

**BEFORE THE MISSOURI
STATE REAL ESTATE APPRAISERS COMMISSION**

MISSOURI REAL ESTATE APPRAISERS COMMISSION,)	
)	
)	
Petitioner,)	
)	
v.)	No. 2010-005448 PV
)	
MARJORIE SEBELIUS,)	
)	
Respondent.)	

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

At its scheduled meeting on March 22, 2016, and pursuant to notice described in the Findings of Fact, the Missouri State Real Estate Appraisers Commission (MREAC) took up the probation violation complaint alleging that Marjorie Sebelius (Respondent or Sebelius) has failed to comply with the terms of her probation.

The MREAC appeared at the hearing through Assistant Attorney General Ross Brown. Pursuant to notice, Respondent appeared at the hearing in person and appeared without representation by legal counsel. Division of Professional Registration Legal Counsel Thomas Mark Townsend served as the MREAC’s legal advisor at the hearing, during deliberations, and in the preparation of this order.

Findings of Fact and Conclusions of Law

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

2. Respondent is a natural person and is certified by the MREAC as a state-certified residential real estate appraiser, license number 2001005233.

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

3. On or about September 12, 2013, Licensee entered into a Settlement Agreement and Joint Agreed Disciplinary Order (“Disciplinary Order”) with the MREAC.

4. Pursuant to the September 12, 2013 Disciplinary Order, Respondent’s residential real estate appraiser certification was placed on a two (2) year period of probation. The effective date Disciplinary Order was September 12, 2013.

5. On September 9, 2015, a Probation Violation Complaint was filed with the MREAC alleging violations by Respondent of the September 12, 2013 Disciplinary Order.

6. The September 12, 2013 Disciplinary Order states on page 5 - 6, paragraphs F, M and I, of Part IV, the Disciplinary Order:

F. “During the probationary period, Sebelius shall comply with all applicable provisions of Chapter 339, RSMo, 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 subdivision.

. . .

M. This Order does not bind the MREAC or restrict the remedies available for any violation of section 339.500 to section 339.549, RSMo, not specifically mentioned in this document.

. . .

I. If Sebelius 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 the MREAC determines that Sebelius 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 section 324.042, RSMo. The MREAC has continuing jurisdiction to hold a hearing to determine if a violation of this Order has occurred.

Twin River Appraisal

7. On or about May 14, 2014, during Respondent's disciplinary period, Respondent completed and signed a "summary appraisal report" for residential real estate located at 7900 Twin River Road, Eureka, Missouri 63025 (Twin River Appraisal Report). The effective date of the appraisal report was May 13, 2014, and the appraisal valued the property at \$640,000.

8. Pursuant to § 339.535, RSMo, and the terms and conditions of the Disciplinary Order, Respondent was required to develop and report the results of each appraisal in compliance with the Uniform Standards of Professional Appraisal Practice, 2014-2015 Edition (USPAP).

9. Respondent prepared the Twin River Appraisal Report for First Community National Bank.

10. Respondent, in the preparation and reporting of the Twin River Appraisal Report, made significant and substantial errors of omission and/or commission, in violation of USPAP, including, but not limited to the following:

- a. Respondent noted that nine of the ten acres are zoned agricultural, but the report does not address the specifics of the acreage or their use, as such Respondent fails to address this in the highest and best use;
- b. Respondent's report relied upon photographs taken six months prior;
- c. Respondent relied on comparable sales in platted subdivision, although the subject property was not in a subdivision;
- d. Respondent failed to provide support for adjustments made to comparable sales.

11. Respondent's Twin River Appraisal Report lacked credibility, was reported in violation of USPAP Standards 1 and 2, which state:

Standard 1: In developing a real property appraisal, an appraiser must identify the problem to be solved, determine the scope of work necessary to solve the problem, and correctly complete research and analyses necessary to produce a credible appraisal.

Standard 2: In reporting the results of a real property appraisal, an appraiser must communicate each analysis, opinion and conclusion in a manner that is not misleading.

12. Respondent intentionally communicated results which were misleading and/or intended to defraud by failing to use appropriate sales comparisons and providing sufficient analysis, reconciliation and data to support the final price of the subject property; and by committing substantial error of omission and commission, while rendering appraisal services in a careless and negligent manner, in violation of the USPAP Ethics Rule, which states:

An appraiser must promote and preserve the public trust inherent in appraisal practice by observing the highest standards of professional ethics.

An appraiser must comply with USPAP when obligated by law or regulation, or by agreement with the client or intended user. In addition to these requirements, an individual should comply any time that individual represents that he or she is performing the service as an appraiser.

. . .

Conduct:

An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.

An appraiser:

. . .

- must not communicate assignment results with the intent to mislead or to defraud.

