

BEFORE THE ARIZONA BOARD OF APPRAISAL

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In the Matter of :

DANA A. MILLER,
Certified Residential Appraiser
Certificate No. 20414,

Respondent.

Case Nos. 08F-2452-BOA
And 08F-2457-BOA
(Consolidated)

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER OF PROBATION**

On November 20, 2008, the Arizona Board of Appraisal ("Board") met to consider the Administrative Law Judge Decision of Diane Mihalsky in the above-captioned matter. Dana A. Miller appeared earlier in the day but was not available at the scheduled time for discussion. 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 presented at the hearing.
2. The Board hereby accepts the Conclusions of Law of the Administrative Law Judge with modifications requested by the State to correct typographical errors and to be consistent with the evidence presented at the hearing.
3. The Board hereby accepts the Order of the Administrative Law Judge with modifications to include the Board's standard language regarding probation decisions.

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

2 **FINDINGS OF FACT**

3 **BACKGROUND AND PROCEDURE**

4 1. The Arizona State Board of Appraisal ("the Board") issued Certified Residential
5 Appraiser Certificate No. 20414 to Respondent Dana A. Miller in 1991. Certificate No. 20414 is
6 due to expire on August 31, 2010.¹

7 2. Ms. Miller prepared an appraisal review of an appraisal report originally prepared
8 by Jaime Topete of a residential property located at 3801 E. Lincoln Drive in Paradise Valley
9 ("the Lincoln property"), which review had an effective date of December 19, 2006.

10 3. Ms. Miller prepared an appraisal report of a property located at 44028 N. Spur
11 Cross Rd. in Cave Creek ("the Spur Cross property"), which report had an effective date of May
12 7, 2007.

13 4. On July 26, 2007, the Board received a complaint from Roger E. Beagle, Sr.
14 regarding Ms. Miller's appraisal review of the Lincoln property.

15 5. Mr. Beagle is a certified appraiser who on occasion works for the Board as a
16 contract investigator. He is one of Ms. Miller's competitors. Mr. Beagle alleged that Ms. Miller
17 had violated the Uniform Standards of Professional Appraisal Practice ("USPAP") by "ignor[ing]
18 facts in the report that were misleading to the client," including the Lincoln property's MLS listing
19 history, which had resulted in an overstated estimated value of the property.

20 6. On July 30, 2007, the Board received an anonymous complaint that Ms. Miller's
21 appraisal report for the Spur Cross property had ignored MLS listing history for the subject,
22 included inappropriate comparables, and incorrectly used the cost approach.

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24 ¹A state-certified residential real estate appraiser can appraise and review residential real properties having one to
25 four units without regard to value or complexity. A.R.S. § 32-3612(A)(2). In contract, a licensed real estate appraiser
26 can appraise and review noncomplex one to four residential units having a value of less than \$1 million and complex
one to four residential units have a value of less than \$250,000. A.R.S. § 3612(A)(3). A state-certified general
appraiser can appraise and review all types of real property. A.R.S. § 32-3612(A)(1).

1 12. Ms. Beatty testified that a review appraiser has been retained to verify
2 information in an appraisal report and to provide a second opinion on value. USPAP SR 3
3 governs appraisal reviews.

4 13. Ms. Miller testified that an appraisal review requires the reviewer to accept
5 certain assumptions and take the original appraiser's word for certain things, such as square
6 footage, measurements, interior conditions, and room count. The reviewer does not actually
7 inspect the property. The review appraiser gets the same fee regardless of whether she agrees
8 or disagrees with the original appraisal report.

9 14. Ms. Miller testified that most of her clients are appraisal management companies.
10 The assignment to review Mr. Topete's appraisal of the Lincoln property came from I-Mortgage
11 Services.

12 15. Ms. Miller testified that I-Mortgage had a full-time review staff in March 2007,
13 which completed the review of the Lincoln property appraisal. She had not meant to be
14 misleading. Although the property was worth more than \$1 million, it was not complex.

15 16. Ms. Beatty testified that lenders usually reviewed appraisal reports for
16 compliance with underwriting guidelines, not with USPAP.

17 Exposure Time on the Market for the Subject and Comparables

18 17. Mr. Topete's appraisal report stated that the marketing times for the
19 neighborhood were under 90 days and that the property values appeared to be increasing.² Ms.
20 Miller's review appraisal agreed with this assessment.³ Neither the appraisal report nor Ms.
21 Miller's review appraisal estimated exposure time.

22 18. Ms. Beatty testified that appraisers typically base marketing time on the time
23 comparable sales and subject property had been on the market. The subject property had been
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²Ex. 3 at 116.

26 ³Ex. 3 at 140, #3.

1 on the market for more than nine months.⁴ The comparable sales cited in the appraisal report
2 had been on the market between 142 and 293 days.

