

**SETTLEMENT AGREEMENT BETWEEN MISSOURI REAL ESTATE APPRAISERS COMMISSION
AND JOSEPH MCDAVID**

Come now Joseph McDavid ("Licensee") and the Missouri Real Estate Appraisers Commission ("Commission") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's certification as a certified residential real estate appraiser will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's certification, and, additionally, the right to a disciplinary hearing before the Commission under § 621.110, RSMo.

Licensee acknowledges that Licensee understands the various rights and privileges afforded Licensee by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee's own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensee and, subsequently, the right to a disciplinary hearing before the Commission at which time Licensee may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against Licensee's certification. Being aware of these rights provided her by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to Licensee.

Licensee acknowledges that Licensee has received a copy of the complaint and other documents relied upon by the Commission in determining there was cause to discipline Licensee's certification, along with citations to law and/or regulations the Commission believes was violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Commission that Licensee's certification, numbered RA002504 is subject to disciplinary action by the Commission in accordance with the provisions of Chapter 621 and §§ 339.500 to 339.549, RSMo.

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

Joint Stipulation of Fact and Conclusions of Law

1. The Commission is an agency of the state of Missouri created and established pursuant to § 339.507, RSMo, for the purpose of licensing all persons engaged in the practice of real estate appraisal in this state. The Commission has control and supervision of the licensed occupations and enforcement of the terms and provisions of Sections 339.500 to 339.549, RSMo.

2. Licensee, Joseph McDavid, holds a certification from the Commission as a certified residential real estate appraiser, license number RA002504. The Commission issued Licensee's certification on June 1, 1993. Licensee's certification expires June 30, 2014. Licensee's Missouri certification was at all times relevant herein, and is now, current and active.

3. On or about June 13, 2013, the Commission received a complaint regarding Licensee from T.H. T.H. stated that Licensee appraised four properties: 1) 3825 Finney Avenue, St. Louis, Missouri ("Finney Property"); 2) 1342 Christmas Valley Drive, Wildwood, Missouri ("Christmas Valley Property"); 3) 7451 Flora Avenue, St. Louis, Missouri ("Flora Property"); and 4) 4221 Clay Avenue, St. Louis, Missouri ("Clay Property") (together "the Properties"). The complainant stated that he received three of the appraisals initially and sent Licensee a letter outlining areas of concern with the three appraisals. The complainant stated that Licensee's response indicated that he was "reacting to questions raised by the reviewer in each case, indicating that he did not use due diligence when completing his appraisals initially." The complainant stated that each had several changes made that were not disclosed in subsequent revisions of the appraisal. After the initial review of the three properties, the complainant stated that he received a repurchase request on another of Licensee's appraisals. The complainant stated that two retroactive review appraisals were completed that revealed significant issues with the original appraisal. Licensee again received a letter outlining the complainant's concerns and requesting Licensee's response. Licensee admitted numerous inaccuracies and inconsistencies in the appraisal in his response. The complainant stated Licensee's violations span one and a half years and "exhibit competency and ethics concerns." As to the Christmas Valley Property, the complainant stated that Licensee failed to support and disclose changes made between versions of the appraisal including comparable sales value changes, bathroom counts, location, quality, basement, site improvements and cost approach revised to match new appraised value. Additionally, Licensee listed more additional features for the subject

property not noted in his original version. Regarding the Flora Property, the complainant stated that Licensee made revisions to the appraisal without disclosure and support for the changes including view and location adjustments, value changes for comparable sales, and adjustments for conditions without discussion as to what was superior/inferior about each property. The complainant stated that Licensee used outdated materials in completing the appraisal. Regarding the Clay Property, Licensee completed three versions of the appraisal with several revisions without disclosure or support in the appraisal. The complainant stated that the failure to disclose the changes was misleading and Licensee claimed it was a new assigned despite the file number being the same on all of them. The relevant changes included the effective date, cost approach and adjustments related to comparable sales. Licensee discussed a 9% decline in the market over the past six months but time adjustments in the appraisal were inconsistent with that. Regarding the Finney Property, complainant stated that Licensee inappropriately used attached houses outside the subject neighborhood to compare to the subject which is a detached home. Licensee's neighborhood boundaries stated in the appraisal do not include the subject property and Licensee used different market times for the subject and comparable sales without analysis or explanation. Licensee failed to provide support for the original appraisal to adequately defend and support the appraisal and acknowledged that the review appraisers used comparable sales that he should have used. Finally, the complainant stated that Licensee used outdated citations and inconsistencies and admitted to mistakes in the appraisals. Accordingly, complainant stated that Licensee violated the Uniform Standards of Professional Appraisal Practice (USPAP) in completing his appraisals of the Properties.