13. Respondent committed errors and/or omissions in developing and reporting the results of the Twin River Appraisal Report, constitute a failure by Respondent to apply proper appraisal methods and techniques to develop a credible appraisal by failing to accurately apply the Sales Comparison approach and failing to correctly apply the highest and best analysis in the Twin River Appraisal Report; and by failing to identify the usage of the agricultural zoned acreage of the property, failing to provide support for the selection of and adjustments applied to the comparable sales, failing to provide up to date photographs of the property, failing to support market conditions in the area, and failure to provide reconciliation data to support all analyses, in violation of USPAP Standard Rule (SR) 1-1(a), which states:

In developing a real property appraisal, an appraiser must:

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

14. Respondent committed errors and/or omissions in failing to note how the nine agricultural acres were in use; failing to include photographs of the property from the time of inspection in May 2014, instead using photographs from November of 2013; failing to include an analysis to support market conditions and one-unit housing trends; failing to include a discussion of the highest and best use; failing to include adjustments for comparable sales and failing to provide research in the work file concerning the neighborhood in the Twin River Appraisal Report, significantly affected the appraisal in violation of the USPAP Standard 1 and SR 1-1(b), which states:

In developing a real property appraisal, an appraiser must:

. . . .

(b) not commit a substantial error of omission or commission that significantly affects the appraisal[.]

15. Respondent committed errors and/or omissions in failing to render appraisal service in a manner that was not careless or negligent, such as failing to include information on the highest and best use, failing to mention the higher quality amenities in comparables Two and Three; failing to provide market support for adjustments or a reconciliation or analysis of strengths and weaknesses in the market report; failing to include information to support the neighborhood value range or to describe the neighborhood; by failing to use up-to-date photographs in the report; and failing to describe the subject property accurately in the Twin River Appraisal Report, significantly affected the appraisal, in violation of the USPAP Standard 1 and SR 1-1(c), which states:

In developing a real property appraisal, an appraiser must:

. . . .

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

16. Respondent committed errors and/or omissions in Respondent's failure to identify the characteristics of the property relevant to the type and definition of value and intended use of the appraisal by failing to include the pole barn as an improvement, the size of the swimming pool, failing to accurately describe the property's location with regard to school district and neighborhood, and failing to accurately describe the gross living area, provide the dimensions of the ten acres or identify the use of the nine acres zoned

agricultural in the Twin River Appraisal Report, in violation of USPAP SR 1-2(e)(i) which states:

In developing a real property appraisal, an appraiser must:

. . . .

(e) identify the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal, including:

(i) its location and physical, legal and economic attributes[.]

17. Respondent committed errors and omissions in her failure to provide sufficient data research, analysis and discussion to support market conditions, one-unit housing trends and usage of the nine acres zoned agricultural in the Twin River Appraisal Report, in violation of USPAP SR 1-3(a), which states:

(a) identify and analyze the effect on use and value of existing land use regulations, reasonably probable modifications of such land use regulations, economic supply and demand, the physical adaptability of the real estate, and market area trends[.]

Comment: An appraiser must avoid making an unsupported assumption or premise about market area trends, effective age, and remaining life.

18. Respondent committed errors and omissions in her failure to complete an analysis of the highest and best use of the subject property, including failing to evaluate the property for possible agricultural uses in the Twin River Appraisal Report, in violation of USPAP Standard 1 and SR 1-3(b), which states:

Standards Rule 1-3(b)

When necessary for credible assignment results in developing a market value opinion, an appraiser must:

. . . .

(b) develop an opinion of the highest and best use of the real estate.

Comment: An appraiser must avoid analyze the relevant legal, physical, and economic factors to the extent necessary to support the appraiser's highest and best use conclusion(s).

19. Respondent committed errors and/or omissions in her failure to support adjustments applied to the comparable sales of the Sales Comparison Approach. Respondent did not address the comparability of comparable sale sites that were smaller than the subject site and had no agricultural zoning or address any of the differences between the subject site and the comparables. Respondent did not address the up-grades in comparable sales Two and Three or mention the amenities although showing them in the photographs of the interiors. There was no marketing support for any of the adjustments or analysis to the similarity in use, zoning or shape, and no reconciliation or analysis of the strengths and weaknesses or reliability of the sales used in the Twin River Appraisal Report. All of the aforementioned are in violation of USPAP Standard 1 and SR 1-4(a), which states:

Standards Rule 1-4(a)

In developing a real property appraisal, an appraiser must collect, verify and analyze all information necessary for credible assignment results.

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

20. Respondent committed errors and/or omissions in her failure to provide indication of what technique and which information was relied upon to support the opinion of site value. Respondent provided insufficient reconciliation in the report for the sales comparison approach to determine within the range of value indications for both the cost

and sales comparisons how the value of the conclusion was determined. All in violation of USPAP Standard 1 and SR 1-6(a), which states:

In developing a real property appraisal, an appraiser must:

. . .

(a) reconcile the quality and quantity of data available and analyzed within the approaches used[.]

21. Respondent failed to include field notes or additional market information to support the value and the adjustments used in the preparation of the Twin River Appraisal Report. Respondent's work file lacked any research or information used to support neighborhood value range, trends or any other sales analyzed but rejected for use in the data array. Respondent violated the Record Keeping Rule, which says in part:

An Appraiser must prepare a work file for each appraisal or appraisal review assignment. A work file must be in existence prior to the issuance of any report. A written summary of an oral report must be added to the work file within a reasonable time after the issuance of the oral report. The work file must include:

. . .

All other data, information, and documentation necessary to support the appraiser's opinions and conclusions and to show compliance with USPAP, or references to the location(s) of such other documentation;

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

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

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

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

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

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

28. Respondent's violation of § 339.535, RSMo, and/or § 339.532.2(5),(6), (7),(8), (9), (10) and/or (14), RSMo, in the development and reporting of the Twin River Appraisal Report, constituted a violation Section IV, paragraph 10(F) of the Disciplinary Order, thus providing cause to further discipline Respondent's license under § 324.042, RSMo, as set forth above.

Elm Street Appraisal

29. On or about July 22, 2014, during Respondent's disciplinary period, Respondent completed and signed a "land appraisal report" for residential real estate located at 3436 Elm Street, St. Charles, Missouri 63301 (Elm Street Appraisal Report). The effective date of the appraisal report was July 21, 2014, and the appraisal valued the property at \$115,000.

30. Pursuant to § 339.535, RSMo, and the terms and conditions of the Disciplinary Order, Respondent was required to develop and report the results of each appraisal in

compliance with the Uniform Standards of Professional Appraisal Practice, 2014-2015 Edition (USPAP).

31. Respondent prepared the Elm Street Appraisal Report for Midwest Regional Bank.

32. Respondent, in the preparation and reporting of the Elm Street Appraisal Report, made significant and substantial errors of omission and/or commission, in violation of USPAP, including but not limited to:

- a. Respondent described the boundaries of the subject property's market and neighborhood, but failed to craft the boundaries that actually include the subject property;
- b. Respondent failed to provide support for adjustments made for such things as kitchen's placement in the basement, its location on a busy street, as opposed to comparable sales, and for the effective age of 12 years for a 71 year old building;
- c. Respondent's report did not accurately describe the neighborhood, nor indicate that the zoning for the property was for a two-unit structure, not a one-unit;
- d. Respondent's report lacked sufficient reconciliation and supporting documentation in the work file.

33. Respondent committed substantial errors and omissions in the Elm Street Appraisal Report by failing to apply proper appraisal methods and techniques necessary to produce a credible appraisal by failing to accurately apply the Sales Comparison Approach, failing to correctly apply the highest and best usage analysis in the Elm Street Appraisal Report and her failure to accurately describe the subject property's neighborhood and market characteristics in violation of USPAP SR 1-1(a), as set forth in paragraph 13 above.

34. Respondent committed errors of omission and/or commission in the Elm Street Appraisal Report by failing to correctly describe the neighborhood and market characteristics for the property; failing to include an analysis to support market conditions and one-unit housing trends; failing to include discussion of highest and best usage; failing to include adjustments for comparable sales; failure to provide market support adjustments made to the proper, such as accounting for the kitchen being located in the basement; and failing to provide research in the work file concerning the neighborhood in violation of USPAP SR 1-1(b), as set forth in paragraph 14 above.

35. Respondent, in the Elm Street Appraisal Report, failed to render appraisal services in a manner that was not careless or negligent such as failing to include analysis on the highest and best use; failed to provide market support and the correct market description for the property; failed to use comparable sales in the same market as the subject property; failed to provide analysis for adjustments for the subject property and the comparables; failed to address the subject property's placement on a busy through street; failed to specifically note what type of residential zone the subject property falls in; and failed to offer support for the effective age of the property, in violation of USPAP SR 1-1(c), as set forth in paragraph 15 above.

36. Respondent, in the Elm Street Appraisal Report, failed to identify how the characteristics of the property are relevant to the type and definition of value and intended use of the appraisal by failing to correctly describe the neighborhood and market for the subject property by describing boundaries which did not include the location of 3436 Elm Street; failed to take into account the subject property's location on a busy through street; and failed to provide correct economic data in the form of its zoning designation as a potential two-unit property, in violation of USPAP SR 1-2(e)(i), as set forth in paragraph 16 above.

