

BEFORE THE MISSOURI
STATE REAL ESTATE APPRAISERS COMMISSION

MISSOURI REAL ESTATE APPRAISERS)
COMMISSION,)

Petitioner,)

v.)

No. 13-1110 RA

MICHAEL A. TERRELL,)

Respondent.)

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

I.

Statement of the Case

On or about December 22, 2014, the Administrative Hearing Commission entered its Decision in the case of *Missouri Real Estate Appraisers Commission v. Michael A. Terrell*, Case No. 13-1110 RA. The Administrative Hearing Commission certified the records of its proceedings and its Decision in *Missouri Real Estate Appraisers Commission v. Michael A. Terrell*, Case No. 13-1110 RA, to the Missouri Real Estate Appraiser Commission (the "MREAC") on approximately January 26, 2015. In its Decision, the Administrative Hearing Commission found that Respondent's certification as a certified residential real estate appraiser is subject to disciplinary action by the MREAC pursuant to § 339.532.2(5), (6), (7), (8), (9), (10), and (14), RSMo.

The MREAC has received and reviewed the record of the proceedings before the Administrative Hearing Commission and the Decision of the Administrative Hearing Commission. The Decision of the Administrative Hearing Commission is hereby adopted and incorporated herein by reference.

Pursuant to notice and § 621.110 and § 339.532.3, RSMo, the MREAC held a hearing on April 15, 2015, at approximately 1:00 p.m. at the Missouri Council of School Administrators Building, 3530 Amazonas Drive, Jefferson City, Missouri, for the purpose of determining the appropriate disciplinary action against Respondent's certification. The MREAC was represented by Assistant Attorney General Craig Jacobs. Respondent was present for the hearing and was represented by Attorney David Barrett. After being present and considering all of the evidence presented during the hearing, the MREAC issues the following Findings of Fact, Conclusions of Law and Order.

II.

Findings of Fact

1. Respondent holds a certification as a state certified residential real estate appraiser from the MREAC (certification # 2003027950).
2. The MREAC hereby adopts and incorporates herein the findings of fact contained in the Decision of the Administrative Hearing Commission in *Missouri Real Estate Appraisers Commission v. Michael A. Terrell*, Case No. 13-1110 RA.
3. In its December 22, 2014, Decision, the Administrative Hearing Commission found the MREAC has grounds to discipline Respondent's certification pursuant to § 339.532.2(5), (6), (7), (8), (9), (10), and (14), RSMo.
4. The MREAC set this matter for disciplinary hearing and served notice of the disciplinary hearing upon Respondent in a proper and timely fashion.

III.

CONCLUSIONS OF LAW

5. The MREAC has jurisdiction over this proceeding pursuant to § 621.110 and § 339.532.3, RSMo.

6. The MREAC expressly adopts and incorporates by reference the Conclusions of Law and the Decision of the Administrative Hearing Commission in *Missouri Real Estate Appraisers Commission v. Michael A. Terrell*, Case No. 13-1110 RA, finding cause to discipline Respondent's certification as a residential real estate appraiser pursuant to § 339.532.2(5), (6), (7), (8), (9), (10), and (14), RSMo.

7. As a result of the foregoing, and as identified in the Decision of the Administrative Hearing Commission, Respondent's state certification as a residential real estate appraiser is subject to disciplinary action by the MREAC, pursuant to § 339.532.2(5), (6), (7), (8), (9), (10), and (14), RSMo.

8. The MREAC has determined that this Order is necessary to ensure the protection of the public.

IV.

Order

9. Having fully considered all the evidence before the MREAC, and giving full weight to the Decision of the Administrative Hearing Commission, it is the **ORDER** of the MREAC, that Respondent's certification as a residential real estate appraiser is hereby placed on **PROBATION** for a period of **two (2) years** from the effective date of this Order. The probation shall be subject to the following terms and conditions:

- A. Respondent shall be entitled to engage in the practice of real estate appraising as a state certified residential real estate appraiser pursuant to § 339.500 to § 339.549, RSMo, as amended, provided Respondent adheres to all of the terms and conditions of this Order.
- B. During the probationary period, Respondent shall not supervise any real estate appraisal, as defined by § 339.503(1), RSMo, of property located in the state of Missouri nor act in any manner as an appraisal supervisor.
- C. Respondent shall submit written reports to the MREAC by no later than October 1 and March 1, during each year of the disciplinary period stating truthfully whether there has been compliance with all terms and conditions of this settlement agreement. The first written report shall be submitted on or before October 1, 2015. Respondent is responsible for assuring that the reports are submitted to and received by the MREAC.
- D. During the probationary period, Respondent shall maintain a log of all appraisal assignments completed, including appraisal values. Respondent shall submit a true and accurate copy of his log to the MREAC every six (6) 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. Respondent 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.
- E. During the probationary period, Respondent shall submit samples of his appraisals as requested by the MREAC for review.
- F. During the probationary period, Respondent shall comply with all applicable provisions of Chapter 339, RSMo, as amended, all applicable MREAC regulations and all applicable federal and state laws. "State" includes the state of Missouri, all other states and territories of the United States, and the ordinances of their political subdivisions. Respondent shall be deemed in violation of this Order and the terms of his probation if he is adjudicated, found guilty of or pleads guilty or nolo contendere to, a criminal offense, whether or not sentence is imposed.
- G. Respondent shall meet in person with the MREAC or its representative at any such time and place as required by the MREAC or its designee upon notification from the MREAC or its designee. Said meetings will be at the MREAC's discretion and may occur periodically during the probationary period.
- H. Respondent shall immediately submit documents showing compliance with the requirements of this Order to the MREAC when requested by the MREAC or its designee.
- I. If Respondent fails to comply with the terms of this order during the probationary period, in any respect, the MREAC may choose to conduct a hearing before it either during the probationary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred. In the event MREAC determines that Respondent has violated any

term or condition of this Order, the MREAC may, in its discretion, vacate this Order and may impose additional discipline as deemed appropriate by the MREAC, including revocation of the certification, pursuant to § 324.042, RSMo. The MREAC has continuing jurisdiction to hold a hearing to determine if a violation of this Order has occurred.

- J. Respondent shall keep the MREAC apprised of his current home and work addresses and telephone numbers. Respondent shall inform the MREAC in writing within ten (10) days of any change in this information.
- K. During the probationary period, Respondent shall timely renew his certification, timely pay all fees required for licensure and comply with all other requirements necessary to maintain his certification current and active.
- L. During the probationary period, Respondent shall accept and comply with unannounced visits from the MREAC's representatives to monitor compliance with the terms and conditions of this Order.
- M. This Order does not bind the MREAC or restrict the remedies available to the MREAC for any violation of § 339.500 to § 339.549, RSMo, not specifically mentioned in this document.
- N. Upon the expiration of the probationary period, Respondent's certification shall be fully restored if all other requirements of law have been satisfied provided, however, that in the event the MREAC determines that Respondent has violated any term or condition of this Order, the MREAC may, in its discretion, vacate and set aside the probation imposed herein and may impose any other lawful discipline the MREAC shall deem appropriate, including, revocation of said license. No order shall be entered by the MREAC pursuant to this paragraph without any required notice and opportunity for a hearing before the MREAC in accordance with Chapter 536, RSMo.
- O. If the MREAC determines that Respondent has violated a term or condition of this Order, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the MREAC may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning that violation.
- P. If, at any time during the probationary period, Respondent ceases to reside in the state of Missouri, or ceases to maintain his state residential real estate appraiser certification current or active under the provisions of Chapter 339, RSMo, or fails to keep MREAC advised of his current places of residence and business, 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.
- Q. Unless otherwise specified by the MREAC, all reports, documentation, evaluations, notices, or other materials required to be submitted to the MREAC shall be forwarded to:

Missouri Real Estate Appraisers Commission, P.O. Box 1335, Jefferson City, Missouri 65102.

