

**BEFORE THE BUREAU CHIEF
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF REAL ESTATE APPRAISERS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

DANIEL E. RINSCH,

Certified Residential License No. AR 02924

Respondent.

Agency Case Nos.:

L20210611-01 and L20220401-02

OAH No.: 2022080334

DECISION ADOPTING PROPOSED DECISION WITH MODIFICATION


Pursuant to Government Code section 11517, subdivision (c)(2)(C), the attached Proposed Decision of the Administrative Law Judge dated September 28, 2023, is hereby modified by striking the incorrect Bureau address from the second sentence of Condition 6. Cost Reimbursement in the Order at page 25, and replacing it with the correct Bureau address. With this modification, the second sentence of that condition will read as follows:

Payment shall be made to the Real Estate Appraisers Regulation Fund, c/o Bureau of Real Estate Appraisers, ~~1102 Q Street, Suite 4100, Sacramento, California 95811~~ *3075 Prospect Park Drive Suite 190 Rancho Cordova CA 95670*, by check or money order and shall indicate on its face the notation: "BREA Case No. L20210611-01 and L20220401-02."

The text that is stricken is denoted in strike-through font and the text that is added to replace it in order to correct the address is denoted in italic font. With this modification, the attached Proposed Decision of the Administrative Law Judge is otherwise accepted and adopted by the Bureau Chief as the final Decision in this matter.

This Decision shall become effective on Nov 13th 2023.

IT IS SO ORDERED this 11th day of October, 2023.



Angela G. Jemmott
Bureau Chief
Bureau of Real Estate Appraisers
Department of Consumer Affairs

**BEFORE THE
BUREAU OF REAL ESTATE APPRAISERS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

DANIEL E. RINSCH, Respondent.

Certified Residential License No. AR 029246

Agency Case Nos. L20210611-01 and L20220401-02

OAH No. 2022080334

PROPOSED DECISION

Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on April 11 through April 14, 2023, and July 25 through July 28, 2023, via Zoom videoconference.

Elaine Yan and Michael Yi, Deputy Attorneys General, represented John Hassler (complainant), Chief of Enforcement for the Bureau of Real Estate Appraisers (Bureau), Department of Consumer Affairs.

Respondent Daniel E. Rinsch represented himself.

Testimony and documents were received in evidence. The record remained open until August 18, 2023, at 5:00 p.m., to allow the parties to submit closing briefs.

On August 18, 2023, respondent filed a "Respondent's Brief Summary of the Evidence" which was marked for identification as exhibit M.

Complainant did not file a closing brief.

On August 18, 2023, the record closed and the matter was submitted for decision.

FACTUAL FINDINGS

Jurisdictional Matters

1. On March 11, 2005, the Bureau, formerly known as the Office of Real Estate Appraisers, issued Certified Residential License number AR 029246 to respondent. The Certified Residential License was always active relevant to the charges brought in the Accusation, and is scheduled to expire on August 11, 2024, unless renewed.

2. On May 9, 2022, complainant, solely in his official capacity, filed an Accusation against respondent's license.

3. On June 8, 2022, respondent filed a Notice of Defense, which requested an administrative hearing on the allegations stated in the Accusation.

4. All jurisdictional requirements have been met.

Applicable Statutory Law

5. Business and Professions Code (Code) section 11319, subdivision (a), states, in pertinent part, that the Uniform Standards of Professional Appraisal Practice

(USPAP) constitute the minimum standards of conduct and performance for a real estate appraiser. Respondent did not dispute the USPAP standards apply to the two real estate appraisals at issue, which are discussed immediately below.

Respondent's Appraisals at Issue

6. The Accusation details two appraisals prepared by respondent. Those appraisals relate to the Kingsley property (Kingsley) and the Crest property (Crest).

7. Respondent's appraisal report on Crest was dated February 12, 2020. Respondent's appraisal report on Kingsley was dated September 21, 2021.

8. The Accusation alleges respondent failed to comply with various rules contained in the 2020 to 2021 USPAP in each of those appraisals. The USPAP rules are called Standard Rules and will hereinafter be referenced as "Standard Rules."

Complainant's Evidence and Testimony of Bureau Investigator

9. At the administrative hearing, Complainant offered the testimony of Supervising Real Property Appraiser Investigator, Tinna Morlatt (Morlatt) to establish the violations in this case. Investigator Morlatt testified credibly, and her testimony and relevant evidence established Factual Findings 10 through 53.