3 19. Ms. Beatty testified that extended marketing time typically indicates an over-
4 supply of properties on the market. A motivated seller usually will reduce his asking price if his
5 property remains unsold for an extended period.

6 20. In the appraisal and review appraisal of the Lincoln property, Mr. Topete and Ms.
7 Miller had stated that the subject property was under contract at the time of the appraisal for
8 \$1,750,000, after being listed for nine months at \$1,375,000 and having been reduced to
9 \$1,200,000, and that the earlier listing had been canceled. Mr. Topete had merely stated in the
10 appraisal report that "Purchase contract appears typical for market." Neither he nor Ms. Miller
11 had discussed the discrepancy between the purchase price and the canceled list price.

12 21. Ms. Beatty testified that it was unreasonable to think that a property will sell for
13 \$600,000 more than the seller had been asking. Although she had seen sales for more than the
14 asking price in the hot market of 2004-2005, generally the sales had occurred the first day that
15 the property had been placed on the market. In this case, the sale price that was \$600,000
16 more than the price at which the property had been listed for 9 months, without a sale, was a
17 "red flag" for possible mortgage fraud.

18 22. Ms. Beatty testified USPAP required appraisers to include exposure time on their
19 reports and reviews. Exposure time is a retrospective estimate of the length of time the property
20 being appraised would have been on the market prior to the effective date of the appraisal.⁵ In
21 contrast, "marketing time" is a prospective estimate of how long the property will take to sell.
22 USPAP does not require appraisers to estimate marketing time.

23 23. Ms. Miller testified that her estimation of marketing time in the neighborhood of
24 less than 3 months was accurate. She prepared the appraisal report at the time when "the

25 ⁴Ex. 3 at 180.

26 ⁵Transcript page 73, line 16. The Board makes this modification to be consistent with the testimony at the hearing.

1 housing market was really hopping." Although bigger, more expensive homes may require
2 slightly more time to market, it had been reasonable to say that marketing time was less than 3
3 months on her review appraisal report.

4 24. Mr. Miller could not point to anything in her work file that supported her
5 characterization of the market as "really hopping" at the time the Lincoln property had been
6 appraised. She testified that she had thrown out some documents and had replacements. She
7 also admitted, however, that she was required to retain her original work file.

8 25. Ms. Beatty opined that, by failing to explain the difference between the contract
9 and listing prices, Ms. Miller had violated USPAP SR 3-1(f).⁶

10 Quality of Construction

11 26. The appraisal report described the improvements on the subject property as
12 "good quality construction, good condition and highly upgraded."⁷ In the cost approach, the
13 report cited the Marshal & Swift Residential Estimator 7 and rated the improvements as
14 "xclnt."⁸ Ms. Beatty testified that a review appraiser was required to verify this information.

15 27. Ms. Beatty testified that the subject has a flat, built-up roof; if it had undergone
16 significant interior renovations, she would have expected the façade to have been updated.
17 Ms. Beatty testified that, based on her inspection of the exterior of the property and information
18 from the prior and current listing agents, the subject was mostly original and in need of
19 significant updating. The current listing agent reported an estimated cost of several hundred
20 thousand dollars to update the property to current Paradise Valley standards.

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24 ⁶SR 3-1(f) requires a reviewer to "develop an opinion as to the appropriateness of the appraisal methods and
25 techniques used, given the reviewer's scope of work, and develop the reasons for any disagreements." All
26 references to USPAP are taken from Ms. Beatty's investigative reports, Ex. 9 and 10.

⁷Ex. 3 at 116.

⁸Ex. 3 at 118.

1 28. Ms. Miller testified that, from the street, the Lincoln property was a stucco house
2 with a built-up roof and a 3-car garage. Although the exterior was not updated, it was
3 maintained.

4 29. Ms. Beatty testified that, if the subject had not been upgraded, the appraiser's
5 use of comparables, some of which had been upgraded, would overstate the subject's value.
6 She opined that, in failing to perform or document a data search for accuracy of the data in the
7 appraisal report, Ms. Miller violated USPAP SR 3-1(c)⁹ and the Conduct provision of the Ethics
8 Rule.¹⁰

9 Location on Lincoln Drive

10 30. Ms. Miller's review noted that the appraisal report had made no adjustment for
11 the subject being located on a busy street. She also noted that no adjustment had been made
12 for having a view of city lights.¹¹

13 31. Ms. Beatty testified that Ms. Miller's notation was inadequate. Typically, a review
14 appraiser should follow up on the effect of the noted condition, especially if it could lessen the
15 subject's value. For example, the reviewer should have noted that she had spoken to listing
16 agents or verified the effect of traffic. Similarly, if the view warranted an upward adjustment,
17 she should have noted further inquiry. Ms. Beatty testified that Ms. Miller's failure to consider
18 the effect of traffic on the subject property's value violated USPAP SR 3-1(f).

