BEFORE THE ARIZONA STATE BOARD OF APPRAISAL

IN THE MATTER OF:

DANNA M. SMITH
Licensed Residential Appraiser
License No. 10777

Case Nos. 2918, 2919, 2958 and 3043

CONSENT AGREEMENT AND ORDER

In the interest of a prompt and judicious settlement of the above-captioned matter before the Arizona Board of Appraisal ("Board") and consistent with public interest, statutory requirements and responsibilities of the Board, and pursuant to A.R.S.§ 32-3601 *et seq.* and A.R.S. §41-1092.07(F)(5), Danna M. Smith ("Respondent"), holder of license no. 10777 and the Board enter into this Consent Agreement, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as the final disposition of these matters.

On May 18, 2010, the Board held an Informal Hearing in Case Nos. 2918, 2919 and 2958. Respondent appeared personally and on her own behalf. At the conclusion of the Board's consideration of these matters, the Board voted to offer the Respondent a Consent Agreement and Order of Discipline in lieu of further administrative proceedings. At its June, 2010 meeting, Board met to consider case no. 3043. Despite having been properly notice, Respondent did not appear. At the conclusion of its consideration of case no. 3043, the Board voted to consolidate that case with the matters considered in May, 2010.

JURISDICTION

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

2. Respondent holds a license as a Licensed Residential Appraiser in the State of Arizona, License No. 10777 issued on February 21, 2002, pursuant to A.R.S. § 32-3612.

CONSENT AGREEMENT

Respondent understands and agrees that:

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

2. Respondent has the right to consult with an attorney prior to entering into this Consent Agreement.

3. Respondent has a right to a public hearing concerning this case. She further acknowledges that at such formal hearing she could present evidence and cross-examine witnesses. Respondent irrevocably waives her right to such a hearing.

4. Respondent irrevocably waives any right to rehearing or review or to any judicial review or any other appeal of this matter.

5. This Consent Agreement shall be subject to the approval of the Board and will be effective only when signed by the Executive Director and accepted by the Board. In the event that the Board does not approve this Consent Agreement, it is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced in any action by any party, except that the parties agree that should the Board reject this Consent Agreement and this case proceeds to hearing, Respondent will assert no claim that the Board was prejudiced by its review and discussion of this document or any records relating thereto.

6. The Consent Agreement, once approved by the Board and signed by the Respondent, shall constitute a public record which may be disseminated as a formal action of the Board.

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FINDINGS OF FACT

2918

On or about May 18, 2010, the Board's investigation revealed the following:

1. This matter deals with an appraisal conducted and report written by Respondent of a single family detached residence located at 6051 East Rolling Ridge Road, Queen Creek, AZ 85240 with a date of value of July 21, 2009.

2. With respect to Comparable Sale No. 4, Respondent's $20,000 upward adjustment for the short sale was not credible.

3. There was a lack of time adjustments for the comparable sales.

4. The workfile contained no data in support of Respondent's stated extraction method nor where there any notes relating to the methods utilized.

5. There was no sale to list ratio provided in the report relating to Comparable Sales nos. 5 and 6.

6. With respect to the Cost Approach, the $60 per square foot is not credible for a property that is stated as being in "good" condition.

7. Respondent did not explain why Comparable Sales Nos. 1 and 3 sold higher than the listing price.

2919

On or about May 18, 2010, the Board's investigation revealed the following:

1. This matter deals with an appraisal conducted and report written by Respondent of a town home residence located at 2512 South Kodiak Lane, Flagstaff, AZ 86001-2846 with a date of value of June 18, 2009.

2. With respect to Comparable Sale No. 3, there was no time adjustment applied despite the length of time on the market.

3. There were six potential sales from the subject subdivision but yet Respondent went out of the subject subdivision for three of the comparable sales.

4. The Respondent incorrectly noted the zoning for this property. Additionally, there was no discussion relating to the subject's end unit premium.