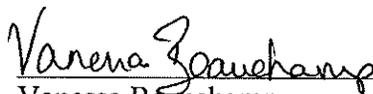
R. Any failure by Respondent to comply with any condition of discipline set forth herein constitutes a violation of this Order.

10. The terms of this Order are contractual, legally enforceable, and binding and not mere recitals. Except as otherwise contained herein, neither this Order 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.

11. The MREAC will maintain this Order as an open record of the MREAC as provided in Chapters 324, 339, and 610, RSMo, as amended.

SO ORDERED, This 27th day of April, 2015.

**MISSOURI REAL ESTATE
APPRAISERS COMMISSION**



Vanessa Beauchamp,
Executive Director
Missouri Real Estate Appraisers Commission

Before the
Administrative Hearing Commission
State of Missouri

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MO. ATTORNEY GENERAL

MISSOURI REAL ESTATE APPRAISERS)
COMMISSION,)
)
Petitioner,)
)
vs.)
)
MICHAEL A. TERRELL,)
)
Respondent.)

No. 13-1110 RA

DECISION

Michael A. Terrell is subject to discipline for errors he made in performing and supervising a residential real estate appraisal.

Procedure

On June 18, 2013, the Missouri Real Estate Appraisers Commission ("MREAC") filed a complaint seeking to discipline Terrell. On August 5, 2013, Terrell was personally served with a copy of the complaint and our notice of complaint/notice of hearing. On March 13, 2014, we held a hearing. Assistant Attorneys General Craig H. Jacobs and Todd C. Lucas represented the MREAC. David F. Barrett represented Terrell. The matter became ready for our decision on August 28, 2014, the date the last written argument was filed.

On August 28, 2014, the case was transferred to Commissioner Karen A. Winn, who, having read the full record including all the evidence, renders the decision. Section 536.080.2;¹ *Angelos v. State Bd. of Regis'n for the Healing Arts*, 90 S.W.3d 189 (Mo. App., S.D. 2002).

Findings of Fact

1. Terrell is certified by the MREAC as a state-certified residential real estate appraiser. His certification is and was, at all relevant times, current and active.
2. In March 2006, Joseph Boyd owned and operated a real estate appraisal business, Residential Appraisal Specialists, LLC ("RAS"). RAS's office was located in Boyd's basement. All records for RAS were kept at that office and there was space for other appraisers to work. There was a computer for the use of all appraisers.
3. At that time, Boyd was a real estate appraiser trainee and performed appraisals for RAS under the supervision of certified appraisers Terrell and Mark Stuart.
4. Terrell worked with RAS as an independent contractor. For his work as a supervisor, he was paid approximately 60% of the fee charged for the appraisal. Terrell was paid in cash, check, or COD (paid by the homeowner at the time of the appraisal). When Terrell was paid COD, the money was paid directly to him and did not pass through RAS's accounts. RAS reduced other payments it owed Terrell to adjust for the COD payments. RAS did not keep complete records of the adjustments.
5. From 2003 to 2006, RAS paid Terrell \$27,038.75 by checks.²
6. Boyd, Terrell, and Stuart communicated in person, by telephone, and by e-mail about the appraisals. The appraisals were transferred among them by e-mail.

¹ Statutory references, unless otherwise noted, are to the 2013 Supplement to the Revised Statutes of Missouri.

² There is nothing in the record to indicate how much Terrell was paid in cash or COD payments.

7. Boyd kept a log of his appraisals, which included those Terrell supervised. Terrell also kept an appraisal log, but his log did not show all of the RAS appraisals.

8. Signatures were affixed to the documents electronically. Terrell's signature was password protected. Terrell never provided a signature to anyone at RAS so that his signature could only be affixed by him.

9. Karen Townsend was the secretary for RAS. She sometimes affixed Boyd's signature to a document with his permission, which was possible because Boyd's signature was not password protected. She never affixed Terrell's signature to any documents.

10. On March 23, 2006, Boyd and Terrell inspected residential real estate located at 4864 Amy Clark Road, Hillsboro, Missouri ("the Amy Clark Road Property"). Boyd did most of the work in completing the summary appraisal report for the property.

11. The effective date of the Amy Clark Road Property appraisal report was March 23, 2006. The Amy Clark Road Property appraisal report was prepared for Community First Mortgage and valued the property at \$358,000.

12. On March 28, 2006, Terrell, as the supervisory appraiser, and Boyd, as the trainee, signed the Amy Clark Road Property appraisal report.

13. At the time of the Amy Clark Road Property appraisal report, the property was a 35-year-old, two-story, eight-room residential property on an approximately ten-acre site. The residential property included four bedrooms and 2.5 baths, with 2,086 square feet of living space. Two outbuildings also existed on the property. There was a relatively small body of water on or near the Amy Clark Road Property, but it was unclear whether it was visible from the property.

14. Terrell was required to develop and report the results of the Amy Clark Road Property appraisal in compliance with the Uniform Standards of Professional Appraisal Practice ("USPAP"), 2005 Edition.

15. In appraising the Amy Clark Road Property and preparing the appraisal report,

Terrell failed to:

- (a) prepare and retain a work file for the appraisal report;
- (b) sufficiently describe and analyze two outbuildings located on the subject property's land by failing to consider factors such as size, age, and type of construction; and
- (c) sufficiently support and analyze a finding of the subject property's condition as "average" when it was inconsistently described in the sales comparison approach grid as in "good" condition; and sufficiently support and analyze finding an effective age of only 5-7 years when the property was 35 years old.

16. In the preparation and reporting of the sales comparison analysis in the Amy Clark

Road appraisal report, Terrell:

- a. used comparable sale 1, a two-year-old home, which was not comparable to the subject property, a 35-year old home.
- b. failed to accurately describe and adequately analyze the adjustments for comparable sale 1, as follows: 1) no support for the relatively small \$5,500 negative adjustment for the significant 33-year age difference; 2) a positive adjustment for a large front porch when the MLS records indicate the comparable sale had a superior porch; 3) no adjustment for the comparable sales' oversized garage and workshop; 4) no adjustment for the comparable sales' superior kitchen with custom maple cabinets, tile floors, and a breakfast bar; 5) misstated the acreage for the comparable sale property as 4.3 acres when the MLS data showed 12.69 acres;
- c. used comparable sale 2, a one-year-old lakefront home in a lake community on a 10,800 sq.-foot lot, which was not properly comparable to the subject property, a 35-year-old home on 10 acres with outbuildings suitable as a horse property;
- d. failed to accurately describe and adequately analyze the adjustments for comparable sale 2, as follows: 1) no support for the \$20,000 positive adjustment for site; 2) no support for the relatively small (\$5,500) negative adjustment for the significant 34-year age difference; 3) no adjustment for the comparable sales' waterfront location, view, or available amenities (clubhouse, pool, and golf), instead describing its view and location as identical to the subject property;
- e. used comparable sale 3, a 17-year old lakefront home in a lake community on a 12,160 sq.- foot lot, which was not properly comparable to the subject property, a 35-year old home on 10 acres with outbuildings suitable as a horse property;

f. failed to accurately describe and/or adequately analyze comparable sale 3, including the following characteristics: its location in a lake community; its waterfront location; the amenities available to the property through its subdivision; the presence of a boat slip, boat house, and large patio off the water; and its “beautiful views of water in every room from the back of the house,” instead describing its view and location as identical to the subject property;

g. used comparable sale 4, a seven-year old home with a private stocked lake and island accessible by an arched bridge, which was not properly comparable to the subject property, a 35-year old home on 10 acres with only a remote water view;

