BEFORE THE MISSOURI
STATE REAL ESTATE APPRAISERS COMMISSION

MISSOURI REAL ESTATE APPRAISERS COMMISSION,	)	
Petitioner,	)	
v.	)	**No. 2009-007420 PV**
EUGENE W. DWIGGINS,	)	
Respondent.	)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DISCIPLINARY ORDER

At its scheduled meeting on September 29, 2015, and pursuant to notice described in the Findings of Fact, the Missouri State Real Estate Appraisers Commission (MREAC) took up the probation violation complaint alleging that Eugene W. Dwiggins (Respondent or Dwiggins) has failed to comply with the terms of his probation.

The MREAC appeared at the hearing through Assistant Attorney General Craig Jacobs. Pursuant to notice, Respondent appeared at the hearing in person and was represented by legal counsel David Barrett. Division of Professional Registration Legal Counsel Thomas Mark Townsend served as the MREAC's legal advisor at the hearing, during deliberations, and in the preparation of this order. Objections to exhibits submitted were noted in the record and weighed upon review. Upon review, the objections were overruled.

Findings of Fact and Conclusions of Law

1. The MREAC was established pursuant to § 339.507, RSMo,[1] for the purpose of executing and enforcing the provisions of §§ 339.500 through 339.549, RSMo, the Missouri Certified Licensed Real Estate Appraisers Act.

[1] All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

2. Respondent is a natural person and is certified by the MREAC as a state-certified residential real estate appraiser, certification number RA003214.

3. On or about November 28, 2012, Licensee entered into a Settlement Agreement and Joint Agreed Disciplinary Order ("Disciplinary Order") with the MREAC.

4. Respondent's residential real estate appraiser certification was originally disciplined on or about November 28, 2012, at which time Respondent's certification was suspended for a period of one (1) month, and then immediately thereafter placed on a three (3) year period of probation. The effective date Disciplinary Order was December 13, 2012.

5. On May 22, 2015, an Amended Probation Violation Complaint was filed with the MREAC alleging violations by Respondent of the November 28, 2012 Disciplinary Order.

6. The November 28, 2012 Disciplinary Order states in paragraph 2, pages 8 and 9, of Part II, the Joint Agreed Disciplinary Order on November 28, 2012:

> B. "During the disciplinary period, Dwiggins shall maintain a log of all appraisal assignments as required by 20 CSR 2245-2.050. A true and correct copy of the log shall be submitted to the MREAC every three (3) months after the disciplinary period goes into effect with the written reports required under subparagraph B., above. Dwiggins is responsible for assuring that the logs are submitted to and received by the MREAC. Upon MREAC request, King shall submit copies of his work samples for MREAC review."
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> . . .
>
> H. "Dwiggins shall comply with all provisions of §§ 339.500 through 339.549, RSMo, all rules and regulations promulgated thereunder, and all federal and state laws. "State" includes the state of Missouri, and all other states and territories of the United States. Any cause to discipline Dwiggins' certification as a real estate appraiser under § 339.532.2, RSMo, as amended, that accrues during the disciplinary period shall also constitute a violation of this Settlement Agreement."

7. On or about March 19, 2013, after receiving Respondent's appraisal log, the MREAC requested by letter that he submit appraisal reports and all supporting data (work files) to the MREAC for review for the following properties: 18962 W. State Hwy,

Richwoods, Missouri and 2 Harbor Springs Court, Fenton Missouri.

8. After receiving Respondent's appraisal log on June 13, 2013, the MREAC requested by email that he submit appraisal reports and all supporting data (work files) to the MREAC for review for the following properties: 552 Brookhaven Lane, Sunrise Beach, Missouri and 1975 Plantation Dr., Hillsboro, Missouri.

9. On or about September 17, 2013, the MREAC, via email, made a second request for the appraisals of the properties: 552 Brookhaven Lane, Sunrise Beach, Missouri and 1975 Plantation Dr., Hillsboro, Missouri.

10. After receiving Respondent's appraisal log on September 17, 2013, the MREAC requested by email that he submit appraisal reports and all supporting data (work files) to the MREAC for review for the following properties: 1100 August Lake Drive, Defiance, Missouri and 418 Pheasant Run Road, Jefferson City, Missouri.

11. The MREAC never received any of Respondent's appraisal reports or work files requested by the specified deadlines.

12. Respondent's failure to provide the requested appraisal reports and work files, is a violation of paragraph 2, subparagraph B, page 8 of Part II of the terms of the Disciplinary Order of November 28, 2012.

13. On or about June 11, 2014, eight (8) of Respondent's appraisals were submitted to the MREAC through Respondent's attorney at that time and the MREAC chose two (2) for review.

Sunrise Beach Appraisal

14. On or about May 29, 2013, during Respondent's disciplinary period, Respondent completed and signed a "summary appraisal report" for residential real estate located at 552 Brookhaven Lane, Sunrise Beach, Missouri (Sunrise Beach Appraisal Report). The

effective date of the appraisal report was May 13, 2013, and the appraisal valued the property at $1,100,000.

15. Pursuant to § 339.535, RSMo, and the terms and conditions of the Disciplinary Order, Respondent was required to develop and report the results of each appraisal in compliance with the Uniform Standards of Professional Appraisal Practice, 2012-2013 Edition (USPAP).

16. Respondent prepared the Sunrise Beach Appraisal Report for Great Western Bank.

17. Petitioner asserted that in preparing and reporting the Sunrise Beach Appraisal Report Respondent misrepresented that each comparable sale site had been inspected from the street and that Respondent's photographs attached to Respondent's reports were taken from the MLS and cropped to eliminate the MLS information. Respondent acknowledged using MLS photographs in his report and disclosing the use in his addendum[trans p.160 - 1] and testified that he is familiar with the area, living "two miles away from it"[trans p. 159].

18. Petitioner asserted that in preparing and reporting the Sunrise Beach Appraisal Report Respondent misstated that the "subject property is located . . . within the Town of Sunrise Beach," when it was not. Respondent asserted that the use of the term "town" of Sunrise Beach was a "typo" and that his report should have referred to the "area" of Sunrise Beach [trans p.161].

19. Petitioner asserted that in preparing and reporting the Sunrise Beach Appraisal Report Respondent's use of the term "neighborhood boundaries" was overly broad spanning three counties, approximately 35 miles, comprised of several unique market areas. Respondent asserted that the geographic size of the neighborhood is "specific to the

lake" and would "cross MLS boundaries and counties" [trans p. 162] because of the random and scattered home development "from Bagnell Dam to the 31-mile marker" [trans p. 163].

20. Petitioner asserted that in preparing and reporting the Sunrise Beach Appraisal Report Respondent used broad and generic terms in his discussion regarding neighborhood, marketability and market conditions and was not specific in his comments or analysis regarding the value influencing economic attributes of the immediate neighborhood. Respondent asserted that based on his definition of "neighborhood," his broad discussion of marketability and market conditions was appropriate [trans p. 164].

21. Petitioner asserted that in preparing and reporting the Sunrise Beach Appraisal Report Respondent misstated the site dimensions and characterized the site as being "irregular" as opposed to rectangular. Respondent asserted that there was a typographical error in the site dimensions in his report but disputed that the site dimensions were rectangular in shape. Respondent noted that in this case, the design and shape of the lot had no bearing on value [trans p. 165-6].

22. Petitioner asserted that in preparing and reporting the Sunrise Beach Appraisal Report Respondent misidentified the two-story lake front improvements as one-story. Respondent asserted that this was a typographical error and that the report under "custom and style and in the actual sketch itself" indicated that the property was a two-story building [trans p. 166].

23. Petitioner asserted that in preparing and reporting the Sales Comparison Analysis in the Sunrise Beach Appraisal Report Respondent failed to adequately analyze area land sales to serve as a basis for an opinion of site value and to support adjustments for differences related to lake front footage and water quality. Respondent asserted that he valued the price per lake frontage and divided by the number of comparables considered

(12). Respondent noted he used a method of mathematical mean in determining site value and relied on his history of working at the lake [trans p.169-70].

24. Petitioner asserted that in preparing and reporting the Sales Comparison Analysis in the Sunrise Beach Appraisal Report Respondent's adjustments for gross living area at $18 per square foot and bathrooms at $1,500 per full bathroom are inconsistent with the reported C2 or like new condition that support a $145.24 per square foot base cost with only 3 percent depreciation (netting at $140 per square foot), especially since no other forms of depreciation are noted and the square footage of the property appears consistent with the sales recited, showing no over-Improvement or superadequacy. Respondent asserted that his use of $20.00 per square foot was correct based on his years of compared sales, market derived analysis and contributory value - a cost based on how the market indicates a reaction [trans p.171].

25. Petitioner asserted that in preparing and reporting the Sales Comparison Analysis in the Sunrise Beach Appraisal Report Respondent's comparative contributions of garages at $1,000 and fireplaces at $1,500 are inconsistent with the incremental value contribution of these features without proper explanation. Respondent asserted that he based his determination on market analysis, using market derived adjustments, historical research and as many abilities to pair out differences as possible [trans p. 175]. Respondent noted that "market value" is the basis of his report [trans p. 175].

26. Petitioner asserted that in preparing and reporting the Sales Comparison Analysis in the Sunrise Beach Appraisal Report Respondent's contribution of the in-ground pool and extras were made at approximately 42 percent of the indicated cost of $357,298 without proper explanation. Respondent asserted that the basis of the contributory value is recorded throughout his addendums to sales research and results and to sales comparison [trans p. 176].

27. Petitioner asserted that in preparing and reporting the Cost Approach in the Sunrise Beach Appraisal Report Respondent failed to summarize in the appraisal report the land sales included in the work file. Respondent asserted that the land sales and analysis are included in his work file [trans p. 177].

28. Petitioner asserted that in preparing and reporting the Cost Approach in the Sunrise Beach Appraisal Report Respondent failed to provide support or analysis in the report for site value and the most proximate land sale data contained in the work file was not supportive of $184,000 site value, based on 115 lakefront feet at $1,600 per lakefront foot , instead supporting a value between $194,465 to $225,975. Respondent asserted that his reported land value was based upon lake frontage and that is the common method for determining site value in the Lake of the Ozarks [trans p. 178].

29. Petitioner asserted that in preparing and reporting the Cost Approach in the Sunrise Beach Appraisal Report Respondent appears to have used an average of the analyzed land sales instead of using appropriate reconciliation criteria to form a meaningful, defensible conclusion of the site value opinion. Respondent asserted that determining value for land is subjective because of the wide range of differences in the lots in the neighborhood and because of this he used a larger number comparables to allow him to make the best value determination [trans p. 179].

30. Petitioner asserted that in preparing and reporting the Cost Approach in the Sunrise Beach Appraisal Report Respondent failed to explain or support in his report or in the work file data, the base cost per square foot based on the source of cost data, the quality rating from cost service and the effective date of cost data. Respondent asserted that he derived his cost data from local builders and his knowledge of the area rather than through the use of Marshall and Swift so as to establish less vague cost data [trans p. 180-1].

31. Petitioner asserted that Respondent used insufficient and conflicting data in the appraisal to reliably estimate the difference between the cost new and the present worth of improvements. Respondent asserted that the information is in his addendum for condition and that the support for the "vague statement of $365,000 in [his] work file" was his familiarity with the home and the work that had been done [trans p. 184].

32. Based upon the evidence presented, Respondent's testimony at hearing regarding Respondent's Sunrise Beach Appraisal Report was not determined to be credible and/or adequate to rebut Petitioner's allegations of USPAP violations regarding Respondent's Sunrise Beach Appraisal Report.

33. Respondent, in the Reconciliation in the Sunrise Beach Appraisal Report, failed to adequately reconcile the applicability and relevance of the approaches, methods and techniques used to arrive at the value conclusion. Respondent provided no reference or comments regarding the applicability of the cost approach.

34. Respondent, in reporting the Sunrise Beach Appraisal, failed to adequately support adjustments for differences with respect to differences in site contributions, gross living area, garage contributions, the contribution of the pool and pool amenities and other value influencing features and amenities necessary for credible and not misleading assignment results.

35. Respondent's Sunrise Beach Appraisal Report lacked credibility, was misleading, and was developed and reported in violation of USPAP Standards 1 and 2, which state:

> Standard 1: In developing a real property appraisal, an appraiser must identify the problem to be solved, determine the scope of work necessary to solve the problem, and correctly complete research and analyses necessary to produce a credible appraisal.
>
> Standard 2: In reporting the results of a real property appraisal, an appraiser must communicate each analysis, opinion and conclusion in a manner that is not misleading.

36. Respondent, in his Sunrise Beach Appraisal Report, was knowingly misleading in his misrepresentation regarding his inspection of the comparable sales and his use of cropped MLS photographs, rather than originals, in violation of the USPAP Ethics Rule, which states:

> An appraiser must promote and preserve the public trust inherent in appraisal practice by observing the highest standards of professional ethics.
>
> An appraiser must comply with USPAP when obligated by law or regulation, or by agreement with the client or intended user. In addition to these requirements, an individual should comply any time that individual represents that he or she is performing the service as an appraiser.
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> . . .
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> Conduct:
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> An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.
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> An appraiser:
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> . . .
>
> - must not communicate assignment results with the intent to mislead or to defraud;
> - must not use or communicate a report that is known by the appraiser to be misleading or fraudulent;
> - must not knowingly permit an employee or other person to communicate a misleading or fraudulent report; [and]
>
> . . .
>
> - must not perform an assignment in a grossly negligent manner[.]

37. Respondent's errors and/or omissions in developing and reporting the results of the Sunrise Beach Appraisal, constitute a failure by Respondent to correctly employ recognized methods and techniques necessary to produce a credible appraisal, in violation of USPAP Standard Rule (SR) 1-1(a), which states:

> In developing a real property appraisal, an appraiser must:
>
> (a) be aware of, understand, and correctly employ those recognized methods and techniques that is necessary to produce a credible appraisal[.]

38. Respondent's errors and/or omissions in developing and reporting the results in the Sunrise Beach Appraisal Report, constituted significantly affected the appraisal in violation of the USPAP Standard 1 and SR 1-1(b), which states:

> In developing a real property appraisal, an appraiser must:
>
> . . .
>
> (b) not commit a substantial error of omission or commission that significantly affects the appraisal[.]

39. Respondent's errors and/or omissions in developing and reporting the results in the Sunrise Beach Appraisal Report, significantly affected the appraisal, in violation of the USPAP Standard 1 and SR 1-1(c), which states:

> In developing a real property appraisal, an appraiser must:
>
> . . .
>
> (c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.

40. Respondent's errors and/or omissions regarding the location, dimensions, shape, neighborhood, market area, size and/or style of the Sunrise Beach property, violated USPAP SR 1-2(e)(i) which states:

> In developing a real property appraisal, an appraiser must:
>
> . . .
>
> (e) identify the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal, including:
>
> (i) its location and physical, legal and economic attributes[.]

41. Respondent's failure to use more similar and proximate comparable sales and to provide proper support and analysis for adjustments in the Sales Comparison Approach; and Respondent failure to use and/or properly analyze sales of similar properties in the Sales Comparison Approach, violated USPAP Standard 1 and SR 1-4(a), which states:

> Standards Rule 1-4(a)
>
> In developing a real property appraisal, an appraiser must collect, verify and analyze all information necessary for credible assignment results.
>
> (a) When a sales comparison approach in necessary for credible assignment results, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.

42. Respondent's errors and/or omissions regarding the development and/or reporting of the Cost Approach in the Sunrise Beach Appraisal Report, violated USPAP Standard 1 and SR 1-4(b)(i), (ii) and (iii), which states:

> In developing a real property appraisal, an appraiser must collect, verify and analyze all information necessary for credible assignment results.
>
> . . .
>
> (b) When a cost approach is necessary for credible

assignment results, an appraiser must:

(i) develop an opinion of site value by an appropriate appraisal method or technique;

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

(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)[.]

43. Respondent's errors and/or omissions regarding the reconciliation of the approaches to value in the Sunrise Beach Appraisal Report violated USPAP Standard 1 and SR 1-6(b), which states:

In developing a real property appraisal, an appraiser must:

. . .

(b) reconcile the applicability and relevance of the approaches, methods and techniques used to arrive at the value conclusion(s).

44. In Respondent's errors and/or omissions in developing and reporting the results in the Sunrise Beach Appraisal Report, Respondent failed to clearly and accurately set forth the appraisal in a manner that would not be misleading, in violation of USPAP Standard 2 and SR 2-1(a), which states:

Each written or oral real property appraisal report must:

(a) clearly and accurately set forth the appraisal in a manner that will not be misleading[.]

45. In Respondent's commission of errors and/or omissions in developing and reporting the results in the Sunrise Beach Appraisal Report, Respondent failed to prepare a report that contained sufficient information to enable the intended users of the appraisal to

understand the report properly in violation of USPAP Standard 2 and SR 2-1(b), which states:

> Each written or oral real property appraisal report must:
>
> . . .
>
> (b) contain sufficient information to enable the intended users of the appraisal to understand the report property[.]

46. Respondent's errors and/or omissions in reporting the location, dimensions, shape, neighborhood, market area, size, and/or style of the Sunrise Beach property violated USPAP SR 2-2(b)(iii), which states:

> Each written real property appraisal report must be prepared under one of the following three options and prominently state which option is used: Self-Contained Appraisal Report, Summary Appraisal Report, or Restricted Use Appraisal Report.
>
> . . .
>
> (b) The content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:
>
> . . .
>
> (iii) summarize information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment[.]

47. Respondent failed to provide adequate support for his conclusions and approaches to value in the Sunrise Beach Appraisal Report, in that Respondent did not summarize the information analyzed, the appraisal procedures followed, and the reasoning that supported the analysis, opinions, and conclusions, in violation USPAP SR 2-2(b)(viii), which states:

> . . .

> (b) The content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:
>
> (viii) summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions; exclusion of the sales comparison approach, cost approach, or income approach must be explained[.]

48. Respondent's conduct demonstrated incompetency, misconduct, gross negligence, dishonesty, fraud and/or misrepresentation in the performance of the functions and/or duties of a real estate appraiser, in violation of §339.532.2(5), RSMo.

49. Respondent's conduct violated standards for the development and/or communication of real estate appraisals as provided in or pursuant to §§ 339.500 to 339.549, RSMo, in violation of § 339.532.2(6), RSMo.

50. Respondent's conduct demonstrated a failure and/or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, and/or communicating an appraisal, in violation of § 339.532.2(8), RSMo.

51. Respondent's conduct demonstrated negligence and/or incompetence in developing an appraisal, in preparing an appraisal report, and/or in communicating an appraisal, in violation of § 339.532.2(9), RSMo.

52. Respondent's USPAP violations constituted violations of § 339.535, RSMo and § 339.532.2(7) and (10), RSMo.

53. Respondent's conduct violated professional trust and confidence owed to his clients, the intended users of the appraisal report, and the public, in violation of § 339.532.2(14), RSMo.

54. Respondent's violation of § 339.535, RSMo, and/or § 339.532.2(5),(6), (7),(8), (9), (10) and/or (14), RSMo, in the development and reporting of the Sunrise Beach

Appraisal Report, constituted a violation of paragraph 2, subparagraph H, page 9 of Part II of the terms of the Disciplinary Order of November 28, 2012, thus providing cause to further discipline Respondent's license under § 324.042, RSMo, as set forth above.

Hermann Appraisal

55. On or about November 20, 2013, during Respondent's disciplinary period, Respondent completed and signed a "summary appraisal report" for residential real estate located at 1781 Highway 100, Hermann, Missouri (Hermann Appraisal Report). The effective date of the appraisal report was November 18, 2013, and the appraisal valued the property at $229,000.

56. Pursuant to § 339.535, RSMo, and the terms and conditions of the Disciplinary Order, Respondent was required to develop and report the results of each appraisal in compliance with the Uniform Standards of Professional Appraisal Practice, 2012-2013 Edition (USPAP).

57. Respondent prepared the Hermann Appraisal Report for Quicken Loans, Inc.

58. Petitioner asserted that Respondent, in the preparation and reporting of the Hermann Appraisal Report, misstated that Comparable No. 1 was "0.78 miles N" when it was approximately 6.5 miles northeast and that Comparable No. 5 was "25.25 miles SW" when it was 6 miles southeast. Respondent asserted that a problem with the mapping system associated with his appraisal data software resulted in the errors in his report regarding the location of the comparables [trans p. 198-9].

59. Petitioner asserted that Respondent, in the preparation and reporting of the Hermann Appraisal Report, misrepresented in the Scope of Work that comparable sales were viewed from the exterior and that "original comparable photos were used when possible," when the multi-listing photographs used in the report and the failure to

accurately report the proximity of the property to the comparable sales indicate otherwise. Respondent asserted that he actually viewed the properties in question [trans p. 201].

60. Petitioner asserted that Respondent, in the preparation and reporting of the Hermann Appraisal Report, failed to identify the personal property included in the sale contract and/or to adequately analyze and/or consider the contribution of those items to the sale price. Respondent asserted that he did consider personal property but determined that the personal property had no bearing on the value in this sale[trans p. 202].

61. Petitioner asserted that Respondent, in the preparation and reporting of the Hermann Appraisal Report, misstated that "the subject is located in a developed area of Gasconade County known as Hermann, Missouri" when it was located outside of the municipal boundaries in a more sparsely developed are identified in the report as "Rural" . Respondent asserted that he identified the property as being rural in his report [trans p. 203].

62. Petitioner asserted that Respondent, in the preparation and reporting of the Hermann Appraisal Report, defined an extraordinarily broad neighborhood spanning many miles and including portions of two counties and multiple communities in and around Hermann, Missouri and New Haven, all having different market characteristics and appeal. Respondent asserted that he identified the neighborhood broadly as the geographic boundaries span the wine country [trans p. 203].

63. Petitioner asserted that Respondent, in the preparation and reporting of the Hermann Appraisal Report, used inadequate supportive comments analysis and/or detail regarding the features and amenities of the subject and comparable properties. Respondent did not directly address this assertion by Petitioner.

64. Petitioner asserted that Respondent, in the preparation and reporting of the Sales Comparison Approach in the Hermann Appraisal Report, failed to properly develop

and/or support an opinion of the site value; including failing to summarize the land sales included in the work file that ostensibly support the site value. Respondent asserted that he considered and referenced in his work file area land sales but did not include land values in his cost approach or sales and comparison approach [trans p. 204-5].

65. Petitioner asserted that Respondent, in the preparation and reporting of the Sales Comparison Approach in the Hermann Appraisal Report, used inconsistent adjustments for gross living area and the value contributions of the garages without proper explanation. Respondent did not directly address this assertion by Petitioner.

66. Petitioner asserted that Respondent, in the preparation and reporting of the Cost Approach in the Hermann Appraisal Report, failed to properly develop and/or support an opinion of site value; including a failure to summarize the land sales in his work file that ostensibly support the site value. Respondent asserted that he considered and referenced land sales in his work file [trans p. 204].

67. Petitioner asserted that Respondent, in the preparation and reporting of the Cost Approach in the Hermann Appraisal Report, used an average of the analyzed land sales instead of using appropriate reconciliation criteria to form a meaningful, defensible conclusion of the site value opinion. Respondent asserted that he reconciled the different values based on the price per acre; sales price divided by the acreage [trans p. 205-6].

68. Petitioner asserted that Respondent, in the preparation and reporting of the Cost Approach in the Hermann Appraisal Report, used source of cost data that was unsupported in the appraisal report and in the work file. Respondent asserted that he based his costs on "local builders" [trans p. 206] and the values they give in a "full bid estimate" [trans p. 207].

69. Petitioner asserted that Respondent, in the preparation and reporting of the Cost Approach in the Hermann Appraisal Report, used insufficient and conflicting data in

the appraisal to reliably estimate the difference between the cost new and the present worth of the improvements (accrued depreciation). Respondent asserted that based on the age and condition of the subject house (age-life method), his findings in the condition section of his report were substantially in compliance with USPAP standards [trans p. 207-8].

70. Based upon the evidence presented, Respondent's testimony at hearing regarding Respondent's Hermann Appraisal Report was not determined to be credible and/or adequate to rebut Petitioner's allegations of USPAP violations regarding Respondent's Hermann Appraisal Report.

71. Respondent, in the Reconciliation in the Hermann Appraisal Report, failed to adequately reconcile the applicability and relevance of the approaches, methods and techniques used to arrive at the value conclusion. Respondent provided no reference or comments regarding the applicability of the cost approach.

72. Respondent, in reporting the Hermann Appraisal, failed to adequately support adjustments for differences with respect to differences in site contributions, gross living area, garage contributions and the contribution of other value influencing features and amenities necessary for credible and not misleading assignment results.

73. Respondent's Hermann Appraisal Report lacked credibility, was misleading, and was developed and reported in violation of USPAP Standards 1 and 2, set forth in paragraph 35 above.

74. Respondent knowingly misrepresented the inspection of comparable sales by using cropped MLS photographs rather than photographs he had taken, in violation of the USPAP Ethics Rule, set forth above in paragraph 36 above.

75. Respondent, in developing and reporting the Hermann Appraisal, committed a substantial error of omission and/or commission that significantly affected the appraisal by

failing to employ recognized methods and techniques necessary to produce a credible appraisal in violation of USPAP SR 1-1(a), as set forth in paragraph 37 above.

76. Respondent, in developing and reporting the Hermann Appraisal, committed a substantial error of omission and/or commission that significantly affected the appraisal in violation of USPAP SR 1-1(b), as set forth in paragraph 38 above.

77. Respondent, in developing and reporting the Hermann Appraisal, committed a substantial error of omission and/or commission in rendering appraisal services in a careless and/or negligent manner in violation of USPAP SR 1-1(c), as set forth in paragraph 39 above.

78. Respondent, committed a substantial errors and/or omissions regarding the location and/or neighborhood characteristics of the Hermann property in violation of USPAP SR 1-2(e)(i), as set forth in paragraph 40 above.

79. Respondent committed errors and omissions regarding the Sales Comparison Approach in the Hermann Appraisal in his failure to analyze such comparable sales data as was available to indicate a value, in violation of USPAP SR 1-4(a), as set forth in paragraph 41 above.

80. Respondent's errors and/or omissions in the developing and/or the reporting of the Cost Approach in the Hermann Appraisal Report violated USPAP SR 1-4(b)(i),(ii), as set forth in paragraph 42 above.

81. Respondent's errors and/or omissions regarding the failure to properly analyze the sale contract in the Hermann Appraisal Report violated USPAP SR 1-5(a), which states:

> When the value opinion to be developed is market value, an appraiser must, if such information is available to the appraiser in the normal course of business:
>
> (a) analyze all agreements of sales, options, and Listings of the subject property current as of the effective Date of the appraisal[.]

82. Respondent's errors and/or omissions regarding the reconciliation of the approaches to value in the Hermann Appraisal Report violated USPAP SR 1-6(b), as set forth in paragraph 43 above.

83. Respondent committed errors and/or omissions in the developing and/or the reporting of the results of the Hermann Appraisal Report, in his failure to clearly and accurately set forth the appraisal in a manner that would not be misleading, violated USPAP SR 2-1(a), as set forth in paragraph 44 above.

84. Respondent committed errors and/or omissions in the developing and/or the reporting of the results of the Hermann Appraisal Report, in his failure to prepare a report that contained sufficient information to enable the intended users of the appraisal report to understand the report properly, violated USPAP SR 2-1(b), as set forth in paragraph 45 above.

85. Respondent committed errors and/or omissions, regarding the reporting of the location and neighborhood characteristics of the Hermann property, in violation of USPAP SR 2-2(b)(iii), as set forth in paragraph 46 above.

86. Respondent failed to provide adequate support for his conclusions and approaches to value in the Hermann Appraisal Report, in that Respondent did not summarize the information analyzed, the appraisal procedures followed, and the reasoning that supported the analysis, opinions, and conclusions, in violation USPAP SR 2-2(b)(viii) as set forth in paragraph 47 above.

87. Respondent's conduct demonstrated incompetency, misconduct, gross negligence, dishonesty, fraud and/or misrepresentation in the performance of the functions and/or duties of a real estate appraiser, in violation of §339.532.2(5), RSMo.

88. Respondent's conduct violated standards for the development and/or communication of real estate appraisals as provided in or pursuant to §§ 339.500 to 339.549, RSMo, in violation of § 339.532.2(6), RSMo.

89. Respondent's conduct demonstrated a failure and/or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, and/or communicating an appraisal, in violation of § 339.532.2(8), RSMo.

90. Respondent's conduct demonstrated negligence and/or incompetence in developing an appraisal, in preparing an appraisal report, and/or in communicating an appraisal, in violation of § 339.532.2(9), RSMo.

91. Respondent's USPAP violations constituted violations of § 339.535, RSMo and § 339.532.2(7) and (10), RSMo.

92. Respondent's conduct violated professional trust and confidence owed to his clients, the intended users of the appraisal report, and the public, in violation of § 339.532.2(14), RSMo.

93. Respondent's violation of § 339.535, RSMo, and/or § 339.532.2(5),(6), (7),(8), (9), (10) and/or (14), RSMo, in the development and reporting of the Sunrise Beach Appraisal Report, constituted a violation of paragraph 2.H of the Disciplinary Order set forth in Part II of the agreement, thus providing cause to further discipline Respondent's license under § 324.042, RSMo, as set forth above.

94. Respondent's evidence presented in the testimony of Dr. Allen Tamaren was weighed and the persuasiveness of the testimony was not determined to be significant in light of all evidence presented.

Conclusions of Law

95. The MREAC has jurisdiction in this proceeding, pursuant to the Disciplinary Order, effective November 28, 2012, section II, paragraphs 3, 4 and 7 on pages 10-11 and

§ 324.042, RSMo, to determine whether Respondent has violated the terms and conditions of the Disciplinary Order regarding Respondent's residential real estate appraiser license, license number RA003214.

96. The Disciplinary Order, paragraphs 3, 4 and 7, on pages 10-11 state:

> 3. Upon the expiration of the disciplinary period, the certification of Dwiggins shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREAC determines that Dwiggins has violated any term or condition of this Settlement Agreement, the MREAC may, in its discretion, after an evidentiary hearing vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Dwiggins' certification.
>
> 4. No additional discipline shall be imposed by the MREAC pursuant to the preceding paragraph of this Settlement Agreement without notice and opportunity for hearing before the MREAC as a contested in accordance with the provisions of Chapter 536, RSMo. This Settlement Agreement does not bind the MREAC or restrict the remedies available to it concerning any future violations by Dwiggins of §§ 339.500 through 339.549, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.
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> . . .
>
> 7. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the parties agree that the MREAC may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Dwiggins agrees and stipulates that the MREAC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

97. Section 324.042, RSMo, provides:

> Any board, commission, or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant, or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission, or committee may impose as additional discipline, any discipline it would be authorized to impose in an initial disciplinary hearing.

98. Respondent violated the terms and conditions of discipline set forth in the Disciplinary Order, as described in the Findings of Fact of this Order.

Decision and Order

It is the decision of the MREAC that Respondent, Eugene W. Dwiggins, has violated the terms of the Disciplinary Order, and that his licensure is, therefore, subject to further disciplinary action.

The MREAC orders that Respondent's previously ordered probationary period of three (3) years, as ordered in the Disciplinary Order effective December 13, 2012, and which provided for a probationary period beginning on January 14, 2013 and continuing until January 14, 2016, to be extended an additional two (2) years, until January 14, 2018. Respondent's extended **PROBATION** shall require continued compliance with all the terms and conditions of the December 13, 2012 Order.

Respondent shall be entitled to practice as a state-certified residential real estate appraiser provided Respondent remains compliant with the terms and conditions of his probation in accordance with the aforementioned December 13, 2012 Disciplinary Order.

The Board will maintain this Order as an open and public record of the Commission as provided in Chapters 339, 610, and 324, RSMo.

SO ORDERED this 9th day of December, 2015.

MISSOURI REAL ESTATE APPRAISERS COMMISSION

Vanessa Beauchamp

Vanessa Beauchamp,
Executive Director