apparent increase in the subject's
7 value since the prior sale less than a year earlier by claiming general market appreciation
8 combined with extensive remodeling of the subject since the prior sale. In the addendum
9 the Respondent stated that property values in the Tucson metropolitan area had increased
10 from 10-40% "within the past year and especially the last 6 months." Later in the
11 addendum the Respondent stated that "market data does not support a time adjustment for
12 comps over 6 months." There was no supporting information for either statement in the
13 workfile.

14
15 25. The 2006 appraisal report was biased and misleading.

16
17 26. Virtually all of the errors of omission and commission had a tendency to
18 lead to an overestimate of the subject's value.

19 **CONCLUSIONS OF LAW**

20 1. Pursuant to A.R.S. § 32-3635, a certified or licensed appraiser in the State
21 of Arizona must comply with the standards of practice adopted by the Board. The
22 Standards of Practice adopted by the Board are codified in the USPAP edition applicable
23 at the time of the appraisal.

24
25 2. The conduct described above constitutes violations of the following
26 provisions of the USPAP, 2005 edition: Standards Rule 1-1(a), (b) and (c); Standards

1 Rule 1-4(a); Standards Rule 1-5(a); Standards Rule 2-1(a), (b) and (c); Standards Ethics
2 Rule – Conduct; and Standards Ethics Rule—Recordkeeping.

3
4 **ORDER**

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

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

11 2. Respondent shall successfully complete the following education within
12 six (6) months of the effective date of this Consent Agreement: Seven (7) hours of
13 sales comparison approach and seven (7) hours of cost approach. In addition,
14 Respondent shall complete a minimum of six (6) hours of education in the area of
15 mortgage fraud. The education required under this paragraph may not be counted
16 toward the continuing education requirements for the renewal of Respondent's
17 certificate. The same class may not be repeated to fulfill the education requirements
18 of this Consent Agreement

19 Proof of completion of the required education must be submitted to the Board
20 within 3 weeks of completion of the required courses.

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

24 4. During the period of probation, Respondent shall complete a minimum
25 of twenty-four (24) appraisal reports under the supervision of an Arizona Certified
26 Residential or Certified General Appraiser who shall serve as Respondent's mentor

1 ("Mentor"). The Mentor shall be either an Arizona Certified Residential or General
2 Appraiser.

3 **5. During the probationary period, the Respondent shall not issue a**
4 **verbal or written appraisal, appraisal review, or consulting assignment without**
5 **prior review and approval by a Mentor.** Each report shall be signed by the Mentor
6 as a supervisory appraiser. After one (1) year, the requirement of pre-approval of
7 appraisals by a mentor may be terminated upon approval by the Board if Respondent
8 has complied with the conditions set out in this Order.

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

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

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

25 9. The Mentor shall submit monthly reports to the Board for each calendar
26 month during Respondent's probationary period reflecting the quantity and quality of

1 Respondent's work, including, but not limited to, improvement in Respondent's
2 practice and resolution of those problems that prompted this action. The Mentor's
3 report shall be filed monthly beginning the 15th day of the first month following the
4 start of Respondent's probationary period and continuing each month thereafter until
5 termination of the probationary period by the Board. **Even if the Mentor reviews no**
6 **appraisals during a given month, a report stating that no appraisals were**
7 **reviewed or approved must be submitted. It is the Respondent's responsibility to**
8 **ensure that the Mentor submits his/her reports monthly.** If the monthly reporting date
9 falls on a Saturday, Sunday, or holiday, the report is due on the next business day.
10 The monthly report may be filed by mail or facsimile.

11 10. The Respondent shall file an appraisal log with the Board on a monthly
12 basis listing every Arizona appraisal that he has completed within the prior calendar
13 month by property address, appraisal type, valuation date, the Mentor's review date,
14 the date the appraisal was issued, and the number of hours worked on each
15 assignment. The report log shall be filed monthly beginning the 15th day of the first
16 month following the start of Respondent's probationary period and continuing each
17 month thereafter until the Board terminates the probation. If the log reporting date
18 falls on a Saturday, Sunday, or holiday, the report log is due on the next business day.
19 **Even if Respondent performs no appraisals within a given month, he must still**
20 **file an appraisal log with the Board showing that no appraisals were performed.**
21 The monthly log report may be filed by mail or facsimile.