h. failed to accurately describe and/or adequately analyze comparable sale 4, including its following characteristics: its pasture; a “well stocked lake, with a private island accessible by an arched bridge”; and its garage with electricity, an office, and a workshop;

i. used comparable sale 5, a seven-year-old home with a private stocked lake and island accessible by an arched bridge, which was not properly comparable to the subject property, a 35-year-old home on 10 acres with only a remote water view;

j. failed to accurately describe and adequately analyze comparable sale 5, including the following characteristics: 1) the comparable sale’s 8.5-acre site and the subject property’s 10-acre site, which are treated as equal so that an adjustment was not necessary; 2) the subject property’s two outbuildings and the comparable sale’s horse barn, screened gazebo, deck, boat dock, guest house with rooms, a screened porch, a four seasons room, and guest cottage with a screened porch; and 3) the comparable sale’s dominant lake view and the limited remote water view, if any, of the subject property;

k. failed to make any adjustments for the location differences between the lake front comparable sales and the subject property;

l. failed to use any of 13 comparable sales ranging in value from \$84,500 to \$324,000 that sold in the year prior to the effective date of the Amy Clark Property appraisal report that were from 20 to 45 years old, on 5- to 15-acre sites, in the same Hillsboro School District, and more similar in design;

m. failed to provide adequate support and/or analysis for adjustments made for the comparable sales with respect to differences in their design, site size, features, age, view, and/or quality of construction.

17. In the preparation and reporting of the cost approach in the appraisal report, Terrell failed to sufficiently support and analyze the site value of \$100,000, describing the method used

to derive the value as "market extraction of land sales or lot pricing within the subject's market."

Ex. 3 at 12.

18. On August 2, 2006, Tracy Newhouse, on behalf of the lender, sent RAS a request for copies of Boyd's and Terrell's appraiser licenses since both signed the appraisal report. Townsend forwarded this to Terrell and asked him to send Newhouse a copy of his certification. On August 9, 2006, Terrell responded back:

Its [sic] been taken care of. I forwarded an e-mail of my license just minutes ago.

However, my records do not reflect any payment to me for this file. Can you please check on this file as well as any others which may have fallen between the cracks utilizing the same diligence to handle this matter.

Ex. 20.

19. On August 11, 2006, at 11:11 a.m., Terrell sent the following e-mail to Townsend:

Does Mark currently have access to all of the necessary records, this file, as well as all files associated with my name in order to make any necessary corrections of compensation due to American Appraisal/Michael Terrell.

Id. At 12:48 p.m., Terrell sent another e-mail to Townsend stating:

We checked with Mark and checked our records.

We were advised that there were:

19 done in January
14 done in February
19 done in March
21 done in April
21 done in May
12 done in June.

Mark does not know how many were done in July nor [sic] August.

We have check [sic] our records and we have only received two checks from Residential Appraisal Specialist, and those were check # 5945 dated 12/30/05 and check #5 969 dated 2/1/06 both for a payment of \$330.00.

Thanks in advance, Karen for your assistance.

Ex. 20A.

20. By letter dated February 24, 2010, Chase Home Lending asked Terrell to address a list of deficiencies in the Amy Clark Road Property appraisal report, and to do so within 21 days. Terrell did not respond. By letter dated April 12, 2010, Chase notified Terrell that his appraiser status had been changed to "Ineligible for Chase." Ex. 14. The letter informed Terrell that Chase would no longer accept appraisal reports submitted in his name or performed by him. Terrell did not respond to this letter.

21. On June 22, 2010, Chase Home Lending filed a complaint with the MREAC against Terrell.

22. By letter dated June 25, 2010, the MREAC informed Terrell of the complaint filed against him and requested all pertinent documents for the Amy Clark Road Property appraisal, including a full copy of the appraisal report, the work file, and the appraisal request. The MREAC requested this information no later than July 25, 2010.

23. Terrell requested an extension of time to respond and was granted until August 10, 2010. On August 5, 2010, the MREAC received Terrell's response, in which Terrell:

- (a) denied inspecting, reviewing, or serving as a supervisor in the appraisal of the Amy Clark Property;
- (b) denied affixing his signature to the Amy Clark Property appraisal report; and
- (c) denied having any record, work file, or appraisal request for the Amy Clark Property appraisal.

24. On September 17, 2010, the MREAC sent Terrell a letter by certified mail asking to meet with Terrell at its next scheduled meeting on November 8, 2010. Terrell asked for his appearance to be rescheduled, and it was rescheduled for the February 1, 2011, MREAC meeting. Terrell did not appear. The MREAC rescheduled Terrell's appearance for March 15, 2011.

25. When he appeared at the March 15, 2011 MREAC meeting, Terrell:

- (a) denied involvement with the Amy Clark Road Property appraisal report;
- (b) denied signing the Amy Clark Road Property appraisal report;
- (c) denied ever seeing the Amy Clark Road Property;
- (d) denied that he had ever been out in the field, looked at properties, or done anything else with Boyd.

26. In April and May of 2011, Terrell exchanged e-mails with the MREAC. Terrell stated he did not have the work files for the Amy Clark Road Property appraisal.

27. The Amy Clark Road Property appraisal report does not appear in Terrell's personal appraisal logs, but he did not keep a record of all RAS appraisals. However, Boyd's appraisal log contains information about appraisals that Terrell performed with him, and it includes the Amy Clark Road Property.

28. On June 18, 2013, the MREAC filed a complaint seeking to discipline Terrell. June 18, 2013, was less than three years after June 22, 2010.

Conclusions of Law

We have jurisdiction to hear this case. Sections 339.532; 621.045. The MREAC bears the burden of proving that Terrell's license is subject to discipline by a preponderance of the evidence, *see Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-30 (Mo. App., W.D. 2012) (dental licensing board demonstrates "cause" to discipline by showing preponderance of evidence). A preponderance of the evidence is evidence showing, as a whole, that "the fact to be proved [is] more probable than not." *Id.* at 230.

I. Credibility

This Commission must judge the credibility of witnesses, and we have the discretion to believe all, part, or none of the testimony of any witness. *Dorman v. State Bd. of Registration for the Healing Arts*, 62 S.W.3d 446, 455 (Mo. App., W.D., 2001). Even when credibility is a

factor, a Commissioner may decide the case after reading the full record but without hearing the evidence. *Angelos*, 90 S.W.3d at 192-94.

We must make a credibility determination between the testimony of Boyd and Terrell. Their testimony is directly contradictory. Boyd testified that he and Terrell worked together on the Amy Clark Road Property appraisal, inspected the property together, and both signed the appraisal report. Terrell testified that he knew nothing about the appraisal and did not sign or cause his signature to be affixed to the report.

At the time of the Amy Clark Road Property appraisal, Boyd was not licensed or certified as a real estate appraiser. In order to conduct and prepare the appraisal, he was required to be supervised by a state certified real estate appraiser. The appraisal report had to be reviewed and signed by the certified appraiser. Section 339.501.3, RSMo 2000.

Boyd testified he followed the above procedure with the Amy Clark Road Property appraisal. He testified that both Terrell and Stuart were hired by RAS to supervise trainees, including him. Terrell attacks Boyd's credibility by noting that there is no evidence that Terrell was paid by check for the Amy Clark Road appraisal. Boyd counters that Terrell was often paid in cash – and it often was the difference between what Terrell collected COD and what he was owed from RAS. He admits that his record keeping was less than professional: “It was a family company. I treated [sic] and thought we were close. We were family. I didn't write everything down.” Tr. at 95.

