

**SOAH DOCKET NO. 329-14-0562.ALC
TALCB COMPLAINT NO. 12-277**

**TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD ("BOARD")**

V.

**TRAVIS R. COOPER
LICENSE NO. TX-1324523-G**

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**BEFORE THE TEXAS APPRAISER
APPRAISER LICENSING AND
CERTIFICATION BOARD**

**SITTING IN AUSTIN
TRAVIS COUNTY, TEXAS**

FINAL ORDER

On the 21st day of November, 2014, the Texas Appraiser Licensing and Certification Board considered this matter.

After proper notice was given, the above-styled case was heard at the State Office of Administrative Hearings ("SOAH") by an Administrative Law Judge ("ALJ") on March 24-25, 2014 and April 16, 2014. On August 19, 2014, the ALJ filed a Proposal for Decision ("PFD") containing Findings of Fact and Conclusions of Law. The PFD was properly served on each party, and each party was given an opportunity to file exceptions and replies as part of the administrative record. No exceptions to the PFD were filed.

The Board, after review and consideration of the PFD, attached as Exhibit A, adopts the Findings of Fact and Conclusions of Law of the ALJ contained in the PFD and incorporates those findings and conclusions into this Final Order as if these were fully set out and separately stated in this Final Order, except as set out below.

Under TALCB Rule §157.17(b), the Board is not bound by the ALJ's recommendations for sanctions to be imposed against the Respondent. Among the sanctions recommended by the ALJ, the ALJ recommends that the Respondent engage and pay the reasonable fees for a monitor to review his appraisals before they are issued for a period of 12 months or until the issuance of 20 written appraisal reports acceptable to the monitor, whichever is later. Because the PFD does not fully set out the terms of how this monitoring arrangement would work, the Board strikes Conclusion of Law No. 45 in the PFD and adopts new Conclusion of Law No. 45 as follows:

45. The Board imposes an initial six-month period of suspension of Mr. Cooper's certified general appraiser license. During this initial suspension, Mr. Cooper shall re-take and pass the examination for certified general appraisers and complete 12 hours of mentorship as follows: 4 hours concerning the sales comparison approach; 2 hours concerning the cost approach; 3 hours concerning the USPAP Ethics Rule (conduct provisions), paying particular attention to the provisions prohibiting predetermining opinions and conclusions; and 3 hours concerning the USPAP Scope of Work Rule. Mr. Cooper shall pay an administrative penalty of \$2,750. Upon completion of this initial six-month period of suspension, Mr. Cooper shall submit experience logs to the Board at regular intervals for a

period of 12 months. The Board staff shall review a minimum of one report per interval. During the initial six-month period of suspension and continuing through the period during which Mr. Cooper must submit experience logs to the Board, Mr. Cooper shall not sponsor any appraiser trainees.

IT IS THEREFORE ORDERED by the Board that the Respondent's Texas appraiser certification be suspended for 18 months, effective 5:00pm (CST) on January 1, 2015.

IT IS FURTHER ORDERED that:

- 1) **ADMINISTRATIVE PENALTY** – On or before December 11, 2014, Respondent shall pay to the Board an administrative penalty of \$2,750, by cashier's check or money order.
- 2) **MENTORSHIP** – On or before February 20, 2015, Respondent shall complete 12 hours of in-person mentorship conducted by a certified USPAP instructor approved by the Board in accordance with the schedule and topics set out below. Respondent shall submit a certification of completion signed by the approved certified USPAP instructor and a signed copy of the Guidelines for Texas Appraiser Licensing and Certification Board mentors and Mentees on or before February 20, 2015. Respondent is solely responsible for locating and scheduling an approved mentor to timely satisfy this Final Order and is urged to do so well in advance of the deadline for completion:
 - a. 4 hours of in-person mentorship concerning the sales comparison approach;
 - b. 2 hours of in-person mentorship concerning the cost approach;
 - c. 3 hours of in-person mentorship concerning the USPAP Ethics Rule (conduct provisions), paying particular attention to the provisions prohibiting predetermining opinions and conclusions; and
 - d. 3 hours concerning the USPAP Scope of Work Rule.
- 3) **EXAM** – Respondent shall re-take and pass the licensing examination for a certified general appraiser.

IT IS FURTHER ORDERED that beginning on July 1, 2015, if Respondent completes the requirements set out in items 1, 2, and 3 above, the remaining 12 months of Respondent's suspension is fully probated, subject to the following terms and conditions:

- 4) **APPRAISAL EXPERIENCE LOGS** – Respondent shall submit to the Board an appraisal experience log on a form prescribed by the Board at regular 3 month intervals.

The appraisal experience log for each 3-month period shall be due no later than the 15th of the month following the end of the relevant period. The log shall detail all real estate appraisal activities Respondent has conducted during the relevant period. The log shall be signed by Respondent and contain a notarized affidavit attesting the log is true, complete, and accurate. Within twenty (20) days of receiving each of

Respondent's appraisal experience log, Board staff will notify Respondent and request a minimum of 1 appraisal report from the appraisal experience log. Respondent shall provide copies of the selected appraisal reports, and workfiles, within 20 days of receiving the Board's request. Within 20 days of receipt of the requested appraisal reports, Board staff will investigate the requested appraisal reports to ensure USPAP compliance. Respondent will be promptly notified of the results of the investigation of the selected appraisal reports with a finding and resolution of:

- a. **CONFORM TO USPAP.** If the selected appraisal report(s) conform to USPAP, Respondent will have completed the relevant experience log term; or
- b. **FAILURE TO CONFORM TO USPAP.** If the selected appraisal report(s) fail to conform to USPAP, Respondent will be notified of the deficiencies in the appraisal report(s) and be required to complete the following remedial measures:
 1. **CORRECTED APPRAISAL(S):** Within 30 days after being notified of the deficiencies in any report, Respondent shall correct all issues noted in the selected appraisal report(s) and resubmit them to the Board. If the corrected appraisal(s) generally conform to USPAP, Respondent will have completed the relevant experience log term. If the corrected appraisal(s) fail to generally conform to USPAP, Board staff may pursue a staff-initiated complaint.
 2. **SERIOUS DEFICIEINCIAS AND INTENTIONAL MISCONDUCT.** In the event Board staff discovers any serious deficiencies, as defined in Board Rule 153.24, or intentional misconduct, during the course of investigating the selected appraisal report(s) as part of this experience log requirement, Board staff may pursue a staff-initiated complaint.

5) TRAINEES – During the period Respondent's license is suspended or probated, Respondent shall not sponsor any appraiser trainees.

If enforcement of this Final Order is restrained or enjoined by court order, this Final Order is effective upon a final determination by the court or an appellate court in favor of the Board.

Approved by the Board and signed this 21 day of November, 2014.



Jamie Wickliffe, Chair
Texas Appraiser Licensing and Certification Board

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

August 19, 2014

Douglas E. Oldmixon
Administrator
Texas Real Estate Commission
1700 N. Congress Avenue, Suite 400
Austin, TX 78701

VIA INTERAGENCY

RE: Docket No. 329-14-0562.ALC; Texas Appraiser Licensing and Certification Board v. Travis R. Cooper

Dear Mr. Oldmixon:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 Tex. Admin. Code § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in cursive script that reads "Paul D. Keeper".

Paul D. Keeper
Administrative Law Judge

PDK/eh
Enclosure

xc: Troy Beaulieu, Attorney, 1700 N. Congress Avenue, Suite 400, Austin, TX 78701 -
VIA INTERAGENCY
Sadiyah A. Evangelista, Attorney, P.O. Box 1092, Houston, TX 77251 - **VIA REGULAR MAIL**
Mark Moore, Director of Standards & Enforcement Services, 1700 N. Congress Ave., Suite 400,
Austin, TX 78701 (with 1 CD) - **VIA INTERAGENCY**

SOAH DOCKET NO. 329-14-0562.ALC

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD,
Petitioner

v.

TRAVIS R. COOPER,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

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BEFORE THE STATE OFFICE

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ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff (Staff) of the Texas Appraiser Licensing and Certification Board (Board), Petitioner, alleged that Travis R. Cooper, Respondent, violated the Uniform Standards of Professional Appraisal Practice (USPAP) in the appraisal of real property in Houston, Texas. Staff seeks to impose a \$5,000 administrative penalty against Mr. Cooper and to revoke his general real estate appraiser certificate. Following a three-day hearing on the merits, the administrative law judge (ALJ) recommends that the Board suspend his license, impose certain remedial requirements described in Section VII, including the use of a monitor, and impose a \$5,000 administrative penalty.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Neither party challenged notice or jurisdiction. Those matters are addressed in the proposed findings of fact and conclusions of law.

On March 24, 2014, the ALJ convened a hearing on the merits. Attorney Troy Beaulieu represented Staff, and attorney Sadiyah Evangelista represented Mr. Cooper. On March 25, 2014, the ALJ granted the parties' joint motion for a recess. By agreement, the ALJ reconvened the hearing on April 16, 2014, and adjourned the hearing on the same day. The parties filed briefs, and the record closed on June 20, 2014.

II. APPLICABLE LAWS

The Texas Appraiser Licensing and Certification Act (Act) gives the Board the authority to regulate the profession of real estate appraising.¹ The Act requires an appraiser to comply with the Act and the Board's rules, including the most current version of USPAP.² The Board may suspend or revoke the license of an appraiser who:

- fails to comply with the version of USPAP in effect at the time of the appraisal or appraisal practice;³
- accepts payment for services contingent upon a minimum or pre-agreed value estimate except when such action would not interfere with the appraiser's obligation to provide an independent and impartial opinion of value and full disclosure of the contingency is made;⁴
- agrees to perform appraiser services when employment to perform such services is contingent upon a minimum or pre-agreed value estimate except when such action would not interfere with the appraiser's obligation to provide an independent and impartial opinion of value and full disclosure of the contingency is made;⁵ or
- makes a material misrepresentation or omission of material fact.⁶

As the party seeking affirmative relief, Staff had the burden to allege and prove its allegations by a preponderance of the evidence.⁷

¹ Tex. Occ. Code ch. 1103.

² Tex. Occ. Code §§ 1103.002(2), 405. The 2012-13 version of the USPAP manual was admitted as Staff Ex. 3.

³ 22 Tex. Admin. Code § 153.20(a)(6).

⁴ 22 Tex. Admin. Code § 153.20(a)(10).

⁵ 22 Tex. Admin. Code § 153.20(a)(11).

⁶ 22 Tex. Admin. Code § 153.20(a)(12).

⁷ 1 Tex. Admin. Code § 155.427; see *Southwestern Public Serv. Company v. Public Utility Comm'n*, 962 S.W.2d 207, 213 (Tex. App.—Austin 1998, pet. denied).

III. BACKGROUND

Mr. Cooper has been a real estate appraiser since 1971.⁸ He has held general real estate appraiser certificate number TX-1324523-G since December 30, 1992,⁹ during which he has issued about 10,000 appraisal reports.¹⁰ He has also held a real estate broker's license since at least July 15, 1988.¹¹ Over his four-decade career, Mr. Cooper has also developed real property in the Houston area and has served as an expert witness for the State of Texas, the City of Houston, Harris County, and for flood control entities.¹² Until Staff brought the complaint in this case, he had never been the subject of a complaint or disciplinary action.¹³

A. Contact with Jon Holverson

On January 28, 2012, Mr. Cooper received a telephone call from Jon Holverson, a person whom he did not know but who provided a reference through a mutual acquaintance.¹⁴ In the call, Mr. Holverson told Mr. Cooper that he needed appraisal services on ten pieces of real estate (Properties) that he owned in the South Park area of Houston.¹⁵ South Park is a low-income community located south of Loop 610 East, near the intersection of Belfort Avenue and Martin Luther King Boulevard.

Mr. Holverson explained that he owed a debt to a bank and that the debt was secured by a \$600,000 certificate of deposit. Mr. Holverson told Mr. Cooper that he wanted to obtain the

⁸ Resp. Ex. 1 at 709.

⁹ Staff Ex. 1-A at 1.

¹⁰ Transcript (Tr.) at 112-13.

¹¹ Staff Ex. 1-B at 2. The Texas Real Estate Commission's records are retained until only this date.

¹² Tr. at 616.

¹³ Tr. at 237, 616.

¹⁴ Tr. at 121-22.

¹⁵ The first ten Properties were: 5303 Lyndhurst, 5223 Myrtlewood, 5406 Myrtlewood, 5222 Lyndhurst, 4825 Burma, 7009 Kassarine Pass, 5430 Westover, 5334 Myrtlewood, 4842 Pershing, and 7355 Guadalcanal. The number of Properties was later increased to eleven, with the addition of 5607 Belmark.

bank's approval for him to substitute the Properties as new collateral for the existing debt.¹⁶ Mr. Holverson informed Mr. Cooper that he needed an appraisal that would prove to the bank that the Properties were worth about \$700,000. Mr. Cooper agreed to research the Properties' values and report his initial findings to Mr. Holverson.¹⁷

Later that same day, Mr. Holverson faxed Mr. Cooper a letter (Letter) in which he listed the addresses of the Properties.¹⁸ In the Letter, Mr. Holverson wrote, "These are NOT mortgage appraisals and do NOT need to comply with FNMA [Federal National Mortgage Association] guidelines. These are special use appraisals to substantiate value of collateral."¹⁹ He concluded the letter with the request: "Please take a look and let me know what you think."

Mr. Cooper began his research by visiting each of the Properties. He found that some were fire- or flood-damaged, and many were boarded up.²⁰ Of the ten Properties, only two were habitable. On February 2, 2012, Mr. Cooper called Mr. Holverson to report that the Properties were in poor condition and that, to "get in the neighborhood of \$70,000 [each], we would have to use an extraordinary assumption and a hypothetical condition to do the job."²¹ As described in greater detail later in this analysis, an extraordinary assumption and a hypothetical condition are legitimate appraisal techniques by which an appraiser values a property based on proposed improvements.²²

Mr. Cooper agreed to a \$2,500 fee and promised to complete the work by February 21, 2012.²³ During the telephone call, Mr. Cooper made handwritten notes (Notes) on the Letter about the terms to which he had agreed.