19 32. Ms. Miller testified that the Lincoln property's side was against Lincoln Drive. Its
20 driveway was off 37th Place. There is a fairly low speed limit along this section of Lincoln
21 Drive, 35 mph, which is strictly enforced. Although she should have mentioned this in her
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23 ⁹SR 3-1(c) requires a reviewer to "determine the scope of work necessary to produce credible assignment results in
accordance with the SCOPE OF WORK RULE."

24 ¹⁰The Conduct provision of the Ethics Rule provides:

25 An appraiser must not communicate assignment results in a misleading or fraudulent manner. An appraiser
26 must not use or communicate a misleading or fraudulent report or knowingly permit an employee or other
person to communicate a misleading report.

¹¹Ex. 3 at 140.

1 review appraisal, it did not affect value. Lenders request that factors that do not require more
2 than 5% adjustment in value not be mentioned. In higher end homes, customers do not mind
3 traffic so much because of the "show off factor."

4 33. Ms. Beatty opined that, in failing to consider the subject's location on an arterial
5 street in the Sales Comparison Approach, Ms. Miller violated USPAP SR 3-1(f).

6 Inconsistencies Between and Deficiencies in Cost and Comparable Sales Approaches

7 34. The appraisal report estimated that the site value of the subject was \$1,250,000.
8 Based on the size of the site, the value in the cost approach was \$29/square foot.¹² In the
9 comparable sales approach, one of the comparable sales was situated on a significantly larger
10 site, but the appraisal report had adjusted the price only \$1/square foot.¹³

11 35. Ms. Beatty testified that different approaches should be at least somewhat
12 consistent. If one of the comparable sales were significantly larger, an adjustment of
13 \$1/square foot was unsupported. One would expect the adjustment based on the site value of
14 the comparable sale to be at least 50-70% of the subject's in the cost approach. Ms. Miller
15 had not addressed the disparity in her review. Her failure was a violation of SR 3-1.

16 36. With respect to Mr. Topete's analysis on the cost approach, Ms. Miller testified
17 that the homes in the neighborhood were on large acre lots. Many of the homeowners did not
18 use their whole lot; for example, the subject had a block wall on its acreage. A discrepancy of
19 4-5,000 square feet was not all that important; buyers did not "go into a frenzy" if their lot was
20 3,000 or 4,000 square feet smaller than their neighbor's.

21 37. In the cost approach Mr. Topete's appraisal report estimates the price per square
22 foot of improvements to be \$374-\$431. However, in the comparable sales approach, the
23 prices of larger comparable sales are adjusted only \$40/square foot.

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26 ¹²Ex. 3 at 118.

¹³Ex. 3 at 117

1 38. Ms. Miller testified that the comparable sales used in the appraisal of the Lincoln
2 property were similar in construction style and appeal. A \$40/square foot adjustment was not
3 out of line, although she conceded it might be a little low. Mr. Topete had adjusted the
4 comparable sales based on whether they had a tile or built-up roof.

5 39. Ms. Beatty testified that, in addition, the external obsolescence of the subject
6 being on a busy street was not addressed in the cost approach.

7 40. The cost approach in the appraisal of the Lincoln property indicated an effective
8 age of 25 years and a remaining economic life of 45 years, which indicates a total life
9 expectancy of 70 years. Mr. Topete and Ms. Miller estimated \$167,947 for depreciation, which
10 represents 25% depreciation. Ms. Beatty testified that, based on the 25 year effective age and
11 the 70 year life expectancy, physical depreciation estimated on an age/life method should be
12 35.7%. Ms. Topete's and Ms. Miller's result was an overstatement of the depreciated cost of
13 improvements.

14 41. Ms. Miller testified that, in the cost approach, it was not "set in stone" that an
15 appraiser was required to calculate depreciation by multiplying the cost of construction by the
16 percentage of effective age compared to economic life of the improvements. The property's
17 location near Lincoln Drive did not affect calculation of value under the cost approach.

18 42. Ms. Miller admitted that the cost manual included a depreciation table, which set
19 forth the depreciation to be calculated based on a mathematical formula. Plugging the effective
20 age and economic life of the property into the table resulted in a rate of depreciation.

21 43. Ms. Beatty opined that Ms. Miller had failed to state reasons or conclusions for
22 items that were in disagreement with the appraisal report and had overlooked several USPAP
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1 violations in the appraisal, which resulted in her concurrence with a misleading report. These
2 actions were in violation of USPAP SR3-2(d)¹⁴ and the Conduct provision of the Ethics Rule.