Boyd specifically testified that both his and Terrell's signatures were on the appraisal report when it was sent to the client. He countered Terrell's contention that the signature was a forgery by testifying that placement of Terrell's signature on the document required a password and neither he nor Townsend had access to that password. Tr. at 90-91. Townsend corroborated his testimony that she did not apply anyone's signature without permission and never applied

Terrell's signature to any document. With respect to Terrell's signature, she could not do so. Terrell's suggestion that Boyd used scanners and old signatures to forge the signature raises the question of why he would do so. There was no evidence of animosity between the two men at time of the appraisal (although this appeared to develop later), and no evidence of any motive for Boyd to have forged Terrell's signature at that time. Boyd's testimony is more credible – that the two worked together as they had in other appraisals and both signed the appraisal report.

The MREAC points to a series of e-mails concerning the Amy Clark Road Property appraisal in which Terrell was asked to provide a copy of his license. The MREAC notes that Terrell did not deny participating in the appraisal, but instead asked for payment. Terrell argues that the Amy Clark Road Property appraisal does not appear in his personal logs, but he admitted that he did not keep a record of all RAS appraisals.

Most damaging to Terrell's credibility is that, in his testimony before the MREAC, he denied ever working with Boyd:

Mr. Harris: Had you ever been out in the field and looked at properties with [Boyd], accompanied him or done anything with him?

Mr. Terrell: No. I hadn't ever done anything with him.

Exhibit 18 at 20. Boyd's appraisal logs list appraisals in which Terrell participated, and they specifically include the Amy Clark Road Property. In his testimony before this Commission, Terrell admitted to supervising Boyd. Boyd testified that Terrell worked with him on the Amy Clark Road Property appraisal by performing final editing on the report and decisions about how to direct the appraisal, and that both he and Terrell inspected the Amy Clark Road Property and the comparable sales properties. Boyd described how they would discuss the appraisal by telephone or by sending documents by e-mail.

We find Boyd to be the more credible witness, and our Findings of Fact reflect our determination.

II. Challenge to USPAP

Terrell argues that the USPAP has not been adopted as a legal standard in Missouri because the MREAC failed to follow the rule-making procedures in Chapter 536, RSMo.

The USPAP is incorporated by reference into the MREAC's regulation. 20 CSR 2245-3.010(5)(B). Regulations promulgated pursuant to statutory authority have the force and effect of law. *Killion v. Bank Midwest, N.A.*, 886 S.W.2d 29, 32 (Mo. App., W.D. 1994). We cannot change and must follow regulations that are consistent with the statutes. *Bridge Data Co. v. Director of Revenue*, 794 S.W.2d 204, 207 (Mo. banc 1990). We have no power to vary the statutes the legislature has enacted. *Id.*

If a regulation is inconsistent with a statute, we follow the statute. But Terrell has shown no such inconsistency. To the contrary, § 339.535, RSMo 2000, states:

State certified real estate appraisers and state licensed real estate appraisers shall comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation.

The legislature has also made failure to comply with USPAP standards cause for discipline under § 339.532.2(7).

Terrell argues that the legislature and the MREAC have improperly delegated the authority to set standards for appraisers' conduct to the creator of the USPAP, the Appraisal Standards Board of the Appraisal Foundation, which is overseen by the Appraisal Subcommittee, which is overseen by the U.S. Congress.

The MREAC argues that the non-delegation doctrine was not violated, citing *Menorah Medical Center v. Health and Educ. Facilities Authority*, 584 S.W.2d 73 (Mo. banc 1979). In that case, the Court noted the general requirement that when a statute vests discretion in

administrative officials, it must include standards for their guidance. The Court then noted the exceptions:

Three general exceptions to the requirement of standards in statutes delegating decisions to administrative agencies were set forth in the *ABC* case at 524-25.

(1) [W]here the ordinance or statute deals with situations which require the vesting of some discretion in public officials, and where it is difficult or impracticable to lay down a definite, comprehensive rule; (2) where the discretion relates to the administration of a police regulation and is necessary to protect the public morals, health, safety and general welfare; (3) where personal fitness is a factor to be taken into consideration.

Id. at 83-84 (quoting *ABC Security Services, Inc. v. Miller*, 514 S.W.2d 521 (Mo. 1974) (other citations omitted).

We agree that the first two factors are present in this case. The professional standards would be difficult for the legislature to create and maintain. And the primary purpose of professional licensing is to protect the public. *Lane v. State Comm. of Psychologists*, 954 S.W.2d 23, 25 (Mo. App., E.D. 1997).

We find there has been no improper delegation.

III. Statute of Limitations

Terrell argues that the case is barred by the statute of limitations, § 516.120, RSMo 2000, entitled, “**What actions within five years**”:

Within five years:

(2) An action upon a liability created by a statute other than a penalty or forfeiture;

(4) An action for taking, detaining or injuring any goods or chattels, including actions for the recovery of specific personal property, or for any other injury to the person or rights of another, not arising on contract and not herein otherwise enumerated[.]

But there is a specific statute of limitations for licensing cases, § 324.043, which states:

1. Except as provided in this section, **no disciplinary proceeding** against any person or entity licensed, registered, or certified to practice a profession within the division of professional registration **shall be initiated unless such action is commenced within three years of the date upon which the licensing, registering, or certifying agency received notice** of an alleged violation of an applicable statute or regulation.
2. For the purpose of this section, **notice shall be limited to:**
 - (1) **A written complaint;**
 - (2) Notice of final disposition of a malpractice claim, including exhaustion of all extraordinary remedies and appeals;
 - (3) Notice of exhaustion of all extraordinary remedies and appeals of a conviction based upon a criminal statute of this state, any other state or the federal government;
 - (4) Notice of exhaustion of all extraordinary remedies and appeals in a disciplinary action by a hospital, state licensing, registering or certifying agency, or an agency of the federal government.
3. For the purpose of this section, an action is commenced when a complaint is filed by the agency with the administrative hearing commission, any other appropriate agency, or in a court; or when a complaint is filed by the agency's legal counsel with the agency in respect to an automatic revocation or a probation violation.

(Emphasis added.) When a law provides a specific statute of limitations, it prevails over the general statute of limitations. *Airis v. Metropolitan Zoological Park & Museum Dist.*, 332 S.W.3d 279, 281 (Mo. App. E.D. 2011) (citing § 516.300). Exhibit 14 is a written complaint to the MREAC that was received by that agency on June 22, 2010. The MREAC filed its complaint with this Commission on June 18, 2013. The statute of limitations does not prevent us from hearing this case.

Terrell also argues that the parties were prejudiced by the time period between the conduct and the filing of the complaint and hearing. Laches is an equitable defense. *UAW-CIO Local #31 Credit Union v. Royal Ins. Co.*, 594 S.W.2d 276, 281 (Mo. 1980). As an

administrative agency, we have no authority to apply the doctrines of equity. *Soars v. Soars-Lovelace, Inc.*, 142 S.W.2d 866, 871 (Mo. 1940).

IV. Objection to Exhibit 3

Terrell objected to Petitioner's Exhibit 3, the appraisal report, because it was not the "best evidence" of the original appraisal. This Commission accepted the exhibit subject to the objection. The best evidence rule "requires the original document be submitted to prove operative terms or content that are at issue." *Hale & Hale, Ltd. v. Arnold & Jeanie Pettit Declaration of Trust Dated 2/1/95*, 298 S.W.3d 104, 108 (Mo. App., W.D. 2009). There is an exception if the original is shown to be unavailable for a reason other than the fault of the party offering the document. *State v. Foulk*, 725 S.W.2d 56 (Mo. App., E.D. 1987).

In administrative hearings, § 536.070(9) governs:

Copies of writings, documents and records shall be admissible without proof that the originals thereof cannot be produced, if it shall appear by testimony or otherwise that the copy offered is a true copy of the original, but the agency may, nevertheless, if it believes the interests of justice so require, sustain any objection to such evidence which would be sustained were the proffered evidence offered in a civil action in the circuit court, but if it does sustain such an objection, it shall give the party offering such evidence reasonable opportunity and, if necessary, opportunity at a later date, to establish by evidence the facts sought to be proved by the evidence to which such objection is sustained[.]