¹⁶ Staff Ex. 14 at 859.

¹⁷ Staff Ex. 14 at 859-60.

¹⁸ Staff Ex. 13 at 819.

¹⁹ Staff Ex. 13 at 819.

²⁰ Staff Ex. 14 at 861.

²¹ Staff Ex. 14 at 863.

²² Staff Ex. 3 at 176 (Advisory Opinion 17).

²³ Staff Ex. 13 at 819, 826.

Mr. Cooper prepared the appraisal reports (Reports), and on February 21, 2012, Mr. Cooper and one of his sons delivered the Reports to Mr. Holverson's office.²⁴ Mr. Cooper received a check for the agreed fee.²⁵ Mr. Holverson later added another address in South Park to the original list of Properties, and Mr. Cooper performed the appraisal of that address for an additional fee of \$250. In April 2012, Mr. Cooper received a second check from Mr. Holverson, after which the two men had no further business dealings or contacts of any kind.²⁶

B. Mr. Holverson's Legal Problems

In his two telephone conversations with Mr. Cooper, Mr. Holverson failed to disclose five important facts: (1) the federal government had recently indicted him for criminal fraud for making false claims to the Small Business Administration about alleged hurricane damage;²⁷ (2) he had pleaded guilty to the criminal charges;²⁸ (3) the federal court had convicted him;²⁹ (4) he was awaiting sentencing to a federal correctional facility for a period of 84 to 102 months;³⁰ and (5) he intended to use Mr. Cooper's Reports as evidence in his sentencing hearing to reduce the length of his sentence by proving that the losses to the Small Business Administration were not as significant as the government had claimed.³¹ To do that, he needed to show that the Properties' total appraised value was about \$700,000.³² Mr. Cooper knew about none of this.

²⁴ Staff Ex. 14 at 866.

²⁵ Staff Ex. 13 at 821.

²⁶ Staff Ex. 13 at 823.

²⁷ Tr. at 561.

²⁸ Tr. at 225.

²⁹ Tr. at 67.

³⁰ Tr. at 225.

³¹ Tr. at 225.

³² Tr. at 67, 564.

Although Mr. Holverson's legal problems were serious, they had not yet reached their apex. After Mr. Cooper delivered his Reports to Mr. Holverson on February 21, 2012, Mr. Holverson altered the Reports before submitting them to the federal sentencing officials. On each Report, Mr. Holverson removed the photographs, the written disclosure about the use of an extraordinary assumption and hypothetical condition, and the text describing the current condition of each Property. Mr. Holverson's lawyer delivered the altered reports to the federal sentencing officials.³³

The sentencing officials challenged the Reports' valuations. The federal prosecuting attorney filed a motion to revoke Mr. Holverson's bail bond.³⁴ The federal judge scheduled a hearing on the motion for June 26, 2012.

In preparation for the hearing, the government's prosecution team dispatched special agents of the Small Business Administration, including Special Agent Robert Mensinger, to interview Mr. Cooper.³⁵ The special agents wanted to learn about Mr. Cooper's relation to Mr. Holverson, including the terms of their agreements and the assumptions that Mr. Cooper had used in preparing the Reports. Mr. Cooper met with Special Agent Mensinger and other agents. He agreed to cooperate. He answered their questions and provided them with copies of the original Reports, including the photos and paragraphs that Mr. Holverson had deleted.

C. Statements by Mr. Cooper

Over the next several weeks, Special Agent Mensinger required Mr. Cooper to meet many times with him, reviewing repeatedly the same information. On May 10, 2012, Special Agent Mensinger drafted a handwritten statement (Statement) for Mr. Cooper to sign, using a Houston Police Department affidavit form.³⁶ Mr. Cooper requested the right to prepare his own version of a written statement, and Special Agent Mensinger refused his request. Mr. Cooper

³³ Tr. at 589.

³⁴ Tr. at 68.

³⁵ Tr. at 315.

³⁶ Staff Ex. 13 at 825-27.

eventually signed the 11-sentence Statement, and his signing was witnessed by two of the other special agents. The document included no notary's seal or signature.³⁷

At the SOAH hearing, Mr. Cooper testified that he disagreed with the accuracy of many of the sentences in the Statement.³⁸ He explained that he had signed the Statement only because he had become tired of being repeatedly asked the same questions. Mr. Cooper testified that he believed that the special agents were not interested in describing truthfully the information that he was providing them. Mr. Cooper testified that he agreed to sign the Statement only if it was unsworn.³⁹

On May 15, 2012, Special Agent Mensinger prepared a Memorandum of Interview (Memorandum) summarizing his interviews with Mr. Cooper. The Memorandum reviewed the agent's conclusions about Mr. Cooper's valuations and motivations in preparing the Reports.⁴⁰ The Memorandum was not prepared as an affidavit, either as the purported statement of Special Agent Mensinger or of Mr. Cooper. The Memorandum summarized not only Mr. Cooper's alleged statements but also the actions allegedly taken and statements made by others.⁴¹ The Memorandum did not state that Mr. Cooper had been shown the Memorandum, had been given the opportunity to read the document, or had agreed with the statements that had been attributed to him. The Memorandum was not signed by Special Agent Mensinger or by anyone else. As with the Statement, Mr. Cooper challenged the accuracy of many of the sentences in the Memorandum.

³⁷ At the SOAH hearing, Mr. Cooper asserted that the lack of a notarization precluded the parties from treating the Statement as an affidavit. Staff did not dispute Mr. Cooper's contention.

³⁸ Tr. at 60.

³⁹ Tr. at 156. At the hearing, Staff objected to Mr. Cooper's announcement that he intended to present evidence that he had signed the Statement under duress. The Act requires a respondent to file an answer, including "any explanation or other statement of mitigating circumstances . . ." Tex. Occ. Code § 1103.505(2). Staff argued that it would have called Special Agent Mensinger as a witness to rebut the facts supporting the affirmative defense if Staff had known that Mr. Cooper intended to raise duress as an affirmative defense. The ALJ sustained Staff's objection, noting that Mr. Cooper had filed an amended answer on March 19, 2014, only five days before the convening of the SOAH hearing on the merits, without the affirmative defense. At the hearing, Mr. Cooper agreed to abandon the affirmative defense. Tr. at 148.

⁴⁰ Staff Ex. 13 at 814-17.

⁴¹ Staff Ex. 13 at 815.

On June 26, 2012, United States District Judge Melissa Harmon held the bond revocation hearing. The prosecution and the defense examined Mr. Cooper under oath. The testimony in that hearing was transcribed (Federal Transcript) and offered by Staff in evidence at the SOAH hearing.⁴² Mr. Cooper offered in evidence at the SOAH hearing a copy of one defense exhibit that was part of the Federal Transcript, a May 22, 2012 sworn affidavit (Affidavit) signed by Mr. Cooper.⁴³ The Affidavit summarized the facts surrounding Mr. Cooper's relation with Mr. Holverson, beginning with Mr. Holverson's Letter, his only written communication with Mr. Cooper.⁴⁴

D. Referral to Board

After Special Agent Mensinger began his investigation into Mr. Cooper's relation to Mr. Holverson, he contacted Staff for help in understanding the scope of a certified real estate appraiser's professional obligations.⁴⁵ Staff assigned two investigators, Robin Forrester, Jr., and John (Jack) McComb, to review Mr. Cooper's work. Like Mr. Cooper, each Staff investigator holds a certification as a general real estate appraiser and has been an appraiser for 40 or more years. In addition, Mr. McComb has experience in developing Houston-area subdivisions and has worked for the Federal Deposit Insurance Corporation as part of the Resolution Trust Corporation's activities.⁴⁶

Mr. Forrester and Mr. McComb sent Mr. Cooper a set of questionnaires (Questionnaires) about the Reports, and Mr. Cooper responded.⁴⁷ After reviewing Mr. Cooper's documents, Mr. Forrester and Mr. McComb recommended that Staff pursue disciplinary action against

⁴² Staff Ex. 14 at 856.

⁴³ Resp. Ex. 1 at 709-10.

⁴⁴ Resp. Ex. 1 at 709.

⁴⁵ Tr. at 313.

⁴⁶ Tr. at 209, 311.

⁴⁷ Staff Ex. 5.

Mr. Cooper, including the revocation of his general real estate appraiser certificate.⁴⁸ On October 10, 2013, Staff filed with SOAH an Original Statement of Charges, a notice of hearing, and a Request to Refer Case form.

IV. STAFF'S ALLEGATIONS

A. First Charge

Staff alleged that Mr. Cooper failed to comply with the provisions of USPAP by:⁴⁹

- performing assignments with bias and reaching pre-determined, inflated values on purpose, knowing the values were not truthful and were inflated to reach pre-determined amounts;⁵⁰
- failing to perform the scope of work necessary to develop credible assignment results and disclose that scope of work in the report and predetermining his scope of work to facilitate reaching the pre-determined values agreed upon with his client;⁵¹
- failing to summarize his rationale for determination of the Properties' highest and best use;⁵²
- failing to summarize and analyze his rationale for his site value determination and failing to employ recognized methods and techniques;⁵³
- failing to collect, verify, analyze, and reconcile accrued depreciation, and misrepresenting the true condition of the Properties and the actual depreciation that should have been applied to them, given their dilapidated condition;⁵⁴

⁴⁸ Staff Ex. 7 at 748. Both Mr. Forrester and Mr. McComb reviewed Mr. Cooper's responses. Only Mr. McComb reviewed the Reports.

⁴⁹ Tex. Occ. Code § 1103.405; 22 Tex. Admin. Code §§ 153.20(a) and 155.1.

⁵⁰ Staff Ex. 3 at 43 (Ethics Rule; Conduct section; first, third, and sixth bullets.)

⁵¹ Staff Ex. 3 at 49 (Scope of Work Rule, items 2 and 3; *id.* at 54 (USPAP Standards Rule 1-2(h)). Staff also cited to USPAP Standard 2-2(b)(v)(ii). No subsection of Standard 2 uses that section number, and nothing in subsections (v), (ii), or (vii) applies to this allegation.

⁵² Staff Ex. 3 at 55 (USPAP Standards Rule 1-3(b)); *id.* at 63 (USPAP Standards Rule 2-2(b)(ix)).

⁵³ Staff Ex. 3 at 55 (USPAP Standards Rule 1-4(b)(i)); *id.* at 62 (USPAP Standards Rule 2-2(b)(viii)).

⁵⁴ Staff Ex. 3 at 55 (USPAP Standards Rule 1-4(b)(iii)); *id.* at 62 (USPAP Standards Rule 2-2(b)(viii)).

- failing to employ recognized methods and techniques correctly in the cost approach;⁵⁵
- failing to collect, verify, analyze, and reconcile comparable sales data adequately, and failing to employ recognized methods and techniques in his sales comparison approach;⁵⁶
- failing to provide supporting documentation or reasoning and a summary of analysis in his sales comparison approach;⁵⁷
- generally failing to use appropriate properties as comparable sales by: (1) going outside the immediate neighborhood area or subdivision to other areas that were further away from Properties, even though sufficient, more similar sales were available in the immediate area; and (2) selecting sales which were dissimilar in salient market-recognized features;⁵⁸
- failing to make appropriate adjustments (or making inappropriate adjustments) to the sales he used;⁵⁹
- failing to discuss his analysis and reasoning behind the adjustments he made or elected not to make;⁶⁰
- generally failing to use objective market data that, if it had been used, would have resulted in significantly lower value conclusions;⁶¹
- failing to reconcile the quality and quantity of the data within the approaches to value or the applicability of the approaches;⁶²
- misrepresenting and omitting involvement of another appraiser in conducting the appraisals;⁶³ and

⁵⁵ Staff Ex. 3 at 52 (USPAP Standards Rule 1-1(a)); *id.* at 55 (USPAP Standards Rule 1-4(b)).

⁵⁶ Staff Ex. 3 at 55 (USPAP Standards Rules 1-1(a) and 1-4(a)); *id.* at 62 (USPAP Standards Rule 2-2(b)(viii)).

⁵⁷ Staff Ex. 3 at 55 (USPAP Standards Rules 1-1(a) and 1-4(a)); *id.* at 62 (USPAP Standards Rule 2-2(b)(viii)).

⁵⁸ Staff Ex. 3 at 55 (USPAP Standards Rules 1-1(a) and 1-4(a)); *id.* at 62 (USPAP Standards Rule 2-2(b)(viii)).

⁵⁹ Staff Ex. 3 at 55 (USPAP Standards Rules 1-1(a) and 1-4(a)); *id.* at 62 (USPAP Standards Rule 2-2(b)(viii)).

⁶⁰ Staff Ex. 3 at 55 (USPAP Standards Rules 1-1(a) and 1-4(a)); *id.* at 62 (USPAP Standards Rule 2-2(b)(viii)).

⁶¹ Staff Ex. 3 at 55 (USPAP Standards Rules 1-1(a) and 1-4(a)); *id.* at 62 (USPAP Standards Rule 2-2(b)(viii)).

⁶² Staff Ex. 3 at 56 (USPAP Standards Rule 1-6(a)); *id.* at 62 (USPAP Standards Rule 2-2(b)(viii)).

⁶³ Staff Ex. 3 at 43 (USPAP Ethics Rule; Conduct section); *id.* at 58 (USPAP Standards Rule 2-1(a)); *id.* at 62 (USPAP Standards Rule 2-2(b)(viii)); *id.* at 63 (USPAP Standards Rule 2-2(b)(ix)); *id.* at 65 (USPAP Standards Rule 2-3).