22 11. The Board reserves the right to audit any of Respondent's reports and
23 conduct peer review, as deemed necessary, during the probationary period. The Board
24 may, in its discretion, seek separate disciplinary action against the Respondent for any
25 violation of the applicable statutes and rules discovered in an audit of the
26

1 Respondent's appraisal reports provided to the Board under the terms of this Consent
2 Agreement.

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

8 13. At the end of twelve (12) months from the effective date of this Consent
9 Agreement, the Respondent must petition the Board for termination of his mentorship
10 and probation. If the Board determines that Respondent has not complied with all the
11 requirements of this Consent Agreement, the Board, at its sole discretion, may either:
12 (a) continue the probation, including mentorship; or (b) institute proceedings for
13 noncompliance with this Consent Agreement, which may result in suspension,
14 revocation, or other disciplinary and/or remedial action.

15 14. Respondent shall not act as a supervising appraiser for other appraisers or
16 trainees, nor shall he act as a mentor, during the term of the probation. Respondent shall
17 also not teach any course related to real estate appraisals during the term of the probation.
18

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

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

26 17. Respondent has read and understands this Consent Agreement as set
forth herein, and has had the opportunity to discuss this Consent Agreement with an

1 attorney or has waived the opportunity to discuss this Consent Agreement with an
2 attorney. Respondent voluntarily enters into this Consent Agreement for the purpose
3 of avoiding the expense and uncertainty of an administrative hearing.

4 18. Respondent understands that he has a right to a public administrative
5 hearing concerning each and every allegation set forth in the above-captioned matter,
6 at which administrative hearing he could present evidence and cross-examine
7 witnesses. By entering into this Consent Agreement, Respondent freely and
8 voluntarily relinquishes all rights to such an administrative hearing, as well as all
9 rights of rehearing, review, reconsideration, appeal, judicial review or any other
10 administrative and/or judicial action, concerning the matters set forth herein.
11 Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

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

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

16 21. Time is of the essence with regard to this agreement.

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

24 23. Respondent understands that this Consent Agreement does not constitute
25 a dismissal or resolution of other matters currently pending before the Board, if any,
26 and does not constitute any waiver, express or implied, of the Board's statutory

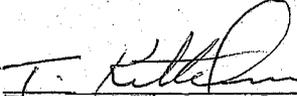
1 authority or jurisdiction regard any other pending or future investigation, action or
2 proceeding. Respondent also understands that acceptance of this Consent Agreement
3 does not preclude any other agency, subdivision or officer of this state from instituting
4 other civil or criminal proceedings with respect to the conduct that is the subject of
5 this Consent Agreement.

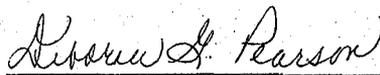
6 24. Respondent understands that the foregoing Consent Agreement shall not
7 become effective unless and until adopted by the Board of Appraisal and executed on
8 behalf of the Board. Any modification to this original document is ineffective and
9 void unless mutually approved by the parties in writing.

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

12 26. Pursuant to the Board's Substantive Policy Statement #1, the Board
13 considers the violations in the above-referenced matter to constitute to a **Level IV**
14 **Violation.**

15 DATED this 16th day of July, 2008.

16
17 
18 Thomas M. Kittelmann, Respondent


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

20 **ORIGINAL** of the foregoing filed
21 this 15th day of July, 2008 with:
22 Arizona Board of Appraisal
23 1400 West Washington Street, Suite 360
Phoenix, Arizona 85007

24 **COPY** of the foregoing mailed regular mail and certified mail 7007 2560 0001 -
this 16th day of July, 2008 to: 3358-8881
25 Thomas M. Kittelmann
26 P.O. Box 29
Cave Creek, Arizona 85327

1 COPY of the foregoing sent or delivered
2 this 11th day of July, 2008 to:

3 Jeanne M. Galvin
4 Assistant Attorney General
5 Arizona Attorney General's Office
6 1275 West Washington, CIV/LES
7 Phoenix, Arizona 85007

8 By Arthur G. Larson

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