

BEFORE THE IOWA REAL ESTATE APPRAISER EXAMINING BOARD

IN THE MATTER OF: ) Case No. 16-41  
)  
)  
James J. Hand, ) NOTICE OF HEARING AND  
CR01389 ) STATEMENT OF CHARGES  
) IN A DISCIPLINARY CASE  
)  
Respondent. )

The Iowa Real Estate Appraiser Examining Board (“Board”) issues this Notice of Hearing and Statement of Charges pursuant to Iowa Code sections 17A.12(2), 17A.18(3), and 543D.17. Respondent is a certified residential real estate appraiser in Iowa. He was issued Certificate No. CR01389 on February 13, 1992. Certificate No. CR01389 is currently valid, suspended pursuant to the Findings of Fact, Conclusions of Law, Decision and Order issued in Case No. 16-24 on October 7, 2016, and scheduled to expire on June 30, 2018. The Board has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 272C, and 543D.

**A. TIME, PLACE, AND NATURE OF HEARING AND HEARING PROCEDURES**

1. **Hearing.** A disciplinary contested case hearing will be held before the Board on the **21st day of February, 2017, at 2:00 o’clock, p.m.**, at 200 E. Grand, Ste. 350, Des Moines, IA 50309.
2. **Answer.** Within 20 days of the date you are served with this Notice you must file an answer to the charges as provided in Iowa Administrative Code rule 193—7.9.
3. **Prehearing Conference.** A prehearing conference will be held by telephone on the **14th day of February, 2017, at 10:00 o’clock, a.m.**, before an Administrative Law Judge from the Iowa Department of Inspections and Appeals (“ALJ”). You are responsible for notifying the Board office of the telephone number at which you or your counsel may be reached. Board rules on prehearing conferences may be found at Iowa Administrative Code rule 193—7.21.
4. **Presiding Officer.** The full Board shall serve as presiding officer at hearing, pursuant to Iowa Code section 272C.6(1) and Iowa Administrative Code 193—7.10(1). The Board may request that an ALJ make initial rulings on prehearing matters, and be present to assist and advise the Board at hearing, as described in 193 Iowa Administrative Code 7.10(4).
5. **Hearing Procedures.** Board rules on hearing procedures may be found at Iowa Administrative Code chapter 193—7 and Iowa Administrative Code chapter 193—8. You have the right to respond to the charges, produce evidence on your behalf, cross-examine witnesses, and examine any documents introduced at hearing. Consult Iowa Administrative Code rule 193—7.22 if you need to request an alternative time or date. The hearing may be open to the

public or closed to the public at the discretion of Respondent.

6. **Default.** If you fail to appear at hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and Iowa Administrative Code rule 193—7.27.

7. **Prosecution.** Licensee disciplinary cases are prosecuted by an Assistant Attorney General acting on behalf of the public interest (the State). Copies of all pleadings shall be filed with the Board, with copies mailed to:

Luke Dawson  
Assistant Attorney General  
Iowa Attorney General's Office  
2<sup>nd</sup> Floor, Hoover State Office Building  
Des Moines, Iowa, 50319

Mr. Dawson may also be reached by phone at (515)414-6187 or e-mail at [luke.dawson@iowa.gov](mailto:luke.dawson@iowa.gov).

8. **Respondent's Counsel.** Respondent is self represented.

9. **Settlement.** The procedural rules governing the Board's settlement process are found at Iowa Administrative Code rule 193—7.42. If you are interested in pursuing settlement of this matter, contact Assistant Attorney General Luke Dawson.

10. **Communications.** You may not contact Board members by phone, letter, facsimile, email, or in person about this Notice of Hearing and Statement of Charges. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You should direct any questions to: Luke Dawson, Assistant Attorney General; or Brandy March, the Board's Executive Officer, at (515)725-9025.