The court in *Sprague v. City of Springfield*, 641 S.W.2d 814 (Mo. App., S.D. 1982) considered how § 536.070 "modifies the best evidence rule in administrative cases" in determining that exhibits were properly before the agency. *Id.* at 818 n.2.

The MREAC's employee testified that the agency had received the copy from Chase Home Lending as part of its initial complaint. Boyd testified that it was a true and correct copy of the Amy Clark Road Property appraisal report that he completed, both he and Terrell signed, and that was sent to the client. Tr. at 66. We accept Boyd's testimony and find that it properly authenticated the report. Therefore, we admit Exhibit 3 into the record.

V. Cause for Discipline

The MREAC argues there is cause for discipline under § 339.532:³

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any state-certified real estate appraiser, state-licensed real estate appraiser, state-licensed appraiser trainee, state-certified residential appraiser trainee, state-certified general appraiser trainee, state-licensed appraisal management company that is a legal entity other than a natural person, any person who is a controlling person as defined in this chapter, 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;

(6) Violation of any of the standards for the development or communication of real estate appraisals as provided in or pursuant to 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;

(8) Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(9) Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal;

(10) Violating, assisting or enabling any person to willfully disregard any of the provisions of sections 339.500 to 339.549 or the regulations of the commission for the administration and enforcement of the provisions of sections 339.500 to 339.549;

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

³ Because there are no significant substantive changes, we cite to the current version of the statute.

A. USPAP Violations

As noted above, § 539.535 requires real estate appraisers to comply with the USPAP.

USPAP Standard 1, regarding the development of an appraisal, states:

In developing a real property appraisal, an appraiser must identify the problem to be solved and the scope of work necessary to solve the problem, and correctly complete research and analysis necessary to produce a credible appraisal.

Ex. 12 at 16. Terrell overvalued the Amy Clark Road Property at \$358,000 by characterizing it as lakefront property when it was merely located near a small body of water remote enough from the house that it was unclear whether it could be seen from the house. Terrell used superior and dissimilar comparable sales, two of which were lakefront properties on a 125-acre lake when there were 13 comparable sales that were closer in age, site size and design, and located in the same Hillsboro school district. These 13 sales ranged in price from \$84,500 to \$324,000. Terrell violated USPAP Standard 1.

USPAP Standard 2, regarding the reporting of an appraisal, provides:

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.

Id. at 22. Comparing the Amy Clark Road Property to superior properties resulted in an inflated value and thus was a misleading appraisal report. Terrell violated USPAP Standard 2.

USPAP Standard 1 and Standards Rule ("SR") 1-1(a) states:

In developing a real property appraisal, an appraiser must:

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

Id. at 16. The MREAC's expert witness, Cheryl Kunzler, testified that Terrell violated subsection (a) because the comparison of newer properties to the Amy Clark Road Property demonstrated that he did not understand the principle of "social change." Tr. at 181-82. She described this as the changes in bedroom count and size, room configuration, floor plan, size of closets, and types of kitchen that would have been acceptable 35 years ago but would not necessarily be acceptable now. Kunzler testified that Terrell violated subdivision (b) because he failed to identify some components affecting value in the comparable properties – differences such as waterfront property and additional amenities, and this was a material omission. He also failed to use more similar properties as comparable sales. Kunzler testified that Terrell violated subdivision (c) because his adjustments in the sales comparison approach do not have adequate support for adjustments for site difference, age difference, and location, in the case of sales that were in a lakefront community.

Terrell violated USPAP SR 1-1(a), (b), and (c).

USPAP Standard 1 and SR 1-2(e) state:

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[.]

Ex. 12 at 17. Terrell's description of the Amy Clark Road Property as lake view property, when it was not, with an effective age of seven years, when it was 35 years (without sufficient explanation), violated this SR.

USPAP Standard 1 and SR 1-4(a) and (b) state:

In developing a real property appraisal, an appraiser must collect, verify and analyze all information applicable to the appraisal problem, given the scope of work identified in accordance with Standards Rule 1-2(f).

(a) When a sales comparison approach is applicable, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.

(b) When a cost approach is applicable, an appraiser must:

(i) develop an opinion of site value by an appropriate appraisal method or technique[.]

Id. at 19. In the sales comparison approach, Terrell failed to use properties that were much more similar to the Amy Clark Road Property in terms of type, location and age than the ones in the report. He failed to provide sufficient support and analysis for the adjustments made to the comparable sales.

Kunzler testified that Terrell failed to properly explain the technique or method he used to arrive at the site value of \$100,000. He wrote that he derived the site value “through market extraction of land sales or lot pricing within the subject’s market.” Ex. 3 at 12. As Kunzler noted, those are two separate methods, and the appraisal report does not specify which was used. Also, lot pricing is not an acceptable method for determining site value because asking price does not necessarily reflect market value, as selling price does.

Terrell violated USPAP SR 1-4(a) and (b)(i).

USPAP Standard 2 and SR 2-1 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;

(b) contain sufficient information to enable the intended users of the appraisal to understand the report properly [.]

Id. at 22. We have already found the appraisal report to be misleading for the reasons stated above. Kunzler testified as to her opinion that it did not contain sufficient information:

A: . . . Again, given the information in the appraisal, number one, the inconsistencies, the lack of support for adjustments and the entire report, none of

the adjustments had reasonable market support. It did not, in my opinion, contain sufficient information to understand the report properly.

Tr. at 189. Terrell violated USPAP SR 2-1(a) and (b).

USPAP SR 2-2(b)(ix) states:

(b) The content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:

(ix) summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions [.]

Ex. 12 at 27. Terrell failed to provide adequate reasoning for his adjustments in valuation using the sales comparison approach, or for his determination of a \$100,000 site value. He violated SR 2-2(b)(ix).

USPAP Ethics Rule states:

An Appraiser must prepare a workfile for each appraisal, appraisal review, or appraisal consulting assignment. The workfile must include:

the name of the client and the identity, by name or type, of any other intended users;

true copies of any written reports, documented on any type of media;

summaries of any oral reports or testimony, or a transcript of testimony, including the appraiser's signed and dated certification; and

all other data, information, and documentation necessary to support the appraiser's opinions and conclusions and to show compliance with this Rule and all other applicable Standards, or references to the location(s) of such other documentation.

An appraiser must retain the workfile for a period of at least five (5) years after preparation or at least two (2) years after final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment, whichever period expires last.

An appraiser must have custody of his or her workfile, or make appropriate workfile retention, access, and retrieval arrangements with the party having custody of the workfile.

(Emphasis added.) Section 339.537, RSMo Supp. 2005, provides:

State-certified real estate appraisers and state licensed real estate appraisers shall retain originals or true copies of contracts engaging an appraiser's services for appraisal assignments, specialized appraisal services, appraisal reports, and supporting data assembled and formulated in preparing appraisal reports, for five years. The period for retention of the records applicable to each engagement of the services of the state-certified real estate appraiser or state-licensed real estate appraiser shall run from the date of the submission of the appraisal report to the client. Upon requests by the commission, these records shall be made available by the state-certified real estate appraiser or state-licensed real estate appraiser for inspection and copying at his or her expense, by the commission on reasonable notice to the state-certified real estate appraiser or state-licensed real estate appraiser. When litigation is contemplated at any time, reports and records shall be retained for two years after the final disposition.

Both of these laws require records to be retained for at least five years. When the MREAC requested records from Terrell, he failed to provide them, arguing that he had not performed the appraisal. But we have found that he did participate in the appraisal. Given that, even if the records had been retained by Boyd rather than Terrell, he should have had arrangements with Boyd for retention, access, and retrieval. Terrell violated these two provisions.