3 Other Circumstances

4 44. When the Board informed Ms. Miller of the complaint, it required her to furnish a
5 copy of her work file on the Lincoln property. Although Mr. Topete's original appraisal was
6 prepared in December 2006 and Ms. Miller's review was prepared in March 2007, documents
7 on the subject and comparable sales in the file that Ms. Miller had provided to the Board
8 indicated that they had been printed out from the MLS service on August 22 or 23, 2007, which
9 was after the complaint had been received.

10 45. Ms. Miller testified that she had fully researched everything and printed out all
11 comparable sales for the Lincoln property. But her daughter's doctor had called her while she
12 had been out in the field and she had made notes regarding her daughter's personal medical
13 information on one of the printouts. Ms. Miller's secretary had printed out all of the comparable
14 sales for the Board, not just the ones with her personal notes on them.

15 46. Ms. Miller testified that, in the future, she would not make personal notes on
16 printouts that she took to the field.

17 47. Ms. Beatty opined that the Comparable Sales data sheets from Ms. Miller's file,
18 which were dated after the date of her review, violated USPAP SR 3-1(c).

19 **Case No. 2457 (the Spur Cross property)**

20 48. The Spur Cross property is a large custom-built Tudor style residence on nearly
21 eight acres of land. The main house has three above-grade stories and a basement. The
22 property also has a guest house. The residence is located at the end of Spur Cross Road,
23 which is dirt for the last mile or so.

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26 ¹⁴SR 3-2(d) requires a reviewer to "state the opinions, reasons, and conclusions required in Standards Rule 3-1(d-g),
given the reviewer's scope of work."

1 54. Ms. Miller testified that Transunion had requested that the Spur Cross property
2 be appraised as if its site had 5 acres. She disclosed this in her appraisal report. She did not
3 mean to be misleading. The lender did not know which 5 acres it wanted included. Lenders
4 generally consider anything larger than a 5-acre site to be excess land.

5 55. Ms. Beatty testified that USPAP does not require that a legal description of the
6 property be included in the report. But Ms. Miller's appraisal report did not identify which five
7 acres of the nearly eight acre site were included in the appraisal. Ms. Miller's report did contain
8 a partial legal description, which did not describe any portion of the site.

9 56. Ms. Miller testified that her secretary prepares everything before she goes out.
10 She operates an office out of her vehicle. In this case, she did not complete the legal
11 description through an oversight.

12 57. Ms. Beatty opined that Ms. Miller had violated USPAP SR 1-1(a) and (b)¹⁸ and
13 SR 2-2(x)¹⁹ by failing to report that the five acre site was a hypothetical condition.²⁰ According
14 to her investigative report, the omission "indicate[d] a lack of knowledge of recognized methods
15 and techniques."²¹

16 58. Ms. Miller testified that, since Ms. Beatty made such a big deal about it, she
17 would disclose a hypothetical condition in future reports.
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21 ¹⁸SR 1-1 requires:

In developing a real property appraisal, an appraiser must:

- 22 (a) be aware of, and understand, and correctly employ those recognized methods and techniques that
are necessary to produce a credible appraisal;
23 (b) not commit a substantial error of omission or commission that significantly affects and appraisal. . . .

24 ¹⁹SR 2-2(x) requires:

Each written real property appraisal report must, at a minimum . . . clearly and conspicuously

- state all extraordinary assumptions and hypothetical conditions; and
- state that their use might have affected the assignment results.

25 ²⁰Ex. 9 at 350-51.

26 ²¹Ex. 9 at 350.

Size of House

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2 59. Ms. Miller's report also stated that the subject had "3,759 square feet of gross
3 living area above grade" and noted a 520 square foot partial basement.²²

4 60. Ms. Beatty's investigative report pointed out that the "URAR form requires a
5 separation of the main floor livable and below grade furnished rooms."²³ She testified at the
6 hearing that the separation is a federal requirement for financing under Fannie Mae.

7 61. Ms. Beatty testified that the county assessor's records showed that the subject
8 had 3,260 square feet with an additional guest quarters. A prior MLS listing reported that the
9 subject included a 3,250 square foot main house with a 725 square foot guest quarters.

10 62. Ms. Miller testified that the finished basement was similar in quality and condition
11 to the rest of the house. The county assessor may include basements in total square footage.
12 The forms are used in all parts of the country; a basement in Wisconsin is very different from a
13 basement in Arizona.

14 63. Ms. Beatty testified that Ms. Miller's file included floor plans, which apparently
15 had been provided by the property owner. Although the floor plans included the rooms'
16 dimensions, they did not include a total for each level.

17 64. In the sales comparison approach, Ms. Miller had adjusted for livable area based
18 on the 3,759 square foot area and made a separate line item adjustment to comparable no. 4
19 for lack of a guesthouse at \$50,000. Ms. Beatty testified that this calculation effectively doubled
20 the subject's livable area.