- producing misleading and predetermined appraisal reports containing substantial errors of omission or commission by failing to employ correct methods and techniques, resulting in appraisal reports that were not credible or reliable.⁶⁴

B. Second Charge

Staff alleged that Mr. Cooper made material misrepresentations and omissions of material fact in his appraisal of the Properties.⁶⁵

C. Third Charge

Staff alleged that Mr. Cooper accepted appraisal assignments, including receiving payment for and producing appraisal reports, contingent on his use of predetermined and inflated values. Staff alleged that the false values were based on Mr. Cooper's agreements with Mr. Holverson before Mr. Cooper actually conducted the appraisals or the necessary research.⁶⁶

V. DISCUSSION

Mr. Cooper disputed each of Staff's Charges, and each Charge will be analyzed in the next section of this Proposal for Decision. However, to reach conclusions about the Charges, the ALJ must first determine four issues about the facts that underlie each of the Charges. First, Staff asserted that Mr. Cooper entered into agreements with Mr. Holverson to predetermine and inflate the Properties' values. Second, Staff asserted that Mr. Cooper's valuations were predetermined and inflated, without respect to any agreements that Mr. Cooper and Mr. Holverson may have made. Third, Staff asserted that Mr. Cooper's appraisal methods were improper. Fourth, Staff asserted that an intended user would have been misled by the Reports. Mr. Cooper disputed each of Staff's four factual contentions. This part of the analysis will begin by determining which, if any, of the factual contentions are supported by the evidence or law.

⁶⁴ Staff Ex. 3 at 52 (USPAP Standards Rule 1-1(a),(b),(c)); *id.* at 58 (USPAP Standards Rule 2-1(a)).

⁶⁵ 22 Tex. Admin. Code § 153.20(a)(12).

⁶⁶ 22 Tex. Admin. Code § 153.20(a)(10), (11).

A. Issue 1: Did Mr. Cooper Agree to Predetermine or Inflate Values?**1. First Telephone Discussion**

Mr. Cooper's agreements with Mr. Holverson were exclusively oral. Because Mr. Holverson was in prison, Mr. Cooper was the only person available to testify at SOAH with direct knowledge about their agreements.

Mr. Cooper testified that, during his first telephone conversation with Mr. Holverson on January 28, 2012, Mr. Holverson: (1) said that he needed appraisals on the Properties as proof of the value of substitute collateral on a loan; (2) asked Mr. Cooper to take a look at the Properties; (3) asked Mr. Cooper if he were willing to take the assignment; and (4) asked Mr. Cooper to quote a fee for his services.⁶⁷ Mr. Cooper testified that he agreed to look at the Properties, call Mr. Holverson when he was finished with his initial review, and give Mr. Holverson his thoughts and a fee proposal. According to Mr. Cooper, the conversation did not include an agreement to predetermine or to inflate the values of the Properties.

Five of the exhibits admitted in evidence provided some information about Mr. Cooper's statements and actions in response to his two telephone conversations with Mr. Holverson. The exhibits are the only documentary evidence that offer confirming or negating information about the alleged agreements between the two men.

Date	Title of Document	Exhibit No.	Who Prepared?	Who Signed?	Was the Document Sworn?	Subject to Cross-Exam?
01-28-12 (02-12-12)	Letter (Notes on Letter)	Pet. Ex. 13 at 819	Mr. Cooper	Unsigned	No	No
05-10-12	Statement	Pet. Ex. 13 at 825-27	Special Agent Mensinger	Mr. Cooper	No	No
05-15-12	Memorandum	Pet. Ex. 13 at 814-17	Special Agent Mensinger	Not signed	No	No

⁶⁷ Tr. at 123.

Date	Title of Document	Exhibit No.	Who Prepared?	Who Signed?	Was the Document Sworn?	Subject to Cross-Exam?
05-22-12	Affidavit	Resp. Ex. 1 at 709-10	Defense counsel ⁶⁸	Mr. Cooper	Yes	No
06-26-12	Federal Transcript	Pet. Ex. 14 at 856	Court reporter	Court reporter	Yes	Yes

The text of the Letter confirmed that Mr. Holverson asked Mr. Cooper to examine the Properties and to "let me know what you think."⁶⁹ Beyond that limited term, the Letter reflected no other terms about an agreement. Nothing in the Letter conflicted with Mr. Cooper's testimony.

The Statement recounted Mr. Holverson's statements during the first telephone call about the fictitious \$600,000 certificate of deposit and his desire that the Properties be valued at \$700,000. The rest of the Statement addressed the events that happened after the January 28, 2012 initial conversation between Mr. Holverson and Mr. Cooper.⁷⁰ As with the Letter, the Statement provided little information about an agreement.

The Memorandum discussed the initial conversation between Mr. Holverson and Mr. Cooper, including Mr. Holverson's expression of interest in replacing the fictitious certificate of deposit with new collateral. The Memorandum repeated Special Agent Mensinger's understanding that Mr. Cooper would not have gotten the job if the appraisals had not reflected an aggregate value of the Properties at \$700,000.⁷¹ The Memorandum repeats most of the information provided in the Statement.

⁶⁸ The record does not disclose the author of the Affidavit. However, it was offered in the federal bond revocation hearing by defense counsel as part of Mr. Cooper's testimony.

⁶⁹ Staff Ex. 13 at 819.

⁷⁰ Staff Ex. 13 at 825.

⁷¹ Staff Ex. 13 at 816.

Although the May 22, 2012 Affidavit contained a series of statements about the conditions under which Mr. Cooper negotiated with Mr. Holverson,⁷² the document provided no information about the terms of an agreement between Mr. Cooper and Mr. Holverson. The Affidavit mentions the Letter, but it does not discuss the telephone calls.

The Federal Transcript reflects Mr. Cooper's statement that in the initial conversation, he understood that Mr. Holverson wanted him to appraise the Properties at about \$70,000 each "in order for him [Mr. Holverson] to do business with you [Mr. Cooper]." In that testimony, Mr. Cooper made clear that he agreed to perform the appraisals but only after he was able to conduct his inspections.⁷³ These documents confirm Mr. Cooper's testimony at SOAH that he agreed to inspect the Properties and report his initial findings to Mr. Holverson before producing any appraisal reports.⁷⁴

2. Second Telephone Discussion

Mr. Cooper stated that in his second telephone discussion, Mr. Holverson restated his need to replace collateral worth \$600,000. Mr. Cooper also denied that Mr. Holverson told him that the average value of the Properties had to be about \$70,000.⁷⁵ When Mr. Cooper's attorney asked him about the source of allegation, Mr. Cooper asserted that it was "the agent who wrote up his statement for the courts . . . ,"⁷⁶ meaning Special Agent Mensinger.

⁷² The language was:

Mr. Holverson did not threaten me or offer more money to inflate the appraisals. He did not try to intimidate me. He did not offer me any incentive to inflate or falsify my appraisal. I did not overvalue the properties. Mr. Holverson did not request or direct me to overvalue the properties.

Resp. Ex. 1 at 709.

⁷³ Staff Ex. 14 at 859-60, 877.

⁷⁴ Staff Ex. 14 at 859-60.

⁷⁵ Q. Now, did he say that he needed the properties to be in the range -- he needed you to do an appraisal report that stipulated the properties had to be \$70,000?

A. No.

Tr. at 126.

⁷⁶ Tr. at 127.

At the SOAH hearing, Mr. Cooper's attorney asked him whether Mr. Holverson had told Mr. Cooper that Mr. Holverson intended to improve the Properties.⁷⁷ Mr. Cooper responded that Mr. Holverson had made that assertion in their second telephone discussion:

Yes. Well, when I got back with him, I told him, I said, Listen, all of these properties are in poor condition. The only way that these properties are going to appraise anywhere in this neighborhood is that all of these properties are going to have to be brought up to good or average condition.⁷⁸

Later, Mr. Cooper's attorney asked again about Mr. Holverson's statements about improving the Properties:

Q. And in your subsequent conversation with Mr. Holverson when he requested that — *well, initially he told you he was going to improve the properties. Is that correct?*

A. Yes.

Q. He didn't say that I want you to value [sic] the properties based on as-is condition?

A. Did not, and I didn't so state in my 10 reports. I did not do an as-is.⁷⁹

Mr. Cooper then testified that he and Mr. Holverson discussed the concept of a hypothetical condition and the steps that would be required for its use.⁸⁰ Mr. Cooper's attorney then asked him:

Q. All right. So once again, you said that he needed a valuation in the neighborhood of 70,000, and you agreed to that. Did you, in fact, agree to the [\$]70,000 to get paid?

A. No.

⁷⁷ Tr. at 128.

⁷⁸ Tr. at 128.

⁷⁹ Tr. at 132. (Emphasis supplied.)

⁸⁰ Tr. at 132.

Q. What did you agree to?

A. I agreed to go out and do the appraisals using the hypothetical extraordinary conditions and let the numbers fall where they may. That's what I did.

Q. Now, you said that if you didn't come up to [\$]70,000, that there was going to be – you weren't going to be able to get the job from Mr. Holverson?

A. Yes, ma'am.⁸¹

Mr. Cooper then explained that he was not concerned about getting the job and that he “would have been free to walk away” if his appraisals revealed that he could not help Mr. Holverson achieve his target.⁸² In summary, according to Mr. Cooper's oral testimony, the agreements that he reached in the second telephone conversation were that: (1) the fee for the Reports would be \$2,500; (2) the deadline for Mr. Cooper's submission of the Reports would be February 21, 2012; (3) Mr. Cooper would use a hypothetical condition in making his appraisals, based on Mr. Holverson's stated intention to upgrade the Properties; and (4) if Mr. Cooper's Reports failed to produce an aggregate value of about \$700,000, Mr. Cooper could abandon the job without consequence.

The five exhibits supported Mr. Cooper's version of the story. In the Notes, Mr. Cooper wrote: “2-2-12 2500 AGREED TO PRICE AND TO DO APP. TURN BACK BY 2-21-12.”⁸³ The text does not conflict with his SOAH testimony. In the Statement, few of the eleven sentences relate to the terms of any agreements between Mr. Cooper and Mr. Holverson. In the Memorandum, Special Agent Mensinger summarized Mr. Cooper's interview in substantially the same language as that used in the Statement.⁸⁴ Mr. Cooper testified at the SOAH hearing that he

⁸¹ Tr. at 133-34.

⁸² Tr. at 134.

⁸³ Staff Ex. 13 at 819.

⁸⁴ Staff Ex. 13 at 816.

disagreed with most of the sentences used in the Statement and in the Memorandum because the special agents had fabricated his alleged statements to them.⁸⁵

Finally, in the Federal Transcript, Mr. Cooper stated that he had told Mr. Holverson that to “get in the neighborhood of \$70,000, we would have to use an extraordinary assumption and a hypothetical condition to do the job.”⁸⁶ This language reflected with some precision Mr. Cooper’s testimony at the SOAH hearing that he had told Mr. Holverson on February 2, 2012, that “to get in the neighborhood of \$70,000, we’re going to have to use this hypothetical condition” and that the Properties “would have to be brought up to average condition.”⁸⁷

3. Analysis

The ALJ finds scant evidentiary support for Staff’s allegation that Mr. Cooper agreed to predetermine the values of the Properties or that he agreed to inflate their values. Although Mr. Cooper’s signed Statement and Special Agent Mensinger’s Memorandum provide some evidence that Mr. Cooper acceded to Mr. Holverson’s requests for a \$700,000 valuation, there was sufficient evidence to show that Mr. Cooper agreed only to take into account Mr. Holverson’s target number rather to reach the number that Mr. Holverson wanted.

B. Issue 2: Did Mr. Cooper Unilaterally Predetermine or Inflate Values?

For Staff to prove that Mr. Cooper used predetermined values, Staff’s burden was to show that Mr. Cooper’s determination of the amount preceded his evaluation of the Properties’ values. However, for Staff to prove that Mr. Cooper reached or used *inflated* values, Staff’s burden was to show that Mr. Cooper’s appraised values were greater than the appraised values that a reasonable appraiser would have calculated.

⁸⁵ Tr. at 73.

⁸⁶ Staff Ex. 14 at 862-63.

⁸⁷ Tr. at 649.

1. Predetermination of the Value of the Properties

Mr. Cooper's testimony at SOAH on this subject was confusing and sometimes contradictory. But the core of his oral defense was that he did not determine the value of the Properties before he visited each Property and later examined comparable Multi-Listing Service (MLS) data and other information. Mr. Holverson's request in the Letter, "Please take a look and let me know what you think," reflects Mr. Cooper's version of the story.⁸⁸ Specifically, Mr. Cooper told Mr. Holverson that he could render an opinion about the values only after looking at the Properties. Nothing in the Notes identifies a value of the Properties, whether predetermined or otherwise.

The Statement does not include Mr. Cooper's admission that he used a predetermined valuation.⁸⁹ The ALJ gives the Memorandum little evidentiary weight because it is an unsigned and unsworn written statement prepared by a non-witness who was not called to testify. In determining the adjudicative facts, including who said what to whom, the ALJ declines to accept the Memorandum as proof that Mr. Cooper knowingly admitted to Special Agent Mensinger that he had used a predetermined value of the Properties.⁹⁰ More significantly, the Memorandum includes no outright statement by Special Agent Mensinger that Mr. Cooper admitted to predetermining the value of the Properties.

As with the absence of proof that Mr. Cooper had *agreed* to predetermine values, the proof similarly fails to support the conclusion that Mr. Cooper unilaterally predetermined the Properties' values.

2. Inflation of the Value of the Properties

In the Statement, Mr. Cooper used these words: "I inflated the value of most of the properties that were vacant based on the assumption that these properties were going to be

⁸⁸ Staff Ex. 13 at 819.

⁸⁹ Staff Ex. 13 at 826.

⁹⁰ See, *Hawkins v. Cmty. Health Choice, Inc.*, 127 S.W.3d 322, 325 (Tex. App. Austin—2004, no pet.); *Flores v. Employees Retirement System*, 74 S.W.3d 532, 540 (Tex. App.—Austin 2002, pet. denied).

brought up to average condition.”⁹¹ Staff contended that the language constituted Mr. Cooper’s admission that he violated the law because he wanted to get the job. Mr. Forrester contended that the sentence in the Statement (and similar language in the Memorandum) constituted Mr. Cooper’s “confessions.”⁹²

Mr. Cooper argued that his use of the word “inflated” reflected his intention to demonstrate the Properties’ increased value as the result of Mr. Holverson’s hypothetical improvements. Mr. Cooper argued that his use of the hypothetical condition and extraordinary assumption necessarily reflected an increase, meaning an appropriate inflation of the value of the Properties. In support of his argument, Mr. Cooper pointed out that he had disagreed with almost every sentence in the Statement, but not this one:

After driving by the properties, and pulling up the square footage on each property, and after looking at comparable properties on MLS with similar square footages[,] I told Holverson I could get him to the \$700,000.00 range if the properties were brought up to average condition.⁹³

Mr. Cooper asserted that the words “I could get him to the \$700,000 range” was another way of asserting his intention to properly inflate the values to match the Properties’ hypothetically remodeled conditions.