The Crest Appraisal Report

10. Respondent was a contract appraiser for ServiceLink Valuation Solutions (ServiceLink), LLC, an appraisal management company. ServiceLink assigned respondent to perform an appraisal of the single-family home located at 1551 S. Crest Drive, Los Angeles, CA 90035. Respondent completed his appraisal of the Crest

property, and his report was dated February 12, 2020. The appraisal report was prepared for Wells Fargo Bank as part of a mortgage finance transaction.

11. On May 8, 2020, Servicelink submitted a complaint to the Bureau. The complaint alleged inconsistent and inaccurate reporting of information regarding the property, inaccurate reporting of comparable features, and unsupported adjustments. The Bureau subsequently initiated an investigation, which complainant contends revealed multiple violations of USPAP.

Relevant USPAP Provisions for The Crest Appraisal

12. Standard Rule 1-4, subdivision (a), and 2-2, subdivision (a)(x)(5), required respondent to collect, verify, and analyze all information necessary for credible assignment results and analyze available comparable sales data to indicate a value conclusion.

13. Respondent failed to develop and report a credible Sales Comparison Approach to value because he failed to report a credible Gross Living Area (GLA) adjustment. Respondent failed to report and analyze a relevant characteristic for Comparable Sale Six.

14. Specifically, respondent reported that the GLA adjustment was based on a matched pair analysis with Comparable Sales One and Three. However, respondent also reported that Comparable Sale Three was an "anomaly." Additionally, the GLA adjustment was greater than the GLA divided by the sale price for all comparable sales and more than four times the replacement cost estimate.

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15. As to Comparable Sale Six, respondent failed to report and analyze a guest house which was cited in respondent's data source. Respondent failed to report the guest house and its impact, if any, on the market value.

16. Standard Rules 1-6, subdivision (a), and 2-2, subdivision (a)(x)(5) required respondent, at a minimum, to summarize the information analyzed and the reasoning that supports his analyses, opinions, and conclusions, including reconciliation of the data and approaches. Respondent failed to adequately summarize and report a credible final reconciliation. Respondent reported he gave the greatest weight to Comparable Sales Two, Three and Four because they presented the lowest net and gross adjustments. Respondent failed to report the rationale for his conclusion that Comparable Sale Three was a "market anomaly" and "given diminished weight as a result," but did not require any adjustments.

17. Standard Rule 2-1, subdivisions (a) and (b), required respondent to set forth the appraisal clearly and accurately in a manner that would not be misleading and to report sufficient information to enable the intended users of the appraisal to properly understand the appraisal. Respondent failed to do so in the Crest report for the reasons set forth in Factual Findings 13 through 16.

The Kingsley Appraisal Report

18. L.D.K. is the owner of a multi-unit property, a duplex, located at 1340 N. Kingsley Drive, in Los Angeles, 90027 (Kingsley Property).

19. L.D.K. was advised by his attorney to retain an appraiser to obtain an appraisal report of the Kingsley Property for purposes of potentially resolving a legal dispute.

20. On July 29, 2021, L.D.K. contacted respondent to engage his services in performing an appraisal of the Kingsley Property.

21. On August 12, 2021, L.D.K. met respondent at the Kingsley Property and gave respondent a \$700 check as payment for an appraisal and report. L.D.K. and respondent also signed an engagement letter. According to the engagement letter, the property was to be valued as of June 15, 2021, and the estimated completion date for delivery of the appraisal report would be by August 18, 2021. The engagement letter said the appraisal was for L.D.K.'s personal use. As of August 18, 2021, L.D.K. did not inform respondent that the appraisal had been requested by L.D.K.'s attorney.

22. On September 1, 2021, L.D.K. inquired regarding the status of the appraisal report via text message. Respondent informed L.D.K. the appraisal report would be provided to L.D.K. on September 2, 2021.

23. On September 2, 2021, L.D.K. inquired regarding the status of the appraisal report via text message. Between September 3 and September 12, 2023, respondent offered multiple excuses for not providing L.D.K. with the appraisal report. These included respondent requesting pictures of the property from L.D.K., for the first time, and a request to re-inspect the property.

24. On September 13, 2021, Respondent inspected the Kingsley Property. Respondent charged L.D.K. an additional fee of \$150.00, which L.D.K. paid.

25. Between September 13 and September 20, 2023, L.D.K. made numerous additional inquiries to respondent regarding when L.D.K. would receive the appraisal report. On multiple occasions, respondent told L.D.K. that the appraisal report would be forthcoming on a specific date and time. Each time, respondent failed to honor his

promise to deliver the appraisal report. This scenario repeated itself on multiple occasions between September 3 and September 20, 2023.