21 65. Ms. Miller produced copies of the plans that showed each floor's total square
22 footage, which had been inadvertently omitted in the copying of the file. With the basement,
23 according to the plans, the subject's total square footage was 3,759. Ms. Miller had not
24 included the guesthouse in the subject's total square footage.

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²²Ex. 5 at 373.

26 ²³Ex. 9 at 349.

1 72. Ms. Miller's description of the site in the report was that "subject's lot is atypical
2 and nonconforming to the neighborhood. Site improvements are typical for the area." Ms.
3 Beatty testified that, if most improvements in the neighborhood occupied 5 to 8 acre lots, the
4 flood hazard status of the site may not have affected its value. But Ms. Miller did not discuss
5 what was atypical about the site or typical about the improvements. Ms. Miller violated USPAP
6 SR 1-1(a) by failing to employ the correct technique to make a credible appraisal.

7 Inconsistencies Between and Deficiencies in Cost and Comparable Sales Approaches

8 73. Ms. Beatty testified that, under the cost approach, Ms. Miller had referred to the
9 2005 edition of Marshall and Swift. This reference could have a typo; the correct reference
10 would have been the 2006 edition. The quality of construction was "good." Ms. Miller
11 calculated value under the cost approach by multiplying the 3,759 square feet in the house by
12 \$300.²⁹

13 74. Ms. Beatty testified that the value for "good" quality construction in the 2006
14 edition of the Marshall and Swift estimator was \$100/square foot. The \$300/square foot price
15 was in a totally different area. Ms. Miller's calculation inflated the value of the property, in
16 violation of USPAP SR 1-4(b)(ii) and SR 1-4(b)(iii).³⁰

17 75. Ms. Miller testified that her citation of an older edition of Marshall & Swift was a
18 typographical error. In addition, the quality of improvements should have been "excellent" or
19 "excellent+." The description "good" was a typographical error.

20 76. Ms. Miller admitted that her appraisal report described the condition of the
21 improvement's foundation walls, exterior walls, roof surface, floors, walls, and trim as "Good."³¹

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23 ²⁹Ex. 4 at 423.

24 ³⁰SR 1-4(b) requires that, "[w]hen a Cost Approach is necessary for credible assignment results, an appraiser must"

(ii) analyze such comparable cost data as are available to estimate the cost new of the improvements

25 (iii) analyze such comparable data as are available to estimate the difference between the cost new and
the present worth of the improvements (accrued depreciation).

26 ³¹Ex. 5 at 373.

1 77. Ms. Beatty testified that, if the property cost \$300/square foot to build, the
2 adjustments from larger comparable sales should be more than the \$45/square foot that Ms.
3 Miller used in her comparable sales approach. The inconsistency was a violation of USPAP SR
4 1-4(a) and 1-1(a).

5 78. Ms. Beatty testified that depreciation under a cost approach should be strictly a
6 mathematical calculation and, in this appraisal, should have been 10% of the cost to build. This
7 was based on Ms. Miller's statements in the appraisal report that the effective age of the
8 improvements was 5 years³² and the remaining economic life was 45 years.³³ Instead, Ms.
9 Miller had simply deducted \$5,000 for depreciation, which understated the amount and resulted
10 in an overstated value. The calculation was a violation of USPAP SR 1-4(b).

11 79. Ms. Miller testified that the depreciation for the Spur Cross property could not be
12 based on a mathematical formula because it was so unique. Instead, it should be based on the
13 appraiser's experience and how she feels about the property. That was even truer for a
14 "castle."

15 80. Finally, Ms. Miller's appraisal had estimated the exposure time for the subject's
16 neighborhood to be 3-6 months.³⁴ Ms. Beatty testified that 3 of the 5 comps had been on the
17 market between 8 and 18 months. Ms. Miller's estimate understated the exposure time.
18 Nothing in Ms. Miller's work file had supported a 3-6 months exposure time. Ms. Beatty testified
19 that the subject was a unique property; if anything, it would have required more time to sell.

20 81. Ms. Miller testified that the marketing time estimate was based on Comparable
21 Sales #2 and #3. The property was so unique that, if a buyer were found who wanted it, he
22 would buy it right away. A marketing time of 3-6 months was reasonable and not misleading.

25 ³²Ex. 4 at 420.

26 ³³Ex. 4 at 423.

³⁴Ex. 4 at 420.

1 87. Ms. Beatty admitted that unpaved driveways in rural areas are not uncommon.
2 But Ms. Miller's failure to discuss the impact of the unpaved access roads in the comparable
3 sales approach was a violation of SR 1-1(b), 1-1(c), and 1-4(a).