4. As a result of the complaint, the Commission conducted an investigation. The Commission obtained Licensee's appraisal, work file, and the original appraisal request from Licensee. The Commission also received a written response from Licensee regarding the complaint as part of the investigation. In his response, Licensee admitted to failing to follow USPAP Standards Rules 1-1B and 1-1C, thereby admitting that he made an omission or commission that significantly affected the value of the appraisal and rendered appraisal services in a careless or negligent manner affecting the results and credibility of the appraisal. Licensee admitted to violating USPAP Standards Rules 1-1B and 1-1C regarding the Finney Property and included detail as to why he felt his choices in the appraisal may have been errors but were appropriate given the circumstances. He also raised concerns about the two review appraisals performed on the Finney Property. Regarding the Christmas Valley Property Licensee stated that "errors were made by me." He stated that

"changes were made to the report to correct these errors and the estimate of value was ultimately increased. Additional mistakes were then made when I failed to change the signature date." Regarding the Flora Property, Licensee stated that he made increases in value related to the comparable sales but that the increase in value for the subject property was supported by new comparable sales and properly discussed in the addendum of the appraisal. Regarding the Clay Property, Licensee stated it was a complicated assignment and included two separate reports, one conventional and one FHA. He stated that the appraisal was subject to repairs which were ultimately not completed per plans and specifications outlined in the report which led to a reduction in the original estimate of value after the final inspection. Licensee detailed his experience in appraising the Clay Property. He stated that he regretted not properly documenting the changes in the subsequent report and that changes were made to the cost approach as a result of changes in the quality of materials and workmanship in the project. Licensee stated that he made "several, too many, mistakes [in] the production of these reports. My excuse, while not a good one, is I was trying to do too much work and became careless. As a result I have brought my competency into question and have jeopardized the livelihood I love." He stated he enrolled in a report writing seminar to review areas of the appraisal process where he has fallen short.

5. The Commission requested to meet with Licensee at its September 10, 2013 regularly scheduled meeting. Licensee appeared at the meeting. Licensee answered questions regarding his education, training and experience. Licensee discussed his appraisals of the Properties and the complaint in general.

6. On or about November 29, 2013, the Commission completed its final review of Licensee's appraisals of the Properties.

7. Licensee's appraisals of the Properties do not comply with several provisions of the Uniform Standards of Professional Appraisal Practice (USPAP):

- a. Licensee's appraisals of the Properties did not comply with USPAP Rule 1-1(a) in that Licensee failed to use complete and/or correct information in original appraisal reports, then altered reports with data provided by interested parties and repeatedly increased value such that Licensee was not aware of, understood or correctly employed recognized methods and techniques necessary to produce a credible appraisal.
- b. Licensee's appraisals of the Properties did not comply with USPAP Rule 1-1(b) in that Licensee failed to accurately analyze the subject properties and markets until redirected by the client or

borrower such that Licensee committed substantial errors of omission or commission that significantly affected the appraisals.

- c. Licensee's appraisals of the Properties did not comply with USPAP Rule 1-1(c) in that overall, Licensee's appraisals of the Properties showed a pattern of carelessness and negligence through the multitude of errors, omissions and failures to properly analyze properties and marketplaces such that Licensee rendered appraisal services in a careless and negligent manner by making a series of errors that affected the results and credibility of the appraisal.
- d. Licensee's appraisals of the Properties did not comply with USPAP Rule 1-2(d) in that Licensee's conclusions changed and, in some cases, effective dates were changed without subsequent inspections or reasoning for the changes, causing the reports to be misleading and unclear on what date the property was inspected such that in developing the appraisals Licensee failed to identify the effective date of his opinions and conclusions.
- e. Licensee's appraisals of the Properties did not comply with USPAP Rule 1-2(e) in that Licensee's initial reports omitted significant characteristics of properties and marketplaces that were not corrected until they were brought to his attention. These items were things that, had the appraiser been exercising appropriate levels of diligence, would have been observed when inspecting the properties and analyzing comparable sales and markets such that in developing the appraisals, Licensee failed to identify the characteristics of the property relevant to the type and definition of value and the intended use of the appraisal.
- f. Licensee's appraisals of the Properties did not comply with USPAP Rule 1-4(a) in that in Licensee's improper analysis and use of varying comparable sales led to a misleading report. Either Licensee's original reports were inappropriately prepared or the subsequent reports were prepared under duress such that in using the sales comparison approach for a credible result, Licensee did not analyze comparable sales data available to indicate a reliable value conclusion.
- g. Licensee's appraisals of the Properties did not comply with USPAP Rule 2-1(a) and 2-1(b) in that Licensee's appraisals of the Properties did not clearly and accurately set forth the report in a manner that would not be misleading and failed to contain sufficient information to enable the

intended users of the appraisal to understand the report properly. Licensee's violations under these two Standards rules are discussed further in paragraph 7.k. below.

- h. Licensee's appraisals of the Properties did not comply with USPAP Rule 2-2(b)(iii) in that Licensee made multiple errors in properly describing the Properties' physical characteristics such that the contents of Licensee's summary appraisal reports for the Properties did not summarize the information sufficiently to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment.
- i. Licensee's appraisals of the Properties did not comply with USPAP Rule 2-2(b)(vi) in that Licensee's effective dates changed without analysis or explanation such that the contents of Licensee's summary appraisal reports for the Properties did not state the effective date of the appraisal and of the report.
- j. Licensee's appraisals of the Properties did not comply with USPAP Rule 2-2(b)(viii) in that Licensee made changes to reports and values which appear inconsistent with the data provided and are unsubstantiated such that the contents of Licensee's summary appraisal reports for the Properties did not summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supported the analyses, opinions and conclusions.
- k. Licensee's appraisals of the Properties did not comply with USPAP Ethics rule because Licensee stated, under oath, that he made value increases to several of the Properties because borrowers and/or loan officers complained that they needed higher values. Further, Licensee showed little to no knowledge of his duties regarding appropriate and inappropriate contact with borrowers and loan officers. Those are egregious violations of the USPAP Ethics rules which states that appraisers "must not disclose (1) confidential information; or (2) assignment results to anyone other than the client (or) persons specifically authorized by the client. Moreover, Licensee violated the USPAP Competency Rule by inappropriately including references to outdated regulations in his reports, thus demonstrating a lack of current appraisal knowledge. Licensee also admitted in his written response to the complainant that he missed significant features of properties in his original reports and allowed loan officers/homeowners to bring information to his attention, resulting in altered reports and increased values. On the Clay

Property appraisal report, Licensee failed to disclose a prior appraisal performed within the prior three years in violation of USPAP Standards Rule 2-3. Overall, Licensee exhibited a dangerous pattern of writing appraisal reports without employing recognized methods and techniques. Licensee's reports were misleading and he showed a dangerous pattern of allowing information from interested parties to influence the appraisal value.

8. Licensee's conduct, as described in paragraphs 3 through 7 above constitutes misconduct in the performance of the duties of a certified residential real estate appraiser for which the Commission has cause to discipline Licensee's certification.

9. Licensee's conduct, as described in paragraphs 3 through 7 above constitutes failure to comply with the requirements of USPAP for which the Commission has cause to discipline Licensee's certification.

10. Licensee's conduct, as described in paragraphs 3 through 7 above, constitutes violation of a professional trust or confidence for which the Commission has cause to discipline Licensee's certification.