## **B. STATEMENT OF CHARGES AND CIRCUMSTANCES**

1. In February 2011, the Board received a complaint about Respondent's appraisal practices. Following investigation, the Board and Respondent entered into a Consent Order in Case No. 11-07. Under the Consent Order, after Respondent completed education requirements, the Board was to select two appraisals from Respondent's logs for review. At about the time the appraisals were due to be reviewed under the Consent Order, the Board received a new complaint in Case No. 12-33. The Board submitted that appraisal as well as the two appraisals under the Consent Order in Case No. 11-07 to Standard Three review by a certified real-estate appraiser.

2. All three reviews revealed violations of the Uniform Standards of Professional Appraisal Practice ("USPAP"). As a result, in 2014, the Board and Respondent entered into a second Consent Order in Case No. 14-02. Under the second Consent Order, Respondent agreed,

among other things, to take certain education, provide monthly logs, and subject two more Board-selected appraisals for Standard Three review by a certified real-estate appraiser.

3. The post-education reviews in Case No. 14-02 continued to reveal USPAP violations and a lack of reasonable diligence. Thus, in 2016, the Board and Respondent entered into an Amendment to Consent Order in Case No. 14-02. Pursuant to the Amendment to Consent Order, Respondent was required to work under the supervision of a pre-approved certified real-estate appraiser, until such time as he was released from supervision by order of the Board. The Board described this supervision as a “*final opportunity* in the hope that one on one mentoring will address the issues.” (Emphasis added.). Additionally, as is relevant here, the Amendment to Consent Order:

- a. Required Respondent to have all appraisal reports reviewed by his approved supervisor and signed by the supervisor in the same manner that a supervisor signs the reports of registered associates;
- b. Required Respondent to provide the Board with all appraisals and work files within 10 days of the date that each appraisal was issued to the client; and
- c. Provided that once Respondent had submitted six appraisals to the Board under the Consent Order, or by May 31, 2016, whichever occurred first, the Board would submit at least two of Respondent’s appraisals for Standard Three review by a certified real-estate appraiser.

4. After entry of the Amendment to Consent Order, Respondent prepared and released at least 6 appraisal reports to a client without first obtaining the signature of his supervising appraiser. Moreover, Respondent failed to submit these appraisal reports and work files to the Board within 10 days of issuing the reports to the client. As a result, on July 28, 2016, the Board filed a Notice of Hearing and Statement of Charges in case 16-24 against Respondent for failing to comply with a Board disciplinary order, in violation of Iowa Code section 272C.3(2)(a) and Iowa Administrative Code rule 193F—7.3. A hearing on the matter was held on September 19, 2016 at 2:00 p.m, at which the Board found the record established by a preponderance of the evidence that Respondent had failed to comply with the Amendment to Consent Order, such that he violated Iowa Code section 272C.3(2)(a) and Iowa Administrative Code rule 193F—7.3(1). As a result, on October 7, 2016, the Board suspended Respondent’s license pending further order of the Board, and further ordered that Respondent provide the following documents for review by the Board’s discipline committee (“Discipline Committee”):

- a. Copies of all signed appraisal reports (and associated work files) that Respondent has issued to a client after February 29, 2016, including: all six appraisal reports (and work files) listed in his log at p. 28 of the state’s exhibits; the two additional appraisal reports (and work files) mentioned by Respondent in his testimony at hearing; and any additional appraisal reports (and work files) completed after February 29, 2016, and not previously disclosed to the Board;

- b. A signed and dated report from Respondent's approved supervisor (Dick Koestner) that specifically identifies each appraisal report (by file number and property address) that Mr. Koestner has reviewed for Respondent. With respect to each appraisal, Mr. Koestner's report shall include the date(s) of his review and what changes (if any) he recommended to bring the report into compliance with USPAP requirements. Mr. Koestner's report shall also state whether his recommended changes were made by Respondent before the report was issued to the client and whether Mr. Koestner has signed the final appraisal reports. If Mr. Koestner has not signed one or more of the reports, he shall state why he did not sign them. Respondent shall be responsible for all fees associated with Richard Koestner's review of his appraisal reports and for Mr. Koestner's preparation of the report to the Board; and
- c. Any other document(s) requested by the discipline committee that are deemed by the committee to be relevant and necessary to their evaluation of Respondent's compliance with the current Board Orders.