26. On September 21, 2021, L.D.K. received the appraisal report from respondent.

27. On October 15, 2021, L.D.K. submitted a complaint against respondent to the Bureau. The complaint alleged respondent committed unprofessional conduct. The Bureau subsequently initiated an investigation, which complainant contends revealed multiple violations of USPAP Standard Rules.

28. The relationship between L.D.K. and respondent was less than cooperative. Initially, L.D.K. told respondent the inside of the property was "complete," which was not true. In fact, the property was in less than habitable condition. During his testimony, L.D.K. stated he did not initially tell respondent the appraisal was for an attorney. However, shortly after the engagement letter was signed, L.D.K began informing respondent, in text messages, that the appraisal was needed for an attorney. Respondent did not attempt to clarify, or modify, the intended use of the appraisal or the engagement letter. Instead, respondent relied on the initial engagement agreement and ignored L.D.K.'s statements about needing the appraisal for an attorney.

Relevant USPAP Provisions for the Kingsley Appraisal

29. Standard Rules 1-2, subdivision (b), and 2-2, subdivision (a)(iii), required respondent, at a minimum, to identify the intended use of his opinions and conclusions and state within the report an intended use that was not misleading.

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30. Respondent failed to identify and report the correct intended use. Respondent reported the intended use was for a mortgage finance transaction, even though he knew, or should have known, the intended use was for L.D.K.'s personal use or legal purposes, but not a mortgage finance transaction.

31. Standard Rules 1-2, subdivision (h), and 2-2, subdivision (a)(viii), required respondent, at a minimum, to state within the report an effective date of the appraisal that was not misleading. Respondent reported the effective date to be the same date as the inspection dates, which were in August and September 2021. However, the appraisal also reported the effective date as June 4, 2021, which was the date the parties had agreed would be used as the date of valuation. Respondent's appraisal stated multiple effective dates, which is not permitted.

32. Standard Rules 1-2, subdivision (e)(i), and 2-2, subdivision (a)(iv), required respondent, at a minimum, to identify from sources the appraiser reasonably believed to be reliable, the characteristics of the property that were relevant to the type and definition of value and intended use of the appraisal, including the subject's physical characteristics. Respondent reported inconsistent and contradictory information regarding the condition of the Kingsley Property, stating it was "poor," but also "average" in his appraisal, which was inconsistent.

33. Standard Rules 1-2, subdivision (e)(i), 2-2, subdivision (a)(iv), and 2-3, subdivision (a), required respondent to certify he "reported the condition of the improvements in factual and specific terms." Respondent failed to report specific and factual information about the physical deficiencies that were readily visible at the time of his inspection. For example, respondent did not report that the property was using a garden hose, through an open window, to provide water to the structure.

34. Standard Rules 1-3, subdivision (b), and 2-2, subdivision (a)(xii), required respondent, at a minimum, to develop an opinion of the highest and best use of the real estate, to state that opinion, and to summarize the support and rationale for that opinion. Respondent used an extraordinary assumption as the basis for his opinion. Specifically, respondent opined that the highest and best use for the property was as vacant land, but also as an improved two-unit property. Respondent failed to summarize the support for his opinion. Respondent inappropriately used an extraordinary assumption instead of reporting a summary of the support for his opinion of highest and best use.

35. Standard Rules 1-4, subdivision (a), and 2-2, subdivision (a)(x)(5), required respondent, at a minimum, to collect, verify and analyze all information necessary for credible assignment results and to analyze available comparable sales data to indicate a value conclusion. Respondent developed and reported a Sales Comparison Approach (SCA) that was not credible and was misleading because the cited support was contradictory to what was developed and reported within the SCA, as set forth in Factual Findings 36 through 42.

36. Respondent specifically cited Comparable Sales Two and Three as the basis of the comparisons used to support respondent's opined \$330.00 per square foot of Gross Building Area (GBA) adjustment factor. Respondent represented Comparable Sales Two and Three as being equal in all respects except for a \$4,000 sale or financing adjustment that was applied to Comparable Sale Two. In calculating the GBA adjustment factor, respondent failed to subtract \$4,000 from the sale price of Comparable Sale Two. Based on the reported data, the GBA adjustment factor should have been a negative \$315.90 per square foot of GBA.

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37. Comparable Sales Two had a smaller GBA and a higher sale price than Comparable Sale Three. Based on this pairing, market participants paid more money for a smaller amount of GBA. Accordingly, this pairing documented a negative market response for larger GBA. Because Comparable Sales Two and Three both had larger GBA's than the Kingsley Property, a negative GBA adjustment factor should have been applied based on respondent's pairing. Instead, respondent applied the GBA adjustment factor as a positive factor, which resulted in a positive adjustment, rather than a negative adjustment. The correct adjusted sales prices for Comparable Sales Two and Three, if respondent had properly applied the GBA adjustment factor using \$330.00 per square foot, are set forth in the chart below.

