TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD ("BOARD")	§	**BEFORE THE TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD**
V.	§	
RONALD CRAIG LEWIS TX-1329836-G ("RESPONDENT")	§	**DOCKET NO. 329-11-9425.ALC**

FINAL ORDER

On this 15th day of February, 2013, the Board considered the above-styled case.

After proper notice was given, the above-styled case was heard by an Administrative Law Judge ("ALJ") at the State Office of Administrative Hearings who made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on September 12, 2012 ("PFD"). This PFD was properly served on all parties, who were given an opportunity to file exceptions and replies as part of the administrative record. Exceptions were filed by Board staff ("Staff Exceptions") and Respondent filed a reply ("Respondent's Reply"). The ALJ by letter dated December 5, 2012 found no reason to make changes to the PFD based on Staff Exceptions and Respondent's Reply ("Exceptions Ruling Letter").

The Board, after review and due consideration of the PFD, Staff Exceptions, Respondent's Reply, and the Exceptions Ruling Letter, collectively attached hereto as Exhibit A, adopts the Findings of Fact and Conclusions of Law of the ALJ contained in the PFD and incorporates those Findings of Fact and Conclusions of Law into this Final Order as if such were fully set out and separately stated in this Final Order. All proposed Findings of Fact and Conclusions of Law submitted by any party that are not specifically adopted in this Final Order are denied.

IT IS THEREFORE ORDERED by the Texas Appraiser Licensing and Certification Board that Ronald Craig Lewis is assessed an administrative penalty of $3,000.00, payable in full on or before twenty days after the date Ronald Craig Lewis is notified of this Final Order.

IT IS FURTHER ORDERED that Ronald Craig Lewis is restricted from performing any appraisals other than for an employer for a one year period, beginning twenty days after the date Ronald Craig Lewis is notified of this Final Order. In the event Ronald Craig Lewis no longer works for an employer during this one year period, Ronald Craig Lewis is limited to preparing no more than 20 appraisals per month.

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

Approved by the Board and signed this 15 day of February, 2013.

Walker R. Beard, Chairperson
Texas Appraiser Licensing and Certification Board

State Office of Administrative Hearings

RECEIVED
SEP 24 2012
Texas Real Estate Commission

Cathleen Parsley
Chief Administrative Law Judge

September 21, 2012

INTER-AGENCY

Douglas E. Oldmixon
Administrator
Texas Appraiser Licensing and Certification Board
1700 N. Congress Avenue, Suite 400
Austin, TX 78701

RE: Docket No. 329-11-9425.ALC; Texas Appraiser Licensing and Certification Board v. Ronald Craig Lewis

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,

Sarah G. Ramos

SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

SRG/lh
Enclosure
xc: Kyle Wolfe, Attorney, TALCB, 1700 N. Congress Ave., Suite 400, Austin, TX – **VIA INTER-AGENCY**
Sadiyah A Evangelista, Attorney, P.O. Box 1092, Houston, TX 77251 - **VIA REGULAR MAIL**
Troy Beaulieu, TALCB, 1700 N. Congress Ave., Suite 400, Austin, TX 78701 – (with 1 hearing CD) - **VIA-INTER-AGENCY**

SOAH DOCKET NO. 329-11-9425.ALC

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD, PETITIONER	§	**BEFORE THE STATE OFFICE**
V.	§	**OF**
RONALD CRAIG LEWIS, RESPONDENT	§	**ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

The Staff of the Texas Appraiser Licensing and Certification Board (TALCB or Board) brought this action to revoke the real property appraiser certification held by Ronald Craig Lewis (Respondent). In the alternative, Staff seeks imposition of an administrative penalty, a requirement for remedial education, and/or suspension or probation of Respondent certificate. Staff alleged that Respondent violated the Texas Appraiser Licensing and Certification Act and the Board's rules by producing appraisal reports that failed to conform to the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP). Respondent demonstrated that he wrote an erroneous appraisal during a time of undue stress and performed another appraisal that, while inadequate, was not intended to be a true summary appraisal. The Administrative Law Judge (ALJ) recommends that Respondent be required to pay a $3,000 monetary penalty and, for one year, be limited to providing appraisals only for his employer.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

The hearing was held on May 14, May 15, and July 12, 2012, by Administrative Law Judge (ALJ) Sarah G. Ramos at the William P. Clements State Office Building, 300 West 15th Street, Austin, Texas. Staff attorneys Troy Beaulieu and Kyle Wolfe represented Staff. Attorney Sadiyah Evangelista represented Respondent. The parties made oral closing arguments on July 24, 2012, on which date the record closed. There were no contested issues of notice or jurisdiction, and those issues are discussed only in the Findings of Fact and Conclusions of Law.

II. APPLICABLE LAW

Texas Occupations Code (Code) § 1103.405 requires a licensed appraiser to comply with the most current edition of USPAP and any other standards established by Board rule that are at least as stringent as those standards. For a violation of the Code, a rule, or a Board order, Code § 1103.552 authorizes the Board to impose an administrative penalty of up to $1,500 for each violation or $5,000 for multiple violations in a single case. The person on whom the penalty is imposed must pay the penalty not later than the 20th day after the date the order imposing the penalty becomes final.