After receiving these documents the Discipline Committee would review the appraisal reports, work files, and supervisor's report and make a recommendation to the full Board concerning whether or not it was in the public interest to allow Respondent's certificate to be reinstated and if so, under what restrictions. If reinstatement was recommended, the Board and Respondent could enter into another Consent Order to establish the terms and conditions of the reinstatement. If Respondent and the Board were unable to reach an agreement on reinstatement, Respondent could request a hearing.

5. As required by the Board's October 7, 2016, order, after said order was issued Respondent provided nine (9) copies of signed appraisal reports (and associated work files) that Respondent had issued to a client after February 29, 2016, and the report from Respondent's approved supervisor, Dick Koestner, to the Discipline Committee. The Discipline Committee submitted two of the appraisals received from Respondent to Standard Three review by a certified real-estate appraiser. The post-supervision reviews following the prior Amendment to Consent Order continued to reveal USPAP violations and a lack of reasonable diligence.

6. Additionally, on December 14, 2016, the Board received information that Respondent had issued an appraisal report during the period his license was suspended under the Board's October 7, 2016, order. Upon further investigation, the Board confirmed Respondent issued at least two appraisal reports while his license was suspended.

7. In light of the foregoing, on December 22, 2016, the Board denied Respondent's request for reinstatement, concluding it was not in the public interest to allow Respondent's certificate to be reinstated, and found probable cause to file these charges.

8. Respondent is charged with:

- a. Failing to comply with a Board Order by issuing at least two appraisal reports while his license was suspended in violation of Iowa Code section 272C.3(2)(a) and Iowa Administrative Code Rule 193F—7.3(10).
- b. Engaging in deceptive practices in violation of Iowa Code 272C.10(3) and 543D.17(1) and/or (1)(a) and Iowa Administrative Code rule 193F—7.3(3) by issuing at least two appraisal reports while his license was suspended, which constitutes:
  - i. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of real property. *Id.*(a).
  - ii. Acceptance of any fee by fraud or misrepresentation. *Id.* (c).
  - iii. Representing oneself as a registered associate appraiser or certified appraiser when one’s registration or certificate has been suspended, revoked, surrendered, or placed on inactive status, or has lapsed. *Id.* (h). And/Or
  - iv. Misrepresenting a specialized service as an appraisal assignment in violation of Iowa Code section 543D.18(3). *Id.* (k).
- c. Failure to adhere to USPAP in violation of Iowa Code sections 543D.17(1)(d) and .18(1) and Iowa Administrative Code rules 193F—7.2, .3(2)(d), (e), and (7)(a).
- d. Failure to exercise reasonable diligence in the development and communication of multiple appraisals in violation of Iowa Code section 543D.17(e) and Iowa Administrative Code rule 193F—7.3(6)(a).
- e. Demonstrating negligence or incompetence in the development, preparation and communication of multiple appraisals in violation of Iowa Code sections 272C.10(2) and 543D.17(f) and Iowa Administrative Code rules 193F—7.3(2)(a), (b), (c), (d), (e) and (6)(a).

**This Notice of Hearing and Statement of Charges is Filed and issued**

**On the 9th day of January, 2017**



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Brandy March, Executive Officer  
Iowa Real Estate Appraiser Examining Board  
200 E. Grand, Ste. 350  
Des Moines, IA 50309  
Phone: (515)725-9025  
brandy.march@iowa.gov

FILED July 28, 2016 (Date)

~~REAP~~  
~~Board / Commission~~  
B March  
Signature, Executive Officer

BEFORE THE IOWA REAL ESTATE APPRAISER EXAMINING BOARD

IN THE MATTER OF:	)	Case No. 16-24
	)	
James J. Hand,	)	NOTICE OF HEARING AND
CR01389	)	STATEMENT OF CHARGES
	)	IN A DISCIPLINARY CASE
Respondent.	)	