B. Statutory Grounds for Discipline

i. Gross Negligence, Misconduct, Dishonesty, Fraud, Misrepresentation, and Incompetency – § 339.532.2(5)

The MREAC alleges there is cause for discipline under § 339.532.2(5) because Terrell's conduct demonstrated incompetency, misconduct, gross negligence, dishonesty, fraud and/or misrepresentation in the performance of the functions or duties of a real estate appraiser.

Incompetency is a general lack of professional ability, or a lack of disposition to use an otherwise sufficient professional ability, to perform in an occupation. "Incompetent," if used in a context relating to actual occupational ability, refers to "the actual ability of a person to perform in [the] occupation." Section 1.020(9). We also look to the analysis of incompetency in a disciplinary case from the Supreme Court, *Albanna v. State Bd. of Regis'n for the Healing Arts*,

293 S.W.3d 423 (Mo. banc 2009). Incompetency is a “state of being” showing that a professional is unable or unwilling to function properly in the profession. *Id.* at 435.

Misconduct means “the willful doing of an act with a wrongful intention[;] intentional wrongdoing.” *Missouri Bd. for Arch’ts, Prof’l Eng’rs & Land Surv’rs v. Duncan*, No. AR-84-0239 (Mo. Admin. Hearing Comm’n Nov. 15, 1985) at 125, *aff’d*, 744 S.W.2d 524 (Mo. App., E.D. 1988). Misrepresentation is “a falsehood or untruth made with the intent of deceit rather than inadvertent mistake.” *Hernandez v. State Bd. of Regis’n for the Healing Arts*, 936 S.W.2d 894, 899 n. 2 (Mo. App., W.D. 1997), quoted in *Kerwin*, 375 S.W.3d at 229. Fraud is an intentional perversion of truth to induce another, in reliance on it, to part with some valuable thing belonging to him. *Id.* It necessarily includes dishonesty, which is a lack of integrity or a disposition to defraud or deceive. WEBSTER’S THIRD INTERNATIONAL DICTIONARY 650 (unabr. 1986).

The Appraisal

The shortcomings we have found appear in one appraisal. Many problems involve providing insufficient explanation. The more serious problem is Terrell’s failure to use better comparables which may have resulted in an inflated appraised value of the subject property. Despite this, we do not find that these deficiencies are sufficient to show he was incompetent. Kunzler could not testify as to whether the report involved fraud or dishonesty. She stated, “I don’t have enough information to indicate either of those.” Tr. at 192. We find no other evidence of any intentional wrongdoing or dishonesty on Terrell’s part as to the report.

We do not find him subject to discipline for fraud, misconduct, dishonesty, or misrepresentation for his preparation of the appraisal report.

Gross negligence is an act or course of conduct constituting such a gross deviation from the standard of care a reasonable professional would exercise under the circumstances that it

demonstrates a conscious indifference to a professional duty. *Duncan*, 744 S.W.2d at 533, quoted in *Kerwin*, 375 S.W.3d at 226.

We believe the evidence of problems such as failure to use more similar comparables, failing to provide support for his calculations, and inaccurate description of the property with reference to its “lake view” and effective age demonstrate a conscious indifference to his professional duties. We find Terrell was grossly negligent.

Statements to the MREAC

In its written argument, the MREAC does not argue that Terrell’s false statements before it are cause for discipline. In its complaint, however, it alleges he made misrepresentations to the Board. Complaint at ¶ 18. Then it alleges that “Terrell’s conduct, as alleged in this Complaint, demonstrates incompetency, misconduct, gross negligence, dishonesty, fraud, and/or misrepresentation” and references § 339.532.2(5). Complaint at ¶ 32. Since the conduct and law are set forth, we find Terrell was on sufficient notice to satisfy the *Duncan* standard that he was subject to discipline for his misstatements.

Terrell’s false statements to the MREAC in which he denied participating in the Amy Clark Road Property appraisal and even denied that he had worked with Boyd were misrepresentations and constitute misconduct and dishonesty.

Terrell is subject to discipline under § 339.532.2(5) for misrepresentation, gross negligence, misconduct, and dishonesty.

ii. Violation of Statutory Standards for Appraisals – § 339.532.2(6)

Section 339.535 mandates compliance with USPAP, and § 339.532.2(6) authorizes discipline for a violation of such standards. Because we have found several violations of such standards by Terrell in relation to the appraisal, we conclude that Terrell is subject to discipline under § 339.532.2(6).

iii. Failure to Comply with USPAP – § 339.532.2(7)

Based on the violation of USPAP Standards and Standards Rules already set out above, we find Terrell subject to discipline under § 339.532.2(7).

iv. Reasonable Diligence – § 339.532.2(8)

Reasonable diligence is defined as:

A fair, proper and due degree of care and activity, measured with reference to the particular circumstances; such diligence, care or attention as might be expected from a man of ordinary prudence and activity.

BLACK'S LAW DICTIONARY 457 (6th ed. 1990). Terrell made a number of errors in completing the appraisal, including the significant ones we set forth above. These show that he was not attentive or persistent and that he did not exercise a fair degree of care in performing the appraisal. He is subject to discipline under § 339.532.2(8).

v. Negligence or Incompetence – § 339.532.2(9)

Negligence is defined as “the failure to use that degree of skill and learning ordinarily used under the same or similar circumstances by members of [the] . . . profession.” *Mirth v. Regional Bldg. Inspection Co.*, 93 S.W.3d 787, 789 (Mo. App., E.D. 2002). This subdivision of § 339.532.2 varies from subdivision (5) by providing cause to discipline upon a finding of negligence or incompetence in developing *an* appraisal, in preparing *an* appraisal report, or in communicating *an* appraisal – it does not require an assessment of overall performance.

USPAP reminds us that “[p]erfection is impossible to attain.” SR 1-1(c) Comment – Exhibit 12 at 16. But the problems in the appraisal report were more than minor. We find that Terrell displayed incompetence as an appraiser. We also find that Terrell was negligent in developing, preparing, or communicating the appraisal. He made significant errors by failing to use similar comparables, which resulted in overvaluing of the subject property. He failed to explain how he arrived at his determinations such as the site value and the effective age of the improvements. We find cause for discipline under § 339.532.2(9).

vi. Violating Statutes or Regulations – § 339.532.2(10)

As described above, we have found that Terrell failed to comply with USPAP standards and rules as is required under § 339.535. Therefore, we find Terrell is subject to discipline under § 339.532.2(10) for violating § 339.535.

vii. Violating Professional Trust – § 339.532.2(14)

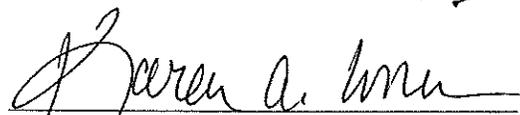
Professional trust or confidence is the reliance on the special knowledge and skills that professional licensure evidences. *State v. Pappas*, 337 N.W.2d 490, 495 (Iowa 1983). It is based on the power imbalance in matters within the knowledge of the licensed profession between the professional and client. *See Siegel v. Kranis*, 288 N.Y.S.2d 831, 835 (N.Y. App. Div. 1968). A professional trust or confidence is engendered by a party's reliance on the special knowledge and skills evidenced by professional licensure. *Trieseler v. Helmbacher*, 168 S.W.2d 1030, 1036 (Mo. 1943). Reliance on a professional's special knowledge and skills creates a professional trust, not only between the professional and his clients, but also between the professional and his employer and colleagues. *Cooper v. Missouri Bd. of Pharmacy*, 774 S.W.2d 501, 504 (Mo. App., E.D. 1989).