	Comparable Sale Two	Comparable Sale Three
Unadjusted sale price	\$1,150,000	\$1,063,875
Adjusted sale price with correct application of the GBA adjustment factor	\$1,246,640	\$1,250,315
Adjusted sale price with Respondent's <i>incorrect</i> application of the GBA adjustment factor	\$845,360	\$677,435

38. Respondent's error had a significant impact on the credibility of the assignment results.

39. Respondent failed to analyze and report the market's response for identified differences between the Kingsley Property and the comparable sales. For example, the reported differences between the Kingsley Property and Comparable Sale One (excluding GBA) were as follows:

Reported Differences	Kingsley Property	Comparable Sale One
Condition	Poor	Average
Bedroom count	2	4
Bathroom count	2	3
Heating/Cooling	Radiant	None
Parking on/off site	2-car garage	Driveway

40. Respondent did not apply market responses for some of these differing contributory elements.

41. On the occasions where respondent cited support for failing to apply such market responses, the cited support was flawed. For example, respondent reported: "BEDROOM COUNTS AND BATH COUNTS WERE NOT SUPPORTED. FOR EXAMPLE, COMP 2 SHOWS HIGHER BEDROOM COUNTS AND LOWER PRICING WHEN COMPARED TO COMPS 1 AND 3." However, in fact, Comparable Sales One, Two and Three were all homes with four total bedrooms.

42. Comparable Sales One and Two each sold for \$1,150,000, and Comparable Sale Three sold for \$1,063,875. This evidences false support for respondent's opinion and conclusion that there was no support for differences in bedroom counts.

43. Standard Rules 1-4, subdivisions (b)(i) and (b)(ii), and 2-2, subdivision (a)(x)(5), required respondent, at a minimum, to collect, verify and analyze all information necessary for credible assignment results and to analyze available site, cost, and depreciation data to indicate a value conclusion. Respondent developed and reported a Cost Approach that was not credible and was misleading. Respondent failed to appropriately develop and report a site value with the cited methodology, failed to support the reported replacement cost figures, and failed to report replacement costs for the Kingsley Property's detached garage, as discussed in Factual Findings 43 through 47.

44. The Kingsley garage was in a state of disrepair and likely could not be repaired, thus rendering the garage a "tear down."

45. Respondent reported that the site of the Kingsley Property was estimated based on the abstracted land values of Comparable Sales One, Two, and Three. The Dictionary of Real Estate Appraisal defines abstraction, also known as extraction, as "a method of estimating land value in which the depreciated cost of the improvements on an improved property is calculated and deducted from the total sale price to arrive at an estimated sale price for the land." Respondent failed to apply depreciation to the Comparable Sales used in this methodology.

46. For example, respondent reported Comparable Sale One to be in average condition and the Kingsley Property to be in poor and average condition. Respondent reported that no significant market reaction exists for the difference between properties in poor and average conditions. Respondent also reported that the improvements on the Kingsley Property were 90% depreciated. Therefore, 90% depreciation should also have been applied to Comparable Sale One. However, respondent applied 0% depreciation to Comparable Sale One.

47. Respondent opined a replacement cost of new improvements at \$300 per square foot and cited a contractor survey and the website "dwellingcost.com" as his sources. However, respondent did not provide or attach any documentation supporting a contractor survey. Respondent failed to include any documentation to support his opined replacement cost figure of \$300 per square foot.

48. Respondent failed to report any replacement cost for the Kingsley Property's detached garage.

49. Standard Rules 1-4, subdivision (c)(i), and 2-2, subdivision (a)(x)(5), required respondent, at a minimum, to collect, verify and analyze all information necessary for credible assignment results and to analyze comparable rental data to estimate the subject property's income potential to indicate a value conclusion. Respondent developed and reported a misleading Income Approach when he opined a market rent for Kingsley's two units, neither of which was in a habitable condition, which is required before a property can be rented. In addition, respondent reconciled to the midpoint of the price per square foot of living area for comparable units when Kingsley was inferior to all comparable rentals reviewed by respondent.

50. Standard Rule 1-1, subdivision (a) and (b), required respondent to understand and use recognized methods and techniques necessary to produce a credible appraisal. Respondent committed substantial errors that significantly affected the appraisal.

51. Standard Rule 2-1, subdivisions (a) and (b), required respondent to set forth the Kingsley appraisal clearly and accurately in a manner that would not be misleading. However, respondent failed to report sufficient information to enable the intended user of the appraisal to understand the appraisal properly.

52. Based on the foregoing, respondent performed the assignment concerning the Kingsley Property in a grossly negligent manner, which violated the USPAP Ethics Rule.

Respondent's Evidence Presented

RESPONDENT'S EXPERT GEORGE DELL

53. George Dell (Dell) has been a licensed real estate appraiser since the 1980's. He is a USPAP instructor.

54. Dell found Kingsley to be a difficult appraisal, which respondent conducted at the same time the industry had an "appraiser shortage." The buildings were in a state of disrepair and the market was difficult to measure at that time. Dell credibly testified that a real estate appraisal is highly subjective. Dell believes this property's value was based on the land, not the structures, which were in disrepair. Dell testified that valuing land alone can be difficult and finding comparable properties was extremely difficult.

55. Dell opined that while respondent used the words "average" and "poor" in describing the property's condition, any inconsistency in wording would easily be remedied by the attached photos which showed the property's condition. This evidence mitigates respondent's error.

56. Dell opined that respondent's sales comparison approach was credible, but that respondent's gross living adjustment was not.

57. Dell initially acknowledged that respondent's appraisals at issue did not comply with the USPAP Standards. Thereafter, Dell changed his opinion and stated

respondent's appraisals were USPAP compliant, although he did not provide a valid reason for the change in his opinion.

58. Dell testified the available data for the Kingsley report was "lousy" and therefore having a "credible" conclusion in the appraisal was impossible. This evidence tends to mitigate respondent's conduct. The value of the Kingsley Property was essentially the land. Examining a property, and then depreciating the structures 90 or 100% is tantamount to performing a land valuation, as compared to the more typical appraisal where properties in similar neighborhoods, with similar structures, are compared. Nevertheless, this does not excuse respondent's actions.

EVIDENCE OF RESPONDENT'S CHARACTER

59. Respondent offered a number of character reference letters as discussed immediately below.

60. Jason Fischman (Fischman) is the CEO and Chief Valuation Officer of Appraisal Evaluations, a real estate appraisal firm in California. Fischman met respondent in February 2018, while working at the same location. Thereafter, they developed an ongoing professional relationship, which included discussing real estate appraisal methodologies. Fischman believes respondent is a consummate professional, who has an exemplary work ethic and is of good moral character. Fischman has referred multiple clients to respondent with positive results. Fischman testified at hearing and submitted a letter on behalf of respondent.

61. John Fogarty (Fogarty) is a partner at Manatt, Phelps and Phillips, a law firm in California. Fogarty has known respondent since middle school. Fogarty believes respondent is an honest, trustworthy, and intelligent man. Respondent assisted Fogarty in preparing a real estate appraisal in a pro-bono matter.

62. Joseph Leonardo (Leonardo) is a Sales Development Representative at Villa Homes. Prior to his current employment, respondent was his mentor and employer for two years. While working under respondent, Leonardo found respondent to be a person of integrity and respect. On one of his first days of employment, respondent advised Leonardo to "always perform with integrity."

63. Joshua Friedman (Friedman) is an attorney with 20 years' experience. Friedman has known respondent since high school. Friedman has sent more than a dozen clients to respondent for real estate appraisals needed in conjunction with litigation. In every instance, his clients were very satisfied, and respondent's appraisals were reviewed and accepted by various courts. Friedman will continue to refer clients to respondent despite having read the Accusation.

64. James S. Martin (Martin) has been a real estate appraiser since 1977. He was the Director of the Bureau until his retirement in July 2020. Martin reviewed respondent's Crest appraisal at the time the Bureau received a complaint regarding that appraisal. Martin spoke with respondent, reviewed the Bureau's report of investigation, and participated in settlement negotiations. Martin did not evaluate the appraisal for USPAP violations, and he acknowledged a real estate appraiser is required to prepare an appraisal which complies with USPAP Standard Rules.

65. The evidence of respondent's character was considered as evidence of respondent's rehabilitation and capability and willingness to conform to Bureau guidelines in the future.

RESPONDENT'S TESTIMONY

66. Respondent has been a licensed real estate appraiser for over 18 years. He has performed approximately 2,000 residential appraisals.

67. Respondent has suffered no criminal convictions. He has never been disciplined by the Bureau.

68. Respondent testified that neither party who complained to the Bureau ever asked for additional clarification or information.

69. Respondent acknowledged that he used the wrong form for the Kingsley appraisal.

70. Respondent testified his engagement letter, dated August 10, 2021, defined the parameters of his agreement with the Kingsley homeowner. However, respondent also acknowledged the homeowner mentioned needing the appraisal for an attorney on September 1 and 3, 2021. Nevertheless, respondent testified he did not feel obligated to amend the engagement letter. Respondent also pointed out that the homeowner described Kingsley as "slightly less than turn-key" when the property was in a serious state of disrepair.

71. While testifying regarding the Kingsley appraisal, and while looking at page A470 of Exhibit 15, respondent stated, for the first time, that the discussion of Comparable Sales 2 and 3 was a "typographical error" and he intended the report to reference Comparable Sales 4 and 5. However, respondent had not previously informed the Bureau of this information.

72. In sum, respondent testified that he is an experienced, well-regarded, real estate appraiser with no prior history of discipline. In most instances, respondent offered explanations regarding why he believes he did not violate the USPAP Standard Rules. In a few instances, he acknowledged his errors, but minimized the impact of those errors.

73. As discussed previously, respondent has the support of colleagues and past clients who submitted letters in support of his continued licensure. Their letters collectively describe Respondent as professional, ethical, and dependable.

74. Respondent has two daughters that he supports financially.

Costs of Prosecution and Investigation

75. Section 125.3 provides that the Bureau may request the ALJ to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated.

76. Complainant submitted, as evidence of the costs of prosecution of this matter, declarations of Deputy Attorneys General Elaine Yan and Michael Yi. Their declarations established the Department of Justice, Office of the Attorney General, billed the Bureau \$41,231.25 in prosecution costs.

77. The Bureau's cost for investigative services was \$8,220.86.

78. The total incurred costs of prosecution and investigation equal \$49,452.11 and are deemed reasonable given the complexity of this matter.

LEGAL CONCLUSIONS

1. All statutory references are to the Business and Professions Code (Code) unless otherwise indicated.

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2. Code section 11301 created within the Department of Consumer Affairs a Bureau of Real Estate Appraisers to administer and enforce the Code.

3. Code sections 11313 and 11314 state the Bureau is under the supervision and control of the Director of Consumer Affairs, who shall adopt rules and regulations regarding enforcement. The Bureau is required to publish regulations which state the requirements for licensure and discipline of real estate appraisers in order to ensure protection of the public interest.

4. A real estate appraiser's license is a professional license. (Cal. Code Regs., tit. 10, §§ 3701, 3542, 3521, and 3522.) The standard of proof in an administrative action seeking to suspend or revoke a professional license is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

5. Code section 11319, subdivision (a), states: the USPAP constitute the minimum standard of conduct and performance for a licensed real estate appraisal performing appraisals, such as the appraisals respondent performed at the Kingsley and Crest properties.

6. California Code of Regulations (CCR), title 10, section 3702, subdivision (a), states in relevant part, that the profession of real estate appraisal is vested with a fiduciary relationship of trust and confidence as to clients, lending institutions, and both public and private guarantors or insurers of funds in federally-related real estate transactions and that the qualifications of honesty, candor, integrity, and trustworthiness are directly and substantially related to and indispensable to the practice of the appraisal profession. All further references to regulations are to title 10 of the CCR unless otherwise stated.

7. CCR section 3721, subdivision (a) states, in relevant part, that complainant may issue a citation, order of abatement, assess a fine or private or public reproof, suspend or revoke any license or Certificate of Registration, to any person or entity acting in a capacity requiring a license or Certificate of Registration who has: (subpart 6) violated any provision of USPAP; (subpart 7) violated any provision of the Real Estate Appraisers' Licensing and Certification Law, or the laws and regulations related to real estate appraisers.

First Cause for Discipline (USPAP Violations - Kingsley Property)

8. Cause exists, pursuant to CCR section 3721, subdivisions (a)(6) and (a)(7), to suspend or revoke respondent's license because respondent violated CCR section 3701 by violating provisions of USPAP, as set forth in Factual Findings 10 through 52.

Second Cause for Discipline (Failure to Demonstrate Qualifications of an Appraiser)

9. Cause exists, pursuant to CCR section 3721, subdivision (a)(7), to suspend or revoke respondent's license because respondent violated CCR section 3702, subdivisions (a)(1) and (a)(3), because respondent failed to demonstrate the qualifications of an appraiser, such as honesty, candor, integrity, and trustworthiness, when he made multiple false statements to L.D.K regarding the estimated time when the appraisal report would be sent to L.D.K., as set forth in Factual Findings 18 through 28.

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Third Cause for Discipline (Violations of USPAP - Crest Property)

10. Cause exists, pursuant to CCR section 3721, subdivisions (a)(6) and (a)(7), to suspend or revoke respondent's license because respondent violated CCR section 3701 by violating provisions of USPAP, as set forth in Factual Findings 10 through 17.

Costs of Investigation and Prosecution

11. Code section 11409, subsection (a), states in pertinent part, any order issued in resolution of a disciplinary proceeding may direct a licensee found to have committed a violation or violations of statutes or regulations relating to real estate appraiser practice to pay a sum not to exceed the reasonable costs of investigation, enforcement, and prosecution of the case.

12. Cause exists to order respondent to pay the Bureau's costs of investigation and prosecution, which total \$49,452.11 as set forth in Factual Findings 75 through 78.

Complainant's Prayer for \$10,000 fine

13. Code section 11316 authorizes the Bureau's Director to assess a fine against a licensee for violating the Bureau's laws or regulations. The language of the statute only discusses the process, and possible methods to force compliance, regarding an existing license. Thus, this Code section does not appear to authorize a fine to be imposed against a license that has been revoked, which is what complainant is requesting in this matter. Complainant did not offer any evidence regarding why a \$10,000 fine would be appropriate in this matter. Respondent is already going to carry a heavy financial burden in being ordered to reimburse costs. Further, no evidence or argument was offered as to why disciplining respondent's license is insufficient to

protect the public. For these reasons, cause was not established to justify imposing a \$10,000 fine against respondent.

Disciplinary Guidelines

14. CCR section 3733 provides, "In reaching a decision on a disciplinary action under the Administrative Procedure Act . . . the Bureau shall consider the disciplinary guidelines entitled "A Manual of Disciplinary Guidelines and Model Disciplinary Orders" (Rev. 2015) [(Disciplinary Guidelines) which are hereby incorporated by reference."

15. The Disciplinary Guidelines recommend that for violations of CCR section 3721, the maximum discipline is revocation, full cost recovery, and payment of a fine. The minimum recommended discipline is revocation stayed and one year of probation with specified conditions, including cost recovery.

16. In determining the level of discipline, the Disciplinary Guidelines list several factors in aggravation and in mitigation to consider. In this case, relevant factors in aggravation are that respondent's errors were numerous. Relevant factors in mitigation are that Respondent's violations were unintentional; the Kingsley assignment was unusual, and respondent's appraisals completed after Kingsley and Crest have not resulted in further complaints or additional disciplinary action.

17. Respondent vigorously disputed the evidence, and testimony of witnesses, offered to establish his conduct violated USPAP Standards. Respondent also offered explanations, in an apparent attempt to justify his actions, when he should have expressed remorse. Complainant contended respondent's behavior indicated an unwillingness to acknowledge wrongdoing, or to change his behavior in the future. Complainant's contention was considered and, on its face, is not unreasonable.

However, given the burden of proof in this matter, respondent's conduct did not establish complainant's contention. Respondent represented himself. In doing so, respondent's zealous representation of himself, and his unwillingness to admit numerous errors, or to express remorse, is viewed as respondent's misguided attempt to vigorously contest every issue in an attempt to protect his license.

18. Administrative proceedings to revoke, suspend, or impose discipline on a professional license are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal. 4th 763, 785-786.)

19. Due consideration was given to all the evidence in this matter. Respondent has been licensed as real estate appraiser for over 18 years without any history of discipline. Respondent will bear a heavy burden serving a long period of probation and paying costs. The Bureau will have substantial time to evaluate respondent's future appraisals to ensure they are USPAP compliant. The following order will adequately protect the public.

ORDER

IT IS HEREBY ORDERED that Certified Real Estate Appraiser License No. AR 029246 issued to respondent Daniel E. Rinsch is revoked. However, the revocation is stayed and respondent is placed on probation for two years on the following terms and conditions.

1. Obey All Laws.

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Respondent shall comply with all federal, state and local laws, the Real Estate Appraisers' Licensing and Certification Law and regulations promulgated thereto, and conform to the minimum guidelines set forth under the Uniform Standards of Professional Appraisal Practice ("USPAP"), and all other laws and regulations pertaining to real estate appraisers. Additionally, if respondent is subject to criminal court orders, respondent shall comply with all criminal court orders, including probation and parole.

2. Appraisal Log/Work Samples

Commencing on the effective date of the Decision and Order and continuing through the period of probation, respondent shall maintain a log of all appraisals and appraisal reviews respondent performs on a Log of Appraisal Experience form provided by the Bureau of Real Estate Appraisers (BREA). Respondent shall submit a complete and accurate copy of the log of all appraisals and appraisal reviews completed each six (6) months. Each six (6) month log shall be submitted to BREA within thirty (30) days following the end of each six (6) month period. Respondent understands BREA may select work samples for review from each submitted six (6) month log. Failure to submit the log, or any selected work samples, in compliance with these terms shall extend the probation for a period equivalent to the period of noncompliance.

Respondent shall complete a minimum of six (6) appraisals every six (6) months. If respondent fails to complete six (6) appraisals every six (6) months, probation shall be tolled. Periods during which probation is tolled shall not apply to reduction of the probationary period, suspension or any other disciplinary order or term.

3. Monitoring.

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Respondent shall be subject to, and shall permit and cooperate with, monitoring and investigation of respondent's professional practice. Such monitoring and investigation shall be conducted by representatives of BREA.

4. Monitoring Costs.

Respondent shall pay \$450 every six months while on probation to compensate BREA for enforcing the order by examining the work samples or AMC logs. Failure to pay monitoring costs shall be a violation of probation.

5. Comply with Probation.

Respondent shall fully comply with the terms and conditions of the probation imposed by the Chief of BREA and shall cooperate fully with representatives of BREA in its investigation of respondent's compliance with the terms and conditions of probation.

6. Cost Reimbursement.

Respondent shall reimburse BREA its investigation and prosecution costs in the sum of \$49,452.11. The payment shall be made within 30 days of the effective date the Decision and Order, unless BREA agrees in writing to a payment plan. Payment shall be made to the Real Estate Appraisers Regulation Fund, c/o Bureau of Real Estate Appraisers, 1102 Q Street, Suite 4100, Sacramento, California 95811, by check or money order and shall indicate on its face the notation: "BRE A Case No. L20210611-01 and L20220401-02." Respondent shall also submit a copy of the invoice with payment, which will be provided by BREA. If full payment is not received by BRE A by the date due as noted in the invoice, a 10 percent late penalty shall be added to the unpaid balance and interest will accrue on the unpaid balance at the pooled money

investment rate in effect at that time, until the full amount is paid. Respondent shall not be eligible to renew his license until such time as full payment of the outstanding costs have been made. Failure to timely reimburse BREA's costs of its investigation and prosecution shall constitute a violation of the probationary order or cause for further disciplinary action.

7. Violation of Probation.

If respondent violates probation in any respect, the Chief of BREA, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against respondent during probation, the Chief shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

8. Surrender of License:

During Respondent's term of probation, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may surrender his license to BREA. BREA reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with BREA. An appraiser whose license has been surrendered may re-apply for licensure no sooner than one year from the effective date of the disciplinary decision.

Respondent may petition to BREa for reinstatement pursuant to the provisions set forth in Government Code section 11522. If, following a surrender of his or her license, respondent ever applies for licensure to BREa and/or petitions for reinstatement in the State of California, the Chief shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in the Accusation or Statement of Issues will be deemed true when the Chief determines whether to grant or deny the application or petition. Further, respondent shall pay the enforcement costs, fines and complete all education, as specified in this Decision and Disciplinary Order prior to filing any application for reinstatement or issuance of a new license.

9. Uniform Standards of Professional Appraisal Practice Course/Examination.

Respondent shall take and pass a BREa approved 15-hour basic education course on the Uniform Standards of Professional Appraisal Practice within six (6) months of the effective date the Decision and Order. The course may be taken on-line or in a classroom setting. However, the course must be The Appraisal Foundation's National USPAP Course (or its equivalent as determined solely by the Appraiser Qualifications Board (AQB) Course Approval Program) and at least one of the course instructors must be an AQB Certified USP AP Instructor who is also a state certified appraiser in good standing. The course must administer a closed-book final examination. Respondent must submit proof of successful completion of the course and final examination within six (6) months following the effective date of the Decision and Order. Respondent understands that it is his responsibility to ensure that the course meets all of the requirements listed above and to make all necessary and preparatory arrangements to take the course. Educational courses imposed by the

Chief of BREa may not be credited toward respondent's continuing education requirements required for renewal of respondent's real estate appraiser license. Failure to comply with the education requirements as contained in this Disciplinary Order shall result in an automatic suspension of respondent's real estate appraiser license. In order to reinstate respondent's license if it is automatically suspended for failure to comply with the education requirement, respondent must provide BREa with the following: (i) satisfactory verification of the completion of the education course or courses imposed; (ii) completion and filing of a reinstatement application; and (iii) payment of all applicable fees, fines, or penalties.

10. Complainant's request to impose a \$10,000 fine is denied.

DATE: 09/28/2023


Christopher Ruiz (Sep 28, 2023 14:17 PDT)

CHRIS RUIZ

Administrative Law Judge

Office of Administrative Hearings