This is the second disciplinary action against Respondent. The Board's penalty matrix at 22 Texas Administrative Code §153.24(9) lists a range of recommended sanctions. For second violations that do not reflect a serious inability or unwillingness to comply, the suggested penalty is $500 to $1,500 per violation with a requirement to take remedial course work or to adopt preventive policies and procedures, or both.

III. BACKGROUND

A. Respondent's History

Respondent began working as a real estate agent in 1992 and was licensed as an appraiser on December 18, 2000. He is a general certificate real estate appraiser and thus allowed to appraise both commercial and residential properties. Respondent has completed more than 1,000 appraisals since being licensed. He testified that he has not done any other type of work except real estate and appraising. Respondent received a bachelor's degree in leadership ministries in 2005, and in January 2009, began pursuing a real estate degree.

Respondent currently resides in Little Rock, Arkansas. Since August 2011, Respondent has worked as a review appraiser for the Department of Housing and Urban Development (HUD).[1] Prior to his employment with HUD, Respondent had own his appraisal company.

[1] Respondent testified that he has an outstanding recommendation from HUD, and his employers are aware of his disciplinary history with the Board.

B. Agreed Final Order

On May 11, 2007, the Board issued an Agreed Final Order which found that Respondent failed to comply with USPAP in appraisals he prepared for four properties.[2] The errors included, among other things, failing to adequately identify and report the site description and improvements; using an inappropriate method to develop an opinion of the value; failing to properly account for depreciation; and failing to adequately collect, verify, analyze and reconcile comparable sales data.

As a result, the Board revoked Respondent's certification but probated the revocation for two years and six months (*i.e.*, until November 11, 2009). In addition, the Board set conditions with which Respondent was required to comply during the period of probation. The conditions included, among other things, that Respondent submit a quarterly log of his appraisals and, at the Board's request, provide his work files. Further, Respondent was suspended from making any appraisals for thirty days, prohibited from sponsoring any appraiser trainees during the probation period, required to pay a $2,000 administrative penalty, and required to attend 105 hours of continuing education courses.

While Respondent was on probation, Staff reviewed the appraisal logs that Respondent submitted quarterly, and Staff requested work files for various properties. In those work files, Staff found errors for two of the properties that Respondent appraised during the term of his probation. One property is at 9430 West Bellfort in Houston, Texas, and is referred to as the "Bellfort property." The other is at 14502 Renee Lane in Crosby, Texas, and is referred to as "Renee property."

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[2] The "Truxillo" property in 2001, the "Russett" property in 2002, and the "Philbrook" and "Kirby" properties in 2006. (Staff Ex. 8).

IV. BELLFORT PROPERTY

A. Respondent's Report

The Bellfort property is a 0.6731 acre tract with a metal warehouse building that was used as a church. It has 6,350 square feet of net rentable area, but a second level has been added, making the total heated and cooled area 12,700 square feet.

According to the appraisal log that Respondent submitted to the Board, he prepared a restricted use report (RUR) for the church on October 24, 2007, and issued his report on November 2, 2007. Respondent testified that representatives of the church contacted him by email in October 2007 and asked him to verbally give them a market value for the property so that they could make an internal decision about whether to sell the property or keep it. They also told Respondent they did not plan to compensate him for his work.

In response, Respondent offered to prepare a "letter of value" for them so that they would have a written figure to discuss. Respondent testified that he inadvertently referred to the letter as an RUR on his appraisal log since he did not intend for it to be either an appraisal summary or an RUR. Further, Respondent understood that no one other than the church would have access to the letter of value. After Respondent submitted the letter, he had no more discussions with the church, and no one from the church ever told him there were any issues with his letter.

The Bellfort report is labeled as a "Summary Report" on the first page,[3] but Respondent testified that the label was an error. In the report, Respondent further states, "Pursuant to your request a letter of value . . . has been done for the purpose of estimating "Market Value/Value in Use" in fee simple interest."[4] He describes the property's location and general features and then states:

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[3] Staff Ex. 5C at 390.

[4] Staff Ex. 5C at 391.

> After analyzing land sales, construction costs, improved sales as well as listings and trends within overall market area, a final estimate of value is determined. Therefore, it is my contention that 'Market Value/Value in Use' for the subject facility . . . as of October 24, 2007, is as follows:
>
> **FIVE HUNDRED THOUSAND DOLLARS**
> **$500,000.00**
>
> The opinion of value expressed in the appraisal is contingent upon basic assumptions presented herein and those stated in the Contingent and Limiting Conditions. . . . This value reported in this appraisal is presented in a letter of value format with pertinent data retained in the appraiser's file. Upon presentation of a full narrative appraisal report, the value may or may not change.
>
> If further information or services are needed, please advise.[5]

Respondent then included six pages of photographs and two pages with various attestations, assumptions, and limiting conditions, such as:

> The analyses, opinions, and conclusions were developed, and this report has been prepared in conformity with [USPAP] and the reporting requirements of various regulatory agencies;
>
> The reported analyses, opinions, and conclusions have been developed and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the [TALCB];
>
> . . . Title is assumed to be marketable and free and clear of all liens, encumbrances, easements, and restriction[s] except those specifically discussed in this report. The property is appraised assuming it to be under responsible ownership and competent management and available for its highest and best use;
>
> . . . Except as specifically stated, data relative to size, location and dimensions, were taken from sources considered reliable and no encroachment or real property improvement is assumed to exist; and
>
> . . . all existing liens and encumbrances have been disregarded, unless specifically stated so in the report.[6]

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[5] Staff Ex. 5C at 392. (Emphasis in the original.)