4 **Factors in Mitigation and Aggravation of the Penalty**

5 88. Ms. Miller has been married to her husband for 22 years. She and her husband
6 have three teenaged daughters. Although her husband works full-time, she earns two-thirds of
7 the family income.

8 89. Most of Ms. Miller's appraisal work is for appraisal management companies. Her
9 clients require that she produce a complete appraisal report within four or five days of the
10 assignment. If a mentor were required to sign Ms. Miller's reports, she fears that she could not
11 meet her clients' requirements for timeliness and would go out of business.

12 90. Ms. Miller testified that the appraisal management companies act as a buffer
13 between the appraiser and the owner or lender. She can be completely independent and is
14 subject to no undue pressure. She did not intend for either of the reports to be misleading and
15 had no interest in the final estimated values.

16 91. Ms. Miller is the sole principal of D & H Appraisals, which she operated with her
17 father before his death. She has a secretary. When she receives an assignment, the secretary
18 does the initial preparation. Ms. Miller pulls comparable sales from the MLS and the county
19 assessor before she inspects a property. Sometimes the appraisal review companies return a
20 report if they find an error or want additional explanation.

21 92. On October 22, 2001, in Case No. 1123 the Board sent Ms. Miller a letter of due
22 diligence, informing her that it had determined that she had violated USPAP SR2-2(b)(i) and (ii)
23 by failing to identify the intended use and user in an appraisal report.³⁸ In lieu of further
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26 ³⁸Ex. 7.

1 litigation, the Board accepted Ms. Miller's agreement "to exercise greater due diligence in
2 appraising similar properties in the future," which did not require any admission of wrongdoing.

3 93. On October 2, 2002, in Case No. 1337 the Board sent Ms. Miller a letter of due
4 diligence, informing her that it had determined that she had violated USPAP SR 2-2 by failing to
5 properly identify the reporting option in an appraisal report.³⁹ In lieu of further litigation, the
6 Board accepted Ms. Miller's agreement "to exercise greater due diligence in appraising similar
7 properties in the future," which did not require any admission of wrongdoing.

8 94. The two letters of due diligence are Level II discipline, which under the Board's
9 policy involve "[v]iolations . . . that may affect the credibility of the assignment" and "do not
10 involve ethics or competency."⁴⁰

11 CONCLUSIONS OF LAW

12 1. These matters lie within the Board's jurisdiction.⁴¹

13 2. The Board bears the burden of proof and must establish that Ms. Miller violated
14 applicable standards, as adopted by statute and regulation, by a preponderance of the
15 evidence.⁴²

16 3. "A preponderance of the evidence is such proof as convinces the trier of fact that
17 the contention is more probably true than not."⁴³ A preponderance of the evidence is [t]he
18 greater weight of evidence, not necessarily established by the greater number of witnesses
19 testifying to a fact but by evidence that has the most convincing force; superior evidentiary
20 weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still
21 sufficient to incline a fair and impartial mind to one side of the issue rather than the other.⁴⁴

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23 ³⁹Ex. 7.

⁴⁰Ex. 11. The Board makes this modification to be consistent with the evidence presented at the hearing.

24 ⁴¹See A.R.S. § 32-3605.

25 ⁴²See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119; see also *Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d
837 (1952).

⁴³Morris K. Udall, *Arizona Law of Evidence* § 5 (1960).

26 ⁴⁴*Black's law Dictionary* at page 1220 (8th ed. 1999).

1 4. The Arizona legislature created the Board to prescribe and enforce standards of
2 professional appraisal practice.⁴⁵ The Arizona legislature charged the Board with investigating
3 complaints against licensed appraisers and, if violations of applicable statute, regulation, or
4 Standards are established, disciplining appraisers' certification.⁴⁶

5 5. A.A.C. R4-46-301(A)(1) requires the Board to investigate complaints, including
6 anonymous complaints, if the complaint includes the following information:

- 7 a. The name of the respondent against whom the allegations are being
8 made;
- 9 b. The action that is the basis of the complaint;
- 10 c. The time frame in which the action occurred;
- 11 d. Each violation alleged to have been committed by the respondent; and
- 12 e. A copy of the report, if the complaint includes allegations concerning an
13 appraisal, consulting assignment, or property tax appeal.

14 Complaints from the public do not need to contain the same detail as the Board's contract
15 consultant's complete investigative report or the specific statutes and USPAP provisions that
16 were violated.

17 6. The complaints from the public in these matters named Ms. Miller, identified the
18 suspect appraisals and the time frame in which they had been prepared, and conveyed
19 specific suspected misconduct. The Administrative Law Judge recommends that the Board
20 deny Ms. Miller's motion to dismiss and determine the merits of the case.