The Letter and the Notes include nothing about property values, whether inflated or otherwise. In the Affidavit, Mr. Cooper stated that the special agents “asked if I had inflated the values of the [P]roperties[,] and I told them that I had not.”⁹⁴ In the Federal Transcript, Mr. Cooper testified that, in response to Mr. Holverson’s request that he promise to deliver a \$70,000 valuation for each of the Properties, Mr. Cooper told him that he first “had to do my inspections.”⁹⁵ Similarly, on cross-examination in that proceeding, Mr. Cooper testified that, in

⁹¹ Staff Ex. 13 at 825-26. (Emphasis supplied.)

⁹² Tr. at 248-49.

⁹³ Staff Ex. 13 at 825.

⁹⁴ Resp. Ex. 1 at 709.

⁹⁵ Staff Ex. 14 at 877.

his work as an appraiser, he had paid no attention to persons who have attempted to hire him "to get to this number or that number."⁹⁶

On balance, the preponderance of the evidence reviewed thus far does not support a finding that Mr. Cooper formed an intention to inflate the appraised value of the Properties before he completed his Reports. However, as discussed in the analysis that follows, the preponderance of the evidence reflects that the values that he reached in his appraisals were greater than the appraised values that a reasonable appraiser would have calculated. This evidence was presented by Mr. McComb in his desk reviews of Mr. Cooper's sales comparison approach and cost comparison approach.

a. Sales Comparison Approach

Mr. McComb demonstrated in his expert report that the properties picked by Mr. Cooper for comparison purposes were not legitimate choices because of their disparate characteristics, including location, date of sale, and condition.⁹⁷ In addition, Mr. McComb also proved that Mr. Cooper failed to provide supporting information for his use of the hypothetical condition.

Location

Mr. McComb's evidence showed that Mr. Cooper relied on the same set of three comparable sales properties in the Reports he prepared for the first eight Properties.⁹⁸ Mr. McComb noted that the market data from the MLS showed that the buyers and sellers of houses in average condition in the South Park neighborhood paid an average of \$37,068 per property. The average value of the Properties as appraised by Mr. Cooper was \$77,550, more than twice the mean.⁹⁹

⁹⁶ Staff Ex. 14 at 878.

⁹⁷ Tr. at 336.

⁹⁸ The eight Properties were: 5303 Lyndhurst, 5223 Myrtlewood, 5406 Myrtlewood, 5222 Lyndhurst, 4825 Burma, 7009 Kassarine Pass, 5430 Westover, and 5607 Belmark. Mr. McComb did not include 5334 Myrtlewood in his analysis.

⁹⁹ Tr. 349.

Mr. McComb also concluded that Mr. Cooper's comparable sales used for the first six Properties were chosen from the area south of Belfort Avenue, an area undergoing gentrification and experiencing an increased number of sales and increases in property value.¹⁰⁰ Mr. McComb asserted that these properties were not comparable to the first six Properties because they were north of Belfort Avenue, a different market area.

For the ninth and tenth Properties, 4842 Pershing and 7355 Guadalcanal, Mr. McComb agreed that Mr. Cooper properly selected properties north of Belfort Avenue, within the same market area as the Properties. However, Mr. McComb concluded that a reasonable sales price for homes about the same size as the two Properties was in the range of \$32,000 and \$55,000. Instead, Mr. Cooper had appraised the two Properties significantly higher than the upper end of the range, at \$75,000 and \$77,500.¹⁰¹

Mr. Cooper disputed the existence of most of these differences, beginning with Mr. McComb's assertion that property values or neighborhood characteristics differ on the north and south sides of Belfort. Mr. Cooper asserted that the comparables were a short distance, about six or seven blocks, from the Properties. Mr. Cooper's proof suffered from the lack of an independent expert witness. As a consequence, Mr. Cooper testified not only about how he had prepared the Reports but also why he believed that his methodology was supported by USPAP. Although Mr. Cooper was not precluded from presenting his own expert testimony, Mr. Cooper was unable to provide sufficient evidence to explain how his hypothetical values managed to exceed the average MLS sales prices by almost 100%.

For much of Mr. Cooper's testimony, he relied on his familiarity with the real estate market of South Park neighborhood. Mr. McComb did not share Mr. Cooper's long-term knowledge of the area. Nonetheless, Mr. McComb's testimony reflected a careful analysis that Mr. Cooper's cross-examination was unable to pick apart. The result was a conflict between

¹⁰⁰ Tr. at 339-40.

¹⁰¹ Tr. at 749.

Mr. McComb's data-based analysis and Mr. Cooper's historical knowledge. The preponderance of the evidence supported Mr. McComb's position.

Date of Sale

Mr. McCombs also criticized Mr. Cooper's sales comparisons on some of the Properties because of the age of the sales materials on which he relied. For the first six Properties, Mr. McComb showed that Mr. Cooper had used sales figures on two of the comparables that were beyond the one-year preferred time period.¹⁰² One of the two comparable properties had been sold 17 months before the Reports had been issued, and the second was more than 24 months old when Mr. Cooper relied on its sales data. On the ninth and tenth Properties, one sale was over 15 months old and another was over 20 months old. For these properties, the sales price for homes about the same size was between \$18,000 and \$54,900. Instead, Mr. Cooper had appraised the two Properties somewhat higher than the upper end of the range, at \$58,000 and \$60,800.

Mr. Cooper asserted that using a two-year-old sales price to establish value is a valid assumption, especially in a market that is inelastic over time. Mr. Cooper also argued that his use of historical sale figures of \$27,000 to \$30,000 per Property was well within the bounds of reason in reaching hypothetically rehabilitated sales price figures of \$70,000 to \$80,000.

Mr. Cooper's decision not to call an expert witness did not work in his favor. An independent expert might have provided a better data set and analysis about the alleged stability of the real estate market and the availability of defensible comparables. In the absence of that independent expert testimony, Mr. Cooper served as both respondent and expert. As with his defense of the arguments about the location of his comparables, his defense of the age of the sales on which he relied was based more on his familiarity with the market than on demonstrable information. The preponderance of the evidence supported Staff's position.

¹⁰² Tr. at 353.

Condition

Mr. McComb raised criticisms about Mr. Cooper's use of the term "average condition." Mr. Cooper had used the term in the Reports to describe the quality to which the Properties allegedly would be raised, based on his description of the overall quality of the South Park neighborhood.

Mr. Cooper's argument about the goal of raising the condition of the Properties to "average" was not supported by evidence. In the following quote, Mr. Cooper explained his reasons for considering the entire South Park neighborhood an "average condition" community:

Counsel, I think what we're missing here, or you and I are not together, is that if you go to South Park, *that is an average condition neighborhood*, period, because of what's in the properties when they was built the first time. And all you're doing now is bring them back to the way they was [sic]. *This is not an upscale neighborhood of no sort. It's not a good neighborhood. It's not an excellent neighborhood. Nothing like that.* You're trying to make a stretch that you can't get to.¹⁰³

Mr. McComb pointed out that when Mr. Cooper selected properties for purposes of comparison, Mr. Cooper had relied on residences that had been brought to like-new status: new roof, new sheetrock, new floor, new kitchen, new bathroom, new paint, and similar improvements. Mr. McComb asserted that Mr. Cooper's use of the term "average condition" in the Reports was false because Mr. Cooper generated a sales figure that was far higher than the value of an average-condition home.¹⁰⁴ In contrast, Mr. McComb pointed out, the term "average condition" is properly used to describe the quality of the maintenance or upkeep of a property, and does not refer to the quality of the construction or the specifications to which a property has been built.

That debate continued throughout the hearing, with Mr. Cooper defending the notion that the term "average condition" may reasonably describe the quality of a building's original

¹⁰³ Tr. at 632. (Emphasis added.)

¹⁰⁴ Tr. at 364.

construction or a neighborhood's overall status, and Staff contending that the term applies solely to the quality of maintenance and upkeep. No provision of the Act defines "average condition," and the term is not defined in the Board's rules. The parties identified no part of USPAP that clarifies the issue. No Texas appellate decision has addressed the question, but at least six non-Texas cases have mentioned the issue in dicta. For five of those cases, a property's "condition" refers to the manner in which it has been maintained.¹⁰⁵ For the sixth case, the Alabama Court of Civil Appeals held that a "fair, average, good, or some other similar designation" in a sales comparison approach may refer to the "quality of construction," where the category is properly labeled.¹⁰⁶

The ALJ concludes that Mr. Cooper's use of the term "average condition" could reasonably have been used to refer to the quality of construction if the language of the Reports had clearly identified that category. Since it did not, the term refers to the manner in which a property has been maintained. The preponderance of the evidence supports Staff's position.

Absence of Supporting Data for Hypothetical Condition

Mr. McComb also testified that Mr. Cooper's Reports failed to state the types of repairs, the cost of labor or materials, or the quality of the materials to be used that would be required to rehabilitate the Properties.¹⁰⁷ The inclusion of these types of data is part of the USPAP requirement when an appraiser relies on a hypothetical condition and extraordinary assumption.¹⁰⁸

¹⁰⁵ *Textron Financial-New Jersey Inc. v. Herring Land Group, LLC*, 2011 U.S. Dist. LEXIS 70132 (D.N.J. June 29, 2011), *aff'd*, *GF Princeton, L.L.C. v. Herring Land Group, L.L.C.*, 518 Fed. Appx. 108, 2013 U.S. App. LEXIS 4027 (3d Cir. N.J. 2013); *Luessenhop v. United States*, 2006 U.S. Dist. LEXIS 22445, 18-19 (E.D. Va. Mar. 28, 2006), *aff'd*, *United States v. Luessenhop*, 258 Fed. Appx. 597, 2007 U.S. App. LEXIS 29366 (4th Cir. Va. 2007); *Millennium Real Estate Inv., LLC v. Assessor Benton County, Indiana*, 979 N.E.2d 192, 197 (Ind. Tax Ct. 2012) *Beechwood v. City of New Haven*, 2004 Conn. Super. LEXIS 2240 (Conn. Super. Ct. Aug. 11, 2004); *Kooshtard Prop. VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005).

¹⁰⁶ *Ala. Real Estate Appraisers Bd. v. Smith*, 108 So. 3d 523, 526-527 (Ala. Civ. App. 2012).

¹⁰⁷ Tr. at 328.

¹⁰⁸ See the analysis about Standard 2 in Section V.D of this Proposal for Decision.

Mr. Cooper offered little persuasive evidence about his reasons for not having the cost information from the Marshall & Swift Residential Cost Handbook in his work file. Near the end of the hearing, Mr. Cooper offered in evidence some pages from the Marshall & Swift materials. Staff challenged the exhibit's authenticity, pointing out that the pages were from a later edition of the Marshall & Swift Handbook—materials that could not have been available to Mr. Cooper when he performed the appraisals. Mr. Cooper asserted that the exhibits were offered to show the types of information on which he had relied. This was less than persuasive evidence, and the ALJ finds that Mr. Cooper did not comply with this requirement of USPAP.

b. Cost Comparison Approach

In Staff Exhibit No. 5, Mr. Cooper's ten Reports listed these costs per square foot and depreciated values for the ten Properties:

Property	Replacement Cost Per Square Foot	Depreciation
5303 Lyndhurst	\$69.11	29%
5223 Myrtlewood	\$69.11	35%
5406 Myrtlewood	\$69.11	35%
5222 Lyndhurst	\$69.11	35%
4825 Burma	\$65.45	35%
7009 Kassarine Pass	\$69.11	35%
5430 Westover	\$69.11	30%
5607 Belmark	\$69.11	30%
4842 Pershing	\$70.24	30%
7355 Guadalcanal	\$75.85	30%

Mr. McComb raised similar criticisms of Mr. Cooper's alternative cost comparison approach as he did in his criticisms of Mr. Cooper's failure to include supporting data for the use of the hypothetical condition and extraordinary assumption. In each Report, Mr. Cooper made reference to the Marshall & Swift Residential Cost Handbook as the source of his information, but he did not include the information itself. Mr. Cooper was unable to identify his resources, either by reviewing a work file or any other materials. The record does not disclose the specifics about how Mr. Cooper derived the replacement costs or depreciation that he listed in the Reports. The ALJ concludes that Mr. Cooper had a basic misunderstanding about the research and

recordkeeping requirements associated with a cost comparison approach in preparing an appraisal report. The preponderance of the evidence supported Staff's challenge to the reasonableness of Mr. Cooper's cost comparison approach.

C. Issue 3: Were Mr. Cooper's Appraisal Methods Proper?

Staff alleged that Mr. Cooper's appraisal methods failed to comply with USPAP's Scope of Work Rule and USPAP Standard 1. The Rule and the Standard govern the methods by which licensed appraisers must conduct their work:

1. Scope of Work Rule

The Scope of Work Rule states: "For each appraisal, appraisal review, and appraisal consulting assignment, an appraiser must: (1) identify the problem to be solved; (2) determine and perform the scope of work necessary to develop credible assignment results; and (3) disclose the scope of work in the report."¹⁰⁹

a. Identifying the Problem to Be Solved

The Rule places the obligation to identify the problem to be solved squarely on the appraiser and not on the client.¹¹⁰ The appraiser is to gather and analyze information needed to properly recognize the problem.

Mr. Cooper testified that Mr. Holverson requested him to produce the Reports showing that the Properties were worth about \$700,000.¹¹¹ Based on that request, Mr. Cooper identified the problem as whether the aggregate value of the Properties was about \$700,000, as Mr. Holverson had hoped. Mr. Cooper testified at the federal bond revocation hearing that Mr. Holverson had explained to him that the Properties had a fair market value of almost

¹⁰⁹ Staff Ex. 3 at 49.