5. Respondent failed to provide an explanation of the sales adjustments or selection of the comparables.

6. Comparable Sale No. 1 is a superior unit and should have been adjusted for the quality. That sale is also from the Enclave, with historical trending, which the subject is not but there was not adjustment for location or explanation as to why this comparable was selected.

7. The appraisal was completed on an Individual Condominium Appraisal Report form but it was a town house and not a condominium therefore, Respondent failed to properly identify the problem.

8. Respondent's comments on the market appear to be canned and do not reasonably address the local supply/demand.

9. Respondent failed to reconcile the quality/quantity of data.

10. What data Respondent did include in the report was not analyzed adequately.

2958

On or about May 18, 2010, the Board's investigation revealed the following:

1. This matter deals with an appraisal conducted and report written by Respondent of a single family residence located at 605 Jacks Canyon Road, Sedona, AZ 86351 with a date of value of September 11, 2009.

2. The Respondent's Neighborhood description does not adequately describe the area of Big Park and the boundaries were incorrect.

3. The workfile contained no abstraction data, no support for the site value and no land data to support Respondent's site adjustment.

4. Moreover, Respondent failed to discuss the sales data to allow an understanding of the report, specifically the sales analysis.

5. With respect to Comparable Sales no. 2 and 4, they would not attract the same type of buyer as the subject (i.e. Big Park versus The Village of Oak Creek).

6. The view adjustments and lot size adjustment for Comparable Sale No. 7 is not credible.

3043

On or about June 15, 2010, the Board's investigation revealed the following:

1. This matter deals with an appraisal conducted and report written by Respondent of a single family residence located at 1999 W. Soft Wind Lane, Flagstaff, AZ 86001 with a date of value of October 22, 2009.

2. The subject was sold three months prior to the date of the subject appraisal report for $95,000 more than the conclusion of value but Respondent failed to analyze the prior sale.

3. Respondent's description of the marketing trending as 10% -35% is vague as to lack credibility.

4. Different sales would arguably lead to a different value conclusion.

5. There was no support for the cost data or size adjustments.

CONCLUSIONS OF LAW

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

2918

The conduct described above constitutes violations of the following provisions of the USPAP, 2008-2009 edition: Standards Rule 1-1(a); Standards Rule 1-4(a) and (b); and Standard Ethics Rule—Recordkeeping.

2919

The conduct described above constitutes violations of the following provisions of the USPAP, 2008-2009 edition: Standards Rule 1-1(b) and (c); Standards Rule 1-2(e)(i); Standards Rule 1-3(a); Standards Rule 1-4(a); Standards Rule 1-6(a); Standards Rule 2-2(b)(iii); and Scope of Work Rule.

2958

The conduct described above constitutes violations of the following provisions of the USPAP, 2008-2009 edition: Standards Rule 1-1(c); Standards Rule 1-2(e)(i); Standards Rule 1-4(a) and (b)(i); Standards Rule 2-2(b)(viii); and Standard Ethics Rule—Recordkeeping.

3043

The conduct described above constitutes violations of the following provisions of the USPAP, 2008-2009 edition: Standards Rule 1-1(a); Standards Rule 1-4(a) and (b); Standards Rule 1-5(b); and Standard Ethics Rule—Recordkeeping.

ORDER

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

1. **Upon the effective date of this Consent Agreement, Respondent's License as a Licensed Residential Appraiser shall be placed on probation for a minimum period of six (6) months.** During probation, Respondent shall comply with USPAP, Arizona Revised Statutes and Appraisal Board rules.

2. Respondent shall successfully complete the following education within **twelve (12) months** of the effective date of this Consent Agreement: **Fifteen (15) hours of Basic Appraisal (to include Report Writing or Sales Analysis) (with an exam) and seven (7) hours of Cost Approach.** The education required under this paragraph **may not** be counted toward the continuing education requirements for the renewal of

Respondent's certificate. The same class may not be repeated to fulfill the education requirements of this Consent Agreement

3. Proof of completion of the required education must be submitted to the Board within 3 weeks of completion of the required course.

