

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-06-0296-REA REGARDING:

THE PROPOSED DISCIPLINARY) Case No. 139-2007
TREATMENT OF THE LICENSE OF)
DAN COBB, Licensed Appraiser No. 338.)
)

**PROPOSED FINDINGS OF FACT; CONCLUSIONS OF LAW;
AND RECOMMENDED ORDER**

I. INTRODUCTION

The Montana Department of Labor and Industry Business Standards Division (BSD) filed a complaint against the appraiser's license of Dan Cobb alleging violations of Montana Code Annotated § 37-54-403(1) (which requires a licensee to comply with the USPAP requirements)¹ and Montana Code Annotated § 37-1-316(18) (which prohibits a licensee from engaging in unprofessional conduct). Hearing Examiner David A. Scrimm held a contested case hearing in this matter on November 30, 2006. Jack Atkins, agency legal counsel, appeared on behalf of the Department of Labor and Industry. Patrick F. Flaherty, attorney at law, represented Cobb.

Cobb, a Montana certified general appraiser, and Billie VeerKamp, a Montana certified general appraiser and Board investigator, testified under oath in this matter. The hearing examiner denied Cobb's offer of expert testimony from Joe Seipel based on BSD's objection that no notice had been provided of such testimony, that it had no opportunity to depose the proposed expert and that the deadline for identifying witnesses had passed on September 22, 2006 and there had been no motion to extend that deadline. The hearing examiner allowed Cobb to submit a post-hearing motion and brief to allow the record to be supplemented with the expert testimony. Counsel for Cobb failed to supply any basis for his motion or to file a brief in support thereof. Accordingly, the motion was denied. BSD's Exhibits 1 through 4 were admitted by stipulation of the parties. Based on the evidence adduced at the hearing as well as the arguments of counsel, the following findings of fact, conclusions of law, and recommended decision are made.

¹ "USPAP" stands for the Uniform Standards of Professional Appraisal Practice, the rules which regulate conduct of appraisers while conducting appraisals. These rules are promulgated by the Appraisal Standards Board of the Appraisal Foundation and govern the professional conduct of Montana appraisers by virtue of Mont. Code Ann. § 37-54-403. For purposes of the instant case, all references are to the 2004 Edition of USPAP which governs the appraisal at issue in this case.

II. FINDINGS OF FACT

1. At all times relevant to this proceeding, Cobb has held a Montana certified general appraiser's license.
2. NovaStar Home Mortgage (bank) retained Cobb to complete an appraisal of a single family residence located at 232 2nd Ave. NW in Browning, Montana. The bank sought the appraisal for lending purposes. Cobb accepted the assignment and ultimately completed one appraisal. This appraisal was subject to the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP).
3. The effective date of valuation of Cobb's appraisal (Exhibit 2) of the property was October 18, 2004.
4. To complete this scope of work, USPAP standards applicable at the time required Cobb to complete all three methods of valuation of property, namely, the market (sales comparison) approach, the income approach, and the cost replacement approach.
5. USPAP Standard Rule 1 requires an appraiser in developing an appraisal to "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."
6. USPAP Standards Rule 1-1(c) provides that in developing a real property appraisal, an appraiser must "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."
7. USPAP Standards Rule 1-2(f) provides that in developing a real property appraisal, an appraiser must "identify the scope of work necessary to complete the assignment." The comment to this rule further provides that "the scope of work is acceptable when it is consistent with: the expectations or participants in the market for the same or similar appraisal services; and what the appraiser's peers' actions would be in performing the same or a similar assignment in compliance with USPAP."
8. USPAP Standards Rule 1-4(a) provides that "when a sale comparison approach is applicable, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion."
9. USPAP Standards Rule 1-4(b) provides that when a cost approach is applicable, an appraiser must:
 - (a) develop an opinion of the site value by an appropriate appraisal method or technique;

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

(c) analyze such comparable data as are available to estimate the difference between the cost new and the present worth of improvements (accrued depreciation).

10. USPAP Standards Rule 1-6 provides that in developing a real property appraisal, an appraiser must “(a) reconcile the quality and quantity of data available and analyzed within the approaches used; and (b) reconcile the applicability or suitability of the approaches used to arrive at the value conclusions.”

11. USPAP Standards Rule 2-1(c) requires a licensee to clearly and accurately disclose all assumptions, hypothetical conditions, and limiting conditions used in an assignment.

12. USPAP Standards Rule 2-2(b)(vii) requires that an appraisal report must “summarize sufficient information to disclose to the client and any intended users of the appraisal the scope of work used to develop the appraisal.”

13. USPAP Standards Rule 2-2(b)(ix) requires that an appraisal report summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analysis opinions and conclusions contained in the reports.

14. Cobb violated USPAP Standards Rule 1-1(c) when he:

(a) failed to provide supporting data, information or explanation to allow the intended user to believe that Browning and Cut Bank are comparable and would compete in the minds of probable and potential purchasers and users;

(b) failed to support his reasoning or analysis for identifying the improvements as having an effective age of 20 years when the actual age was 74 years or to identify any updating or remodeling that would justify the effective age;

(c) made adjustments in the comparable sales without any supporting data or explanation for the adjustment;

(d) estimated the lot value without providing any supporting analysis or summary of information to support the conclusion; and

(e) did not summarize the supporting information and data utilized to arrive at the adjusted values for the comparables and how those adjusted values are reconciled with the final value.