¹¹⁰ Staff Ex. 3 at 231, Advisory Opinion 28.

¹¹¹ Tr. at 62, 86, 91.

nothing.¹¹² In response to that information, Mr. Cooper told Mr. Holverson “in no uncertain terms that . . . [Mr. Cooper] would be imagining for the purposes of this appraisal that almost a new house had been constructed on each one of these plots.”¹¹³ According to Mr. Cooper, the Properties would have to be “substantially rehabilitated.”¹¹⁴ Mr. Cooper testified that the only way that he could get to the identified amount was to employ the hypothetical condition and the extraordinary assumption.¹¹⁵ This analysis has already concluded that Mr. Cooper did not agree to predetermine the Properties’ values. In light of that conclusion, Mr. Cooper’s identification of the problem as determining whether the Properties’ appraised value met Mr. Holverson’s target of \$700,000 was proper.

b. Determining and Performing the Scope of Work

Mr. Cooper explained that he was able to determine (and later perform) the scope of the work because he had a thorough knowledge of the South Park neighborhood’s property values.¹¹⁶ As previously discussed, he also testified that his knowledge of the South Park neighborhood’s property values allowed him to know the results that his appraisal reports.¹¹⁷ As also previously discussed, the manner in which Mr. Cooper performed the scope of his work did not comply with USPAP, at least as far as his formulation of a comparable sales approach and a cost comparison approach.

c. Disclosing the Scope of Work in the Report

The parties did not dispute that Mr. Cooper disclosed in the Reports that he had used the hypothetical condition and extraordinary assumption. The question is whether Mr. Cooper properly disclosed his purpose in using these tools in reaching the appraised value of each

¹¹² Staff Ex. 14 at 865.

¹¹³ Staff Ex. 14 at 864-65.

¹¹⁴ Staff Ex. 14 at 865.

¹¹⁵ Tr. at 89.

¹¹⁶ Tr. at 632.

¹¹⁷ Tr. at 90-91.

Property. From Staff's perspective, Mr. Cooper's sole purpose in using the hypothetical condition of refurbished homes was to help Mr. Holverson achieve his target of \$700,000, a potential violation of USPAP's requirements. Mr. Cooper asserted the opposite: his purpose was to accurately reflect the conditions under which Mr. Holverson intended to offer his collateral to the fictitious bank, a potentially legitimate compliance technique under USPAP's terms.

The answers to two fundamental questions govern this determination. First, who suggested the use of a hypothetical condition? Second, under what circumstances was the suggestion made?

Mr. Cooper testified in the federal bond revocation hearing that, during the February 2, 2012 telephone call, he told Mr. Holverson that the Properties were in poor condition and that, to "get in the neighborhood of \$70,000 [each], we would have to use an extraordinary assumption and a hypothetical condition to do the job."¹¹⁸ The testimony includes nothing about whether Mr. Holverson intended to improve the Properties.

In the Affidavit, Mr. Cooper told the federal court: "Mr. Holverson did not request or direct me to use a hypothetical condition when appraising the properties. I decided to do so on my own."¹¹⁹ This statement makes clear that Mr. Cooper alone decided to use the hypothetical condition.

At the SOAH hearing, Mr. Cooper confirmed the accuracy of his oral testimony in federal court.¹²⁰ Mr. Cooper also confirmed that he had suggested to Mr. Holverson that Mr. Holverson would have to improve the conditions of the individual Properties if the Properties were to be valued about \$700,000.¹²¹

¹¹⁸ Staff Ex. 14 at 863.

¹¹⁹ Resp. Ex. 1 at 709.

¹²⁰ Tr. at 87.

¹²¹ Tr. at 128.

However, later in his SOAH testimony, Mr. Cooper testified that the reverse had happened. Mr. Cooper claimed that Mr. Holverson had told *him* that Mr. Holverson was going to improve the properties.¹²² Mr. Cooper later testified about this version of the facts:

Q. All right. Was there further conversation with Mr. Holverson about the properties?

A. I told him with these properties being in poor condition -- he came right back and said, *Well, I'm in the process of rehabbing one at the time, and I'll rehab the rest of them and get them all up to average condition so I can sell them once they all are completed. I said, Well, if you'll do that, then we can appraise the properties using the hypothetical condition.*¹²³

Mr. Cooper asserted that he had told the two special agents about this statement by Mr. Holverson, but the agents failed to include the information in their reports.¹²⁴ Mr. Cooper asserted that he had responded to all of Staff's requests for information in their questionnaire, but none of the questions related to the rehabilitation of the Properties.¹²⁵ He asserted that Staff should have understood that rehabilitation was a necessary condition that was included in his decision to use the extraordinary assumption or hypothetical condition.¹²⁶

The ALJ declines to adopt Mr. Cooper's version of these facts. If Mr. Holverson had been the source of Mr. Cooper's decision to rely on an extraordinary assumption or hypothetical condition, then it would have been to Mr. Cooper's advantage to recite that fact at every opportunity—in every interview by the special agents, in the Affidavit, in his testimony in the federal bond revocation hearing, and in his responses to the Questionnaires. Mr. Cooper's version appears in none of those sources.

¹²² Q. [W]ell, initially he told you he was going to improve the properties. Is that correct?

A. Yes.
Tr. at 132.

¹²³ Tr. at 568-69. (Emphasis supplied.)

¹²⁴ Tr. at 661.

¹²⁵ Tr. at 663

¹²⁶ Tr. at 664.

The evidence supports the factual determination that Mr. Cooper suggested to Mr. Holverson that the use of an extraordinary assumption or hypothetical condition was the only method available by which Mr. Cooper could help Mr. Holverson reach his targeted value for Properties. Similarly, the evidence supports the factual determination that Mr. Cooper made the suggestion for the purpose of helping Mr. Holverson achieve his target value.

2. Standard 1: Developing a Real Property Appraisal

Standard 1 states:

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.¹²⁷

Of the three elements in Standard 1, all three have already been reviewed in this analysis. First, Mr. Cooper identified the problem to be solved as determining whether the Properties were worth about \$700,000. Second, he determined the scope of work necessary to solve the problem, but he performed the scope of work improperly. Third, Mr. Cooper did not correctly complete the research and analyses necessary to produce a credible appraisal.

D. Issue 3: Potential for Misleading Effect of Appraised Values

The third issue is: if the appraisal methods used by Mr. Cooper did not comply with USPAP standards, then would an intended user have been misled by his Reports about the value of the Properties?

Standard 2 governs the substantive content of an appraisal report in the determination of its compliance with USPAP.¹²⁸ Although the Standard requires an appraiser to communicate each analysis, opinion, and conclusion “in a manner that is not misleading,” the official Comment to Standard 2 clarifies that the substantive content of an appraisal report—and not the

¹²⁷ Staff Ex. 3 at 52.

¹²⁸ Staff Ex. 3 at 58.

report's form—determines its compliance.¹²⁹ In addition, Standards Rule 2-2(a)(viii) requires that an appraisal report must “describe the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions; exclusion”¹³⁰

As has been determined in this analysis, Mr. Cooper's use of the term “average condition” was misleading. The term relates to the condition of a property's upkeep or maintenance and not, as Mr. Cooper asserted, the quality of original construction or neighborhood.

Staff also proved that Mr. Cooper's failed to retain the details about the construction requirements used in the hypothetical conditions. Mr. Cooper admitted that he had no survey, plans, or specifications to be used in any of the Properties' hypothetical remodeling or rebuilding.¹³¹ In his defense, Mr. Cooper explained that he had conversations with Mr. Holverson about the use of a hypothetical condition and that Mr. Cooper had “understood exactly what he [Mr. Holverson] was talking about.”¹³² Despite his understanding, Mr. Cooper did not reduce the details to writing; he took no notes; and included nothing in his work file to support his version of the conversation.¹³³

An equally misleading element of Mr. Cooper's Reports was the profound difference in Mr. Cooper's appraised values and the MLS average for homes of the same size, in the same market area, and sold within a one-year period.¹³⁴ As previously discussed, many of Mr. Cooper's appraised values far exceeded Mr. McComb's calculation of the MLS average, the only other evidence about a reasonable set of values for the Properties. These differentials are particularly troubling when combined with the two other issues described in this section—the

¹²⁹ Staff Ex. 3 at 58.

¹³⁰ Staff Ex. 3 at 60.

¹³¹ Tr. at 571.

¹³² Tr. at 650.

¹³³ Tr. at 651.

¹³⁴ Staff Ex. 7.

confusion created by Mr. Cooper's use of the term "average condition," and the questionable nature of Mr. Cooper's calculation of the hypothetical values. The result is a heightened potential for an intended user to be misled by Mr. Cooper's appraisal techniques.

VI. CHARGES

A. **First Charge: Violation of Texas Occupations Code § 1103.405 and 22 Texas Administrative Code §§ 153.20(a)(6) and 155.1(a)**

Staff alleged in its First Charge that Mr. Cooper committed these violations of USPAP:

1. **USPAP Issue 1 (Bias and Predetermination of Values):**

Did Mr. Cooper perform assignments with bias and reach predetermined, inflated values on purpose, knowing the values were not truthful and were inflated to reach predetermined amounts?¹³⁵

As discussed in Section V.A, the preponderance of the evidence shows that Mr. Cooper did not agree to reach a predetermined value or to inflate values. Leaving aside his agreements, Mr. Cooper's performance of his assignment was made with bias, as demonstrated by his use of misleading terms, failure to maintain proper work files, and reaching appraised values far in excess of recent sales prices.

¹³⁵ Staff Ex. 3 at 43 (Ethics Rule; Conduct section; first, third, and sixth bullets.)

2. **USPAP Issue 2 (Scope of Work and Predetermination of Scope):**

Did Mr. Cooper: (1) perform the scope of work necessary to develop credible assignment results, (2) disclose that scope of work in the report, and (3) predetermine his scope of work to facilitate reaching the predetermined values agreed upon with his client?¹³⁶

a. **Perform the Scope of Work**

For each appraisal assignment, an appraiser is required to determine and perform the scope of work necessary to develop credible assignment results and to disclose the scope of work in the report.¹³⁷ In performing the scope of work, an appraiser must include the research and analyses that are necessary to develop credible assignment results.¹³⁸ In gathering the research and making the analyses, an appraiser must keep a work file that includes all “data, information, and documentation necessary to support the appraiser’s opinions and conclusions and to show compliance with USPAP”¹³⁹

Mr. Cooper could not produce a work file with the required information or documentation. At the SOAH hearing on the merits, Mr. McComb testified that there was nothing in the Reports that described the scope of work and that Mr. Cooper had no documentation in a work file to support the scope of work for the Reports.¹⁴⁰ Mr. Cooper relied on his expertise to support his contention that he had performed the scope of work necessary to develop credible assignment results.

The preponderance of the evidence supports Staff’s allegation that Mr. Cooper failed to perform the scope of work necessary to develop credible assignment results.

¹³⁶ Staff Ex. 3 at 49 (Scope of Work Rule, items 2 and 3; *id.* at 54 (USPAP Standards Rule 1-2(h)). Staff also cited to USPAP Standard 2-2(b)(v)(ii). No subsection of Standard 2 uses that section number, and none of the provisions in subsections (v), (ii), or (vii) appears to apply to this allegation.

¹³⁷ Staff Ex. 3 at 49 (Scope of Work Rule).

¹³⁸ Staff Ex. 3 at 50 (Scope of Work Rule, “Scope of Work Acceptability.”)

¹³⁹ Staff Ex. 3 at 46 (Record Keeping Rule).

¹⁴⁰ Tr. at 326

b. Disclose Scope of Work

In disclosing the scope of work, an appraiser's report is required to: (1) contain sufficient information to allow intended users to understand the scope of work and (2) disclose the research and analyses *not* performed when disclosure is necessary for intended users to understand the report.¹⁴¹

The preponderance of the evidence supports Staff's allegations in both parts of the requirement. Specifically, Mr. Cooper failed to include in the Reports information that would allow an intended user to understand the scope of his work, including the definitions on which Mr. Cooper relied ("average condition"), the relevant property characteristics of the comparable properties, and the construction information about the hypothetical remodeling program.

Mr. Cooper also failed to disclose the research and the analyses that he failed to perform. Specifically, Mr. Cooper relied on his familiarity with building costs in the neighborhood to such a degree that he did not perform cost studies for new construction, remodeling, or demolition of the Properties.

c. Predetermine Scope of Work to Reach Predetermined Values

As stated in this analysis, the preponderance of the evidence does not support a conclusion that Mr. Cooper predetermined the appraised value of the Properties. However, the preponderance of the evidence supports an allegation that he predetermined the scope of his work. Mr. Cooper provided that evidence when he testified that he had stated to Mr. Holverson in the second telephone call: "The only way that these properties are going to appraise anywhere in this neighborhood is that all of these properties are going to have to be brought up to good or average condition."¹⁴²

¹⁴¹ Staff Ex. 3 at 233 (Advisory Opinion 28, "Scope of Work Decision, Performance, and Disclosure: Disclosing the Scope of Work Performed.").

¹⁴² Tr. at 128.

As also stated in this analysis, the evidence includes varying versions of how the hypothetical condition and extraordinary assumption came into play. Those varying versions were provided by Mr. Cooper's testimony. The preponderance of the credible testimony was that Mr. Cooper elected to alter his role as appraiser from an independent and objective evaluator of the available credible information to an appraisal counselor for Mr. Holverson. Specifically, Mr. Cooper examined the Properties, concluded that their value was far less than Mr. Holverson wanted, and suggested to Mr. Holverson a method to negotiate USPAP's many provisions to reach his goal.

In doing so, Mr. Cooper did not agree to a predetermined value, but he reached Mr. Holverson's \$700,000 figure based on assumptions and methods that were not supported by fact or USPAP procedures.