[6] Staff Ex. 5C at 399-400.

B. Testimony of John "Jack" F. McCombs, Jr.

Mr. McCombs has been a Board investigator for almost twelve years and a licensed appraiser for more than thirty-five years. He has testified as an expert in several forums. Mr. McCombs said Staff requested three appraisal reports from every appraisal log that Respondent submitted during the term of his probation.

Mr. McCombs reviewed some of Respondent's appraisals and completed a "desktop" review of Respondent's report for the Bellfort property to determine whether it complied with USPAP standards.[7] Later, Mr. McCombs went to Houston to view the subject and comparable properties that Respondent relied on to develop the Bellfort report.

In general, Mr. McCombs said Respondent's report did not comply with USPAP requirements for a summary report or an RUR. Instead, it was more like a letter. The quality was so poor that Mr. McCombs considered it an ethical violation to label the report as an appraisal.[8] As to Respondent's assertion that the owners of the Bellfort property wanted only a letter of value, Mr. McCombs testified that USPAP includes no such document. In Mr. McCombs' opinion, Respondent should have turned down the assignment if he was not able to a complete a proper appraisal report. However, Mr. McCombs conceded that he did not personally speak with persons at the church about what they had asked Respondent to do for them.

An appraisal might be used for many purposes, including mortgage lending and estate work, and at a minimum, appraisers must comply with USPAP standards when preparing an appraisal report, Mr. McCombs stated. He also described the three main approaches to determining value in an appraisal – sales, cost, and income value. The cost approach considers the amount necessary to reproduce a property after depreciation is taken into account, the sales approach evaluates what has

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[7] Mr. McCombs' report is Staff Exhibit 7G.

[8] Staff Ex. 7G at 527.

happened recently in the market for similar types of property, and the income approach determines the amount of rent a property would produce and what someone would pay for that income stream.

Mr. McCombs testified that an RUR requires the same work as an appraisal report, even though the format may be different. The only difference between a summary report and an RUR is that, in a summary, the appraiser has to summarize the data and analysis, but for a restricted use report, the appraiser has only to state his conclusions and have the data in his work file.

Mr. McCombs listed numerous ways the Bellfort report failed to meet USPAP standards. It did not address the size of the lot or include neighborhood data. It did not properly identify the problem to be solved and the scope of work necessary to develop credible results. Also, the report did not disclose the intended use of the appraiser's conclusions or define the property's value and source.

Respondent included 12,700 feet in calculating the value of improvements, but the second floor did not cost the same as the first floor. A USPAP appraisal cannot have the same cost method for both floors, and using the square footage for the entire building added extra costs for the foundation and roof, Mr. McCombs testified. In addition, the report does not adequately address the property's possible rent value because the most likely use of a metal building is as a warehouse with storage only on the ground floor. In addition, the property included an area of 1,200 square feet that was labeled "mercy ground" but not further described.

The report also does not indicate whether personal property would be conveyed and does not discuss any kind of restrictions on the property. Although Houston does not have restricted zones, Mr. McCombs said the city restricts uses for certain areas.

In most commercial properties, frontage is paramount and utilities are essential, Mr. McCombs added. Respondent did not identify any easements or analyze the effects of other factors on the property's use and value, such as existing land-use regulations, economic support and demand, physical adaptability of the real estate, and market area trends.

Mr. McCombs also found the report deficient because it did not address the income approach, which could have been highest and best use for the property. Along these lines, an unused billboard on the property was not discussed, even though a billboard is often a potential source of income.

As for the cost approach, even though there were some comparables in the work file, they were not part of Respondent's report to his client, and the report did not include a data summary stating what was in his work file. According to Mr. McCombs, even an RUR should have included Respondent's conclusions.

Moreover, Mr. McCombs testified that Respondent's work file does not show that he adequately collected, verified, analyzed and reconciled comparable sales data. Some comparable properties that Respondent used had different quality construction, Mr. McCombs noted. The Bellfort property is a metal, warehouse building, but sales of some properties used as comparables had concrete block and other types of construction.

The first comparable sale was reported sold for $72,000 more than the listed price. The second comparable was a larger general-purpose building on a smaller site. The third comparable was a smaller general-purpose building on a smaller site. The fourth comparable sale was a small office building and not similar. There were no notes as to the analysis involved and no adjustment to analyze the data, Mr. McCombs testified. All the comparable sales were for single story buildings, and the resulting sales prices per square foot did not apply to second-floor improvement or uses.

Mr. McCombs also disagreed with the way in which Respondent used the Marshall Valuation Service (MVS) to analyze and reconcile the cost, when new, of improvements. Respondent used the section that refers to improvements built as theaters, museums, and churches but should have used the section for low cost Class S storage and showroom buildings. The churches used in the MVS are brick and mortar churches, not metal buildings, and it costs less to build a metal building, Mr. McCombs added.