Terrell neglected to use his specialized knowledge and skills to prepare a credible and not misleading appraisal report. He violated the professional trust of his clients. He is subject to discipline under § 339.532.2(14).

Summary

Terrell is subject to discipline under § 339.532.2(5), (6), (7), (8), (9), (10) and (14).

SO ORDERED on December 22, 2014.


KAREN A. WINN
Commissioner

**BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI**

FILED

JUN 18 2013

ADMINISTRATIVE HEARING
COMMISSION

MISSOURI REAL ESTATE)
APPRAISERS COMMISSION,)
3605 Missouri Boulevard)
P.O. Box 1335)
Jefferson City, MO 65102,)
(573) 751-0038)

Petitioner,)

v.)

MICHAEL A. TERRELL)
12625 Clock Tower Dr.)
Spanish Lake, MO 63138)
(314) 517-7918)

Respondent.)

Case No. 13-1110 RA

COMPLAINT

Petitioner, the Missouri Real Estate Appraisers Commission (“MREAC”), by and through counsel, the Missouri Attorney General’s Office, states its cause of action against Respondent, Michael Terrell (“Respondent”), as follows:

1. The MREAC was established pursuant to § 339.507, RSMo¹, for the purpose of executing and enforcing the provisions of §§ 339.500 through 339.549, RSMo, as amended.

¹ All statutory references are to the 2000 Revised Statutes of Missouri unless otherwise

2. Respondent is certified by the MREAC as a state-certified residential real estate appraiser, certificate no. 2003027950 (“Certification”). Such Certification is and was, at all times relevant to this action, current and active.

3. Jurisdiction and venue are proper before the Administrative Hearing Commission (“AHC”) pursuant to §§ 621.045 and 339.532.2, RSMo Supp. 2012.

4. Section 339.532.2, RSMo Supp. 2012, provides in relevant part as follows:

The commission may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any state-certified real estate appraiser, state-licensed real estate appraiser, state-licensed appraiser trainee, state-certified residential appraiser trainee, state-certified general appraiser trainee, state-licensed appraisal management company that is a legal entity other than a natural person, any person who is a controlling person as defined in this chapter, 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;

noted.

(6) Violation of any of the standards for the development or communication of real estate appraisals as provided in or pursuant to 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;

(8) Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(9) Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal;

(10) Violating, assisting or enabling any person to willfully disregard any of the provisions of sections 339.500 to 339.549 or the regulations of the commission for the administration and enforcement of the provisions of sections 339.500 to 339.549;

.....

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

5. Section 339.535, RSMo Supp. 2012, provides as follows:

State-certified real estate appraisers, state-licensed real estate appraisers, state-licensed appraiser trainees, and state-certified appraiser trainees shall comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation.

Similarly, § 339.535, RSMo, provided as follows:

State certified real estate appraisers and state licensed real estate appraisers shall comply with the Uniform

Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation.

6. On or about March 23, 2006, Terrell and/or Joseph Boyd, then a trainee working under Terrell's supervision, inspected and completed a summary appraisal report for residential real estate located at 4864 Amy Clark Road, Hillsboro, MO 63050 ("the Amy Clark Property").

7. The effective date of the appraisal report for the Amy Clark Property ("Amy Clark Property Appraisal Report") was March 23, 2006.

8. On or about March 28, 2006, Terrell—as the Supervisory Appraiser—and Boyd—as the trainee—signed the Amy Clark Property Appraisal Report."

9. At the time of the Amy Clark Property Appraisal and Appraisal Report, the Property was a 35-year-old, two-story, residential property on an approximately ten-acre site. The improvements on the Amy Clark Property were comprised of eight rooms, including four bedrooms and 2.5 baths, with 2,086 square feet of living space. Two outbuildings also existed on the property. There was a relatively small body of water on or near the Amy Clark Property, but it may or may not have been visible from the Property.

10. The Amy Clark Property Appraisal Report valued the Property at \$358,000.

11. Terrell was required to develop and report the results of the Amy Clark Property Appraisal in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), 2005 Edition.

12. The Amy Clark Property Appraisal Report was prepared for Community First Mortgage.

13. In appraising the Amy Clark Property and preparing the Amy Clark Property Appraisal Report, Terrell made significant and substantial errors of omission and/or commission, including, but not limited to, failing to:

- a. prepare a workfile for the Appraisal Report;
- b. retain a workfile for at least five years after the preparation of the Appraisal Report;
- c. retain an original or true copy of contracts engaging his services for the Amy Clark Property Appraisal;
- d. sufficiently describe and analyze two outbuildings located on the subject property's land;
- e. use comparable sales more similar in age, design, and site size and/or which occurred within one year of the effective date of value of the appraisal;
- f. sufficiently identify the relevant characteristics of the Amy Clark Property, including physical attributes such as upgrades; and/or

- g. sufficiently support and analyze a finding of the subject property's condition as "average."

14. In the preparation and reporting of the Sales Comparison Analysis in the Amy Clark Property Appraisal Report, Terrell made significant and/or substantial errors of omission and/or commission including, but not limited to, the following:

- a. Failing to accurately describe and/or adequately analyze comparable sale 1, including its following characteristics: its age of two years; its large front porch; oversized garage with workshop; and its kitchen with custom maple cabinets;
- b. Failing to accurately describe and/or adequately analyze comparable sale 2, including its following characteristics: its age of one year; its location in a lake community; its waterfront location; and the amenities available to the property through its subdivision, instead describing its view and location as identical to the subject property;
- c. Failing to accurately describe and/or adequately analyze comparable sale 3, including its following characteristics: its location in a lake community; its waterfront location; the amenities available to the property through its subdivision; the

presence of a boat slip, boat house and large patio off the water; and its “beautiful views of water in every room from the back of the house,” instead describing its view and location as identical to the subject property;

- d. Failing to accurately describe and/or adequately analyze comparable sale 4, including its following characteristics: its pasture; a “well stocked lake, with a private island accessible by an arched bridge”; and its garage with electricity, an office, and a workshop;
- e. Failing to accurately describe and/or adequately analyze comparable sale 5, including its following characteristics: its 8 acre site; horse barn; guest cottage with a screened porch; its lake view; and a boat dock and a screened gazebo;
- f. Improperly using four comparable sales that were on superior lakefront sites, two of them being in a community with recreational amenities;
- g. Failing to make proper adjustments for comparable sales used that were not similar in location to the subject property;

- h. Failing to use sales more similar to the subject in age, design, and/or site size and/or which occurred within one year of the effective date of the value;
- i. Failing to provide adequate support and/or analysis for adjustments made for the comparable sales with respect to differences in their design, site size, features, age, view, and/or quality of construction.

15. In the preparation and reporting of the Cost Approach in the Amy Clark Property Appraisal Report, Terrell made significant and/or substantial errors of omission and/or commission including, but not limited to, failing to sufficiently support and/or analyze the site value of \$100,000.

16. On or about June 25, 2010, the MREAC sent Terrell a letter by certified mail requesting all pertinent documents for the Amy Clark Property Appraisal, including a full copy of the Appraisal Report, work file, and Appraisal request within 30 days ("June 25 Request").

17. On or about August 4, 2010, after requesting an extension of time to respond to the MREAC's June 25th Request, Terrell responded in writing, making the following misrepresentations: 1) he did not inspect, review, or serve as a supervisor in the appraisal of the Amy Clark Property; 2) he did not affix his signature to the Amy Clark Property Appraisal Report; and 3) he

did not have any record, workfile, or appraisal request for the Amy Clark Property Appraisal.

18. On or about March 15, 2011, in a meeting before the MREAC, Terrell made the following misrepresentations:

- a. He had no involvement with the Amy Clark Property Appraisal Report;
- b. He had not signed the Amy Clark Property Appraisal Report; and
- c. He had never seen the Amy Clark Property.