3. USPAP Issue 3 (Summarization of Highest and Best Use):

Did Mr. Cooper fail to summarize his rationale for determination of the Properties highest and best use?¹⁴³

The only reference to this alleged violation was in Mr. McComb's exhibit, "USPAP Checklist for Reviewing Appraisals."¹⁴⁴ Mr. McComb's report stated that Mr. Cooper had failed to summarize in his Reports his basis for an opinion on the Properties highest and best use. If this was an issue, Mr. McComb did not testify about the matter, and Staff did not brief the issue.

The parties did not dispute that the Properties were built as single family homes or that Mr. Cooper's hypothetical condition was to rehabilitate the Properties as single family homes. The preponderance of the credible evidence does not support Staff's allegation that Mr. Cooper violated USPAP on this issue.

¹⁴³ Staff Ex. 3 at 55 (USPAP Standards Rule 1-3(b)); *id.* at 63 (USPAP Standards Rule 2-2(b)(ix)).

¹⁴⁴ Staff Ex. 8 at 756 (item 20).

4. USPAP Issue 4 (Summarization of Rationale for Site Value):

Did Mr. Cooper fail to summarize and analyze his rationale for his site value determination and fail to employ recognized methods and techniques?¹⁴⁵

The only reference to the alleged violation that Mr. Cooper failed to summarize his "rationale for the site value" was in Mr. McComb's exhibit, "USPAP Checklist for Reviewing Appraisals."¹⁴⁶ Mr. McComb did not testify about the matter, and Staff did not brief the issue. The preponderance of the credible evidence does not support Staff's allegation that Mr. Cooper violated USPAP on this issue.

The allegation about the failure to employ recognized methods and techniques is examined in the next USPAP issue.

5. USPAP Issues 5 and 6 (Depreciation and Cost Approach Methods):

Did Mr. Cooper fail to collect, verify, analyze, and reconcile accrued depreciation and misrepresenting the true condition of the Properties and the actual depreciation that should have been applied to them, given their dilapidated condition?¹⁴⁷

Did Mr. Cooper fail to employ recognized methods and techniques correctly in the cost approach?¹⁴⁸

Mr. McComb testified that Mr. Cooper's use of a 29% depreciation figure was inaccurate. He asserted that Mr. Cooper had used the wrong projected lifespan of the Properties: about 90 years instead of 60 years.¹⁴⁹ Mr. Cooper testified how he conducted his cost-approach analysis, including his depreciation calculations:

¹⁴⁵ Staff Ex. 3 at 55 (USPAP Standards Rule 1-4(b)(i)); *id.* at 62 (USPAP Standards Rule 2-2(b)(viii)).

¹⁴⁶ Staff Ex. 8 at 757 (item 22).

¹⁴⁷ Staff Ex. 3 at 55 (USPAP Standards Rule 1-4(b)(iii)); *id.* at 62 (USPAP Standards Rule 2-2(b)(viii)).

¹⁴⁸ Staff Ex. 3 at 52 (USPAP Standards Rule 1-1(a); *id.* at 55 (USPAP Standards Rule 1-4(b)).

¹⁴⁹ Tr. at 370-72.

The cost approach analysis, I used that to give the reader some kind of a feel for what's going on in the area. I don't put ultimate weight on it because you've got a property here that's probably – well, it was built in '55, so that gives you, what, 50-something years old, almost 60, and you got to go back and recoup all of the deferred maintenance out of there to get that to make any sense. And as a result, that's what I did. I said it was depreciated 29%. Once you do the hypothetical and bring it up to the condition, which I am telling you that we discussed, or Mr. Holverson told me it was going to be brought up to, I thought we had an economic life – we had a life of 15 years divided by a – a life of 50. You divide 50 into 15, you'll get 30%, so I'm 1% off.¹⁵⁰

As a depreciation calculation-related issue, Mr. Cooper stated in discovery that he had prepared the depreciation portion of his cost approach in his Reports using the Marshall & Swift Residential Cost Handbook, “based on the estimated effective age and the typical life expectancy of such properties.”¹⁵¹ Neither party challenged the assertion that the Marshall & Swift Handbook is a trusted appraisal resource. However, Mr. Cooper was unable to identify the precise pages of the materials on which he had relied or how he had used them in his analyses.

In balancing these elements about Mr. Cooper's cost-approach analysis, Mr. McComb's testimony was specific about Mr. Cooper's erroneous use of a 60-year lifespan instead of a 90-year lifespan in calculating depreciation. However, Mr. Cooper's testimony gave a reasonable explanation of how he had used depreciation and how he had calculated a 29-30% figure using a 50-year projected lifespan.¹⁵² Although Mr. Cooper did not overcome his failure to produce the parts of the Marshall & Swift materials on which he relied, Staff did not sustain its burden of proof to show that Mr. Cooper had used an improper lifespan for the Properties or that his use of 29% depreciation figure, bracketed by 25% and 30% as upper and lower limits, was a violation of USPAP's requirements.

¹⁵⁰ Tr. at 588.

¹⁵¹ Tr. at 206.

¹⁵² If Mr. Cooper had used a 60-year lifespan, as he testified, the depreciation would have dropped to about 25%, not a significant difference from his 29% calculation.

6. **USPAP Issues 7 through 12 (Sales Comparison Approach):**¹⁵³

Did Mr. Cooper fail to collect, verify, analyze, and reconcile comparable sales data adequately and failing to employ recognized methods and techniques in his sales comparison approach?

Did Mr. Cooper fail to provide supporting documentation or reasoning and a summary of analysis in his sales comparison approach?

Did Mr. Cooper fail to use inappropriate properties as comparable sales by: (1) going outside the immediate neighborhood area or subdivision to other areas that were further away from Properties, even though sufficient, more similar sales were available in the immediate area; and (2) selecting sales which were dissimilar in salient market recognized features?

Did Mr. Cooper fail to make appropriate adjustments (or by making inappropriate adjustments) to the sales he used?

Did Mr. Cooper fail to discuss his analysis and reasoning behind the adjustments he made or elected not to make?

Did Mr. Cooper fail to use objective market data that, if it had been used, would have resulted in significantly lower value conclusions?

Staff asserted that Mr. Cooper violated USPAP's requirements in preparing his sales comparison approach by selecting non-representative properties from non-representative locations within non-representative sales periods.

As discussed above in Section V.B.2.a, Staff criticized the locations from which Mr. Cooper selected the comparable properties. Staff offered Mr. McComb's expert evidence to critique significant differences between Mr. Cooper's projected sales prices and the mean sales prices of allegedly comparable properties of "average condition" in the same area.¹⁵⁴ Similarly, Mr. McComb asserted that many of Mr. Cooper's comparables were found in parts of the South Park neighborhood that did not share growth or development characteristics with most of the Properties' locations.¹⁵⁵

¹⁵³ Staff Ex. 3 at 55 (USPAP Standards Rules 1-1(a) and 1-4(a)); *id.* at 62 (USPAP Standards Rule 2-2(b)(viii)).

¹⁵⁴ Tr. 349.

¹⁵⁵ Tr. 339-40.

Mr. Cooper had the option of bringing an independent appraiser to testify about the reasonableness of his selection of the comparables, the market conditions of the neighborhood, the reasonableness of his decision to use sales prices more than a year old, and all of the other positions that he was defending. His decision not to call an independent expert witness left Mr. Cooper in the difficult position of having to explain the historical facts, defend his decisions, and give an expert opinion. That strategic choice weakened Mr. Cooper's case.

In evaluating the provisions of USPAP cited in these issues, the ALJ concludes that Staff proved by a preponderance of the evidence that Mr. Cooper's sales data was not comparable to the Properties' values and that Mr. Cooper's methods failed to reflect USPAP's requirements for a proper sales comparison approach. That conclusion is based in part on Mr. Cooper's inability to produce work files showing his data, methods, or reasoning. Although Mr. Cooper was able to provide some of that information in testimony, Staff proved that his oral testimony was insufficient to meet USPAP's documentary requirements.

In contrast, Staff's evidence was sufficient to show that Mr. Cooper used comparables that did not meet USPAP standards. Mr. Cooper's decision to use comparables from beyond the immediate market area suggested that he was trying to boost the Properties' values beyond the limit that the data would reasonably permit.

Further, Staff proved that Mr. Cooper's use of the hypothetical conditions in his appraisals were not supported by the types of data, analysis, and reasoning that should have been placed in a work file. The result was a set of Reports that reached unsupported conclusions in the form of unreasonably higher values that misled the intended user. Mr. Cooper argued persuasively that the bad actor in this set of facts was Mr. Holverson, a person who had lied to Mr. Cooper as a means of fraudulently obtaining information. But, Mr. Holverson's bad acts are not subject to evaluation by the Act, and Mr. Cooper's license is governed by its terms and purposes.

The Act's purpose is to: "(1) conform state law relating to the regulation of real estate appraisers to the requirements adopted under Title XI, Financial Institutions Reform, Recovery,

and Enforcement Act of 1989 [FIRREA]; and (2) enforce standards for the appraisal of real property.”¹⁵⁶ FIRREA is a federal law enacted after the savings and loan crisis of the 1980s that protects the public by requiring the states to ensure that real estate appraisals are performed competently.¹⁵⁷

Mr. Cooper’s license requires him to comply with the provisions of the Texas’s licensing laws, including USPAP. Mr. Cooper’s evidence proved his familiarity with the South Park neighborhood, including sales prices, economics, and costs of construction. However, his familiarity was not a substitute for proof of his employing the type of analyses, record keeping, and other requirements established by USPAP. Mr. Cooper’s Reports reflect that he failed to prove his compliance with many, if not most, of those requirements.

7. USPAP Issue 13 (Quality and Quantity of Data):

Did Mr. Cooper fail to reconcile the quality and quantity of the data within the approaches to value or the applicability of the approaches?¹⁵⁸

The only reference to this alleged violation was in Mr. McComb’s exhibit, “USPAP Checklist for Reviewing Appraisals.”¹⁵⁹ Mr. McComb’s report stated that Mr. Cooper had “performed a reconciliation of the data presented, but the data presented was not properly analyzed, supported, and reported. The reconciliation in the report was meaningless.” If this was an issue, Mr. McComb did not testify about the matter, and Staff did not brief the issue. The preponderance of the credible evidence does not support Staff’s allegation that Mr. Cooper violated USPAP on this issue.

¹⁵⁶ Tex. Occ. Code § 1103.002.

¹⁵⁷ Pub. L. No. 101-73, 83 Stat. 183 (1989).

¹⁵⁸ Staff Ex. 3 at 56 (USPAP Standards Rule 1-6(a); *id.* at 62 (USPAP Standards Rule 2-2(b)(viii)).

¹⁵⁹ Staff Ex. 8 at 761 (item 37).

8. USPAP Issue 14 (Involvement of Other Appraisers):

Did Mr. Cooper misrepresent and omit from his Reports information about the involvement of another appraiser in conducting the appraisals?¹⁶⁰

The record includes one reference to this alleged violation. In Staff's direct examination of Mr. Cooper, this exchange took place:

Q. And when you say nobody helped you in any substantial way, are you referring to some clerical assistance that your son Gary Cooper provided?

A. Clerical assistance.

Q. But nothing more?

A. Well, he went out with me when I did some of my inspections, so he held the tape on one end.

Q. Okay. But that was the extent of his assistance?

A. That was the extent of his. Now, we made pictures of the properties. I think I shot them all, but I ain't going to swear I made all 10 pictures. He might have made a couple pictures also.¹⁶¹

If Mr. Cooper's son or any other person was involved in the appraisal of the Properties in any significant manner, Staff did not present that proof. The preponderance of the credible evidence does not support Staff's allegation that Mr. Cooper violated USPAP on this issue.

¹⁶⁰ Staff Ex. 3 at 43 (USPAP Ethics Rule; Conduct section); *id.* at 58 (USPAP Standards Rule 2-1(a)); *id.* at 62 (USPAP Standards Rule 2-2(b)(viii)); *id.* at 63 (USPAP Standards Rule 2-2(b)(ix)); *id.* at 65 (USPAP Standards Rule 2-3).

¹⁶¹ Tr. at 44-45.

9. USPAP Issue 15 (Producing Reports that Were Not Credible or Reliable):

Did Mr. Cooper produce misleading and predetermined appraisal reports containing substantial errors of omission or commission by failing to employ correct methods and techniques, resulting in appraisal reports that were not credible or reliable?¹⁶²

This matter has been addressed above in Section V.D. As previously discussed, the preponderance of the evidence supports a conclusion that Mr. Cooper produced appraisal reports that were misleading and that contained substantial errors by his failure to use correct methods and techniques. The Reports produced by Mr. Cooper were not credible or reliable.

B. Second Charge: Violation of Board Rule 153.20(a)(12)

Board Rule 153.20(a)(12) permits the Board to suspend or revoke a license if an appraiser makes a material misrepresentation or omission of material fact. The Board's rules do not define the term. A term that is undefined is given its common meaning or usage.¹⁶³ "Material" is defined as "being of real importance or great consequence, and "misrepresentation" is defined as "an untrue, incorrect, or misleading representation (as of a fact, event, or person)."¹⁶⁴

For the reasons previously analyzed, Mr. Cooper's determination of the Properties' values were based on faulty appraisal methods that omitted material facts. Those omissions included Mr. Cooper's reliance on hypothetical conditions and extraordinary assumptions without inclusion in the Reports of all of the terms of the conditions and assumptions on which an intended user might reasonably rely, as well as his failure to retain in his work files the types of information required under USPAP.

¹⁶² *Id.* at 52 (USPAP Standards Rule 1-1(a),(b),(c)); *id.* at 58 (USPAP Standards Rule 2-1(a)).

¹⁶³ Tex. Gov't Code § 311.011.

¹⁶⁴ Webster's Third New Int'l Dict. at 1392, 1445 (1993).

C. Third Charge: Violation of Board Rule 153.20(a)(10) and (11)

The Board may discipline an appraiser who:

accepts payment for services contingent upon a minimum, maximum, or pre-agreed value estimate except when such action would not interfere with the appraiser's obligation to provide an independent and impartial opinion of value and full disclosure of the contingency is made; [or]

offers to perform appraiser services or agrees to perform such services when employment to perform such services is contingent upon a minimum, maximum, or pre-agreed value estimate except when such action would not interfere with the appraiser's obligation to provide an independent and impartial opinion of value and full disclosure of the contingency is made¹⁶⁵

As previously determined, the preponderance of the evidence does not support a conclusion that Mr. Cooper predetermined his value estimates of the Properties. Instead, Mr. Cooper reached those value estimates only after examining the Properties.