21 7. The Board has established that Ms. Miller's appraisal review of the Lincoln
22 property failed to explain why the sale price was \$600,000 higher than the price at which it had
23 been listed for nine months, failed to verify the condition of the improvements relative to the
24 comparable sales, failed to discuss the impact on value of the subject's location on an arterial
25 street, and failed to adequately explain or support the calculations of value in the comparable
26 sales and the cost approaches.

⁴⁵ A.R.S. § 32-3605(A)(1).

⁴⁶ A.R.S. § 32-3631(A)(2) and (6); see also A.A.C. R4-46-301 and R4-46-302 (concerning formal hearing procedures, investigations, and penalties).

1 8. The Board has therefore established that, in reviewing the appraisal of the
2 Lincoln property, Ms. Miller violated USPAP SR 3-1(c), 3-1(f), 3-2(d) and Standards Ethics
3 Rule—Conduct.

4 9. The Board has also established that, in her appraisal of the Spur Cross property,
5 Ms. Miller failed to state as a hypothetical condition that the size of the site was five rather than
6 nearly 8 acres, incorrectly stated the size of the house by including the basement, failed to
7 consider the effect on value of at least a portion of the subject's site's location within a flood
8 hazard area, failed to adequately explain or support the calculations of value in the
9 comparable sales and the cost approaches, and failed to consider the effect of the unpaved
10 access road in the sales comparison approach.

11 10. The Board has therefore established that, in preparing the appraisal report for the
12 Spur Cross property, Ms. Miller violated USPAP SR 1-1(a), 1-1(b), 1-1(c), 1-4(a), 1-4(b)(ii), 1-
13 4(b)(iii), 2-1(a), and 2-2(x) and Standards Ethics Rule—Conduct.

14 11. Licensed appraisers' appraisals in Arizona must comply with USPAP.⁴⁷

15 12. A.R.S. § 32-3635(A) and (B) requires state certified appraisers to comply with the
16 standards of appraisal practice that have been adopted by the Board and appraisal standards
17 and rules adopted by the Board. A.R.S. § 32-3631(6) authorizes the Board to impose
18 discipline against the certificate holder who has violated any of the standards that the Board
19 has adopted.

20 13. With respect to the penalty, there is no evidence that Ms. Miller intentionally
21 defrauded or misled anyone in preparing the review appraisal and appraisal at issue. Her prior
22 discipline is for relatively minor errors that were not repeated in either of the appraisals at
23 issue.

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25
26 ⁴⁷A.A.C. R4-46-401.

1 **months.** During probation, Respondent shall comply with USPAP, Arizona Revised Statutes
2 and Appraisal Board rules.

3 2. Respondent shall successfully complete the following education prior to the
4 termination of probation: **seven (7) hours in Cost Approach, seven (7) hours in Review**
5 **Appraisals, six (6) hours in Mortgage Fraud, and fifteen (15) hours of Qualifying**
6 **Education (with exam).** The education required above may not be counted toward the
7 continuing education requirements for the renewal of Respondent's certificate. Proof of
8 completion of the required education must be submitted to the Board within 3 weeks of
9 completion of the required courses.

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

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

17 5. **During the probationary period, the Respondent shall not issue a verbal or**
18 **written appraisal, appraisal review, or consulting assignment without prior review and**
19 **approval by a Mentor.** Each report shall be signed by the Mentor as a supervisory appraiser. In
20 the event that Respondent's client will not accept the signature of the Mentor affixed to an
21 assignment as a supervisory appraiser, the Mentor need not co-sign the report, but must
22 complete a written review of each report ensuring that the report complies with USPAP and the
23 Board's statutes and rules. The Mentor's review shall comply with the requirements of Standard
24 3 of the USPAP. The Mentor's Standard 3 review shall be completed before the report is issued
25 to the client. Any changes the Mentor requires to ensure the report complies with the USPAP
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1 shall be completed by the Respondent and approved by the Mentor before the report is issued.
2 The Mentor's written Standard 3 review shall be maintained by the Mentor and made available
3 to the Board upon request. In order to invoke these provisions, the Respondent must submit
4 proof to the Board with her monthly log showing that her client's policies prevent co-signature by
5 the Mentor.

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

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

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

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

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

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

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

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

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

6 13. At the end of **six (6) months** from the effective date of this Order, the
7 Respondent must petition the Board for termination of her mentorship and probation. If the
8 Board determines that Respondent has not complied with **all** the requirements of this Order, the
9 Board, at its sole discretion, may institute proceedings for noncompliance with this Order, which
10 may result in suspension, revocation, or other disciplinary and/or remedial action.

11 14. Respondent shall not act as a supervising appraiser for other appraisers or
12 trainees, nor shall she act as a mentor during the term of the probation. Respondent shall also
13 not teach any course related to real estate appraisals during the term of the probation.

