

Before the
New Hampshire Board of Real Estate Appraisers
Concord, New Hampshire 03301

In The Matter Of:

Case No.: 10.30

James L. Cassell
License No.: NHCR-820
(Adjudicatory/Disciplinary Proceeding)

FINAL DECISION AND ORDER

Before the New Hampshire Board of Real Estate Appraisers (“Board”) is an adjudicatory/disciplinary proceeding in In the Matter of James L. Cassell (“Respondent” or “Mr. Cassell”) in Docket Number 10.30.

Background Information:

On or about September 7, 2010, a grievance was filed with the Board’s office. The grievance involved an appraisal written by the Respondent on a property located at 180 Clinton Street, Concord, NH 03301. Subsequent to an investigation, on May 18, 2011, the Board issued a Notice of Hearing scheduled for August 12, 2011. On July 8, 2011 an Amendment to Notice of Hearing was issued changing the time of the hearing from 10:00 a.m. to 1:00 p.m. This hearing indeed occurred on August 12, 2011.

On Friday, August 12, 2011, at 10:50 a.m., the Board commenced with the adjudicatory/disciplinary hearing in the above captioned matter. Board members present¹ were:

Brian Underwood, CRE, Appraiser Member (Certified General Appraiser), Chairperson,
Presiding Officer
Kathy Hildreth, Banking Commissioner Designee Member
Len Gerzon, Public Member
Rick Burgess, NH Lending Institution Representative Member
Kevin Fritschy, Appraiser Member (Certified Residential Appraiser)

¹ These same Board members also deliberated and voted on this Final Decision and Order.

The Grievance Officer was recused Board Member Peggy Gallus (Real Estate Appraiser). The Respondent did not appear for the hearing.

The following exhibits were introduced into evidence and accepted into the record:

- Hearing Counsel's exhibits: 1 – Grievance
 - 2 – Appraisal Report
 - 3 – Investigative Review Report
 - 4 – Mr. Cassell's Workfile
 - 5 – NHREAB Rules and Statutes
 - 6 – 2010 USPAP Manual
- The Respondent's exhibits: A – A letter from the Respondent dated 08/10/2011

Findings of Fact:

The Board heard testimony from Kenneth Currier, MAI, of Atlantic Valuation Consultants, Inc. an investigator the Board's Grievance Officer assigned to this grievance. Mr. Currier submitted an Appraisal Review Report ("ARR") to the Board on December 22, 2010. This ARR was the basis for the Board to issue the Notice of Hearing and is incorporated within the Notice of Hearing as the allegations. The Board finds Mr. Currier's testimony at the hearing was professional, forthright, and credible.

The Board also heard a letter from the Respondent that was read into the record. The hearing was held in absentia.

In light of the testimony and exhibits, the Board finds the following facts:

1. The Respondent was granted a certificate to complete residential appraisals in the State of New Hampshire on September 24, 2008. The Respondent's license status is current.
2. On June 1, 2010, the Respondent appraised a property located at 180 Clinton Street, Concord, NH 03301.

3. There were five major violations of the Uniform Standards of Professional Appraisal Practice (USPAP). There are as follows:
- a. Standards Rule 1-2g: identify any hypothetical conditions necessary in the assignment – The appraiser failed to identify the hypothetical conditions of a proposed kennel project in the appraisal report.
 - b. Standards Rule 1-4a: When a sales comparison approach is necessary for credible assignment results, an appraiser must analyze such comparable sales data are available to indicate a value conclusion. – The appraiser failed to identify truly comparable sales (comparables were available) in the appraisal report.
 - c. Standards Rule 1-4b: When a cost approach is necessary for credible assignment results, an appraiser must: (i) develop an opinion of site value by an appropriate appraisal method or technique; (ii) analyze such comparable cost data as are available to estimate the cost new of the improvements (if any); and (iii) analyze such comparable data as are available to estimate the difference between the cost ne and the present worth of the improvements (accrued depreciation). – The appraiser did not develop a reliable cost approach which resulted in a misleading appraisal report.
 - d. Standards Rule 1-4c: When an income approach is necessary for credible assignment results, an appraiser must: (i) analyze such comparable rental data as are available and/or the potential earnings capacity of the property to estimate the gross income potential of the property; (ii) analyze such comparable operating expense data as are available to estimate the operating expenses of the property; (iii) analyze such comparable data as are available to estimate rates of capitalization and/or rates of discount; and (iv) base projections of future rent and/or income potential and expenses on reasonably clear and appropriate evidence. – The appraiser failed to develop an income approach utilizing his own, independently verified income and expense projects. Rather, he relied solely on the owner's projections without any support or analysis. This resulted in an overstatement of the appraised value with no market support, justification, or rationale.
 - e. Standards Rule 1-4g: When personal property, trade fixtures, or intangible items are included in the appraisal, the appraiser must analyze the effect on value of such non-real property items. – The appraiser failed to analyze the effect of the furniture, fixtures, and equipment (FF&E) required to operate the proposed kennel. Furthermore, because the appraisal was based on the going concern value, the FF&E would be a significant component of the overall value which was ignored in the appraisal report.
 - f. Standards Rule 1-2a: identify the client and other intended users; - The client is not identified.

- g. Standards Rule 1-2b: identify the intended use of the appraiser's opinions and conclusions; - The appraiser failed to identify the intended use.
- h. Standards Rule 1-2c: identify the type and definition of value, and, if the value opinion to be developed is market value, ascertain whether the value is to be the most probable price: (i) in terms of cash; or (ii) in terms of financial arrangements equivalent to cash; or (iii) in other precisely defined terms; and (iv) if the opinion of value is to be based on non-market financing or financing with unusual conditions or incentives, the terms of such financing must be clearly identified and the appraiser's opinion of their contributions to or negative influence on value must be developed by analysis of relevant market data. – The appraiser did not develop or support a reasonable exposure time.
- i. Standards Rule 1-2e: identify the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal, including: (i) its location and physical, legal, and economic attributes; (ii) the real property interest to be valued; (iii) any personal property, trade fixtures, or intangible items that are not real property but included in the appraisal; (iv) any known easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of a similar nature; and (v) whether the subject property is a fractional interest, physical segment, or partial holding. – There were no details on the real estate market in general or on commercial kennel / veterinary hospitals in particular. Furthermore, there was no analysis of FF&E and its contributory value to the overall appraised value. The appraiser failed to analyze the impact of zoning approvals and expirations. The appraiser failed to note litigation related to sewerage disposal on the property.
- j. Standards Rule 1-2f: identify any extraordinary assumptions necessary in the assignment; - There were no extraordinary assumptions identified. Final approvals for the existing and proposed uses were not granted at the time of the report. A pump to the septic system had failed and is not known if it was corrected. Assumptions about the supply and demand for commercial kennel/veterinary hospitals were not adequately presented.
- k. Standards Rule 1-3b: develop an opinion of highest and best use of the real estate. – The highest and best use does not address the uses allowed by the zoning or permits required for the proposed use. The appraiser stated: “..it is felt that the property is physically and legally permissible...” when in fact no approvals for any commercial uses had been granted at the time of the appraisal.
- l. Standards Rule 1-4g: When personal property, trade fixtures, or intangible items are included in the appraisal, the appraisal must analyze the effect on value of such non-real property items. – The appraiser failed to discuss, identify, or analyze any items in Standards Rule 1-4g.

- m. Standards Rule 2-2b: The content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum: (i) state the identity of the client and any intended users, by name or type; (ii) state the intended use of the appraisal; (iii) summarize information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment; (iv) state the real property interest appraised; (v) state the type and definition of value and cite the source of the definition; (vi) state the effective date of the appraisal and the date of the report; (vii) summarize the scope of work used to develop the appraisal; (viii) summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions; 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 appraiser, summarize the support and rationale for 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 Standards Rule 2-3. – The certification on page 8 of the appraisal report is not signed. The property interest appraised is not defined. The definition of value does not cite a source. There are no extraordinary assumptions identified. Scope of work is a generic statement. No details were found in the appraisal regarding the real estate market or commercial kennel / veterinary hospitals. Description of the proposed improvements consists of two sentences and is inadequate given the size and scope of the proposed improvements. The subject property has a residential use on the second floor and no commercial uses are allowed above the first floor. All comparable sales are commercial properties, except Sale #5 which has a residence on the property. No adjustments or discussion on this difference are in the report. The comparable sales selected were not applicable to the proposed use and are considered misleading.
- n. Ethics Rule: An appraiser must promote and preserve the public trust inherent in appraisal practice by observing the highest standards of professional ethics. An appraiser must comply with USPAP when obligated by law or regulation, or by agreement with the client or intended users. In addition to these requirements, an individual should comply any time that individual represents that he or she is performing the service as an appraiser. – The appraiser prepared a report that, on the whole appears to have bias toward developing a high value for the property. The appraisal report is found to be misleading and fraudulent. The appraisal report was written in a grossly negligent manner. The appraiser was not qualified; nor did he hold a Certified General License that would allow him to appraise this property type.
- o. Competency Rule: An appraiser must be competent to perform the assignment; acquire the necessary competency to perform the assignment; or decline or withdraw from the assignment. – The appraiser did not hold the necessary license

to appraise this proposed commercial property. The appraiser is found not to be competent to appraise the proposed property type. The appraiser did not acquire the necessary competency to perform the assignment.

Rulings of Law:

Applicable Laws:

RSA 310-B:18 Disciplinary Proceedings states in pertinent part:

The board may revoke or suspend a licensure or certification; may assess a fine of not more than \$2,000 per violation or, in the case of a continuing violation, \$100 for each day the violation continues, whichever would be greater; may require mandatory completion of continuing education; or may take any combination of the preceding actions, relating to any real estate appraiser, in accordance with the provisions of this chapter, upon any of the grounds set forth in this section for any of the following acts or omissions:

...

VII. Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal.

VIII. Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal, as determined by the board.

RSA 310-B:18-a Standards for Professional Conduct states:

For purposes of RSA 310-B:18, the Uniform Standards of Professional Appraisal Practice (USPAP) ethical and professional conduct standards in effect at the time of the appraisal assignment shall be the ethical and professional conduct standards to be followed at the time of any violation.

Rab 501.01 Purpose states:

The purpose of this chapter is to establish a New Hampshire code of ethics by which all licensed and certified real estate appraisers shall abide. This code is, pursuant to RSA 310-B:18-a, as set forth in the then-current version of USPAP.

- i. USPAP Standards Rule 1-2g States the need identify any hypothetical conditions necessary in the assignment.
- ii. USPAP Standards Rule 1-4a states that when a sales comparison approach is necessary for credible assignment results, an appraiser must analyze such comparable sales data are available to indicate a value conclusion.
- iii. USPAP Standards Rule 1-4b states that when a cost approach is necessary for credible assignment results, an appraiser must: (i) develop an opinion of site value by an appropriate appraisal method or technique; (ii) analyze such comparable cost data as are available to

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

- iv. USPAP Standards Rule 1-4c state that when an income approach is necessary for credible assignment results, an appraiser must: (i) analyze such comparable rental data as are available and/or the potential earnings capacity of the property to estimate the gross income potential of the property; (ii) analyze such comparable operating expense data as are available to estimate the operating expenses of the property; (iii) analyze such comparable data as are available to estimate rates of capitalization and/or rates of discount; and (iv) base projections of future rent and/or income potential and expenses on reasonably clear and appropriate evidence.
- v. USPAP Standards Rule 1-4g states that when personal property, trade fixtures, or intangible items are included in the appraisal, the appraiser must analyze the effect on value of such non-real property items.
- vi. USPAP Standards Rule 1-2a states that an appraiser must identify the client and other intended users; - The client is not identified.
- vii. USPAP Standards Rule 1-2b states that an appraiser must identify the intended use of the appraiser's opinions and conclusions.
- viii. USPAP Standards Rule 1-2c states that an appraiser must identify the type and definition of value, and, if the value opinion to be developed is market value, ascertain whether the value is to be the most probable price: (i) in terms of cash; or (ii) in terms of financial arrangements equivalent to cash; or (iii) in other precisely defined terms; and (iv) if the opinion of value is to be based on non-market financing or financing with unusual conditions or incentives, the terms of such financing must be clearly identified and the appraiser's opinion of their contributions to or negative influence on value must be developed by analysis of relevant market data.
- ix. USPAP Standards Rule 1-2e states that an appraiser must identify the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal, including: (i) its location and physical, legal, and economic attributes; (ii) the real property interest to be valued; (iii) any personal property, trade fixtures, or intangible items that are not real property but included in the appraisal; (iv) any known easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of a similar nature; and (v) whether the subject property is a fractional interest, physical segment, or partial holding.
- x. USPAP Standards Rule 1-2f states that an appraiser must identify any extraordinary assumptions necessary in the assignment;

- xi. USPAP Standards Rule 1-3b states that an appraiser must develop an opinion of highest and best use of the real estate.
- xii. USPAP Standards Rule 1-4g states that when personal property, trade fixtures, or intangible items are included in the appraisal, the appraisal must analyze the effect on value of such non-real property items.
- xiii. USPAP Standards Rule 2-2b states that The content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum: (i) state the identity of the client and any intended users, by name or type; (ii) state the intended use of the appraisal; (iii) summarize information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment; (iv) state the real property interest appraised; (v) state the type and definition of value and cite the source of the definition; (vi) state the effective date of the appraisal and the date of the report; (vii) summarize the scope of work used to develop the appraisal; (viii) summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions; 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 appraiser, summarize the support and rationale for 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 Standards Rule 2-3
- xiv. The Ethics Rule state that an appraiser must promote and preserve the public trust inherent in appraisal practice by observing the highest standards of professional ethics. An appraiser must comply with USPAP when obligated by law or regulation, or by agreement with the client or intended users. In addition to these requirements, an individual should comply any time that individual represents that he or she is performing the service as an appraiser.
- xv. The Competency Rule states that an appraiser must be competent to perform the assignment; acquire the necessary competency to perform the assignment; or decline or withdraw from the assignment.

Rulings:

The Board makes the following findings by a preponderance of the evidence:

1. The Board finds that the respondent has Violated Standards Rule 1-2g.
2. The Board finds that the respondent has Violated Standards Rule 1-4a.
3. The Board finds that the respondent has Violated Standards Rule 1-4b.

4. The Board finds that the respondent has Violated Standards Rule 1-4c.
5. The Board finds that the respondent has Violated Standards Rule 1-4g.
6. The Board finds that the respondent has Violated Standards Rule 1-2a.
7. The Board finds that the respondent has Violated Standards Rule 1-2b.
8. The Board finds that the respondent has Violated Standards Rule 1-2c.
9. The Board finds that the respondent has Violated Standards Rule 1-2e.
10. The Board finds that the respondent has Violated Standards Rule 1-2f.
11. The Board finds that the respondent has Violated Standards Rule 1-3b.
12. The Board finds that the respondent has Violated Standards Rule 1-4g.
13. The Board finds that the respondent has Violated Standards Rule 2-2b.
14. The Board finds that the respondent has Violated Ethics Rule.
15. The Board finds that the respondent has Violated Competency Rule.

Disciplinary Action:

Based upon the Findings of Facts and Rulings of Law above, the Board has voted to order the following:

IT IS ORDERED that the Respondent is **REPRIMANDED**.

IT IS FURTHER ORDERED that the Respondent is assessed an **ADMINISTRATIVE FINE** in the amount of eleven thousand dollars (\$11,000.00) due within thirty (30) days of the effective date of this Order. The payment shall be made in the form of a money order or bank check made payable to "Treasurer, State of New Hampshire" and delivered to the Board's office at the Joint Board, 57 Regional Drive, Concord, NH 03301.

IT IS FURTHERED ORDERED that the Respondent completes a Residential Income Approach Course, an Ethics Course, a Highest and Best Use Course, and a 15 hour USPAP course due within ninety (90) days of the effective date of this order. Within fifteen (15) days of completing each course, Respondent shall notify the Board and provide written proof of completion.

IT IS FURTHER ORDERED that the Respondent license is immediately suspended from the effective date of the order as further defined below; this suspension shall only be lifted by further order of the Board. The two pre-conditions to lifting this suspension is: (1) payment in full of the administrative fine; and (2) providing written proof of the requisite courses.

IT IS FURTHER ORDERED that the Respondent's failure to comply with any terms or conditions imposed by this Final Decision and Order shall constitute unprofessional conduct pursuant to RSA 329:17, VI (d), and a separate and sufficient basis for further disciplinary action by the Board against the Respondent.

IT IS FURTHER ORDERED that this Final Decision and Order shall become a permanent part of the Respondent's file, which is maintained by the Board as a public document.

IT IS FURTHER ORDERED that this Final Decision and Order shall take effect as an Order of the Board on the date an authorized representative of the Board signs it.

*\BY ORDER OF THE NEW HAMPSHIRE BOARD OF REAL ESTATE APPRAISERS

Date: 1/23/2012


(Signature)

Louise Lavertu, Executive Director
Authorized Representative of the
New Hampshire Real Estate Appraisers Board

*\ Peggy Gallus, Board member, recused.