However, the preponderance of the evidence does support the conclusion that Mr. Cooper accepted payment for services contingent on his reaching a minimum value estimate. Mr. Cooper testified that his agreement with Mr. Holverson was that if he failed to reach Mr. Holverson's identified minimum estimate, then Mr. Cooper could "walk away."¹⁶⁶ Correspondingly, under their agreement, if—and only if—Mr. Cooper could reach the minimum, then he would prepare and deliver the Reports and be eligible to be paid.

Mr. Cooper's decision to render an appraisal arose when he agreed to make an initial determination of the Properties' values. That agreement was made in the first telephone call, during which Mr. Cooper accepted Mr. Holverson's request to gather information and to provide Mr. Cooper's initial opinion about the Properties' collective appraised value. When Mr. Cooper completed his initial review and gave Mr. Holverson an oral opinion in the second telephone call, Mr. Cooper's actions constituted an appraisal under USPAP.¹⁶⁷

¹⁶⁵ 22 Tex. Admin. Code § 153.20(a)(10) and (11).

¹⁶⁶ Tr. at 134.

¹⁶⁷ Staff Ex. 3 at 191 (Advisory Opinion 19).

When Mr. Cooper accepted the assignment, he was bound to disclose his obligations under USPAP. The Appraisal Board suggests one appropriate way in which an appraiser could have responded to a similar request was:

I'll need to research the market to know whether the 'comps' will support a value range relative to the loan amount. In doing this, I will be deciding which sales are 'comps' and what those 'comps' mean. Those decisions will result in a range of value for your [Properties], which is an appraisal.¹⁶⁸

Mr. Cooper's testimony showed that he substantially complied with this requirement that he clarify to Mr. Holverson his role as an independent appraiser, including his right to identify his own comparable sales.

In addition, upon learning that Mr. Holverson had a minimum value that he hoped to achieve, Mr. Cooper had an obligation to notify Mr. Holverson of the distinction between Mr. Holverson's objective of reaching the target value and the possibility that Mr. Holverson was engaging Mr. Cooper's services on the condition that the minimum value be reached. In his testimony at SOAH, Mr. Cooper asserted that he understood the distinction between the two concepts and that he agreed to "do the appraisals using the hypothetical extraordinary conditions and let the numbers fall where they may. That's what I did."¹⁶⁹ Again, Mr. Cooper's actions appear to have satisfied the minimum requirements of USPAP.

The preponderance of the evidence supports Mr. Cooper's assertion that his acceptance of payment for services was contingent upon his reaching a minimum value estimate and that the action would not interfere with his obligation to provide an independent and impartial opinion of value. The preponderance of the evidence supports a conclusion that Mr. Cooper made a full disclosure of the contingency to Mr. Holverson. Mr. Cooper's disclosure met the minimum requirements of USPAP's terms.

¹⁶⁸ Staff Ex. 3 at 191 (Advisory Opinion 19).

¹⁶⁹ Tr. at 133-34.

VII. SANCTIONS

The Board has adopted a sanctions matrix that ranks disciplinary actions according to the number of times a licensee has been disciplined previously and the level of the violation.¹⁷⁰ Levels of violation are: Level 1 (violations showing “minor deficiencies”); Level 2 (violations showing “serious deficiencies”); and Level 3 (violations showing “serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence”).¹⁷¹

The Board’s rules define “minor deficiencies” and “serious deficiencies” as:

“Minor deficiencies” is defined as violations of the Act, Board Rules or USPAP which do not impact the credibility of the appraisal assignment results, the assignment results themselves and do not impact the appraiser’s honesty, trustworthiness or integrity to the board, the appraiser’s clients or intended users of the appraisal service provided[.]¹⁷²

“Serious deficiencies” is defined as violations of the Act, Board Rules or USPAP which do impact the credibility of the appraisal assignment results, the assignment results themselves or do impact the appraiser’s honesty, trustworthiness or integrity to the board, the appraiser’s clients or intended users of the appraisal service provided[.]¹⁷³

Staff asserted that Mr. Cooper’s license should be revoked because his conduct allegedly constituted serious deficiencies and was done knowingly, deliberately, and willfully.¹⁷⁴ Mr. Cooper requested that no penalty be imposed.¹⁷⁵

¹⁷⁰ 22 Tex. Admin. Code § 153.24(j)(3).

¹⁷¹ 22 Tex. Admin. Code § 153.24(j)(3).

¹⁷² 22 Tex. Admin. Code § 153.24(j)(1)(E).

¹⁷³ 22 Tex. Admin. Code § 153.24(j)(1)(F).

¹⁷⁴ Staff did not argue that Mr. Cooper had acted with gross negligence.

¹⁷⁵ In Mr. Cooper’s Closing Brief at 12, counsel asserted that Mr. McComb had recommended an alternative sanction, including the imposition of “a 3-year probated revocation or suspension period with appropriate remedial measures (such as mentorship, remedial education, etc.) and appropriate restrictions on Mr. Cooper’s scope of practice and ability to sponsor appraiser trainees.” The citation for the reference was not to this language. The ALJ did not find the text in the transcript of the Mr. McComb’s testimony at the SOAH hearing or in any other evidence.

This was a first violation by Mr. Cooper. Mr. Cooper's violations evidenced serious deficiencies and were committed knowingly, deliberately, and willfully.¹⁷⁶ For a first-time violation within Discipline Level 3, the Board may impose a period of suspension, revocation, remedial measures, implementation of preventative procedures addressing specific areas of professional practice, a probationary period, restrictions on a certified appraiser's ability to sponsor appraiser trainees, restrictions on the scope of practice for a specified time period until specific conditions are satisfied, and a \$5,000 administrative penalty.

The ALJ must recommend a sanction after considering the Board's guidelines for imposing sanctions.¹⁷⁷ The ALJ's recommended findings are listed under each bulleted guideline:

- **The difficulty or complexity of the appraisal assignment(s) at issue;**

The appraisal of the Properties, eleven single-family residences, most of which were uninhabitable within an existing inner-city neighborhood, was not a difficult or complex appraisal assignment.

- **Whether the violations found were of a negligent, grossly negligent or a knowing or intentional nature;**

The violations were knowing and intentional but not negligent or grossly negligent.

- **Whether the violations found involved a single appraisal/instance of conduct or multiple appraisals/instances of conduct;**

The violations involved multiple appraisals in a single instance of conduct.

- **To whom were the appraisal report(s) or the conduct directed, with greater weight placed upon appraisal report(s) or conduct directed at: (1) a financial institution or their agent, contemplating a lending decision based, in part, on the appraisal report(s) or conduct at issue; (2) the Board; (3) a matter which is actively being litigated in a state or federal court or before a regulatory body of a state or the federal government; (4) another government agency or government sponsored entity, including, but not limited to, the United States**

¹⁷⁶ 22 Tex. Admin. Code § 153.24(j)(3)(C).

¹⁷⁷ 22 Tex. Admin. Code § 153.24(j)(2); Tex. Occ. Code § 1103.518.

Department of Veteran's Administration, the United States Department of Housing and Urban Development, the State of Texas, Fannie Mae, and Freddie Mac; or (5) a consumer contemplating a real property transaction involving the consumer's principal residence;

The Reports were nominally directed to a financial institution. Their true use was for a federal court's sentencing officials, but Mr. Cooper was unaware of Mr. Holverson's fraud.

- **Whether Respondent's violations caused any harm, including financial harm, and the amount of such harm;**

Although Mr. Cooper's violations had the potential to create harm, they did not. The harm was caused by the manner in which the Reports were used by Mr. Holverson after he fraudulently redacted the documents. If he had not redacted the documents or if he had actually submitted the Reports to a bank for the purpose of establishing the value of substitute collateral, they may have caused harm. However, harm was never established by a preponderance of the evidence.

- **Whether Respondent acknowledged or admitted to violations and cooperated with the Board's investigation prior to any contested case hearing;**

Mr. Cooper did not acknowledge or admit to the alleged violations. He cooperated with the Board's investigation, at least to the extent of the contested case proceeding.

- **The level of experience Respondent had in the appraisal profession at the time of the violations, including: (1) the level of appraisal credential Respondent held; (2) the length of time Respondent had been an appraiser; (3) the nature and extent of any education Respondent had received related to the areas in which violations were found; and (4) any other real estate or appraisal related background or experience Respondent had;**

Mr. Cooper had extensive experience in the appraisal profession in that he had been an appraiser for four decades, had served as an expert witness in his field, had maintained his education requirements, and had other real estate background as a broker and developer.

- **Whether Respondent can improve appraisal skills and reports through the use of remedial measures.**

Through the testimony of Mr. Robinson, Mr. Cooper acknowledged that he could improve his appraisal skills and reports through the use of remedial measures.

In addition to these findings, the ALJ also finds no evidence that Mr. Cooper colluded with Mr. Holverson to defraud the intended user of the Reports. Instead, Mr. Cooper's violations of the Act were the result of his conscious indifference to his obligations under the law. Similarly, the evidence did not show that Mr. Cooper did not agree to predetermine or to inflate the appraised values of the Properties. However, Mr. Cooper did inflate those appraised values.

Mr. Cooper's testimony demonstrated that most of his violations arose from his fundamental misunderstanding of the obligation of an appraiser not to act as an advocate for a client or for an issue.¹⁷⁸ In violation of that obligation, Mr. Cooper counseled Mr. Holverson about the conditions that Mr. Cooper needed Mr. Holverson to claim so that Mr. Cooper could help Mr. Holverson achieve his \$700,000 appraisal goal. Mr. Cooper showed Mr. Holverson how and why the use of a hypothetical condition and extraordinary assumption were the only means by which Mr. Cooper could appraise the Properties at values greater than their unimproved land values alone. When Mr. Holverson positively responded to Mr. Cooper's prompting, Mr. Cooper began performing his research and drafting the Reports. In taking this step, Mr. Cooper improperly transformed his role from that of an objective appraiser of value to that of an advocate and counselor for Mr. Holverson.

Mr. Cooper's violations did not end there. When he prepared the Reports, the manner of his preparation failed to comply with many of USPAP's requirements. Again, many of the violations in this area seemed to arise from Mr. Cooper's misunderstanding about the criteria and procedures required under current USPAP terms. Accordingly, Mr. Cooper's determination and performance of the scope of his work, including the scope of his disclosures, failed to comply with the Scope of Work Rule and the Record Keeping Rule. His resulting violations of the Standards and the Standards Rules cascaded from those failures.

Mr. Cooper based much of his defense on his deep familiarity with the South Park neighborhood. That knowledge worked both to Mr. Cooper's advantage and disadvantage. To his advantage, Mr. Cooper was able to quickly form an opinion and prepare written Reports,

¹⁷⁸ Staff Ex. 3 at 43 (Ethics Rule, Conduct).

saving his client time and money. To his disadvantage, Mr. Cooper relied on his knowledge of the area as a substitute for his careful attendance to the steps required by USPAP for the proper preparation of an appraisal. In the process, and among other violations, Mr. Cooper managed to fail to collect, verify, analyze, and reconcile comparable sales data adequately, as well as to fail to employ recognized methods and techniques in his sales comparison approach.

Mr. Cooper called as a witness Robert Anthony Robinson, a general certified appraiser, who testified in his role as a mentor to Mr. Cooper.¹⁷⁹ From November 2013 to March 2014, Mr. Robinson's function was to help Mr. Cooper "update his practice,"¹⁸⁰ including to review common mistakes and Mr. Cooper's practices. Mr. Cooper's reliance on Mr. Robinson as a resource was admirable, but the Board is not precluded from disciplining Mr. Cooper based on his previously having sought professional remedial measures on his own.

In light of the scope of Mr. Cooper's violations, the ALJ recommends that the Board impose a period of suspension of Mr. Cooper's certified appraiser's certificate until Mr. Cooper can demonstrate his proficiency in complying with the requirements of the laws governing appraisers. During that period, Mr. Cooper should be required to take and pass the licensing examination as a general appraiser. Upon his licensing, and for a period of twelve months or the issuance of 20 acceptably prepared written appraisal reports, whichever is later, Mr. Cooper should have a monitor who reviews his appraisals before they are issued. Mr. Cooper should be required to comply with the monitor's recommendations before issuance. Mr. Cooper should be required to pay a \$5,000 administrative penalty, as well as pay the reasonable fees of his monitor.

¹⁷⁹ Tr. at 398-410.

¹⁸⁰ Tr. at 404.

VIII. FINDINGS OF FACT

1. Travis R. Cooper, Respondent, has been a real estate appraiser since 1971.
2. Since December 30, 1992, Mr. Cooper has held general real estate appraiser certificate number TX-1324523-G, issued by the Texas Appraiser Licensing and Certification Board (Board).
3. As an appraiser, Mr. Cooper has served as an expert witness for the State of Texas, the City of Houston, Harris County, and for flood control entities.
4. Until this case, Mr. Cooper has never been the subject of a complaint or disciplinary action by the Board.
5. On January 28, 2012, Mr. Cooper received a telephone call from Jon Holverson, a person whom he did not know.
6. Mr. Holverson told Mr. Cooper that he needed appraisal services on ten (later, eleven) single-family residences (Properties) that he owned in the South Park area of Houston.
7. Mr. Holverson explained that he needed appraisal reports (Reports) that would prove to a bank that the Properties were worth about \$700,000.
8. Mr. Cooper agreed to research the values of the Properties and report his initial findings to Mr. Holverson.
9. On January 28, 2012, Mr. Holverson faxed to Mr. Cooper a list of the Properties.
10. Mr. Cooper visited and researched the Properties.
11. Mr. Cooper found that the Properties were generally in poor condition; only two of the Properties were habitable; some were fire- or flood-damaged; and many were boarded up.
12. On February 2, 2012, Mr. Cooper called Mr. Holverson to report that the Properties were in poor condition and that, to "get in the neighborhood of \$70,000 [each], we would have to use an extraordinary assumption and a hypothetical condition to do the job."
13. Mr. Cooper suggested to Mr. Holverson that the use of an extraordinary assumption or hypothetical condition was the only method available by which Mr. Cooper could help Mr. Holverson reach his targeted value for Properties.
14. Mr. Cooper prepared the Reports using an extraordinary assumption and a hypothetical condition that the Properties had been remodeled to an average condition.
15. Mr. Cooper prepared the Reports to show that the Properties had a total appraised value of about \$700,000.