37. Respondent, in the Elm Street Appraisal Report, failed to correctly identify the subject property's market, therefore rendering all associated data and analysis incorrect; failed to specify the type of residential zoning; failed to note one unit housing trends; failed to select comparable sales in the proper market or on through streets; and failed to offer support for her analysis of the effective age and remaining economic life of the property or for the placement of the kitchen in the basement, in violation of USPAP SR 1-3(a), as set forth in paragraph 17 above.

38. Respondent, in the Elm Street Appraisal Report, failed to analysis or support the opinion of the highest and best use of the subject property, in violation of USPAP Standard 1 and SR 1-3(b), as set forth in paragraph 18 above.

39. Respondent, in the Elm Street Appraisal Report, failed to correctly identify the market area for the subject property, rendering the answers to the question of how many listing and sales existed not credible; failed to properly address the use of sales which were bigger than the subject property; failed to adjust for the comparable properties being located on non-through streets, unlike the subject property; failed to address the location of the comparable properties in relation to the subject property; failed to support the 15% adjustment to the kitchen in the basement of the subject property with market evidence; and failed to offer market support for the upgrading in Sale Two noted in the MLS listing, in violation of USPAP SR 1-4(a), as set forth in paragraph 19 above.

40. Respondent, in the Elm Street Appraisal Report, failed to provide indication of what technique and which information was relied on to support the opinion of site value. Respondent provided insufficient information regarding reconciliation in the report for the sales comparison approach in order to determine the range of value indications for both the cost and sales comparisons and how the value of the conclusion was determined, in violation of USPAP Standard 1 and SR 1-6(a), as set forth in paragraph 20 above.

41. Respondent intentionally communicated results which were misleading and/or intended to defraud by failing to use appropriate sales comparisons and providing sufficient analysis, reconciliation and data to support the final price of the subject property; and by committing substantial error of omission and commission, while rendering appraisal services in a careless and negligent manner, in violation of the USPAP Ethics Rule, which states:

An appraiser must promote and preserve the public trust inherent in appraisal practice by observing the highest Standards of professional ethics.

An appraiser must comply with USPAP when obligated by law or regulation, or by agreement with the client or intended user. In addition to these requirements, an individual should comply any time that individual represents that he or she is performing the service as an appraiser.

. . .

Conduct:

An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.

An appraiser:

. . .

- must not communicate assignment results with the intent to mislead or to defraud.

42. Respondent failed to include field notes or additional market information to support the value and the adjustments used in the preparation of the Elm Street Appraisal Report. Respondent's work file lacked any research or information used to support neighborhood value range, trends or any other sales analyzed but rejected for use in the data array. Respondent violated the Record Keeping Rule, which says in part:

An Appraiser must prepare a work file for each appraisal or appraisal review assignment. A work file must be in existence prior to the issuance of any report. A written summary of an oral report must be added to the work file within a reasonable time after the issuance of the oral report. The work file must include:

All other data, information, and documentation necessary to support the appraiser's opinions and conclusions and to show compliance with USPAP, or references to the location(s) of such other documentation;

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

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

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

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

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

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

49. Respondent's violation of § 339.535, RSMo, and/or § 339.532.2(5),(6), (7),(8), (9), (10) and/or (14), RSMo, in the development and reporting of the Elm Street Appraisal Report, constituted a violation Section IV, paragraph 10(F) of the Disciplinary Order, thus providing cause to further discipline Respondent's license under § 324.042, RSMo, as set forth above

Conclusions of Law

50. The MREAC has jurisdiction in this proceeding, pursuant to the Disciplinary Order, effective September 12, 2013, section IV, paragraph N on page 6 and § 324.042, RSMo, to determine whether Respondent has violated the terms and conditions of the Disciplinary Order regarding Respondent's residential real estate appraiser license, license number 2001005233.

51. The Disciplinary Order, section IV, paragraph N on page 6 states:

3. Upon the expiration of the disciplinary period, Sebelius' Certificate shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREAC determines that Sebelius 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 certification. 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.

52. Section 324.042, RSMo, provides:

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

impose as additional discipline, any discipline it would be authorized to impose in an initial disciplinary hearing.

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

Decision and Order

It is the decision 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. Respondent's **PROBATION** shall require continued compliance with all the terms and conditions of the September 12, 2013 Disciplinary Order, incorporated by reference. Respondent is also ordered to take an approved 15 hour report writing course. This course may be taken online and should it be completed by 06/30/2016 it may be used for the continuing education for the 2016 renewal period.

Respondent shall be entitled to practice as a state-certified residential real estate appraiser provided Respondent remains compliant with the terms and conditions of her probation in accordance with this Order and the terms and conditions of the aforementioned September 12, 2013 Disciplinary Order.

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

SO ORDERED this 2nd day of May, 2016.

**MISSOURI REAL ESTATE APPRAISERS
COMMISSION**


Vanessa Beauchamp,
Executive Director