15. Cobb's appraisal report violated USPAP Standards Rule 1-2(f) because Cobb failed to identify the scope of work necessary to complete the assignment and to summarize the assignment-specific information used to develop the appraisal report. Cobb's report also failed to identify or give any rationale for the decision to go to a neighboring town 25 miles away and select comparable sales data to be used in estimating the subject's market value.

16. Cobb's appraisal report violated USPAP Standards Rule 1-4(a) and 2-2(b)(ix) because he failed to explain why comparable sales were chosen from a neighboring town 25 miles away. His report did not support the adjustments made in the sales comparison approach to value with any summary of information. The report failed to summarize how the three (3) adjusted sales prices of the three (3) comparables were reconciled with the final value of the subject property.

17. Cobb's appraisal report violated USPAP Standards Rule 1-4(b) and 2-2(b)(ix) because he failed to develop an opinion of the site value by an appropriate method or technique in the cost approach to value and failed to contain any land as though vacant analysis.

18. Cobb's appraisal report violated USPAP Standards Rule 1-4(b)(iii) and 2-2(b)(ix) because he failed to analyze the comparable sales data to estimate the accrued depreciation of the subject improvements when using the cost approach. The subject improvements have an actual age of 74 years; the report estimated the subject improvements had an effective age of 20 years; however, nothing in the report supports the reduction in effective age.

19. Cobb's appraisal report violated USPAP Standards Rule 1-6(b) and 2-2(b)(ix) because he failed to reconcile how the cost approach and the sales comparison approach were developed into a final conclusion of value.

20. The USPAP deficiencies contained in Cobb's appraisal report rendered that appraisal not credible.

21. Cobb's report and his testimony about it show an inappropriate reliance on merely filling out the form as opposed to meeting USPAP requirements for real estate appraisals. Cobb testified that he is not limited to the four corners of the URAR form, but nonetheless he provided little or no explanation for numerous departures in his appraisal because the form didn't allow him to further explain. Cobb admitted that lenders do not dictate how one performs an appraisal, but also testified that lenders do not want the detail that USPAP requires and that his appraisal report is not misleading. Cobb stated several times in his testimony that the explanation and detail required to be part of his appraisal report could be found in his work file which was not part of the appraisal report or produced as evidence in this matter.

22. Cobb's violations are not the result of a conscious decision to mislead the lender or other potential users of his appraisal, but rather the result of unfamiliarity with the application of USPAP requirements.

23. The BSD has sought revocation of Cobb's license as a result of his conduct in this case. The protection of the public in this matter requires that Cobb be subject to supervision by the Board for a period of six months.

III. CONCLUSIONS OF LAW²

1. The Board of Real Estate Appraisers has jurisdiction over this matter. Mont. Code Ann. § 37-54-105.

2. The Department bears the burden of proof to show by a preponderance of the evidence that the licensee committed an act of unprofessional conduct. Mont. Code Ann. § 37-3-311; *Ulrich v. State ex rel. Board of Funeral Service*, 1998 MT 196, 289 Mont. 407, 961 P.2d 126. The Department must also show that any sanction which it seeks is appropriate under the circumstances of the case.

3. Montana licensed appraisers must "comply with generally accepted standards of professional appraisal practice" as evidenced by USPAP. Mont. Code Ann. § 39-54-403(1). In addition, Admin. R. Mont. 24.207.402 provides that the Board adopts by reference USPAP standards.

4. By failing to comport with USPAP requirements, Cobb committed unprofessional conduct. Mont. Code Ann. § 37-1-316(18) and Mont. Code Ann. § 37-54-403(1).

² Statements of fact in this discussion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

5. Mont. Code Ann. § 37-1-312(1) provides that upon a determination that the licensee has committed a violation, the Board may issue an order providing for, among other things, payment of a fine not to exceed \$1,000.00 per occurrence, remedial education, and suspension of the licensee's license for a fixed or indefinite term.

6. To determine which sanctions are appropriate, a regulatory board must first consider the sanctions necessary to protect the public. Only after this determination has been made can a board then consider and include in the order requirements designed to rehabilitate the licensee. Mont. Code Ann. § 37-1-312(2).

7. On balance, the facts in this case demonstrate that sanctions are required both to protect the public and to rehabilitate the licensee. While the department has not shown a pattern, history or severity of violation that justifies revocation, Cobb's obvious lack of familiarity with the USPAP standards as shown by the omissions in the report (such as the lack of reasoning for upward and downward adjustments in the sales comparison valuation) demonstrates the need to impose remedial training in order to ensure the protection of the public. Likewise, Cobb's suggestion that most of the omissions in the report were unintentional and due only to the need to provide summary information to the lender do not mitigate the need for remedial training or the imposition of a fine.

8. Under the circumstances of this case, imposition of a \$250.00 fine, requiring regular submission of Cobb's appraisal log to the Board for a period of six months following the entry of the Board's final order in this matter, and ordering Cobb to attend USPAP training is appropriate.

IV. RECOMMENDED ORDER

Based on the foregoing, the hearing examiner recommends that the Montana Board of Real Estate Appraisers order the licensee: (1) to pay a fine of \$250.00 to the Board of Real Estate Appraisers by cashier's check or money order no later than 30 days after the entry of the final order in this matter; (2) to submit his appraisal log for review by the Board at a frequency directed by the Board for a period of six months following the final order in this matter; (3) to attend and successfully complete a current USPAP course of instruction from an accredited provider as determined by the Board; and (4) to provide documentary proof of successful completion of such additional USPAP training within 12 months of the entry of the final order in this matter.

DATED this 16th day of April, 2007.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ DAVID A. SCRIMM
DAVID A. SCRIMM
Hearing Examiner

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.