The Iowa Real Estate Appraiser Examining Board ("Board") issues this Notice of Hearing and Statement of Charges pursuant to Iowa Code sections 17A.12(2), 17A.18(3), and 543D.17. Respondent is a certified residential real estate appraiser in Iowa. He was issued Certificate No. CR01389 on February 13, 1992. Certificate No. CR01389 is currently valid, under supervision pursuant to Case No. 14-02, and scheduled to expire on June 30, 2018. The Board has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 272C, and 543D.

**A. TIME, PLACE, AND NATURE OF HEARING  
AND HEARING PROCEDURES**

1. **Hearing.** A disciplinary contested case hearing will be held before the Board on the **19th day of September, 2016, at 2 o'clock, p.m.**, at 200 E. Grand Ave., Suite 350 Des Moines, Iowa 50309.

2. **Answer.** Within 20 days of the date you are served with this Notice you must file an answer to the charges as provided in Iowa Administrative Code rule 193—7.9.

3. **Prehearing Conference.** A prehearing conference will be held by telephone on the **12th day of September, at 10 o'clock, a.m.**, before an Administrative Law Judge from the Iowa Department of Inspections and Appeals ("ALJ"). You are responsible for notifying the Board office of the telephone number at which you or your counsel may be reached. Board rules on prehearing conferences may be found at Iowa Administrative Code rule 193—7.21.

4. **Presiding Officer.** The full Board shall serve as presiding officer at hearing, pursuant to Iowa Code section 272C.6(1) and Iowa Administrative Code 193—7.10(1). The Board may request that an ALJ make initial rulings on prehearing matters, and be present to assist and advise the Board at hearing, as described in 193 Iowa Administrative Code 7.10(4).

5. **Hearing Procedures.** Board rules on hearing procedures may be found at Iowa Administrative Code chapter 193—7 and Iowa Administrative Code chapter 193—8. You have the right to respond to the charges, produce evidence on your behalf, cross-examine witnesses, and examine any documents introduced at hearing. Consult Iowa Administrative Code rule 193—7.22 if you need to request an alternative time or date. The hearing may be open to the public or closed to the public at the discretion of Respondent.

6. **Default.** If you fail to appear at hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and Iowa Administrative Code rule 193—7.27.

7. **Prosecution.** Licensee disciplinary cases are prosecuted by an Assistant Attorney General acting on behalf of the public interest (the State). Copies of all pleadings shall be filed with the Board, with copies mailed to:

Luke Dawson  
Assistant Attorney General  
Iowa Attorney General's Office  
2<sup>nd</sup> Floor, Hoover State Office Building  
Des Moines, Iowa, 50319.

Mr. Dawson may also be reached by phone at (515) 414-6187 or e-mail at [luke.dawson@iowa.gov](mailto:luke.dawson@iowa.gov).

8. **Respondent's Counsel.** Copies of all pleadings filed with the Board shall be provided to: [Unknown].

9. **Settlement.** The procedural rules governing the Board's settlement process are found at Iowa Administrative Code rule 193—7.42. If you are interested in pursuing settlement of this matter, please contact Assistant Attorney General Luke Dawson.

10. **Communications.** You may not contact Board members by phone, letter, facsimile, email, or in person about this Notice of Hearing and Statement of Charges. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You should direct any questions to: Assistant Attorney General, Luke Dawson, or Brandi March, the Board's Executive Officer, at (515) 725-9025.

## **B. STATEMENT OF CHARGES AND CIRCUMSTANCES**

1. The Board found probable cause to file charges on July 18, 2016.

2. In 2011, the Board received a complaint about Respondent's appraisal practices. Following investigation, the Board and Respondent entered into a Consent Order in Case No. 11-07. Under the Consent Order, after Respondent completed education requirements, the Board was to select two appraisals from Respondent's logs for review. At about the time the appraisals were due to be reviewed under the Consent Order, the Board received a new complaint in Case No. 12-33. The Board subjected that appraisal as well as the two appraisals under the Consent Order in Case No. 11-07 to Standard Three review.

3. All three reviews revealed violations of the Uniform Standards of Professional Appraisal Practice (USPAP). As a result, in 2014, the Board and Respondent entered into a

second Consent Order in Case No. 14-02. Under the second Consent Order, Respondent agreed, among other things, to take certain education, provide monthly logs, and subject two more Board-selected appraisals for review.

4. The post-education reviews in Case No. 14-02 continued to reveal USPAP violations and a lack of reasonable diligence. Thus, in 2016, the Board and Respondent entered into an Amendment to Consent Order in Case No. 14-02. Pursuant to the Amendment to Consent Order, Respondent was required to work under the supervision of a pre-approved certified real-estate appraiser, until such time as he was released from supervision by order of the Board. The Board described such supervision as a "*final opportunity* in the hope that one on one mentoring will address the issues." (Emphasis added.).

5. Additionally, as relevant here, the Amendment to Consent Order provided:

Every Appraisal assignment must be supervised and every appraisal report must be signed by the supervisor in the same manner a supervisor signs the reports of registered associates, as more fully described in Board rules at 193F IAC rule 4.2 and chapter 15. *Respondent shall be responsible for submitting the appraisals and work files to the Board within 10 days of the date each appraisal was issued to the client.*

(Emphasis added.).

6. In March of 2016, the Board reminded Respondent via email he was responsible for submitting any appraisals and work files to the Board within 10 days of the date each appraisal was issued to a client.

7. On June 14, Respondent submitted a log to the Board via email. The log indicated he had completed a total of six appraisals.

8. On July 3, 2016, the Board again reminded Respondent via email he was responsible for submitting any appraisals and work files to the Board within 10 days of the date each appraisal was issued to a client, and notified him it had not received copies of the appraisals and work files listed on his June log as required by the Amendment to Consent Order. That same day, Respondent acknowledged the Board's email and indicated the required appraisals and work files would be forthcoming.

9. On July 14, the Board notified Respondent via email it had still not received the required reports and work files and that the discipline committee would be meeting on July 18 to review the reports and work files. That same day, Respondent again acknowledged his obligation and indicated he would send the reports and work files. The Board did not receive the reports and work files by July 18, and has not received them to date.

10. Respondent is charged with failing to comply with a Board Order by failing to submit appraisals and work files to the Board within 10 days of the date each appraisal was issued to the client as required by the Amendment to Consent Order. This, despite numerous reminders and notifications from the Board regarding such compliance. This is a practice harmful or detrimental to the public under Iowa Code section 272C.10(3) as the Board cannot

perform its duties when licensees fail to comply with the terms of a Board Order, and is a violation of Iowa Code section 272C.3(2)(a) and Iowa Administrative Code Rule 193F—7.3(10).

**This Notice of Hearing and Statement of Charges is Filed and issued**

On the 28<sup>th</sup> day of July, 2016

B March

Brandy March, Executive Officer  
Iowa Real Estate Appraiser Examining Board  
200 E. Grand, Ste. 350  
Des Moines, IA 50309  
Phone: (515)725-9025  
brandy.march@iowa.gov

Copies to:

Assistant Attorney General Luke Dawson  
Respondent  
Department of Inspections and Appeals, assigned Administrative Law Judge

BEFORE THE IOWA REAL ESTATE APPRAISER EXAMINING BOARD

IN THE MATTER OF: ) CASE NO. 16-24  
)  
James J. Hand, ) STATE'S MOTION  
CR01389 ) TO DISMISS  
)  
Respondent )

COMES NOW the State of Iowa, by and through the undersigned, and moves to dismiss the above-captioned contested case hearing. In support thereof, the State respectfully states as follows:

1. On July 28, 2016, the Iowa Real Estate Appraiser Examining Board (Board) filed a Notice of Hearing and Statement of Charges concerning Respondent, James J. Hand. Respondent was charged with failing to comply with a Board Order and practice harmful or detrimental to the public by failing to submit appraisals and work files to the Board within 10 days of the date each appraisal was issued to the client as required by an Amendment to Consent Order entered between Respondent and the Board in 2016. A hearing is currently scheduled in this matter for September 19, 2016, at 2 p.m.

2. Following issuance of the Notice of Hearing & Statement of Charges, the State was informed Respondent never issued the reports in question to the client(s).

3. The undersigned believes the Board would not have filed formal disciplinary charges had the Board known Respondent had not issued the reports in question to the client(s), as this is not a violation of the terms of the Amendment to Consent Order.

4. Given the totality of circumstances, the undersigned believes it is in the interest of justice to dismiss the above-captioned matter. The undersigned further believes there is good cause for permitting this motion at this time as a hearing may no longer be necessary in this matter. See Iowa

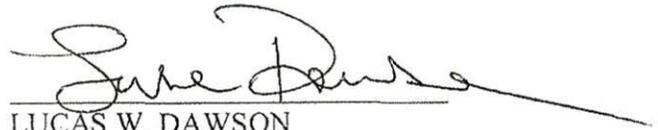
Admin. Code r. 193—7.20(17A) (“Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least five days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.”).

5. To the extent feasible, the State would request the administrative law judge assigned to this matter seek authorization to issue a ruling on this motion, Iowa Admin. Code r. 7.20(3), or permit Respondent to appear by telephone at the hearing in this matter if respondent so desires and consents to the same. Iowa Admin. Code r. 193—7.13.

**WHEREFORE** the State requests that the above-captioned contested case hearing be dismissed.

Respectfully submitted,

THOMAS J. MILLER  
ATTORNEY GENERAL OF IOWA



LUCAS W. DAWSON  
Assistant Attorney General  
Iowa Attorney General's Office  
2nd Floor, Hoover State Office Building  
Des Moines, Iowa 50319  
(515)414-6187  
luke.dawson@iowa.gov

Original filed.

Copies to:

Assistant Attorney General, Luke Dawson;  
Respondent; and  
Administrative Law Judge Maggie LaMarche.

Proof of Service	
The undersigned certifies that the foregoing instrument was served upon each of the persons identified as receiving a copy by delivery in the following manner on the 13th day of September, 2016.	
<input type="checkbox"/> U.S. Mail	<input type="checkbox"/> FAX
<input type="checkbox"/> Hand Delivery	<input type="checkbox"/> Overnight Courier
<input type="checkbox"/> Federal Express	<input type="checkbox"/> Other
<input checked="" type="checkbox"/> Electronically	
Signature: _____	

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

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IN THE MATTER OF:	)	CASE NO. 16-24
	)	DIA NO. 16REA002
JAMES HAND	)	
CR01389	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
RESPONDENT	)	DECISION AND ORDER

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On July 28, 2016, the Iowa Real Estate Appraiser Examining Board (Board) found probable cause to file a Notice of Hearing and Statement of Charges against James Hand (Respondent). Respondent was charged with failure to comply with a Board disciplinary order, in violation of Iowa Code section 272C.3(2)(a) and 193F IAC 7.3. A telephone prehearing conference was held on September 12, 2016. On September 13, 2016, the state filed a Motion to Dismiss, which was withdrawn prior to hearing.

The hearing was held on September 19, 2016 at 2:00 p.m. Assistant Attorney General Lucas Dawson represented the state of Iowa. Respondent appeared by telephone and was self-represented. The following Board members presided at the hearing: Amanda Luscombe, Appraiser, Chairperson; Gene Nelsen, Appraiser; Caryl Swaim, Appraiser; Fred Greder, Appraiser; and Joan Scotter, public member. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was closed to the public at Respondent's request, pursuant to Iowa Code section 272C.6(1)(2015) and 193 IAC 7.25(2). After hearing the testimony and examining the exhibits, the Board convened in closed session, pursuant to Iowa Code section 21.5(1)(f)(2015), to deliberate its decision. The Board instructed the administrative law judge to prepare the Decision and Order, consistent with their deliberations.

**THE RECORD**

The record includes the State's Prehearing Conference Report, State's Motion to Dismiss (withdrawn), the testimony of Executive Officer Brandy March and Respondent, and State Exhibits 1-5.

**FINDINGS OF FACT**  
**Licensing and Disciplinary History**

Respondent was initially certified (certificate CR01389) to practice as a residential real estate appraiser in Iowa in 1992. Respondent's certificate to practice is currently valid, but he has been restricted to practicing under the supervision of another certified real estate appraiser approved by the Board. Respondent's certificate expires on June 30, 2018. (State Exhibits 1, 3, 4)

***Consent Order-Case No. 11-07.*** All appraisal reports prepared by a certified appraiser must comply with the Uniform Standards of Professional Appraisal Practice (USPAP). Respondent has history of discipline by the Board based on his failure to comply with USPAP requirements. In February 2011, the Board opened an investigation after receiving a complaint about Respondent's appraisal practices. On October 27, 2011, Respondent and the Board entered into a Combined Statement of Charges and Consent Order (Case No. 11-07) in settlement of that complaint. The Consent Order in Case No. 11-07 required Respondent to complete a 15-hour tested USPAP course, a 30-hour tested course entitled "Residential sales comparison and income approaches," and a 15-hour tested course entitled "Residential appraiser site valuation and cost approach." (State Exhibits 1-3; March testimony)

This Consent Order required Respondent to submit a log of all appraisals that he completed in the two month period following this remedial education. The Board selected two of the appraisal reports from the log and submitted them for a Standard Three review at Respondent's expense. Before those reviews could be conducted, however, the Board received a new complaint concerning another one of Respondent's appraisals. The Board obtained a copy of that additional appraisal, and all three appraisals were sent to a certified appraiser for a Standard Three review. All three of these reviews revealed USPAP violations. (State Exhibits 1-3; March testimony)

***Consent Order and Amendment to Consent Order in Case No. 14-02.*** On March 4, 2014, Respondent and the Board entered into another Consent Order, which required Respondent to complete a 30-hour tested course in residential report writing (Case No. 14-02). That Consent Order further provided that following Respondent's completion of this additional education, two more appraisals would be selected from his appraisal log for a Standard Three review. (State Exhibit 4; March testimony)

These additional reviews continued to reveal USPAP violations and lack of reasonable diligence by Respondent. As a result, Respondent and the Board entered into an

Amendment to Consent Order on February 29, 2016. The Amendment to Consent Order expressly states that the Board was providing Respondent a "final opportunity" in the hope that one on one mentoring would address his issues. The Amendment to Consent Order provided, in relevant part:

- Respondent shall not practice real estate appraising in an unsupervised manner until expressly released from supervision by order of the board;
- Within 30 days of the date of the Consent Order, Respondent shall enter into a supervision agreement with an Iowa certified appraiser pre-approved by the Board. The agreement may be in letter form but shall attach a copy of the Consent Order to assure that the desk reviewer is familiar with the terms of the Order;
- Every appraisal assignment must be supervised and every appraisal report must be signed by the supervisor in the same manner that a supervisor signs the reports of registered associates, as more fully described in Board rules 4.2 and chapter 15. Respondent shall be responsible for submitting the appraisals and work files to the Board within 10 days of the date each appraisal was issued to the client;
- Upon Respondent's submission of the last of the six appraisals under this Consent Order, the Board shall submit two reports for Standard Three review. Respondent shall pay the Board the sum of \$600 at the time he submits the sixth appraisal to the Board; and
- In the event Respondent has not completed six appraisals by May 31, 2016 but has completed at least two appraisals, the Board may submit one or both of the appraisals for Standard Three review.