19. The Amy Clark Property Appraisal Report overestimates the value, is not credible, is misleading, and was developed and reported in violation of USPAP Standards 1 and 2.

20. USPAP Standard 1, regarding the development of an appraisal, states as follows:

In developing a real property appraisal, an appraiser must identify the problem to be solved and the scope of work necessary to solve the problem, and correctly complete research and analysis necessary to produce a credible appraisal.

21. USPAP Standard 2, regarding the reporting of an appraisal, provides as follows:

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.

22. Based on Terrell's errors and/or omissions in developing and reporting the results of the Amy Clark Property Appraisal, as alleged in this Complaint, Terrell failed to correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal in violation of USPAP Standard 1 and Standards Rule ("SR") 1-1(a), which states as follows:

In developing a real property appraisal, an appraiser must:

- (a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal[.]

23. Based on Terrell's errors and/or omissions in developing and reporting the results of the Amy Clark Property Appraisal, as alleged in this Complaint, Terrell committed substantial errors of omission and/or commission that significantly affected the Appraisal in violation of 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 an appraisal[.]

24. Based on Terrell's errors and/or omissions in developing and reporting the results of the Amy Clark Property Appraisal, as alleged in this

Complaint, Terrell rendered appraisal services in violation of USPAP

Standard 1 and SR 1-1(c), which states as follows:

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.

25. Based on Terrell's errors and/or omissions in developing and reporting the results of the Amy Clark Property Appraisal, as alleged in this Complaint, Terrell rendered appraisal services in violation of USPAP

Standard 1 and SR 1-2(e), which states as follows:

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;
 - (ii) the real property interest to be valued;
 - (iii) any personal property, trade fixtures, or intangible items that are not real property but are included in the appraisal[.]

26. Terrell's errors and/or omissions in the preparation of the Sales Comparison Analysis and/or the Cost Approach, as alleged in this Complaint, constitute violations of USPAP Standard 1 and SR 1-4(a) and (b), which states as follows:

In developing a real property appraisal, an appraiser must collect, verify and analyze all information applicable to the appraisal problem, given the scope of work identified in accordance with Standards Rule 1-2(f).

- (a) When a sales comparison approach is applicable, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.
- (b) When a cost approach is applicable, 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); and
 - (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).

27. Based on Terrell's errors and/or omissions in developing and reporting the results of the Amy Clark Property Appraisal, as alleged in this

Complaint, Terrell failed to clearly and accurately set forth the appraisal in a manner that would not be misleading and violated USPAP Standard 2 and SR 2-1(a), which states as follows:

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[.]

28. Based on Terrell's errors and/or omissions in developing and reporting the results of the Amy Clark Property Appraisal, as alleged in this Complaint, Terrell failed to prepare a report that contained sufficient information to enable the intended users of the appraisal to understand the report properly, thereby violating USPAP Standard 2 and SR 2-1(b), which provides as follows:

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 properly[.]

29. By failing to provide adequate support for the reasoning and conclusions in the Sales Comparison Analysis and/or the Cost Approach in the Amy Clark Property Appraisal Report, as alleged in this Complaint, Terrell failed to summarize the information analyzed, the appraisal

procedures followed, and the reasoning that supports the analysis, opinions, and conclusions, in violation of USPAP SR 2-2(b)(ix), which states as follows:

- (b) The content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:

.....

- (ix) summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions[.]

30. Terrell's failure to prepare and/or retain and/or have or arrange custody of the workfile for the Amy Clark Property Appraisal was a violation of the Record Keeping section of the USPAP Ethics Rule, which provides as follows:

An Appraiser must prepare a workfile for each appraisal, appraisal review, or appraisal consulting assignment. The workfile must include:

- the name of the client and the identity, by name or type, of any other intended users;
- true copies of any written reports, documented on any type of media;
- summaries of any oral reports or testimony, or a transcript of testimony, including the appraiser's signed and dated certification; and
- all other data, information, and documentation necessary to support the

appraiser's opinions and conclusions and to show compliance with this Rule and all other applicable Standards, or references to the location(s) of such other documentation.

An appraiser must retain the workfile for a period of at least five (5) years after preparation or at least two (2) years after final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment, whichever period expires last.

An appraiser must have custody of his or her workfile, or make appropriate workfile retention, access, and retrieval arrangements with the party having custody of the workfile.

31. Terrell's failure to retain the workfile for the Amy Clark Property Appraisal Report is in violation of § 339.537, RSMo Supp. 2003, which provides as follows:

State-certified real estate appraisers and state licensed real estate appraisers shall retain originals or true copies of contracts engaging an appraiser's services for appraisal assignments, specialized appraisal services, appraisal reports, and supporting data assembled and formulated in preparing appraisal reports, for five years. The period for retention of the records applicable to each engagement of the services of the state-certified real estate appraiser or state-licensed real estate appraiser shall run from the date of the submission of the appraisal report to the client. Upon requests by the commission, these records shall be made available by the state-certified real estate appraiser or state-licensed real estate appraiser for inspection and copying at his or her expense, by the commission on reasonable notice to the state-certified real estate appraiser or state-licensed real estate appraiser. When litigation is

contemplated at any time, reports and records shall be retained for two years after the final disposition.

32. Terrell's conduct, as alleged in this Complaint, demonstrates incompetency, misconduct, gross negligence, dishonesty, fraud, and/or misrepresentation in the performance of the functions and/or duties of a real estate appraiser, providing cause to discipline his Certification pursuant to § 339.532.2(5), RSMo Supp. 2012.

33. Terrell's conduct, as alleged in this Complaint, violates standards for the development and/or communication of real estate appraisals as provided in or pursuant to §§ 339.500 to 339.549, RSMo, providing cause to discipline his Certification pursuant to § 339.532.2(6), RSMo Supp. 2012..

34. Terrell's conduct, as alleged in this Complaint, demonstrates 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, providing cause to discipline his Certification pursuant to § 339.532.2(8), RSMo Supp. 2012..

35. Terrell's conduct, as alleged in this Complaint, demonstrates negligence and/or incompetence in developing an appraisal, in preparing an appraisal report, and/or in communicating an appraisal, providing cause to discipline his Certification pursuant to § 339.532.2(9), RSMo Supp. 2012..

36. Each of Terrell's USPAP violations, as alleged in this Complaint, constitutes a violation of § 339.535, RSMo, providing cause to discipline his Certification pursuant to § 339.532.2(7) and (10), RSMo Supp. 2012..

37. Terrell's violation of § 339.537, RSMo, provides cause to discipline his Certification pursuant to § 339.532.2(10), RSMo Supp. 2012..

38. Terrell's conduct, as alleged in this Complaint, violates the professional trust and confidence he owed to his clients, the intended users of the Amy Clark Property Appraisal Report, and the public, providing cause to discipline his Certification pursuant to § 339.532.2(14), RSMo Supp. 2012..

39. Terrell's conduct, as alleged in this Complaint, demonstrates that Terrell rendered appraisal services in violation of the USPAP Ethics Rule, USPAP Standards 1 and 2, the USPAP Standards Rules cited above, and §§ 339.535 and 339.537, RSMo, providing cause to discipline Terrell's Certification pursuant to §§ 339.532.2(5), (6), (7), (8), (9), (10) and (14), RSMo Supp. 2012.

CONCLUSION

Based on the above, the MREAC respectfully requests this Commission conduct a hearing in this cause pursuant to Chapter 621, RSMo, and thereafter issue its Findings of Fact and Conclusions of Law that Terrell's Certification is subject to disciplinary action by the MREAC for violations of

provisions of §§ 339.500 through 339.549, RSMo, as amended, and the MREAC's regulations promulgated thereunder, and for such other relief as may be appropriate.

Respectfully submitted,

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