16. On February 21, 2012, Mr. Cooper delivered the Reports to Mr. Holverson's office.
17. Mr. Holverson paid Mr. Cooper for the Reports at an agreed price.
18. Mr. Cooper had no further business dealing with Mr. Holverson.
19. In his two telephone conversations with Mr. Cooper, Mr. Holverson failed to disclose that: (1) the federal government recently indicted him for criminal fraud for making false claims to the Small Business Administration about alleged hurricane damage; (2) he had pleaded guilty to the criminal charges; (3) the federal court had convicted him; (4) he was awaiting sentencing to a federal correctional facility for a period of 84 to 102 months; and (5) he intended to use Mr. Cooper's appraisal reports as evidence in his sentencing hearing to reduce the length of his sentence by proving that the losses to the Small Business Administration were not as significant as the government had claimed.
20. Mr. Cooper knew about none of Mr. Holverson's legal problems.
21. Mr. Holverson altered the Reports before submitting them to the federal sentencing officials.
22. The federal sentencing officials challenged the Reports.
23. Small Business Administration Special Agent Robert Mensinger interviewed Mr. Cooper about his relation with Mr. Holverson.
24. Mr. Cooper cooperated with Special Agent Mensinger and provided him with copies of the Reports as originally prepared.
25. On June 26, 2012, Mr. Cooper testified in Mr. Holverson's federal bond revocation hearing.
26. Special Agent Mensinger filed a complaint against Mr. Cooper with staff (Staff) of the Board.
27. On October 10, 2013, Staff filed with the State Office of Administrative Hearings (SOAH) an Original Statement of Charges that alleged that in preparing the Reports, Mr. Cooper had violated the Texas Appraiser Licensing and Certification Act (Act), Texas Occupations Code ch. 1101, the Board's rules, and the Uniform Standards of Professional Appraisal Practice (USPAP).
28. On February 27, 2014, Staff published a notice of hearing for a hearing on the merits to be convened on March 24, 2014.

29. The notice included: (1) a statement of the time, place, and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and rules involved; and (4) a short, plain statement of the matters asserted.
30. On March 24, 2014, the administrative law judge (ALJ) convened a three-day hearing on the merits that adjourned on April 16, 2014, after a three-week recess.
31. Attorney Troy Beaulieu represented Staff, and attorney Sadiyah Evangelista represented Mr. Cooper.
32. The parties filed briefs, and the record closed on June 20, 2014.
33. The appraisal of the Properties, eleven single-family residences, most of which were uninhabitable within an existing inner-city neighborhood, was not a difficult or complex appraisal assignment.
34. Mr. Cooper's violations were not of a negligent, grossly negligent, or a knowing or intentional nature.
35. The violations involved multiple appraisals in a single instance of conduct.
36. The Reports were nominally directed to a financial institution. Their true use was for review by a federal court's sentencing officials, but Mr. Cooper was unaware of Mr. Holverson's fraud.
37. Although Mr. Cooper's violations had the potential to create harm, they did not.
38. Mr. Cooper did not acknowledge or admit to the alleged violations. He cooperated with the Board's investigation, at least to the extent of the contested case proceeding.
39. Mr. Cooper had extensive experience in the appraisal profession in that he had been an appraiser for four decades, had served as an expert witness in his field, had maintained his education requirements, and had other real estate background as a broker and developer.
40. Through the testimony of Mr. Robinson, Mr. Cooper acknowledged that he could improve his appraisal skills and reports through the use of remedial measures.

IX. CONCLUSIONS OF LAW

1. The Board has jurisdiction to regulate the profession of real estate appraising. Tex. Occ. Code ch. 1103.
2. The purpose of the Texas Appraiser Licensing and Certification Act is to: "(1) conform state law relating to the regulation of real estate appraisers to the requirements adopted under Title XI, Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [FIRREA]; and (2) enforce standards for the appraisal of real property." Tex. Occ. Code § 1103.002.
3. The purpose of Title XI of FIRREA is:

to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

Pub. L. No. 101-73, 83 Stat. 183 (1989).
4. SOAH has jurisdiction to conduct a contested case hearing, administer oaths, admit or exclude testimony or other evidence, rule on motions, make findings of fact and conclusions of law; and issue to the Board a proposal for decision. Tex. Occ. Code §§ 1103.508, 1103.518.
5. The Board has adopted rules governing the enforcement of the profession of appraising. 22 Tex. Admin. Code chs. 153 and 155.
6. The Board's rules conform to USPAP's minimum standards. Tex. Occ. Code § 1103.002(2).
7. The Board may suspend or revoke the certificate of an appraiser who fails to comply with the version of USPAP in effect at the time of the appraisal or appraisal practice. 22 Tex. Admin. Code § 153.20(a)(6).
8. The version of USPAP in effect of the time of the appraisal or appraisal practice was the 2012-13 version.
9. The Board may suspend or revoke the certificate of an appraiser who accepts payment for services contingent upon a minimum or pre-agreed value estimate except when such action would not interfere with the appraiser's obligation to provide an independent and impartial opinion of value and full disclosure of the contingency is made. 22 Tex. Admin. Code § 153.20(a)(10).

10. The Board may suspend or revoke the certificate of an appraiser who agrees to perform appraiser services when employment to perform such services is contingent upon a minimum or pre-agreed value estimate except when such action would not interfere with the appraiser's obligation to provide an independent and impartial opinion of value and full disclosure of the contingency is made. 22 Tex. Admin. Code § 153.20(a)(11).
11. The Board may suspend or revoke the certificate of an appraiser who makes a material misrepresentation or omission of material fact. 22 Tex. Admin. Code § 153.20(a)(12).
12. As the party seeking affirmative relief, Staff had the burden to allege and prove its allegations by a preponderance of the evidence. 1 Tex. Admin. Code § 155.427; see *Southwestern Pub. Serv. Company v. Public Utility Comm'n*, 962 S.W.2d 207, 213 (Tex. App.—Austin 1998, pet. denied).
13. Mr. Cooper performed the assignment with bias and inflated value; he neither reached nor agreed to reach a predetermined value. USPAP; Ethics Rule; Conduct section; first, third, and sixth bullets.
14. Mr. Cooper failed to perform the scope of work necessary to develop credible assignment results. USPAP; Scope of Work Rule, items 2 and 3; Standards Rule 1-2(h).
15. In the Reports, Mr. Cooper failed to include information that would allow an intended user to understand the scope of his work, including the definitions on which Mr. Cooper relied (“average condition”), the relevant property characteristics of the comparable properties, and the types of construction information on which the hypothetical condition was based. USPAP; Scope of Work Rule, items 2 and 3; Standards Rule 1-2(h).
16. Mr. Cooper did not perform cost studies for new construction, remodeling, or demolition of the Properties. USPAP; Scope of Work Rule, items 2 and 3; Standards Rule 1-2(h).
17. Mr. Cooper predetermined the scope of his work. USPAP; Scope of Work Rule, items 2 and 3; Standards Rule 1-2(h).
18. Mr. Cooper did not fail to summarize his rationale for determination of the Properties highest and best use. USPAP Standards Rules 1-3(b), 2-2(b)(ix).
19. Mr. Cooper did not fail to summarize and analyze his rationale for his site value determination. USPAP Standards Rules 1-4(b)(i), 2-2(b)(viii).
20. Mr. Cooper did not fail to collect, verify, analyze, and reconcile accrued depreciation of the Properties. USPAP Standards Rules 1-4(b)(i), 2-2(b)(viii).
21. Mr. Cooper did not misrepresent the true condition of the Properties and the actual depreciation that should have been applied to them. USPAP Standards Rules 1-4(b)(i), 2-2(b)(viii).

22. Staff did not prove that Mr. Cooper failed to collect, verify, analyze, and reconcile accrued depreciation. USPAP Standards Rules 1-4(b)(iii), 2-2(b)(viii).
23. Staff did not prove that Mr. Cooper misrepresented the true condition of the Properties and the actual depreciation that should have been applied to them. USPAP Standards Rules 1-4(b)(iii), 2-2(b)(viii).
24. Mr. Cooper did not fail to employ recognized methods and techniques correctly in the cost approach. USPAP Standards Rules 1-1(a), 1-4(b).
25. Mr. Cooper failed to collect, verify, analyze, and reconcile comparable sales data adequately and failed to employ recognized methods and techniques in his sales comparison approach. USPAP Standards Rules 1-1(a), 1-4(a), 2-2(b)(viii).
26. Mr. Cooper failed to provide supporting documentation or reasoning and a summary of analysis in his sales comparison approach. USPAP Standards Rules 1-1(a), 1-4(a), 2-2(b)(viii).
27. Mr. Cooper failed to use appropriate properties as comparable sales by: (1) going outside the immediate neighborhood area or subdivision to other areas that were further away from Properties, even though sufficient, more similar sales were available in the immediate area; and (2) selecting sales which were dissimilar in salient market recognized features. USPAP Standards Rules 1-1(a), 1-4(a), 2-2(b)(viii).
28. Mr. Cooper failed to make appropriate adjustments to the sales he used. USPAP Standards Rules 1-1(a), 1-4(a), 2-2(b)(viii).
29. Mr. Cooper failed to discuss his analysis and reasoning behind the adjustments he made or elected not to make. USPAP Standards Rules 1-1(a), 1-4(a), 2-2(b)(viii).
30. Mr. Cooper failed to use objective market data that, if it had been used, would have resulted in significantly lower value conclusions. USPAP Standards Rules 1-1(a), 1-4(a), 2-2(b)(viii).
31. Mr. Cooper did not misrepresent or omit from his Reports information about the involvement of another appraiser in conducting the appraisals. USPAP Ethics Rule; Conduct section; Standards Rules 2-1(a), 2-2(b)(viii), 2-2(b)(ix), 2-3.
32. Mr. Cooper produced misleading appraisal reports containing substantial errors of omission or commission by failing to employ correct methods and techniques, resulting in appraisal reports that were not credible or reliable. USPAP Standards Rules 1-1(a),(b),(c); 2-1(a).
33. Mr. Cooper made material misrepresentations or omission of material facts. 22 Tex. Admin. Code § 153.20(a)(12).

34. Mr. Cooper accepted payment for appraiser services contingent upon a minimum value estimate, and his agreement interfered with his obligation as an appraiser to provide an independent and impartial opinion of value and full disclosure of the contingency is that is being made. 22 Tex. Admin. Code § 153.20(a)(10).
35. Mr. Cooper agreed to perform appraiser services upon a minimum value estimate, and his agreement interfered with his obligation as an appraiser to provide an independent and impartial opinion of value and full disclosure of the contingency is made. 22 Tex. Admin. Code § 153.20(a)(11).
36. After a hearing on the merits, the ALJ is required to issue a proposal for decision that the Board take one of more the following actions: (1) dismiss the charges; (2) suspend or revoke the appraiser's certificate or license; (3) impose a period of probation with or without conditions; (4) require the appraiser to submit to reexamination for a certificate or license; (5) require the appraiser to participate in additional professional education or continuing education; (6) issue a public or private reprimand or a warning; (7) issue a consent order; or (8) impose an administrative penalty as prescribed by Section 1103.552 of the Act. Tex. Occ. Code § 1103.518.
37. The Board has adopted a sanctions matrix that ranks disciplinary actions according to the number of times a licensee has been disciplined previously and the level of the violation. 22 Tex. Admin. Code § 153.24(j)(3).
38. Levels of violation are: Level 1 (violations showing "minor deficiencies"); Level 2 (violations showing "serious deficiencies"); and Level 3 (violations showing "serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence"). 22 Tex. Admin. Code § 153.24(j)(3).
39. The Board's rules define "minor deficiencies" as:
violations of the Act, Board Rules or USPAP which do not impact the credibility of the appraisal assignment results, the assignment results themselves and do not impact the appraiser's honesty, trustworthiness or integrity to the board, the appraiser's clients or intended users of the appraisal service provided[.] 22 Tex. Admin. Code § 153.24(j)(1)(E).
40. The Board's rules define "serious deficiencies" as:
violations of the Act, Board Rules or USPAP which do impact the credibility of the appraisal assignment results, the assignment results themselves or do impact the appraiser's honesty, trustworthiness or integrity to the board, the appraiser's clients or intended users of the appraisal service provided[.] 22 Tex. Admin. Code § 153.24(j)(1)(F).
41. An administrative penalty may not exceed \$1,500 per violation or \$5,000 for multiple violations in a single case. Tex. Occ. Code § 1103.552(a).

42. Mr. Cooper intentionally violated a known duty, and his actions were made knowingly, deliberately, and willfully. 22 Tex. Admin. Code § 153.24(j)(3).
43. Mr. Cooper committed a first-time Disciplinary Level 3 violation.
44. The Board has developed guidelines for the consideration of the ALJ and the Board in imposing sanctions. 22 Tex. Admin. Code § 153.24(j)(2).
45. The Board should impose a period of a period of suspension of Mr. Cooper's certified appraiser's certificate until Mr. Cooper can demonstrate his proficiency in complying with the requirements of the laws governing appraisers. During that period, Mr. Cooper should be required to take and pass the licensing examination as a general appraiser. Upon his licensing, and for a period of twelve months or the issuance of 20 acceptably prepared written appraisal reports, whichever is later, Mr. Cooper should have a monitor who reviews his appraisals before they are issued. Mr. Cooper should be required to comply with the monitor's recommendations before issuance. Mr. Cooper should be required to pay a \$5,000 administrative penalty, as well as pay the reasonable fees of his monitor.

SIGNED August 19, 2014.



PAUL D. KEEPER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS