

BEFORE THE REAL ESTATE APPRAISER EXAMINING BOARD  
OF THE STATE OF IOWA

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IN THE MATTER OF:	)	CASE NO. 04-47
	)	DIA NO. 04DOCRE010
JAMES O. ANDERSON	)	
CERTIFICATE NO. CR01253	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
RESPONDENT	)	DECISION AND ORDER

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On July 28, 2004, the Iowa Real Estate Appraiser Examining Board (Board) found probable cause to file a Statement of Charges against James O. Anderson (Respondent). The Statement of Charges alleged that the Respondent violated a Consent Order imposing discipline, in violation of Iowa Code section 272C.3(2)(a)(2003), and engaged in a practice harmful or detrimental to the public, in violation of Iowa Code section 272.10(3)(2003).

A prehearing conference was held by telephone conference call on September 30, 2004 at 1:30 p.m. The hearing was held before the Board on October 22, 2004 at 9:00 a.m. The Respondent appeared and was not represented by counsel. Pamela Griebel, Assistant Attorney General, represented the state of Iowa. The following Board members were present for the hearing: Richard Koestner, Appraiser, Chairperson; Richard DeHeer, Appraiser; Karen Oberman, Appraiser; Luther C. Gammon, Appraiser; and David Erickson and Barbara Leestamper, Public Members. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, assisted the Board in conducting the hearing. A certified court reporter recorded the proceedings.

The hearing was closed to the public at the election of the Respondent, pursuant to Iowa Code section 272C.6(1)(2003) and 193 IAC 7.25(2). After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2003) to deliberate its decision. The members of the Board instructed the administrative law judge to prepare the Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

THE RECORD

The record includes the State's Prehearing Conference Report, Continuance Order, the testimony of the witnesses, and the following exhibits:

- State Exhibit 1: Statement of Charges, Notice of Hearing, Service
- State Exhibit 2: Consent Order
- State Exhibit 3: Appraisal, 1300 Grandview Ave.
- State Exhibit 4: Review Report, 4/1/04, 1300 Grandview Ave.
- State Exhibit 5: Appraisal, 2608 S.E. 8<sup>th</sup>
- State Exhibit 6: Review Report, 4/2/04, 2608 S.E. 8<sup>th</sup>
- State Exhibit 7: Certified Letter, 4/7/04 (Board to Respondent)
- State Exhibit 8: Letter, 4/22/04 (Board to Respondent)
- State Exhibit 9: Letter, 5/3/04; E-mail, 5/12/04 (Larson to Board)
- State Exhibit 10: Certified Letter, 5/27/04 (Board to Respondent)
- State Exhibit 11: Revised Appraisal, 1300 Grandview
- State Exhibit 12: E-mail (Larson to Board)
- State Exhibit 13: Letter, 4/21/04 (Respondent to Board), with revised appraisal
- State Exhibit 14: Log
- State Exhibit 15: Continuing Education
- Respondent Exhibit A: Written Statement, 9/23/04 (Carl and Angie Kaskie To Whom It May

Concern); Letter, 6/2/04  
(Respondent to Board)<sup>1</sup>

Respondent Exhibit B: Continuing Education (52 hours)

#### FINDINGS OF FACT

1. On January 2, 1992, the Respondent was issued Certificate No. CR01253 to practice as a certified residential real estate appraiser in the state of Iowa. (State Exhibit 1)

2. On December 18, 2003, the Board charged the Respondent with repeated failure to adhere to appraisal standards, failure to exercise reasonable diligence, demonstrated negligence or incompetence in the development, preparation, and communication of four appraisals, in violation of Iowa Code sections 543D.17(1)(d), (e), and (f), and 543D.18(1)(2003), and 193F IAC 7.2(5). (Testimony of Susan Griffel; State Exhibit 2)

On January 8, 2004, the Respondent and the Board entered into a Consent Order, in resolution of the Statement of Charges. The Respondent voluntarily waived his right to a hearing on the charges and agreed to comply with the requirements of the Consent Order. The Consent Order became a part of the Respondent's permanent record.

Pursuant to the terms of January 8, 2004 Consent Order, the Respondent was required to:

a. Complete the following educational courses by June 1, 2004 and provide certificates of completion to the Board:

- (1) a 15-hour tested USPAP course;
- (2) a 30 hour pre-approved classroom course on the three approaches to value.

b. Enter into a desk review consultation agreement with a Board-approved desk review appraiser, within 20 calendar days of the signed Consent Order. The Respondent was required to select two appraisals each month to be desk

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<sup>1</sup> Exhibit A is not relevant to the Board's decision in this case because it concerns one of four appraisals at issue in the first Statement of Charges filed against the Respondent. The Respondent had the right to a contested case hearing on the first Statement of Charges and elected instead to resolve the charges through the Consent Order. The Consent Order was final in January 2004. It is too late for the Respondent to challenge the Board's factual basis for the first Statement of Charges.

reviewed for facial compliance with USPAP and to provide the reviewing appraiser copies of all documents verifying the accuracy of the factual representations in each draft appraisal. By the tenth of each month, the Respondent was required to submit a monthly log of all appraisals completed the previous month, designating those appraisals submitted for desk review.

The desk review was to be completed *before* the final documents were signed and submitted to the client. The desk reviewer's recommended revisions or corrections, if any, were to be incorporated into each appraisal report *prior* to its release to the client.

The Respondent was required to provide the Board with copies of his initial appraisal report and the final version issued following desk review, within ten days of the date it was finalized.

(Testimony of Susan Griffel; State Exhibit 2)

3. The Consent Order provided that the Respondent could petition the Board for release from the desk review requirement after:

- a. The education requirements have been satisfied;
- b. A minimum of six (6) appraisals have been reviewed;
- c. The Board has received copies of all initial and final versions of reviewed appraisals; and
- d. The Board received copies of all desk review reports;

However, the Respondent would be released from the desk review requirement only if the draft appraisals and review comments did not reveal serious deviations from minimum appraising standards.

(Testimony of Susan Griffel; State Exhibit 2)

#### *Educational Requirements*

4. The Respondent completed the required 15-hour USPAP course on May 2, 2004, within the deadline established in the Consent Order. (Testimony of Respondent; Susan Griffel; State Exhibit 15)

5. The Respondent failed to complete a thirty (30) hour pre-approved classroom course on the three approaches to value prior to June 1, 2004.

Susan Griffel is the Board's Executive Officer and also serves as the Education Director for the Iowa Real Estate Commission. She is the person who was designated to pre-approve the courses selected by the Respondent on the three approaches to value. However, the Respondent has never asked Susan Griffel or the Board to pre-approve any course for the purpose of fulfilling this educational requirement.

The Respondent attended educational courses totaling thirty-seven (37) hours, both before and after the June 1, 2004 deadline. Susan Griffel has now reviewed the course information submitted by the Respondent and has determined that only twenty-two (22) of these hours were approvable. The remaining fifteen (15) hours did not address the three approaches to value.

a. On March 29, 2004, the Respondent attended a seven (7) hour course entitled "Scope of Work: Expanding Your Range of Services." Susan Griffel would not have approved this course.

b. On May 11, 2004, the Respondent attended a seven (7) hour course entitled "Approaches to Value-The Sales Comparison Approach." Susan Griffel would have approved this course.

c. On May 18, 2004, the Respondent attended an eight (8) hour course entitled "Appraisal & Marketing." Susan Griffel would not have approved this course to satisfy the requirements of the Consent Order. This is an introductory course designed for aspiring real estate brokers and includes only a very general overview of appraising. It is not an appropriate course for teaching an experienced appraiser how to apply the three approaches to value.

d. On June 13, 2004, the Respondent completed a fifteen (15) hour course entitled "Financial Analysis of Income Property." Susan Griffel would have approved this course.

(Testimony of Susan Griffel; Respondent; State Exhibit 15; Respondent Exhibit B)

#### *Desk Review Requirements*

6. The Respondent did not satisfy the desk review requirements established in the Consent Order. The Consent Order required the Respondent to enter into an agreement with a desk reviewer

by January 28, 2004 and to submit a minimum of two appraisals for desk review each month, beginning in February 2004.

The Board approved certified residential real estate appraiser Nancy Larson to serve as the Respondent's desk reviewer. Ms. Larson owns an appraisal company, where she employs and supervises a staff of nine appraisers. She has served two three-year terms on the Board. On February 27, 2004, the Respondent faxed the Consent Order to Ms. Larson for her review, and they signed a desk review agreement on March 1, 2004. The Respondent did not submit any appraisal reports to Larson for desk review until March 25 or 26, 2004. (Testimony of Nancy Larson; Susan Griffel)

7. On March 29, 2004, the Respondent signed an appraisal report for a residential property located at 1300 Grandview Avenue in Des Moines and released it to the client prior to desk review, in violation of the terms of the Consent Order. Nancy Larson received the appraisal report for the Grandview property for desk review on either March 25 or March 26, 2004. On April 1, 2004, she issued an Appraisal Review Report identifying deficiencies that needed to be corrected.

a. The Respondent failed to state the report option used or to identify the users of the report. The zoning classification was incomplete, and the report failed to properly identify the property as a corner lot. The property's proximity to a college, which could affect its value, was not even addressed.

b. In the Cost Approach, the Respondent provided an estimated remaining economic life for the property of 26 years, but then took an inconsistent physical depreciation for the property. Ms. Larson noted that a typical lender will not loan money on a dwelling with less than 30 years of remaining economic life and that the Cost Approach is less relevant with an older home. The Respondent used the construction cost figure for "good" construction (\$84.22/sq. ft), but the appraisal showed the home to be only of "average" construction (\$63.90/sq.ft.).

c. There was inaccurate information in the comparable sales used by the Respondent. Sale #1 was reported as having a site of 21280 SF, when it was actually 7280 SF. The Respondent failed to note that the home had 700 square feet basement finish, was fenced, and had a 274 SF deck. The Respondent failed to state that Sale #2 had a large

covered patio and a fenced yard or that Sale #3 had 200 SF of basement finish. The Respondent indicated that all sales were estimated to be on the market 110 days, but the Multiple Listing Service (MLS) indicated that Sale 1 was on the market 5 days; Sale 2 was on the market 14 days; and Sale 3 was on the market 74 days.

d. The Respondent missed a lot of information because he did not have access to the Multiple Listing Service (MLS) or the respective listing/selling agents, but relied totally on assessor's data. The Respondent has been relying solely on courthouse records for information, which are often outdated and do not usually provide adequate or accurate information about the property without reference to other sources, such as the MLS and listing or selling agents. The desk reviewer recommended that the Respondent join the MLS or affiliate himself with someone who does belong.

(Testimony of Nancy Larson; State Exhibits 3, 4)

8. On March 25, 2004, the Respondent signed an appraisal report for a residential property located at 2608 S.E. 8<sup>th</sup> Street in Des Moines. Nancy Larson issued an Appraisal Review Report on April 2, 2004, approximately one week after the Respondent provided his appraisal report for desk review.

a. The Respondent failed to state the report option used or to identify the users of the report. The zoning classification was incomplete.

b. In the Cost Approach, the Respondent took a physical depreciation for the property that was inconsistent with its estimated remaining economic life. The Respondent did not use the relevant construction cost for average construction of a 1000 square foot residence per the Marshall & Swift Residential Cost Handbook.

c. There was inaccurate information in the comparable sales used by the Respondent. Sale #1 was reported as having a site of 11623 SF, when it was actually 8673 SF. The Respondent failed to note that the home had 430 square feet basement finish plus a  $\frac{3}{4}$  bath. Sale #2 was reported as having a site of 4940 SF, when it was actually 9552 SF. This home also had 400 SF basement finish and a fence. The Respondent indicated that all sales were estimated to be on the market 110 days, but the Multiple Listing Service (MLS) indicated that Sale 1 was on the market 93 days; Sale 2 was

on the market 57 days; and Sale 3 was on the market 21 days. The site adjustments and finish adjustments were incorrect.

d. Once again, the Respondent missed a lot of information because he did not have access to Multiple Listing Service or the respective listing/selling agents, but relied totally on assessor's data. The desk reviewer recommended that the Respondent join the MLS or affiliate himself with someone who does belong.

(Testimony of Nancy Larson; State Exhibits 5, 6)

9. Susan Griffel sent the Respondent a certified letter on April 7, 2004, acknowledging receipt of the desk reviews for the Grandview and S.E. 8<sup>th</sup> St. properties. Griffel reiterated the requirements of the Consent Order and noted that it appeared both appraisals had been released to the clients before desk review and before the recommended revisions or corrections had been incorporated into the report. She told the Respondent that she would bring the matter to the attention of the Board's disciplinary committee, but that he should immediately amend the issued appraisals to address the concerns raised in the desk review and submit the amended appraisals to the Board. The Respondent was warned that any further violations of the Consent Order would be referred for possible disciplinary action.

(Testimony of Susan Griffel; State Exhibit 7)

10. On April 22, 2004, Susan Griffel sent the Respondent a follow-up letter to his earlier telephone call, in which he reported amending the two appraisals that had been desk reviewed and resubmitting them to the mortgage companies. Griffel reminded the Respondent that he needed to send the Board copies of the two amended appraisals as soon as possible. The Board received a copy of the amended appraisal report for the S.E. 8<sup>th</sup> Street property on April 23, 2004. (Testimony of Susan Griffel; State Exhibits 8; 13)

Griffel also reminded the Respondent that he was required to submit a monthly log of all appraisals completed the previous month and warned him that his March log was overdue. Exhibit 14 includes the Respondent's monthly logs from January through May. The March log was submitted nineteen days late. (Testimony of Susan Griffel; State Exhibit 14)

11. Nancy Larson reviewed the Respondent's "revision" of the 8<sup>th</sup> Street appraisal report. She noted that the Respondent incorporated some, but not all of her suggested corrections.



The Respondent did not correct the number of days that the comparable sales were on the market, per the MLS information. With respect to Comparable Sale #1, the Respondent corrected the square footage for the site and the associated adjustments, but did not incorporate the corrections to the basement finish (430 sf finish and ¼ bath) and still made the upward adjustment of \$3500. Ms. Larson concluded that the Respondent was still having difficulty with the report requirements, specifically the purpose of the report, its intended user, and the differences between a complete appraisal and limited appraisal, both written in a summary format. (Testimony of Nancy Larson; State Exhibits 5, 9, 13)

12. The Respondent's appraisal logs show that he completed 11 appraisals in January, 14 appraisals in February, 15 appraisals in March, 17 appraisals in April, and 14 appraisals in May. As of May 3, 2004, the Respondent should have submitted a minimum of six appraisal reports for desk review. However, by that time he had only submitted two appraisal reports for desk review and had only revised one of two reports. (Testimony of Nancy Larson; Susan Griffel; State Exhibits 5, 9, 13)

13. On May 4, 2004, the Respondent appeared at Nancy Larson's office, without appointment or prior notice, and asked her to immediately review an appraisal report for a town home in Urbandale, Iowa. Larson performed a quick review of the report and pointed out some obvious problems: the Respondent needed to indicate whether it was a complete or a limited report and the Respondent's Comparable Sales #2 and #3 appeared to have more baths "above grade" than made sense for a 1546 square foot town home. Larson again emphasized the importance of verifying information through sources other than courthouse records, but the Respondent told her that he had never had any luck with the MLS.

Nancy Larson had to leave for a noon meeting and told the Respondent that she would get back to him the next day. However, Larson got a phone call regarding a family emergency later that afternoon and was out of the office for the remainder of the week. She heard nothing more from the Respondent regarding the townhome property and never saw a revised appraisal report for it. (Testimony of Nancy Larson; State Exhibit 9)

14. On June 9, 2004, the Respondent submitted his revised appraisal report for the Grandview property to the Board. (Testimony of Susan Griffel; State Exhibit 11) On June 14,

2004, Nancy Larson sent the Board an e-mail outlining her review of the revised report. Larson observed that the Respondent had incorporated some, but not all of her suggested corrections. The Respondent corrected the zoning, the number of days on the market, and the square footage mistake and its corresponding \$5000 adjustment. The Respondent did not correct the inaccurate information in the comparable sales concerning finish on the basements, covered patios or decks, or fences. He merely stated that the courthouse records did not show any basement finish. The adjusted sales prices of the comparable sales now ranged from \$96,600 to \$102,000, but the Respondent did not change the indicated value by sales comparison approach. The estimated value remained at \$95,000, which was lower than all estimates of value, even the estimate from the cost approach. (Testimony of Nancy Larson; State Exhibits 3, 11, 12)

15. The Respondent reports that he is now working with a new desk reviewer, Nancy Selberg. He told the Board that he has submitted three additional appraisal reports to Selberg for desk review, but has only received one completed desk review back. He has not submitted documentation of this desk review report to the Board. (Testimony of Respondent; Susan Griffel)

#### CONCLUSIONS OF LAW

##### *I. The Violations*

Iowa Code section 272C.3(2)(a)(2003) provides in relevant part:

##### **272C.3 Authority of licensing boards.**

Each licensing board may impose one or more of the following as licensee discipline:

a. Revoke a license, or suspend a license either until further order of the board or for a specified period, ...upon the failure of the licensee to comply with a decision of the board imposing licensee discipline.

Iowa Code section 272C.10(3)(2003) provides in relevant part:

##### **272C.10 Rules for revocation or suspension of license.**

A licensing board established after January 1, 1978 and pursuant to the provisions of this chapter shall by rule include provisions for the revocation or suspension of a license which shall include but is not limited to the following:

...

3. ...engaging in ...practice harmful or detrimental to the public. Proof of actual injury need not be established.

The preponderance of the evidence established that the Respondent violated the terms of the January 8, 2004 Consent Order in several respects. The Respondent did not complete thirty (30) hours of pre-approved education on the three approaches to value prior to the June 1, 2004 deadline. Prior to June 1, 2004, the Respondent only completed one seven (7) hour course on approaches to value and failed to ask the Board to pre-approve the course. As of the date of the hearing, the Respondent had completed a total of twenty-two (22) hours on the three approaches to value, eight (8) hours less than he was required to complete, but never had any of the courses pre-approved. The failure to complete the required education violates the terms of the Consent Order and Iowa Code section 272C.3(2)(a)(2003).

The Respondent also failed to fulfill the desk review requirements of the Consent Order, in violation of Iowa Code section 272C.3(2)(a)(2003). The Respondent was required to enter into a desk review agreement by January 28, 2004, but did not do so until March 1, 2004. The Respondent was required to complete a minimum of two desk reviews each month beginning in February 2004. The Respondent did not complete any desk reviews in February.

The Respondent had two appraisal reports desk reviewed by Nancy Larson in late March, but submitted his appraisal reports to the clients before the desk review was completed and before incorporating the Nancy Larson's suggested corrections into the reports. When the Respondent did revise the two appraisal reports, he did not make all of the corrections recommended by the desk reviewer.

The Respondent did not have any desk reviews in April. The Respondent submitted a third appraisal report for desk review on May 4, 2004, but never followed up with the desk reviewer to obtain a written report and never submitted any documentation of the draft appraisal, the desk review, or the final appraisal report to the Board.

The Respondent testified that he has now entered into an agreement with a new desk reviewer, Theresa Selberg. He further testified that he has submitted three appraisals to the new desk reviewer, and she has issued one Appraisal Review Report, which

required him to make only one correction. However, the Respondent has not submitted any documentation to the Board concerning these three additional appraisal reports or the one additional desk review.

The Respondent was subject to the Consent Order as a result of his prior repeated failures to adhere to appraisal standards and to exercise reasonable diligence in the development, preparation, and communication of appraisals. The Board determined that remedial measures outlined in the Consent Order were necessary to protect the public. The Respondent agreed to comply with the educational and desk review requirements, including the provision requiring him to fully correct any adverse comments before submitting the appraisal report to the client. The Respondent's multiple failures to comply with the Consent Order constitute practices harmful and detrimental to the public, in violation of Iowa Code section 272C.10(3)(2003).

## *II. Sanction*

The Respondent did not present any significant mitigating circumstances to explain his multiple failures to abide by the clearly stated terms of the Consent Order. The terms of the Consent Order were not onerous and were designed to help the Respondent understand and adhere to the appraisal standards. The Respondent entered into the Consent Order voluntarily and never contacted the Board to ask for clarification of the terms or to explain any barriers to his compliance. By his words and actions, the Respondent has demonstrated a complete lack of commitment to fulfilling his responsibilities under the Consent Order. The Respondent has not given the Board any reason to believe that he would be more compliant if given another chance to complete a remedial program of education and desk review.

## DECISION AND ORDER

**IT IS THEREFORE ORDERED** that the Iowa Real Estate Appraiser Certificate No. CR01253, issued to James O. Anderson, is hereby **REVOKED**, effective immediately upon service of this Decision and Order.

**IT IS FURTHER ORDERED** that the Respondent may not apply for reinstatement for one year from the date of this Decision and Order. **IT IS FURTHER ORDERED** that prior to any reinstatement, the Respondent will be required to redo all of the education, examination, and experience requirements required for initial licensure at the time of his reinstatement. All of the required

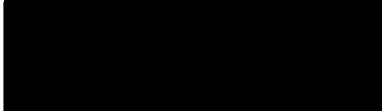
education, examination, and experience must be completed following the issuance of this Decision and Order and prior to filing an application for reinstatement.

**IT IS FURTHER ORDERED** that before any application for reinstatement is granted, the Respondent will be required to establish that the reason for the revocation no longer exists and it is in the public interest for his license to be reinstated. 193 IAC 7.38(5). The Board retains the right to set conditions of probation in connection with any order reinstating the Respondent's license.

**IT IS FURTHER ORDERED**, pursuant to Iowa Code section 272C.6 and 193 IAC 7.41, that the Respondent shall pay \$75.00 within thirty (30) days of receipt of this decision for fees associated with conducting the disciplinary hearing.

**IT IS FURTHER ORDERED** that the Respondent shall notify all clients of the fact that his certification has been revoked within fifteen (15) days of receipt of this final decision, in accordance with 193 IAC 7.30(3). Within thirty days of receipt of this final order, the Respondent shall file copies of the notice sent to clients with the Board.

Dated this 17<sup>th</sup> day of November, 2004.

  
Richard Koestner, Appraiser  
Chairperson  
Iowa Real Estate Appraiser Examining Board

Cc: James O. Anderson  
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Clive, IA 50325  
(CERTIFIED)

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Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.