11. Cause exists for the Commission to take disciplinary action against Licensee's certification under § 337.532.2(5), (7), and (14), RSMo, which states in pertinent part:

2. The Commission may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any state-certified real estate appraiser, state-licensed real estate appraiser, or any person who has failed to renew or has surrendered his or her certificate or license for any one or any combination of the following causes:

...

(5) Incompetency, misconduct, gross negligence, dishonesty, fraud, or misrepresentation in the performance of the functions or duties of any profession licensed or regulated by sections 339.500 to 339.549;

...

(7) Failure to comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation;

...

(14) Violation of any professional trust or confidence[.]

Joint Agreed Disciplinary Order

12. Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Commission in this matter under the authority of § 621.045.3, RSMo.

13. The terms of discipline shall include that Licensee's certification shall be **SUSPENDED** for a period of one (1) year. Immediately following the period of suspension, Licensee's certification shall be placed on **PROBATION** for a period of three (3) years ("disciplinary period"). During Licensee's probation, Licensee shall be entitled to engage as a certified residential real estate appraiser under Sections 339.500 to 339.549, RSMo, provided Licensee adheres to all of the terms of this Settlement Agreement.

I. EDUCATIONAL REQUIREMENTS

- A. Within six months after the effective date of this Settlement Agreement, Licensee shall submit verification to the Commission of successful completion of a fifteen hour approved qualifying education course, including examination, on the Uniform Standards of Professional Appraisal Practice (USPAP).
- B. Licensee shall not apply the education required by this Settlement Agreement to satisfy the continuing education hours required for license renewal.

II. GENERAL REQUIREMENTS

- A. During the probationary period, Licensee shall not supervise any real estate appraisal, as defined by § 339.503(1), RSMo, of property located in the state of Missouri nor sign any appraisal for property located in Missouri as an appraisal supervisor.
- B. During the probationary period, Licensee shall maintain a log of all appraisal assignments completed, including appraisal values. Licensee shall submit a true and accurate copy of his log to the MREAC every three (3) months after the effective date of this Order. Each log, except for the final log, shall be submitted within 15 days after the end of the respective six month period. Licensee shall submit the final log 30 days prior to the end of the probationary period. All logs shall comply with rule 20 CSR 2245-2.050.
- C. During the disciplinary period, Licensee shall keep the Commission informed of Licensee's current work and home telephone numbers. Licensee shall notify the Commission in writing within ten days (10) of any change in this information.
- D. During the probationary period, Licensee shall timely renew Licensee's certification granted hereby and shall timely pay all fees required for certification and comply with all other Commission requirements necessary to maintain said certification in a current and active state.
- E. During the probationary period, Licensee shall accept and comply with unannounced visits from the Commission's representatives to monitor compliance with the terms and conditions of this Agreement.
- F. During the disciplinary period, Licensee shall appear in person for interviews with the Commission or its designee upon request.

- G. Licensee shall submit written reports to the Commission every six (6) months during the probationary period stating truthfully whether there has been compliance with all terms and conditions of this Agreement. The first such report shall be received by the Commission on or before July 1, 2014.
- H. Licensee shall execute any release or provide any other authorization necessary for the Commission to obtain records of Licensee's employment during the terms of the permit.
- I. Licensee shall comply with all provisions of §§ 339.500 to 339.549, RSMo; all federal and state drug laws, rules, and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri, all other states and territories of the United States, and the ordinances of political subdivisions of any state or territory. Licensee shall immediately report any violation of this provision to the Commission in writing. Licensee shall also immediately report any allegation that Licensee has violated this provision to the Commission, in writing. Examples of allegations of such a violation include, but are not limited to, any arrest, summons, inquiry by any law enforcement official into these topics, or inquiry into these topics by a health oversight agency. Licensee shall sign releases or other documents authorizing and requesting the holder of any closed record related to this paragraph to release such records to the Commission.
- J. Licensee shall immediately submit documents showing compliance with the requirements of this Order to the Commission when requested.
- K. In the event the Commission determines that Licensee has violated any term or condition of this Order, the Commission may, in its discretion, after an evidentiary hearing, suspend, revoke, or otherwise lawfully discipline Licensee's certification.
- L. No Order shall be entered by the Commission pursuant to the preceding paragraph of this Order without notice and an opportunity for hearing before the Commission in accordance with the provisions of Chapter 536, RSMo.
- M. If, at any time during the probationary period, Licensee changes Licensee's address from the state of Missouri, or ceases to maintain Licensee's certification current or active under the provisions of §§ 339.500 to 339.549, RSMo, or fails to keep the Commission advised of all current places of residence, the time of such absence, unlicensed or inactive status, or unknown whereabouts shall not be deemed or taken to satisfy any part of the probationary period.
- N. Unless otherwise specified by the Commission, all reports, documentation, notices, or other materials required to be submitted to the Commission shall be forwarded to: Missouri Real Estate Appraisers Commission, P.O. Box 1335, Jefferson City, Missouri 65102.
- O. Any failure by Licensee to comply with any condition of discipline set forth herein constitutes a violation of this Order.

14. The parties to this Agreement understand that the Missouri Real Estate Appraisers Commission will maintain this Agreement as an open record of the Commission as provided in Chapters 339, 610 and 324, RSMo.

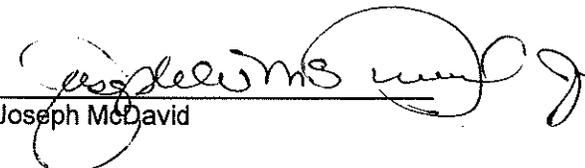
15. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

16. Licensee, together with Licensee's heirs and assigns, and Licensee's attorneys, do hereby waive, release, acquit and forever discharge the Commission, its respective members and any of its employees, agents, or attorneys, including any former Commission members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

17. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the certification of Licensee. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit this request to:
Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

18. If Licensee has requested review, Licensee and Commission jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's certification and issue findings of act and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's certification. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensee's certification, the agreed upon discipline set forth herein shall go into effect.

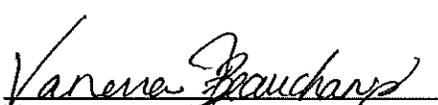
LICENSEE



Joseph McDavid

Date 02/28/2014

COMMISSION



Vanessa Beauchamp
Executive Director
Missouri Real Estate Appraisers Commission

Date 3-7-14

Before the
Administrative Hearing Commission
State of Missouri

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MISSOURI REAL ESTATE APPRAISERS)
COMMISSION,)
)
Petitioner,)
)
vs.)
)
JOSEPH W MCDAVID,)
)
Respondent.)

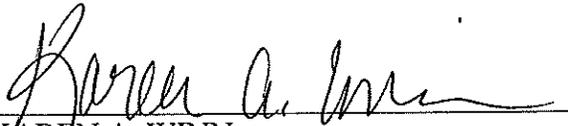
No. 14-0318 RA

ORDER

On March 10, 2014, Joseph W. McDavid filed a request to review a settlement agreement. He filed a copy of the settlement agreement with his signature, but without the signature of a representative of the Missouri Real Estate Appraisers Commission ("MREAC"). On March 11, 2014, we ordered the MREAC to file a fully executed copy of the settlement agreement, or otherwise to inform us of its status, by March 18, 2014. The MREAC filed the fully executed copy on March 12, 2014. It was executed by the MREAC on March 7, 2014. Thus, the settlement agreement was submitted to this Commission within fifteen days of its execution.

We have jurisdiction to review a timely submitted settlement agreement between the MREAC and one of its licensees. § 621.045.4(3) and .5, RSMo Supp. 2013. Our review shows that the parties have stipulated to facts, jointly proposed conclusions of law, and an agreement on discipline. Because the parties have agreed to these facts, we incorporate them into this order and adopt them as stipulated. *See Buckner v. Buckner*, 912 S.W.2d 65, 70 (Mo. App., W.D. 1995) (court is bound by and must give effect to parties' stipulations of fact). We have reviewed the stipulated facts and conclude McDavid is subject to discipline under § 337.532.2(5), (7), and (14), RSMo Supp. 2013, for the reasons set forth by the parties. Thus, we adopt and incorporate the parties' proposed conclusions of law into this order.

SO ORDERED on March 14, 2014.


KAREN A. WINN
Commissioner