Furthermore, Mr. McCombs said Respondent did not appropriately address accrued depreciation. The improvements were built in 1979 and were twenty-eight years old on the effective date of the report. MVS indicates that metal buildings should last twenty-five to forty years. As a result, MVS estimates the normal depreciation to be 70%-80%, but Respondent used only 42% depreciation.

Finally, the report states, "[u]pon the presentation of a full narrative appraisal report, the value may or may not change." Therefore, in Mr. McCombs' opinion, Respondent admitted to potential errors in his analysis. In summary, Mr. McCombs said it was obvious that Respondent did not perform a USPAP compliance summary appraisal report or an RUR. Errors of commission and omission significantly affected the report, and the report failed to include sufficient information to enable the intended users of the appraisal to understand the report properly. In Mr. McCombs' opinion, this led to an inflation of the property's value.

C. Respondent's Evidence Regarding Bellfort Property

During Respondent's testimony, his attorney asked him to consider whether the Bellfort report complied with minimum USPAP requirements for an RUR.[9] Respondent indicated how and whether he had complied and affirmed that, for the most part, the letter meets the requirements.

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[9] The requirements are:
(i) state the identity of the client, by name and type; and state a prominent use restriction that limits use of the report to the client and warns that the appraiser's opinions and conclusions set forth in the report may not be understood properly without additional information in the appraiser's workfile;
(ii) state the intended use of the appraisal;
(iii) state information sufficient to identify the real estate involved in the appraisal;
(iv) state the real property interest appraised;
(v) state the type of value, and cite the source of its definition;
(vi) state the effective date of the appraisal and the date of the report;
(vii) state the scope of work used to develop the appraisal;
(viii) state the appraisal methods and techniques employed, state the value opinion(s) and conclusions(s) reached, and reference the workfile; exclusion of the sales comparison approach, cost approach, or income approach must be explained;
(ix) state the use of the real estate existing as of the date of value and the use of the real estate reflected in the appraisal; and when an opinion of highest and best use was developed by the appraisal, state that opinion;
(x) clearly and conspicuously:
State all extraordinary assumptions and hypothetical conditions; and
State that their use might have affected the assignment results; and
(xi) include a signed certification in accordance with Standard Rule 2-3. USPAP Standard Rule 2-2(c).

Respondent's report quotes the definition of market value, and Respondent said he used that approach because it was responsive to the church's question. He also identified the date of the appraisal and the date of his letter. The scope of his work was explicit in the methodology he used, and his analysis was in his work file and available to the church upon request, Respondent testified.

Respondent also said that his work papers demonstrate that he used a sales comparison approach and each of comparables has a corresponding sales sheet.[10] The first comparable sale was a metal building used for a motor vehicle repair shop that could be retrofitted as a church.[11] The second sale was also a metal building used as an automobile sales center.[12] The third comparable sale was a convenience store.[13] Respondent said he selected these comparable sales because the properties could be adapted to a special-purpose use.

Two comparables were similar properties, Respondent testified. He said he corresponded the square footage with value per square foot based on past sales and showed his adjustment range. Then, he showed comparable sales for land value only. He determined a $3.40 per-square-foot value and used cost per square foot to determine the cost of the subject property. He correlated the land value and calculated a depreciated cost for the subject property.

Respondent provided an estimated value with an appropriate definition,[14] using the appraisal institute's definition. In Respondent's work file, he included a sketch of property.[15] He showed the total square footage, including the upper level. Respondent said the "mercy ground" area was a 1,200 square foot sand pit covered by a gazebo that the church members built themselves. Respondent included the 1,200 square feet in the total square footage but did not specifically describe the area in the report because it did not have any value other than square footage.

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[10] *See* Staff Ex. 5C at 426.

[11] Staff Ex. 5C at 408.

[12] Staff Ex. 5C at 409.

[13] Staff Ex. 5C at 410.

[14] Staff Ex. 5C at 391.

[15] Staff Ex. 5C at 390.

Furthermore, Respondent did not include a value for personal property because he was asked only to value the land and improvements. As for easements and restrictions, the report expressly states that they were disregarded.[16]

Under the circumstances, Respondent thought it was reasonable not to address the billboard in his letter of value because the church was not using it for income at the time. However, he recognized that he violated USPAP by not including the billboard's possible value at least in his work papers.[17]

The Bellfort property has churches on either side of it, and the neighborhood is 75-80% built. Respondent said he used comparable sales from the same socio-economic climate, thereby accounting for crime rates in the area. He said he reflected the fact that the improvement was a metal building by noting the improvements were "low cost."[18] Moreover, Respondent said the Bellfort area is still a good area for real estate,[19] and the property has about the same value today as when he appraised it.

No one from the church ever told Respondent that he or she could not understand what was in letter. Respondent said he would have explained anything that was not clear. Even so, Respondent testified that it was an error to label the letter as a "summary report."[20] Most appraisers know a letter of value is synonymous with an RUR, Respondent stated, but he knew the church was not asking for an RUR. They simply wanted him to tell them what he thought the property was worth.

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[16] Staff Ex. 5C at 400, 3rd paragraph.