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

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

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

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

3 19. Respondent understands that this Order does not constitute a dismissal or
4 resolution of other matters currently pending before the Board, if any, and does not constitute
5 any waiver, express or implied, of the Board's statutory authority or jurisdiction regard any other
6 pending or future investigation, action or proceeding

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

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

11 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

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

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

20 DATED this 21st day of November, 2008.

21 ARIZONA STATE BOARD OF APPRAISAL

22 By: Deborah G. Pearson
23 Deborah G. Pearson, Executive Director

24 Copy of the foregoing personally served
25 this 21st day of November, 2008, on:

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

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Copy of the foregoing mailed via regular U.S.
& Certified Mail #7007 2560 0001 3358 8737
this 21st day of November, 2008, to:

DANA A. MILLER
7840 W. KRISTAL WAY
GLENDALE, AZ 85308

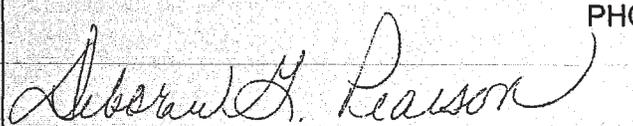
Copy of the foregoing mailed via regular U.S.
Mail this 21st day of November, 2008, to:

CHRISTOPHER J. CHARLES, ESQ.
COMBS LAW GROUP, P.C.
2200 E. CAMELBACK RD. ,SUITE #221
PHOENIX, AZ 85016

Copies of the foregoing sent by interagency
this 21st day of November, 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

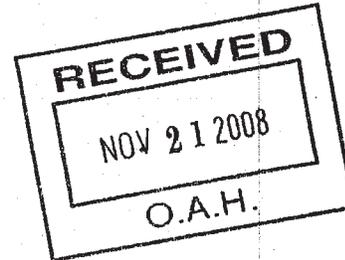

Deborah G. Pearson

ARIZONA BOARD OF APPRAISAL

1400 West Washington, Suite 360
Phoenix, Arizona 85007
(602) 542-1539 FAX (602) 542-1598
e-mail: appraisal@appraisal.state.az.us
Web Site: www.appraisal.state.az.us

November 21, 2008

Cliff J. Vanell, Director
Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, AZ, 85007



Re: 08F-2452-BOA and 08F-2457-BOA, Dana A. Miller

Dear Mr. Vanell:

Attached please find the Findings of Fact, Conclusions of Law, and Order of Revocation entered by the Arizona Board of Appraisal.

The Board adopted the administrative law judge's recommended Findings of Fact and Conclusions of Law with modifications to correct typographical errors and to be consistent with the testimony presented at the hearing, as set out in the State's Memorandum Re Recommended Decision. In addition, the Board made the following modifications to correct typographical errors and to be consistent with the evidence presented at the hearing:

Page 1, footnote 1, line 29: After "one to four" add "residential units"; delete "that" and replace with "than"

Page 1, footnote 1, line 30: Delete "that" and replace with "than"

Page 5, paragraph 5, line 3: Delete "certificated" and replace with "certified"

Page 5, paragraph 7, line 14: Delete "Creek" and replace with "Cross"

Page 9, title, line 10: Delete "3457" and replace with "2457"; delete "Cave Creek" and replace with "Spur Cross"

Page 9, paragraph 48, line 11: Delete "Cave Creek" and replace with "Spur Cross"

Page 9, paragraph 49, line 49: Delete "Cave Creek" and replace with "Spur Cross"

Page 11, paragraph 58, line 3: Delete "such made" and replace with "made such"

Page 11, paragraph 62, line 17: Delete "county" and replace with "country"

Page 17, paragraph 94, line 2: Delete "I" and replace with "II"

Page 17, paragraph 94, line 3: Delete "[e]rrors or violations . . . that do not materially impact the purpose, intended use or final conclusion of the assignment"

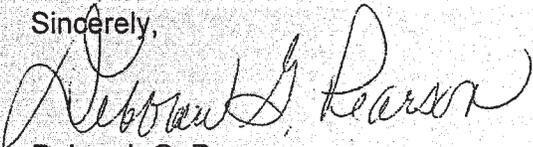
Cliff J. Vanell, Director
November 21, 2008
Page 2

and replace with "[v]iolations . . . that may affect the credibility of the assignment"

Page 18, paragraph 9, line 24: Delete "Cave Creek" and replace with "Spur Cross"

The Board modified the administrative law judge's Order of Revocation by adding the Board's boilerplate revocation language for consistency.

Sincerely,



Deborah G. Pearson
Executive Director

Attachment

cw/attachment: Jeanne Galvin, Assistant Attorney General
Christopher Munns, Assistant Attorney General
Christopher J. Charles, Esq.
Dana A. Miller