

1. The Arizona State Board of Appraisal (hereinafter "the Board") is the state agency authorized pursuant to A.R.S. § 32-3601 *et seq.* to regulate appraisers in the State of Arizona.

2. James R. Nelson (hereinafter "Mr. Nelson") is the holder of Certified General Appraiser Certificate No. 30173 issued by the Board.

3. On or about March 29, 2013, the Board received a Real Estate Appraiser Violation Complaint (hereinafter "the Complaint") filed by Diana Smiley (hereinafter "Ms. Smiley"). Ms. Smiley alleged as follows: "We signed an appraisal assignment agreement on 12/14/12 and paid a fee of \$3,800.00 to James [Nelson]. No appraisal report was ever completed."¹

4. On or about April 3, 2013, the Board mailed a copy of the Complaint via U.S. Postal Service regular mail to Mr. Nelson.²

5. On or about April 30, 2013, the Board's Compliance Officer, Nancy Inserra, electronically mailed an additional copy of the Complaint to Mr. Nelson at his electronic address of record.³

6. On or about May 1, 2013, the Board mailed an additional copy of the Complaint to Mr. Nelson via certified U.S. Postal Service.⁴

7. On or about May 31, 2013, the Board received Mr. Nelson's reply to the Complaint.⁵

8. Mr. Nelson's response to the Complaint provided, in relevant part, as follows:

I completed the appraisal report on February 27, 2013, and put it in the UPS drop box in Overgaard on February 28, using my UPS account.

On 4/18/2013, I discovered an old email from the client indicating they had not received the report. I immediately made two additional copies of the report, and sent them out via UPS, using a friend's account that can be accessed via computer, with emailed delivery receipts. A copy of that delivery receipt is enclosed.

¹ See Exhibit No. 1 (Real Estate violation Complaint).

² See Exhibit No. 3 (4/3/13 Copy of Notice).

³ See Exhibit No. 4 (4/30/13 Email).

⁴ See Exhibit No. 5 (Certified Mail Receipt).

⁵ See Exhibit No. 6 (Reply to Complaint).

1 9. On or about July 22, 2013, the Board issued Interim Findings of Fact, Interim
2 Conclusions of Law, and Order for Summary Suspension of License.⁶

3 10. On or about August 19, 2013, Mr. Nelson electronically filed an Answer to the
4 Board's Interim Findings of Fact, Interim Conclusions of Law, and Order for Summary
5 Suspension of License with the Board.⁷

6 **Testimony of James R. Nelson**

7 11. Mr. Nelson testified that he is a Certified General Appraiser in the State of
8 Arizona. Mr. Nelson stated that he had been performing appraising work since 1970.
9 Mr. Nelson testified that he had been a Certified General Appraiser in the State of
10 Arizona since 1991. Mr. Nelson acknowledged that he was aware of the Complaint
11 filed by Ms. Smiley.

12 12. Mr. Nelson acknowledged that in mid-December, 2012, he entered into a
13 contract with Ms. Smiley to assess the value of a commercial property located at 709
14 South Beeline Highway, Payson, Arizona 85541 (the "property").

15 13. Mr. Nelson acknowledged that Ms. Smiley directly deposited the sum of
16 \$3,800.00 into his bank account on or about December 17, 2012, for the performance
17 of the agreed-upon appraisal.

18 14. Mr. Nelson testified that he submitted an Answer to the Complaint and
19 attachments on or about May 29, 2013. Mr. Nelson acknowledged that Exhibit No. 6
20 contained his Answer with the Waybill attachment. Mr. Nelson acknowledged that he
21 submitted a UPS Waybill as part of his Answer with attachments.⁸ Mr. Nelson stated
22 that he personally completed the UPS Waybill on February 28, 2013, when the
23 appraisal was shipped to Ms. Smiley.

24 15. Mr. Nelson acknowledged that his Answer to the Complaint provided as follows:

25 I completed the appraisal report on February 27, 2013, and put it
26 in the UPS drop box in Overgaard on February 28, using my UPS
account.

27 16. Mr. Nelson testified that "actually" his brother put the appraisal report in the UPS
28 drop box. Mr. Nelson stated that he left town in late February 2013, to care for his 89-

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30 ⁶ See first document in Department's Exhibit Book.

⁷ See August 20, 2013 Notice of Filing of Respondent's Answer.

1 year-old aunt in the State of Wisconsin. Mr. Nelson testified that he was with his aunt
2 during March and April 2013. Mr. Nelson stated that he had poor mail and internet
3 service while he was with his aunt in Wisconsin.

4 17. Mr. Nelson acknowledged that his April 18, 2013 letter to Ms. Smiley provided, in
5 relevant part, as follows: "Apparently, my brother misunderstood me when he sent the
6 first package, and mailed it via USPS. I had to have him send the package, as I
7 needed to depart post haste."⁹

8 18. Mr. Nelson testified that he typed the April 18, 2013 letter after he found an old
9 email from Ms. Smiley indicating that she had not received the appraisal. Mr. Nelson
10 stated that he "guessed" that his brother had mailed the appraisal to Ms. Smiley via
11 USPS. Mr. Nelson testified that he typed the April 18, 2013 letter before he checked
12 with his brother. Mr. Nelson stated that his brother gave him the Waybill for sending the
13 appraisal via UPS and that his brother mailed the appraisal to Ms. Smiley via UPS.¹⁰
14 Mr. Nelson testified that he "was sure his brother put it in the UPS box."

15 **Testimony of Nancy A. Inserra**

16 19. Nancy A. Inserra (hereinafter "Ms. Inserra") testified that she is the Regulatory
17 Compliance Officer for the Board. Ms. Inserra testified that she was a Certified
18 Residential Appraiser in the State of Arizona. Ms. Inserra stated that all licensed
19 appraisers in the State of Arizona are bound by the Uniform Standards of Professional
20 Appraisal Practice ("USPAP"). Ms. Inserra testified that the USPAP is revised every
21 two years.

22 20. Ms. Inserra testified that she was familiar with Mr. Nelson. Ms. Inserra stated
23 that she received the Complaint filed by Ms. Smiley against Mr. Nelson. Ms. Inserra
24 testified that the Certified General Real Estate Appraisal Certificate No. 30173 issued to
25 Mr. Nelson expires on August 31, 2014.

26 21. Ms. Inserra testified that the Certified General Real Estate Appraisal Certificate
27 No. 30173 issued to Mr. Nelson had been summarily suspended by the Board. Ms.
28 Inserra stated that the December 14, 2012 letter of engagement issued by Mr. Nelson

29 ⁸ See Exhibit No. 6, page 130 (Answer with attachments).

30 ⁹ See Exhibit No. 15 (4/15/13 Letter).

¹⁰ See Exhibit No.7 (2/28/13 UPS Waybill).

1 estimated that the appraisal would be completed within four weeks of receipt of funds.¹¹

2 Ms. Inserra testified that Ms. Smiley did not receive the appraisal until after the
3 Complaint was filed.

4 22. Ms. Inserra testified that once a Complaint is processed, the Respondent has
5 thirty days to respond to the Complaint. Ms Inserra stated that, initially, Notification of
6 the Complaint was mailed to Mr. Nelson via regular mail on April 3, 2013. Ms. Inserra
7 testified that she mailed another Notification of the Complaint to Mr. Nelson via certified
8 mail on May 1, 2013.

9 23. Ms. Inserra testified that the Notification of the Complaint that was mailed to Mr.
10 Nelson by regular mail was not returned to the Board. Ms. Inserra stated that the
11 Notification of the Complaint that was sent to Mr. Nelson by certified mail was received
12 by Mr. Nelson on May 16, 2013. Ms. Inserra testified that she also attempted to email
13 Notification of the Complaint to Mr. Nelson on April 30, 2013.

14 24. Ms. Inserra testified that Mr. Nelson responded to the Complaint on May 31,
15 2013. Ms. Inserra stated that in his Answer, Mr. Nelson asserted that the appraisal had
16 been shipped to Complainant on April 18, 2013, as evidenced by the UPS Waybill
17 attached to the Answer. Ms. Inserra testified that she investigated the UPS Waybill
18 provided by Mr. Nelson.

19 25. Ms. Inserra testified that the tracking number on the Waybill could not be tracked
20 and was not in the UPS system as ever having been sent.¹² Ms. Inserra opined that the
21 UPS Waybill submitted by Mr. Nelson was false and misleading.

22 26. Ms. Inserra testified that Mr. Nelson attached a copy of his Certified General
23 Real Estate Appraisal Certificate No. 30173 to the appraisal that was mailed to Ms.
24 Smiley on April 23, 2013. Ms Inserra stated that the Certificate shows that the
25 Certificate expired on August 31, 2012.¹³ Ms. Inserra testified that Mr. Nelson's Answer
26 states that the Appraisal was completed on February 27, 2013, and allegedly was
27 shipped to Ms. Smiley on February 28, 2013.

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29 ¹¹ See Exhibit No. 1, page 7 (12/14/12 Letter of engagement).

30 ¹² See Exhibit No. 8 (UPS Tracking information).

¹³ See Exhibit No. 6, page 109 (Copy of Certified General Real Estate Appraisal Certificate No. 30173).

1 27. Ms. Inserra testified that she received an email from Mr. Nelson on May 14,
2 2013. Ms Inserra stated that the email consisted of assignment logs that Mr. Nelson
3 was required to file with the Board as part of a previous disciplinary action by the Board
4 against Mr. Nelson for five prior Complaints that had been filed against Mr. Nelson. Ms.
5 Inserra testified that Mr. Nelson was required to submit monthly assignment logs of all
6 of his appraisals showing the dates that he contracted for appraisals, the dates that he
7 completed the appraisals, and the dates that he delivered the appraisals.¹⁴

8 28. Ms. Inserra testified that the contract for the appraisal of the property appears on
9 page 3 of the monthly log. Ms. Inserra stated that appraisal logs prepared by Mr.
10 Nelson declared that the property was inspected by Mr. Nelson on January 6, 2013,
11 that the appraisal was completed on February 17, 2013, and that the appraisal was
12 shipped to the client via UPS on February 17, 2013.¹⁵

13 29. Ms. Inserra testified that the Waybill provided by Mr. Nelson declares that the
14 appraisal was shipped to Ms. Smiley on February 28, 2013. Ms. Inserra stated that she
15 had reviewed the April 18, 2013 email from Mr. Nelson to Ms. Smiley. Ms. Inserra
16 testified that Mr. Nelson stated that he had been in Wisconsin for the last few months
17 with his sick aunt. Ms. Inserra testified that the appraisal logs submitted by Mr. Nelson
18 declared that Mr. Nelson was present in the State of Arizona and performing appraisals
19 during the months of February, March, and April 2013.

20 30. Ms. Inserra testified that the Complaint was brought before the Board during the
21 Board's July 19, 2013 meeting. Ms. Inserra stated that Mr. Nelson was provided notice
22 of the meeting. Ms. Inserra testified that Mr. Nelson appeared telephonically at the
23 scheduled meeting with the Board.

24 31. Ms. Inserra testified that the Board voted to summarily suspend Mr. Nelson's
25 Certified General Real Estate Appraisal Certificate No. 30173. Ms. Inserra stated that
26 Mr. Nelson was personally served with the Order. Ms. Inserra testified that the Interim
27 Findings of Fact, Interim Conclusions of Law, and Order for Summary Suspension of
28 License was the first document in the Board's Exhibit Booklet.

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30 ¹⁴ See Exhibit No. 16 (May 14, 2013 Email with assignment logs).

¹⁵ See Exhibit No. 16, page 3 (No. 12080105).

1 32. Ms. Inserra testified that the Board summarily suspended Mr. Nelson's Certified
2 General Real Estate Appraisal Certificate No. 30173 because Mr. Nelson had taken
3 money to complete an appraisal and that Mr. Nelson had failed to complete the
4 appraisal. Ms. Inserra stated that Mr. Nelson had been previously disciplined by the
5 Board for the same type of behavior.¹⁶

6 33. Ms. Inserra testified that she recalled issuing an email to Mr. Nelson in May,
7 2013, requesting missing appraisal logs. Ms. Inserra stated that she recalled Mr.
8 Nelson complaining about not receiving mail and emails issued by the Board. Ms.
9 Inserra acknowledged that Mr. Nelson's attorney initiated settlement negotiations that
10 resulted in the Consent Agreement for the Voluntary Suspension and Order of
11 Probation for Case Nos. 3071, 3085, 3195, 3199 and 3226. Ms. Inserra testified that
12 four of the Complaints involved consumer Complaints filed against Mr. Nelson and that
13 the fifth Complaint was filed by the Board.

14 34. Ms. Inserra's testimony is found to be credible.

15 **Testimony of Diana G. Smiley**

16 35. Ms. Smiley testified that she entered into an appraisal contract with Mr. Nelson
17 on or about December 14, 2012.¹⁷ Ms. Smiley testified that on December 17, 2013,
18 she paid Mr. Nelson the \$3,800.00 by direct deposit to his bank account in advance of
19 the appraisal services.

20 36. Ms. Smiley testified that on or about March 28, 2013, she filed a complaint
21 against Mr. Nelson with the Board. Ms. Smiley stated that Mr. Nelson accepted her
22 \$3,800.00 but failed to complete the appraisal report in a timely manner. Ms. Smiley
23 testified that the appraisal was supposed to be completed within four weeks after Mr.
24 Nelson received payment in full for his services. Ms. Smiley stated that she had
25 informed Mr. Nelson that time was of the essence in obtaining the appraisal.

26 37. Ms. Smiley testified that she finally received Mr. Nelson's appraisal report on or
27 about April 18, 2013. Ms. Smiley stated that she did not receive Mr. Nelson's appraisal
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29 ¹⁶ See Exhibit No. 12 (Consent Agreement for Case No. 18510 and Exhibit No. 14 (Consent Agreement
30 for Case Nos. 3071, 3185, 3195, 3199, and 3226).,

¹⁷ See Exhibit No. 1, page 15 (Engagement Letter for Appraisal).

1 until approximately two weeks after she filed the Complaint with the Board against Mr.
2 Nelson.

3 38. Ms. Smiley testified that she made numerous attempts to contact Mr. Nelson and
4 either obtain a refund of her money or the delivery of the agreed-upon appraisal before
5 she filed the formal Complaint against Mr. Nelson. Ms. Smiley stated that she prepared
6 a timeline of her repeated attempts to contact Mr. Nelson.¹⁸ Ms. Smiley testified that
7 due to Mr. Nelson's failure to complete her appraisal in a timely manner, she was
8 forced to retain a different appraiser to perform an appraisal for the property at an
9 additional cost of \$1,800.00.

10 39. Ms. Smiley testified that she had mailed the keys to the property to Mr. Nelson
11 on January 3, 2013. Ms. Smiley stated that Mr. Nelson failed to return the keys to her
12 despite her repeated requests that he do so. Ms. Smiley testified that she needed the
13 keys to the building. Ms. Smiley stated that she did not have a copy of the car-rental
14 lock box key and was unable to access the lock box without the key.

15 40. Ms. Smiley's testimony is found to be credible.

16 **Testimony of James R. Nelson**

17 41. Mr. Nelson testified that he performed his first inspection of the property on
18 December 22, 2013. Mr. Nelson stated that he could not complete the appraisal on
19 December 22, 2013, because he did not have keys to the office. Mr. Nelson testified
20 that he received the keys to the office in early January 2013.

21 42. Mr. Nelson testified that he was then able to gain access to the interior of the
22 office on the property. Mr. Nelson stated that he completed his inspection of the
23 property on January 16, 2013. Mr. Nelson testified that his delay in preparing the
24 appraisal was due to Ms. Smiley's delay in providing the keys and also because he had
25 been "quite ill."

26 43. Mr. Nelson testified that he discussed the appraisal with Ms. Smiley's sister on
27 February 23, 2013. Mr. Nelson stated that he told Ms. Smiley's sister that the appraisal
28 would be completed in two more days. Mr. Nelson testified that that the appraisal was
29 actually completed on or about February 27, 2013.

30 ¹⁸ See Exhibit No. 1, page 3 (Timeline).

1 44. Mr. Nelson testified that the extra time was necessary because he was trying to
2 be careful because Ms. Smiley's sister sounded upset. Mr. Nelson stated that he
3 printed out copies of the appraisal and placed the copies and the keys in an envelope.
4 Mr. Nelson testified that he then "had his brother pick up the Waybill from the UPS box."

5 45. Mr. Nelson testified that he then put his personal information on the Waybill and
6 "had his brother go down and put [the appraisal] in the UPS box." Mr. Nelson stated
7 that there is only one UPS drop box in Overgaard. Mr. Nelson testified that he was
8 unaware "that apparently [the appraisal] did not get delivered."

9 46. Mr. Nelson testified that he contacted the Show Low UPS office and was
10 informed that UPS could find no tracking record for the shipping of the appraisal. Mr.
11 Nelson stated that UPS had canceled his UPS account without notifying him. Mr.
12 Nelson testified that he believed the closing of the UPS account is why Ms. Smiley did
13 not receive the appraisal. Mr. Nelson stated that "the package must be in limbo."

14 47. Mr. Nelson testified that he had great difficulty in receiving mail through the
15 United States Post Office in the Overgaard area. Mr. Nelson stated that he also had
16 difficulty in sending and receiving emails. Mr. Nelson testified that he was truly sorry
17 about the communication problems. Mr. Nelson stated that Overgaard is a small town
18 and that communication problems are common in the area.

19 48. Mr. Nelson testified that he had never failed to deliver an appraisal report. Mr.
20 Nelson stated that he would "certainly not" fail to deliver a report because of the
21 problems he had with Board when he failed to deliver appraisal reports previously.

22 49. Mr. Nelson testified that his appraisal log had several typos in it and that the log
23 was inaccurate. Mr. Nelson stated that his internet access was via cell phone and that
24 it was unreliable. Mr. Nelson testified that he was unable to download the UPS
25 software to his computer. Mr. Nelson stated that he usually used a friend's UPS system
26 when he shipped items via UPS.

27 50. Mr. Nelson testified that that he should have checked the delivery status of Ms.
28 Smiley's appraisal. Mr. Nelson stated that he did not have Ms. Smiley's keys to the
29 property. Mr. Nelson acknowledged that most of his appraisals for January, February,
30 and March 2013, were delivered to clients via email. Mr. Nelson testified that most of
the email deliveries were completed after numerous attempts to log onto the internet.

CONCLUSIONS OF LAW

1. This matter is within the Board's jurisdiction under A.R.S. § 32-3661 *et seq.*
2. The Board bears the burden of proof and must establish cause to penalize Mr. Nelson's Certified General Real Estate Appraisal Certificate No. 30173. The standard of proof on all issues in these matters is by a preponderance of the evidence. See A.A.C. R2-19-119.
3. A preponderance of the evidence is "such proof as convinces the trier of fact that the contention is more probably true than not." MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).
4. A.R.S. § 32-3631 authorizes the Board to discipline the certificate of an appraiser that has committed any act in violation of the Board's statutes or rules.
5. Pursuant to A.R.S. § 32-3635, "[a] state licensed or state certified appraiser shall comply with the standards of professional appraisal practice adopted by the board." The Board has adopted the 2012-2013 USPAP as the standards for professional appraisal practice. The Ethics Rule in the 2012-2013 USPAP requires that "[a]n appraiser must promote and preserve the public trust inherent in appraisal practice by observing the highest standards of professional ethics."
6. The Board established that Mr. Nelson misrepresented that he had shipped the appraisal to Ms. Smiley when in fact no appraisal had been shipped and that Mr. Nelson submitted a false Waybill to the Board. This Tribunal concludes that Mr. Nelson violated the charged provision of A.R.S. § 32-3631(A)(1).¹⁹
7. The Board established that Mr. Nelson failed to perform his appraisal work in a timely fashion. Mr. Nelson failed to return Ms. Smiley's money to her despite her repeated requests that he do so. Mr. Nelson knowingly misrepresented that the appraisal had been shipped to Ms. Smiley when the appraisal had not been shipped to Ms. Smiley. Ms. Smiley was required to pay additional money to a different

¹⁹ A.R.S. § 32-3631(A)(1) provides as follows:

Procuring or attempting to procure a license or certificate pursuant to this chapter by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for a license or certificate or committing any form of fraud or misrepresentation.

1 appraiser to obtain the required appraisal for the property. This Tribunal concludes
2 that Mr. Nelson violated the charged provision of A.R.S. § 32-3631(A)(5).²⁰

3 8. The Board established that Mr. Nelson failed to perform his appraisal work
4 ethically and competently. Mr. Nelson failed to perform his appraisal work in a
5 timely fashion and knowingly misrepresented that he had shipped the appraisal to
6 Ms. Smiley when Mr. Nelson had not shipped the appraisal to Ms. Smiley. Mr.
7 Nelson knowingly misrepresented that he had shipped the appraisal to Ms Smiley to
8 the Board and presented a false UPS Waybill to the Board. This Tribunal concludes
9 that Mr. Nelson violated the USPAP Ethics Rule.

10 9. The Board established that it has cause to revoke Mr. Nelson's General
11 Appraiser Certificate No. 30173.

12 **ORDER**

13 In view of the foregoing, it is recommended that on the effective date of Order,
14 the Board revoke Mr. Nelson's General Appraiser Certificate No. 30173.

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

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

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28 ²⁰ A.R.S. § 32-3631(A)(5) provides as follows:

29 An act or omission involving dishonesty, fraud or misrepresentation
30 with the intent to substantially benefit the license or certificate holder or
another person or with the intent to substantially injure another person.

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

3
4 Dated this 16th day of October, 2013.

5 Arizona State Board of Appraisal

6 By: Debra J. Rudd

7 Debra J. Rudd, Executive Director

8 Copy of the foregoing transmitted electronically on this
9 17th day of October, 2013 to:

10 Office of Administrative Hearings
11 1400 West Washington St., Suite 101
12 Phoenix, AZ 85007

13 Copy of the foregoing mailed via regular mail and U.S.
14 Certified Mail 7012 3050 0002 0140 5219
15 this 17th day of October, 2013 to:

16 James R. Nelson
17 P.O. Box 470
18 Overgaard, AZ 85933

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

21 Jeanne M. Galvin
22 Assistant Attorney General
23 1275 W. Washington St.
24 Phoenix, AZ 85007

25 Christopher Munns
26 Assistant Attorney General
27 Solicitor General's Office
28 1275 W. Washington St.
29 Phoenix, AZ 85007

30 By: Nancy A. Inserra
Nancy A. Inserra