[17] See the bottom photograph on Respondent Ex. 6 and the top photograph on Respondent Ex. 7, which Respondent took a few weeks before the hearing.

[18] *See* Staff Ex. 5C at 427.

[19] *Citing* the bottom photograph on Respondent Ex. 7, and the photographs n Respondent Exs. 8 and 9.

[20] Staff Ex. 5C at 390 and 392.

D. Analysis of Bellfort Evidence

Respondent admitted that he made errors in the Bellfort report. He included terms that would lead a reader to believe he had prepared a summary appraisal. He informed the church that he had analyzed land sales, construction costs, improved sales, listings, and trends within the market. All of those steps imply that he was providing at least an RUR.

It would have been more prudent if Respondent had not presented a document to the church that used the term "appraisal" and included some aspects of a summary appraisal report and if he had not listed it as an RUR on his appraisal log when he gave the church something less. Mr. McCombs testified the USPAP has no such document as a letter of value, so Respondent should not have used terms that would lead one to think he was writing a summary appraisal or an RUR.

An RUR must explain the exclusion of the income approach, and Respondent failed to explain that exclusion or to address the possible value of the billboard. The report miscalculates the value of the property based on the second floor footage and use of the incorrect section in MVS. Rather than describing easements, Respondent stated only that he had assumed there were none. He did not explicitly discuss the physical adaptability of the building or market trends in the area. Respondent did not summarize the data in his work file. He also did not use the correct section of the MVS, and he miscalculated deprecation. It appears that Respondent prepared the report as a favor and did not intend to offer it as an appraisal summary or RUR; nevertheless, he should have either prepared an RUR that complied with USPAP or declined to assist the church. As a result, he is responsible for the errors in the report.

V. RENEE PROPERTY

A. Overview

The Renee property is a 2,698 square foot house on a 2.0694 acre lot. Staff had four appraisal reports for the property – the initial appraisal report that Respondent submitted as part of

his probation audit, the report he submitted in response to Staff's complaint, a report that Staff acquired from the lender shortly before the hearing commenced, and a fourth report, prepared two months later than the other three appraisals.

Report Number	Date	Type	Estimated Market Value	Exhibit Reference
Appraisal 1	10-15-07	Exterior only.	$240,000	Staff Ex. 6F at 444-457.
Appraisal 2	10-15-07	Exterior only.	$240,000	Staff Ex. 6F at 458-471.
Appraisal 3	10-15-07	Exterior only.	$240,000	Staff Ex. 12 (sent to lender).
Appraisal 4	12-13-07	Interior and exterior.	$205,000	Staff Ex. 6F at 472-493.

The second and third reports have only one difference – trainee's names were included on the third report. Staff did not contest the fourth appraisal but does allege that the versions completed in October 2007 have errors.

B. Testimony of Jeff Strawmyer

Mr. Strawmyer holds a bachelor's degree in architecture and has been a real estate appraiser for twenty-four years. He has been employed by the Board for eight years and currently serves as a case manager. He performs compliance reviews, completes experience audits, and trains new investigators.

Mr. Strawmyer prepared an investigative report for the Renee property.[21] To Mr. Strawmyer, the different versions of the Renee property's appraisal appeared to indicate that Respondent attempted to alter them to avoid disciplinary action. He testified that the Renee appraisal failed to adequately identify and report the site description, develop an opinion of the highest and best use for

[21] Staff Ex. 7H.

the property, support the estimated lot value of $70,000, and properly represent the sales comparison approach.

Furthermore, Mr. Strawmyer said Respondent did not calculate physical depreciation properly, which created a misleading indication of value. And the appraisal failed to make adjustments for numerous aspects of the comparable properties, such as swimming pools and other features that affected the comparable properties' values.

In addition, Mr. Strawmyer said the appraisal did not demonstrate that Respondent was aware of, understood, and correctly used recognized methods and techniques to produce a credible appraisal. Since Respondent is an experienced appraiser, he should have used appropriate methods so that land value was not inflated and the sales comparison approach was not misrepresented.

C. Respondent's Evidence Regarding Renee Property

When Staff contacted Respondent about the Renee property, Respondent wrote a letter, dated January 3, 2008, which states, in part:

> . . . the report submitted to [the Board] is the incorrect version of the report. Due to critical illness of my father and subsequent amputation of his foot, the report in question was shuffled between the hospital and office via computer data stick. The correct report was not transferred to the original main frame computer and upon request for review by [Staff] the unrevised version of the report was sent to your office. The correct version of this report has been submitted with this response for your review.

At the hearing, Respondent further explained his challenges in writing the Renee property appraisal. His father, Rev. Etheal Lewis, Sr., was in the hospital and, at least once, required "code blue" care. Rev. Lewis's hospitalization was traumatic for the family. He was admitted to a Houston hospital on October 11, 2007 and airlifted to St. Louis on October 30, 2007,[22] where he was treated

[22] Respondent Ex. 4.

for four-to-five months. Respondent worked on the Renee report at the hospital, using two or three computer flash drives as he worked.

LSI Title Agency, Inc. (LSI), the entity that requested the Renee appraisal, allowed only seven days for an appraiser to write a report, Respondent stated. As Respondent was with his father at the hospital, LSI called him repeatedly to find out when the report was going to be submitted. While working at the hospital, Respondent sometimes saved changes to the appraisal on a flash drive but not to his computer's hard drive. The cost approach on the version sent to LSI lists an inflated site value of $70,000,[23] while the version Respondent sent to Staff has a correct site value of $40,500.[24]

Respondent said all versions of the Renee appraisals were completed before Staff sent a complaint. He thought he had sent LSI the version that he sent to Staff, but the versions were different. When Respondent was asked why his corrections on subsequent versions tended to mirror Mr. Strawmyer's notes, Respondent said he was able to see the errors he had made once the crisis with his father had passed. He corrected the errors before he knew about Mr. Strawmyer's notes. Further, Respondent testified that an appraiser does not typically perform a cost-approach analysis on an exterior-only review.

Respondent said the Renee property sold on January 31, 2005, for $269,178,[25] but then the real estate market dropped. At first, LSI asked him to complete only an exterior "drive by" appraisal since the property was in foreclosure. When he had a chance to go inside the property in December, he changed the value from $240,000 to $205,000 because the house had interior damage. Also, the square footage was 1,216 feet different than what was shown on HCAD's records. As a result, Respondent said his earlier appraisal reports were based on erroneous assumptions, *i.e.*, that the property was in good condition and was the size that HCAD had recorded. The property was listed

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[23] Staff Ex. 12 at 598.

[24] Staff Ex. 6F at 463.

[25] Respondent Ex. 5.

on the market on January 8, 2008, for the amount that Respondent last appraised it, $205,000, and sold in May 2008 for $190,000.

D. Dr. Sabrina Lewis-Jones

Dr. Lewis-Jones, a Houston Community College teacher and administrator, has a master's degree in business administration and a doctorate in management and organizational leadership. She is Respondent's sister and assisted in caring for their father during his hospitalization.

Dr. Lewis-Jones confirmed Respondent's explanation of their father's experience during October 2007. She said Rev. Lewis's illness originated when he stepped on a nail but was not aware that he had done so. He developed blood poisoning and had to be rushed to hospital. Later, he was moved to another hospital for an immediate operation. After surgery, Rev. Lewis was transferred back to the first hospital. During a blood transfusion, he was given the wrong type of blood which caused him to go into a coma. Eventually, Rev. Lewis had to be transported to St. Louis and was in a coma for about two weeks. The family stayed with him "around the clock," Dr. Lewis-Jones testified. She said her brother, Respondent, worked on his appraisals at the hospital, even on the days when doctors told them their father might not survive.

The experience was very traumatic for the entire family, and traumatic experiences can cause a delay in thinking and making decisions, Dr. Lewis-Jones noted. In her opinion, excessive stress during this time could have altered her brother's thinking.

E. Other Appraisers

1. Testimony of Mr. Strawmyer

In Respondent's discovery responses, he verified that he completed the Renee appraisal without the assistance of other persons. To Mr. Strawmyer, this statement proved that Respondent is

untruthful because one version of the Renee appraisal shows that Zolee Joshua and Keith Claiborne provided significant assistance with the property inspection and preparation of the report.[26]

Mr. Strawmyer said that when Respondent put the names of other appraisers on the report, he informed both the property owner and the lender that those appraisers had participated in the appraisal. Ms. Joshua was licensed on April 16, 2007, and the appraisal was in October 2007, so, legally, she could have participated in the appraisal. However, Mr. Claiborne's trainee authorization had expired by October 2007, so he would not have been allowed to participate even if the Agreed Order had permitted Respondent to have trainees.

2. Respondent's Evidence

Respondent testified that Ms. Joshua and Mr. Claiborne did not work with him after 2006. In September 2006, Respondent decided he would no longer supervise trainees, and he sent in the appropriate forms to end all of his trainee relationships. Nevertheless, he used a template that had Ms. Joshua's and Mr. Claiborne's names on it, and he admitted it was an error to include them. Mr. Strawmyer conceded that he, like Respondent, uses templates and recognized that outdated information is left on a template at times when a new document is created from it.

3. Testimony of Zolee Joshua Thomas

In 2007, Ms. Thomas was not yet married and her last name was Joshua. She testified that Respondent sponsored her as an appraisal trainee beginning in early 2006 but stopped sponsoring her in August or September 2006. Subsequently, Ms. Thomas trained with another appraiser; she was not sponsored by two persons at a time. She became licensed in April 2007 and continues to practice in the profession. Ms. Thomas did not recall working on the Renee property with Respondent and said she did not do any work with Respondent in 2007.

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[26] Staff Ex. 12 at 602. Compare Staff Ex. 6F at pages 450, 464, and 483, which do not include their names.

F. Analysis of Renee Evidence

The ALJ agrees with Mr. Strawmyer that the Renee appraisal has errors. Considering the various versions of the appraisal, Staff's assertion that Respondent attempted to correct an inadequate report has some merit. However, the evidence more persuasively proved a different version of the events. Given the disruption in Respondent's life at the time when his father was so ill, Respondent's explanation is entirely reasonable. Even though the exterior-only versions of the report have some errors, such as the difference in lot value, those errors do not prove that Respondent is generally unable to perform a proper appraisal or unwilling to comply with Board requirements. On the contrary, the evidence shows that he worked very hard to comply and to provide LSI with correct information, even when it was almost impossible to do so. Based on the evidence, the ALJ finds that while the October 2007 Renee appraisals have errors, those errors were made at a time of extreme duress in Respondent's life. There was no evidence that they are typical of Respondent's work.

Similarly, the evidence proved that including Ms. Joshua's and Mr. Claiborne's names was an inadvertent error. No finding should be issued for that mistake.

VI. PROPOSED PENALTY

Mr. McCombs testified that the violations for which Respondent was disciplined in the May 2007 order are the same as proven by the facts in this case. The current violations reflect gross negligence. Therefore, in Mr. McCombs' opinion, Respondent's license should be revoked.

Mr. Strawmyer said the deficits in the appraisal reports support his recommendation that Respondent's license be suspended. Because Respondent applied improper techniques in his appraisals, his reports either inflated or deflated the properties' values and could have misled a lender and violated the terms of Respondent's probation. Thus, the violations justify revocation of his certification.

Respondent testified that he never intended to mislead the Board and acted as carefully as possible under the circumstances. He explained that he never tried to conceal or change a report. He could not have altered the Renee appraisal based on Mr. Strawmyer's notes because he did not have those notes when he filed his reports with the Board. Respondent also said he had never deliberately, intentionally, or willfully violated USPAP standards in preparing an appraisal. He added that it is not in his nature or his character to be deceitful or dishonest. Finally, Respondent testified that he recognizes he made mistakes but stated he is becoming a better appraiser and cares about the quality of his work.

Respondent made some of the same errors with the Bellfort and Renee appraisals that he did in the appraisals addressed in the Agreed Order. This might lead one to conclude he is unable to properly perform an appraisal. However, the ALJ finds that Respondent is neither unwilling nor unable to comply with USPAP requirements.

When Respondent prepared the Bellfort appraisal, he mixed appraisal terms with what he intended as an informal estimate. While Respondent used poor judgment in his attempt to assist the church, the evidence does not prove that Respondent was unable to complete a proper appraisal for them. True, he should not have performed an inadequate appraisal as a favor, and he should be sanctioned for this. But the deficits in Respondent's Bellfort report do not prove that he is unable to practice the appraisal profession properly.

As for the Renee property, the evidence again shows that Respondent had the knowledge to complete a proper appraisal report. Even though the errors he made were the same or similar to the ones addressed in the Agreed Order, Respondent was able to see and correct the errors once he returned to his regular work situation. Therefore, the errors are attributable to the extreme stress Respondent was experiencing at the time.

As a result, the ALJ recommends that the Board follow its penalty matrix for a second occurrence that does constitute evidence of a serious inability or unwillingness to comply. The evidence does not establish either that Respondent was unable to complete a USPAP-compliance

appraisal or unwilling to comply with the standards. The suggested penalty for such a violation is $500 to $1,500 per violation with requirement to take remedial course work or to adopt preventive policies and procedures, or both. The ALJ recommends that Respondent be required to pay a $3,000 monetary penalty. Yet, the evidence does not support a requirement of remedial education, given the fact that the fourth Renee appraisal demonstrates that Respondent knows how to prepare a proper appraisal.

The Renee appraisal was prepared when Respondent was not able to work properly due to family circumstances. The Bellfort report was prepared without remuneration, thus implying that it may have been done as a favor. As a preventative measure to address these types of situations, the ALJ recommends that Respondent be restricted from performing any appraisals other than for his employer for a period of one year. In the alternative, if Respondent's relationship with HUD ends, he should be limited to preparing a reasonable number of appraisals per year. The Board will know better than the ALJ what that number should be, but Respondent listed 28 appraisals on his log for October 2007. The ALJ assumes something less than that number would be appropriate.

VII. FINDINGS OF FACT

1. Ronald Craig Lewis (Respondent) holds certification number TX-1329836-G issued by the Texas Appraiser Licensing and Certification Board.

2. Respondent began working as a real estate agent in 1992 and was licensed as an appraiser on December 18, 2000. He is a general certificate real estate appraiser and thus allowed to appraise both commercial and residential properties.

3. Respondent has completed more than 1,000 appraisals since being licensed.

4. Since August 2011, Respondent has worked as a review appraiser for the Department of Housing and Urban Development (HUD).

5. Prior to his employment with HUD, Respondent had own his appraisal company

6. On May 11, 2007, the Board issued an Agreed Final Order which found that Respondent failed to comply with Uniform Standards of Professional Appraisal Practice (USPAP) in appraisals he prepared for four properties. As a result, the Board revoked Respondent's

certification but probated the revocation for two years and six months (*i.e.*, until November 11, 2009) and set conditions with which Respondent was required to comply during the period of probation. The conditions included, among other things, that Respondent submit a quarterly log of his appraisals and, at the Board's request, provide his work files.

7. While Respondent was on probation, Staff reviewed the appraisal logs that Respondent submitted quarterly, and Staff requested work files for various properties.

8. In the work files that Respondent submitted, Staff found errors for two of the properties, the "Bellfort property" and the "Renee property" that Respondent appraised during the term of his probation.

Bellfort Property

9. The Bellfort property, located at 9430 West Bellfort in Houston, Texas is a 0.6731 acre tract with a metal warehouse building that was used as a church.

10. The Bellfort property has 6,350 square feet of net rentable area, but a second level has been added, making the total heated and cooled area 12,700 square feet.

11. Respondent informed the Board that he had prepared a restricted use report (RUR) for the Bellfort property on October 24, 2007, and had issued his report on November 2, 2007.

12. The report Respondent prepared was an attempt to provide a "letter of value" so that church leaders could make an internal decision about whether to sell the property or keep it.

13. USPAP does not include a "letter of value."

14. The Bellfort property report has some attributes of a summary appraisal or an RUR but does not comply with USPAP in that it does not:

- explain the exclusion of the income approach,
- address the possible value of a billboard on the property;
- properly account for the second-floor footage;
- use the correct section in Marshall Valuation Service;
- describe easements;
- discuss the physical adaptability of the building or market trends in the area;
- summarize the data in his work file; and
- properly calculate deprecation.

Renee Property

15. The Renee property, is located 14502 Renee Lane in Crosby, Texas, and the improvement on it is a house.

16. For the Renee property, Staff had three versions of the exterior only appraisal and one version of the interior and exterior appraisal.

17. Some versions of the appraisal had USPAP errors but Staff did not contest the fourth version of the appraisal.

18. At least one version of the Renee appraisal failed to adequately identify and report the site description, develop an opinion of the highest and best use for the property, support the estimated lot value of $70,000, properly represent the sales comparison approach, properly calculate physical depreciation, and make appropriate adjustments for numerous aspects of the comparable properties, such as swimming pools and other features.

19. Respondent prepared the first three versions of the Renee appraisals in October 2007 while staying with his father who was hospitalized with life-threatening illnesses.

20. Respondent had only one week to write the Renee appraisal.

21. Respondent transferred his work between the hospital where his father was and Respondent's office using computer data sticks.

22. Respondent did not transfer the correct version of the report to his main computer.

23. The cost approach on the version of the Renee appraisal sent to LSI Title Agency, Inc., lists an inflated site value of $70,000, while the version Respondent sent to Staff has a correct site value of $40,500.

24. Respondent was able to see the errors he had made once the crisis with his father had passed, and all versions of the Renee appraisals were completed before Staff sent a complaint.

25. While the October 2007 Renee appraisals have USPAP errors, those errors were made at a time of extreme duress in Respondent's life; there was no evidence that they are typical of Respondent's work.

Procedural History and Notice

26. On August 25, 2011, the Board's Staff sent notice of hearing to Respondent proposing revocation of the certification referred to in Finding of Fact No. 1.

27. Staff sent Respondent its first amended statement of charges on April 12, 2012, a supplemental statement of charges on April 23, 2012, and a second supplemental statement of charges on May 2, 2012.

28. The notice of hearing and various statements of charges stated the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statues and rules involved; and the matters asserted.

29. The hearing was held on May 14, May 15, and July 12, 2012, by Administrative Law Judge Sarah G. Ramos at the William P. Clements State Office Building, 300 West 15th Street, Austin, Texas. Staff attorneys Troy Beaulieu and Kyle Wolfe represented Staff. Attorney Sadiyah Evangelista represented Respondent. The record closed on July 24, 2012.

VIII. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to Tex. Occ. Code (Code) ch. 1103.

2. The State Office of Administrative Hearings has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to Tex. Gov't Code chs. 2001 and 2003.

3. Respondent received adequate and timely notice of the hearing, as required by Tex. Gov't Code §§ 2001.051 and 2001.052.

4. Staff had the burden of proof on its allegations. 1 Tex. Admin. Code (TAC) § 155.427.

5. Appraisals must conform to the USPAP standards developed and published by the Appraisal Foundation and in effect at the time the appraisal is performed. Code § 1103.405 and 22 TAC § 155.1(a).

6. Respondent violated the USPAP Standards in preparing the Bellfort and Renee appraisals in 2007.

7. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent violated Code § 1103.405 and 22 TAC § 155.1(a).

8. The Board may suspend or revoke the certification of an appraiser who has failed to comply with the applicable USPAP Standards. Code § 1103.552.

9. The Board's penalty matrix for a second occurrence that does constitute evidence of a serious inability or unwillingness to comply provides for a monetary penalty of $500 to $1,500 per violation with requirement to take remedial course work or to adopt preventive policies and procedures, or both. 22 Tex. Admin. Code §153.24(9).

ALJ'S RECOMMENDATION

- Given the fact that the fourth Renee appraisal demonstrates that Respondent knows how to prepare a proper appraisal, remedial education is not required.

- Respondent should be assessed a monetary penalty of $1,500 each for the Bellfort and Renee appraisals, for a total of $3,000.

- As a preventative measure, Respondent should be restricted from performing any appraisals other than for his employer for a period of one year. In the alternative, if Respondent does not work for an employer, he should be limited to preparing a reasonable number of appraisals per year.

SIGNED September 21, 2012.

Sarah G. Ramos

SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS