

**BEFORE THE NEW MEXICO
REAL ESTATE APPRAISERS BOARD**

IN THE MATTER OF:

Case No. 31, 13-10-30

**PAUL KRESSIN,
License No. 757-R**

Respondent.

FINAL DECISION AND ORDER

THIS MATTER comes before the New Mexico Real Estate Appraisers Board (the “Board”) upon the June 11, 2014, filing of a Notice of Contemplated Action (“NCA”), and subsequent service of the notice with Paul Kressin (“Respondent”).

A hearing before Dean Zantow, designated hearing officer, was held on August 22, 2014, at the Los Alamos Municipal Court Hearing Room, Los Alamos, New Mexico. The hearing officer was assisted by Board counsel, Assistant Attorney General Luis Carrasco. The purpose of the hearing was to take evidence concerning allegations contained in the NCA and related conduct of Respondent. The state appeared through its prosecuting attorney, Sally Galanter. Respondent appeared in person, *pro se*.

On November 6, 2014, during a regularly scheduled and properly noticed meeting, the Board entered into executive session, pursuant to NMSA 1978, Sections 10-15-1(H)(1), (3), to discuss the aforementioned matter. The Board reconvened immediately following its executive session, entered back into open session and made a determination.

Pursuant to the Uniform Licensing Act, Sections 61-1-1 to -34, having reviewed the Hearing Officer's Report, the testimony and exhibits presented during the hearing and duly admitted into the record, the Board hereby finds the following:

FINDINGS OF FACT

The Board hereby adopts and incorporates by reference, as if fully stated herein, the Hearing Officer's Proposed Findings of Fact numbered 1 through 41, such findings being based on the record, testimony, and exhibits from the August 22 hearing.

CONCLUSIONS OF LAW

1. Respondent is licensed as a Residential Certified Appraiser (#757-R) and is subject to the jurisdiction of the Board pursuant to the Uniform Licensing Act; the New Mexico Real Estate Appraisers Act, Sections 61-30-1 to -24; and the New Mexico Real Estate Appraisers Board Rules and Regulations, Title 16, Chapter 65, NMAC.
2. Pursuant to the Real Estate Appraisers Act, Section 61-30-7(L), the Uniform Licensing Act, and rules promulgated pursuant to the Real Estate Appraisers Act, the Board held a proper hearing on the above-referenced matter.
3. Respondent was provided timely notice of the hearing and was advised of his rights, including that he could appear at the hearing in person or through an attorney; that he would have the opportunity to admit evidence, testify, call witnesses, and cross-examine witnesses presented by the administrative prosecutor.
4. There is sufficient support to adopt the findings of the peer review analysis and reports provided by expert witness Karen D. Cuellar.

5. Respondent's appraisal in question included several factual and reporting errors, which included an incorrect property address and indicated zoning, as well as a greater opinion of marketing time than appropriate.
6. Respondent's appraisal also included significant errors, inconsistencies, and areas of disagreement in Respondent's sales comparison approach. These included: incorrect report of the sale price; lack of adequate support for age and condition adjustments; inaccuracies with comparable subject property; and failure to properly account for additional outbuildings.
7. Respondent testified that the age and condition adjustments were excessive and not market supported.
8. Respondent's lack of support for site adjustments and the large age and condition adjustments resulted in a misleading appraisal, and violated the Uniform Standards of Professional Appraisal Practice ("USPAP").
9. The Board has adopted the Uniform Standards of Professional Appraisal Practice pursuant to Rule 16.62.1.8 NMAC.

"The national uniform standards of professional appraisal practice (USPAP) as promulgated by the appraisal standards board of the appraisal foundation, and adopted and incorporated by reference are the minimum requirements. The appraisal standards board's code of professional responsibility, as filed in the federal register, are the minimum professional and ethical standards that will govern appraisers practicing in New Mexico."

10. The Preamble to the Uniform Standards of Professional Appraisal Practice states, in relevant part:

"The purpose of the Uniform Standards of Professional Appraisal Practice (USPAP) is to promote and maintain a high level of public trust in

appraisal practice by establishing requirements for appraisers. It is essential that appraisers develop and communicate their analyses, opinions and conclusions to intended users of their services in a manner that is meaningful and not misleading.”

11. A preponderance of evidence in the record demonstrates that Respondent violated the Preamble to the Uniform Standards of Professional Appraisal Practice.

12. USPAP Standards Rule 1-1 states, in relevant part:

In developing a real property appraisal, an appraiser must:

- a. be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;
- b. not commit a substantial error of omission or commission that significantly affects appraisal; and
- c. not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affect the credibility of those results.

13. A preponderance of evidence in the record demonstrates that Respondent made a substantial error that significantly affected the appraisal in question. As such, Respondent’s conduct constitutes a violation of the Uniform Standards of Professional Appraisal Practice Standard 1-1(a) and (b).

14. USPAP Standards Rule 1-4 states, in relevant part:

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

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

15. A preponderance of evidence in the record demonstrates that Respondent violated Standards Rule 1-4 (a) when he failed analyze adequately comparable sales data when implementing a sales comparison approach.
16. USPAP Standards Rule 1-1(b) states, in relevant part:
 - (b) not commit a substantial error of omission or commission that significantly affects an appraisal.
17. A preponderance of evidence in the report demonstrates that respondent violated Standards Rule 1-1(b) when he made a substantial error in analyzing the effective age and condition of the subject and the comparison properties.
18. USPAP Standard Rule 2-1 states, in relevant part:

Each written or oral real property appraisal report must:

 - (a) Clearly and accurately set forth the appraisal in a manner that will not be misleading.
 - (b) Contain sufficient information to enable the intended users of the appraisal to understand the report properly.
19. A preponderance of evidence in the record demonstrates that Respondent's reports were not clear, were not accurate, and were misleading, all of which exhibit that Respondent violated Standards Rule 2-1 (a) and (b).
20. Failure to comply with USPAP Standard Rules is a violation of the Real Estate Appraisers Act, Section 61-30-15(B).
21. The Board concludes that a preponderance of the evidence reveals that Respondent violated the Uniform Standards of Professional Appraisal Practice and the Real Estate Appraisers Act.

22. Pursuant to Section 61-30-15, the Board is authorized to revoke, suspend, reprimand, or place on probation Respondent's license for violations of the Real Estate Appraisers Act.

ORDER


Based upon these Findings of Fact and Conclusions, a quorum of the Board renders the following order:

IT IS THEREFORE ORDERED that Respondent:

- i. Pay a fine of one thousand dollars (\$1,000.00);
- ii. Pursuant to Section 61-1-4(G), bear costs of the disciplinary proceeding, an amount to be calculated by Board staff; and
- iii. Submit all payments to the Board within ninety (90) days from the date of this Order.

IT IS SO ORDERED.

11/18/2014
DATE



DEAN ZANTOW, CHAIR
ON BEHALF OF THE BOARD

JUDICIAL REVIEW

This Order constitutes a final decision for purposes of initiating any contemplated judicial review pursuant to the provisions of NMSA 1978, Section 39-3-1.1. An aggrieved party has the right to judicial review of this Order by filing a notice of appeal under Rule 1-074 NMRA.

Service copies sent to:

Sally Galanter, Esq.
Administrative Prosecutor
PO Drawer 1508
Santa Fe, NM 87504-1508

Respondent:

Paul Kressin

Mailed to address on file with the Board

Certified Mail to Respondent No.: _____ Date: 11/19/14
Return Receipt Requested 70101670 0000 8692 9987

**BEFORE THE NEW MEXICO REAL ESTATE APPRAISERS BOARD
FOR THE STATE OF NEW MEXICO**

IN THE MATTER OF:

**PAUL KRESSIN,
License No. 757-R**

Case No. 31, 13-10-30

Respondent.

HEARING OFFICER'S REPORT

THIS MATTER came before the duly appointed Hearing Officer, Dean Zantow, at a hearing held on August 22, 2014, at the Los Alamos Municipal Court Hearing Room in Los Alamos, New Mexico. Assistant Attorney General Luis Carrasco was present to advise the hearing officer. Respondent, Mr. Paul Kressin (hereinafter "Respondent"), appeared in person, *pro se*. The State appeared through its Administrative Prosecutor, Assistant Attorney General Sally Galanter. Laura Romero Halama, hearing clerk for the New Mexico Regulation and Licensing Department, was present to record the hearing. The State's exhibits 1 through 5 were entered into the record by stipulation. Respondent's exhibit A was also entered into the record by stipulation.

The Hearing Officer finds as follows:

PROPOSED FINDINGS OF FACT

Based upon the exhibits and testimony provided at the hearing, the Hearing Officer hereby submits the following findings of fact:

1. Respondent was, at all relevant times, licensed by the New Mexico Real Estate Appraisers Board (the "Board") to practice as a Residential Certified Appraiser, license # 757-R, under the New Mexico Real Estate Appraisers Act (the "Act"), NMSA 1978, §§ 61-30-1 to -24 (1990, as amended through 2011).

2. Residential Certified Real Estate Appraisers licensed by the State of New Mexico are subject to the Uniform Standards of Professional Appraisal Practice (“USPAP”) promulgated by the Appraisal Standards Board of the Appraisal Foundation and adopted by rule pursuant to provisions of the Act.

3. Respondent has appraised residential real property for 22 years. [Testimony of Respondent].

4. A complaint against Respondent (Complaint 31, 13-10-30) was received by the Board on or about October 22, 2013. [Exhibit 3, Attachment 2].

5. Respondent has had no prior discipline from the Board. According to Respondent, this was the first complaint ever filed against Respondent. [Testimony of Respondent].

6. The complaint, which is the basis of this matter, concerns an appraisal of the real property located at 27 Heritage Road, Edgewood, New Mexico 87015 (hereinafter “subject” or “subject property”), which was performed by Respondent on May 6, 2013. [Exhibit 3, Attachment 2]; [Testimony of Respondent].

7. The subject property is a 26-year-old manufactured home containing 2,428 square feet situated on a 5.42 acre site. [Exhibit 3, Attachment 1]; [Testimony of Respondent].

8. The appraisal was performed for a lender/client to evaluate the property for a mortgage finance transaction in conjunction with the sale of the subject property. [Exhibit 3, Attachment 1].

9. The contract sale price was \$200,000; the sale was between two neighbors and was not an arm’s length transaction. [Exhibit 3, Bates Stamped APP PK 72]; [Exhibit 4].

10. Respondent appraised the value of the subject property at \$195,000 as of May 6, 2013. [Exhibit 4]; [Testimony of Respondent].

11. Respondent submitted two appraisal reports with the same effective date and the same report date. The second report corrected some reporting inconsistencies. [Exhibit 3, Attachment 1]; [Exhibit 4].

12. The complaint stated, in summary, as follows [Exhibit 3, Attachment 2]:

- a. The subject is a 26-year-old manufactured home with no reported updates.
- b. An internal review by the lender caused the appraisal report to be forwarded for review to the lender's staff appraiser, Karen D. Cuellar.
- c. All of the comparison properties used in Respondent's appraisal were 8 to 20 years newer than the subject.
- d. Based on the MLS comments and photos, the comparison properties appeared to be in at least similar condition to the subject, if not superior.
- e. The appraisal applied a positive, straight line adjustment from \$34,000 to \$64,000 to all of the comparables with no support.
- f. The appraisal had unsupported site adjustments.

13. The complaint alleged that, overall, "the appraisal lacks credibility and appears misleading." [Exhibit 3, Attachment 2].

14. Respondent was notified of the complaint by the New Mexico Regulation and Licensing Department via certified letter dated November 4, 2013. Respondent received the letter on November 6, 2013. [Exhibit 3, Attachment 4].

15. On November 15, 2013, Respondent submitted a response to the complaint. [Exhibit 3, Attachment 5].

16. The Board issued a Notice of Contemplated Action ("NCA") to Respondent on or about June 11, 2014. [Exhibit 2].

17. In response to the NCA, Respondent requested a hearing in this matter, which was held at 9:30 AM on August 22, 2014, in the Los Alamos Municipal Court Hearing Room, Los Alamos, New Mexico. The presiding Hearing Officer was Dean Zantow, Board Chairman.

18. Karen D. Cuellar, staff appraiser for Wells Fargo Bank and review appraiser for the subject appraisal report, was physically present at the hearing and testified under oath. Ms. Cuellar stated that she is a residential appraiser in Albuquerque, she is an FHA approved appraiser, an AQB Certified USPAP Instructor, and she previously served on the New Mexico Real Estate Appraiser's Board. She has been licensed since 1990. [Testimony of Ms. Cuellar].

19. Ms. Cuellar was accepted as a real estate appraiser expert by the Hearing Officer.

20. Ms. Cuellar testified in detail as to the USPAP guidelines as well as her review of the appraisal report prepared by the Respondent.

21. Ms. Cuellar performed a USPAP Standard 3 review of the Respondent's appraisal report. Ms. Cuellar stated that her assignment was to perform a "desk review" of Respondent's appraisal report and stated that she never actually visited the property. Ms. Cuellar reviewed Respondent's report for quality, accuracy, and reasonableness, and also verified the information contained in the report. [Testimony of Ms. Cuellar].

22. Ms. Cuellar performed her review on the first appraisal submitted by Respondent, which is the appraisal contained in Exhibit 4. [Testimony of Ms. Cuellar].

23. Ms. Cuellar testified that she had not seen the revised appraisal report until the hearing.

24. Ms. Cuellar documented her findings, conclusion, and opinions in her review report; she extended to her analysis, by use of an extraordinary assumption, credible information from the report under review. [Exhibit 3, Attachment 3].

25. Ms. Cuellar testified in detail as to her analysis and review of Respondent's appraisal, concluding that the appraisal of the property at issue violated multiple sections of USPAP.

26. Ms. Cuellar testified to the following factual and/or reporting errors in Respondent's report:

- a. The address of the subject property was incorrectly reported.
- b. Based on independent research, Ms. Cuellar concluded a longer opinion of marketing time than Respondent's marketing time opinion.
- c. Zoning was incorrectly stated in Respondent's report.

27. Ms. Cuellar noted the following significant errors, inconsistencies, and areas of disagreement in Respondent's sales comparison approach:

- a. Comp 1: Respondent incorrectly reported the sale price as \$140,000; it was \$135,000. Respondent failed to report sales concessions of \$1,500 as reported by the MLS. [Testimony of Ms. Cuellar]; [Exhibit 3, Bates Stamped APP PK 46].
- b. Comp 4: This property sat on 40-acres, and according to Ms. Cuellar, was not comparable to the subject property. Respondent did not report additional outbuildings which included a 24' x 24', insulated and heated workshop. [Testimony of Ms. Cuellar]; [Exhibit 3, Bates Stamped APP PK 46].
- c. Comp 5: This property was an REO (real estate owned) sale with \$4,850 in sales concessions; neither were reported by Respondent. The house was also 10 years younger than the subject. [Testimony of Ms. Cuellar]; [Exhibit 3, Bates Stamped APP PK 46].

d. Site Adjustments: Ms. Cuellar reported her study comparing median prices for 2-3 acre sites with 4-6 acre sites; here study indicated an adjustment factor of \$5,000, suggesting that Respondent's site adjustments were high. [Testimony of Ms. Cuellar]; [Exhibit 3, Bates Stamped APP PK 46].

28. In Ms. Cuellar's opinion, comps 4 and 5 were not good comparisons for the subject property.

29. Respondent used effective age as a proxy for "condition" as evidenced by the following:

a. Respondent reported the subject's actual age as 26-years-old and estimated the subject's effective age as 16-years-old. [Exhibit 4].

b. The comparison sales were all newer than the subject (actual age); however, Respondent estimated the effective ages for the comparison sales at 26-years, 25-years, 30-years, 27-years, and 33-years. This resulted in positive, "across the grid", effective age (condition) adjustments for the comparable sales of \$38,000, \$34,200, \$53,200, 41,800 and \$64,600, respectively. [Exhibit 4].

30. Ms. Cuellar noted that the large age/condition adjustments were not supported by the facts and resulted in a significantly higher indicated value for the subject property.

31. Respondent's report did not include an estimate of reasonable exposure time as required by USPAP. [Testimony of Ms. Cuellar].

32. Ms. Cuellar did not discover any better sales but did "re-adjust" the sales used by the Respondent in his sales comparison analysis. [Testimony of Ms. Cuellar].

33. Ms. Cuellar's opinion of the subject property's value, as of the effective date, was \$142,000. [Exhibit 3, Attachment 3]; [Testimony of Ms. Cuellar].

34. Ms. Cuellar noted that the lack of support for the site adjustments and the large, unsupported age/condition adjustments, resulted in a misleading appraisal.

35. Respondent's revised appraisal report includes a scatter chart that shows the relationship between lot size and price per acre as support for the site value estimate and site adjustments. [Exhibit 3, Attachment 1].

36. Respondent's revised appraisal report includes a narrative discussion of his effective age methodology. [Exhibit 3, Attachment 1].

37. Respondent's revised appraisal report addendum contains a narrative statement that ". . . the majority of sales of manufactured homes in this area are in the \$120,000 to \$150,000 range. Hence, at the contract price, the subject property is considered one of the highest prices in the area for a manufactured home." [Exhibit 3, Bates Stamped APP PK 12].

38. At the hearing, Respondent testified that no one met him on his initial site visit and that he had to make two visits to the subject property.

39. Respondent's work file contains progress report notes. Respondent testified that the work file notes were made after his initial visit to the property but before he had an opportunity to view the interior. The work file notes say, in part: "I've run the comparables in a confined over the last year and these have a range of 100,000 to 234,000. The \$234,000 property has 40 acres and is of the top condition for manufactured housing in Edgewood and the surrounding area. After applying the appraisal principles with the assumption that the interior of the subject property is in good condition and of the higher and quality for manufactured home, I am still coming in under the sales price of 200,000 by quite a bit. My preliminary number is in the 155,000 range. Though

I will look at this again once I have inspected the inside of the property, it will be difficult I think, for the value to be near purchase price.” [Exhibit 3, Bates Stamped APP PK 119].

40. At the hearing, Respondent testified in person and under oath that the age/condition adjustments he made were excessive and not market supported. [Testimony of Respondent].

41. Respondent introduced as evidence a summary of his recent medical visit and medications. [Exhibit A]. He indicated that the medications may have been, at least in part, responsible for his defensive response to the reviewer’s report as well as his response to the initial complaint that was submitted to the Board.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Dean Zantow", is written over a horizontal line.

Dean Zantow
Hearing Officer