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

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

6. During the probationary period, the Respondent shall not issue a verbal or written appraisal, appraisal review, or consulting assignment without prior review and approval by a Mentor. Each report shall **either** be signed by the Mentor as a supervisory appraiser **or** the Mentor must complete a written review of each report ensuring that the report complies with USPAP and the Board's statutes and rules. The Mentor's review shall comply with the requirements of Standard 3 of the USPAP. The Mentor's Standard 3 review shall be completed before the report is issued to the client. Any changes the Mentor requires to ensure the report complies with the USPAP shall be completed by the Respondent and approved by the Mentor before the report is issued. The Mentor's written Standard 3 review shall be maintained by the Mentor and made available to the Board upon request.

7. The Mentor must be approved by the Board and is subject to removal by the Board for nonperformance of the terms of this Consent Agreement. The Mentor may not have a business relationship with Respondent except for the Mentor/Mentee relationship nor may the Mentor be related to Respondent. Any replacement Mentor is subject to the

Board's approval and the remaining terms of this Consent Agreement. The Board's Executive Director may give temporary approval of the Mentor until the next regular meeting of the Board.

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

9. Respondent shall bear all costs and expenses associated with the mentorship and incurred by attending the courses.

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

11. The Respondent shall file an appraisal log with the Board on a monthly basis listing every Arizona appraisal that he has completed within the prior calendar month by

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

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

13. Respondent's probation, including mentorship, shall continue until: (a) Respondent petitions the Board for termination as provided in paragraph 14, and (b) the Board terminates the probation and mentorship. Upon petition by the Respondent for termination of the probation and mentorship, the Board will select and audit 3 of Respondent's appraisal reports.

14. At the end of **six (~~12~~ 6) months** from the effective date of this Consent Agreement, the Respondent may petition the Board for termination of her mentorship and probation. If the Board determines that Respondent has not complied with **all** the requirements of this Consent Agreement, the Board, at its sole discretion, may either: (a) continue the probation, including mentorship; or (b) institute proceedings for noncompliance with this Consent Agreement, which may result in suspension, revocation, or other disciplinary and/or remedial action.

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

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

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

18. Respondent has read and understands this Consent Agreement as set forth herein, and has had the opportunity to discuss this Consent Agreement with an attorney or has waived the opportunity to discuss this Consent Agreement with an attorney. Respondent voluntarily enters into this Consent Agreement for the purpose of avoiding the expense and uncertainty of an administrative hearing.

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

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

21. The parties agree that this Consent Agreement constitutes final resolution of this disciplinary matter.

22. Time is of the essence with regard to this agreement.

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

24. Respondent understands that this Consent Agreement does not constitute a dismissal or resolution of other matters currently pending before the Board, if any, and does not constitute any waiver, express or implied, of the Board's statutory authority or jurisdiction regard any other pending or future investigation, action or proceeding. Respondent also understands that acceptance of this Consent Agreement does not preclude any other agency, subdivision or officer of this state from instituting other civil or criminal proceedings with respect to the conduct that is the subject of this Consent Agreement.

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

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

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27. Pursuant to the Board's Substantive Policy Statement #1, the Board considers the violations in the above-referenced matters to constitute to a **Level III Violation**.

DATED this 21 day of July, 2010.

Danna M. Smith
Respondent

Daniel Pietropaulo
Executive Director
Arizona Board of Appraisal

ORIGINAL of the foregoing filed this 21 day of July, 2010 with:

Arizona Board of Appraisal
1400 West Washington Street, Suite 360
Phoenix, Arizona 85007

COPY of the foregoing mailed regular and certified mail 7009 1680 0000 7387 6240 this 1 day of September, 2010 to:

Ms. Danna M. Smith
P.O. Box 31811
Mesa, AZ 85275

COPY of the foregoing sent or delivered this 1 day of September, 2010 to:

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

By:
866125
Rebecca M. Lozar