(State Exhibit 4; March testimony)

*Respondent's Failure to Comply with Amendment to Consent Order in Case No. 14-02*

On March 29, 2016, the Board's Interim Administrator (Lori SchraderBachar) emailed Respondent to remind him of the terms of the Amendment to Consent Order. Ms. SchraderBachar asked Respondent if he had entered into a supervision agreement with (certified appraiser) Dick Koestner and if he had provided Mr. Koestner with a copy of the Amendment to Consent Order. She reminded Respondent that every appraisal assignment must be supervised and every appraisal report must be signed by the supervisor in the same manner as a supervisor signs the reports of registered associates. She further reminded Respondent that he was responsible for submitting the appraisals and work files to the Board within 10 days of the date each appraisal was issued to the

client. Ms. SchraderBacher asked Respondent if he had completed any appraisals under Mr. Koestner. (State Exhibit 5, pp. 19-20)

Respondent replied to Lori SchraderBacher by email on April 4, 2016 and confirmed that he had an agreement with Dick Koestner. He further wrote that he had "been out" because his wife had been very ill. Respondent informed Ms. SchraderBacher that he "did not read that every report needed to be sent out" to the Board and that he thought that it was "just the log" that he had to send in. Respondent told Ms. SchraderBacher that he would "send out each one as you request." (State Exhibit 5, p. 18)

Lori SchraderBacher called Dick Koestner on May 18, 2016, and he confirmed that he had agreed to supervise Respondent. Mr. Koestner mentioned that Respondent's wife had been very ill and that appointments with Respondent had been postponed. Mr. Koestner reported that he and Respondent had met once and that things were going slow. Mr. Koestner further reported that Respondent had only submitted two reports to him for review. (State Exhibit 5, p. 18)

On June 3, 2016, Board Administrator Brandy March emailed Respondent and reminded him that he still had not submitted his appraiser log to the Board and that the deadline to do so had passed. She asked Respondent to mail or fax his appraiser log to the Board office. Respondent replied that he was working with Dick Koestner, that he did not "have many" because his wife was ill, and that he would get them in on Monday. Ms. March responded that it was fine if he did not have many, but the Board needed a log of what he has done. (State Exhibit 5, pp. 21-22; March testimony)

On June 7, 2016, Brandy March sent Respondent another email asking him to confirm whether he had completed at least two appraisals. Respondent replied the following day and told March that his wife had been sick again. He apologized for the delay and told Ms. March that he would "send them out tonight to you via email." On June 14, 2016, Respondent emailed Ms. March a log that listed six appraisals. The log included a file number, the last name of the property owner, the property address, and the lender/client. For all six appraisals, the "lender/client" was listed as "United States." (State Exhibit 5, pp. 24-28; March testimony)

On July 3, 2016, Brandy March emailed Respondent and reminded him that paragraph 8 of the Amendment to Consent Order required him to submit the appraisal report and work files for each appraisal within 10 days of the report being issued to the client. Ms. March noted that Respondent's log indicated that he had completed a total of six appraisals, but the Board had not yet received a copy of those appraisal reports or work

files. Respondent replied that he thought the Board would pick 3-6 to review and not every appraisal. He told Ms. March that he would send them out that week. (State Exhibit 5, p. 29-31; March testimony)

On July 14, 2016, Brandy March sent another email to Respondent and told him that the discipline committee would be meeting the morning of July 18, 2016. She recommended that he submit all of his appraisals to the Board prior to that meeting. Respondent replied that his wife was in the hospital and he needed to "get back to print them off." On July 18, 2016, Respondent sent another email and asked for an extension until the following week to get the reports out. His email stated that he was out of town with his wife obtaining medical attention and believed he would be home by Tuesday. (State Exhibit 5, pp. 33-35; March testimony)

As of the date of the hearing, Respondent still had not provided the Board with the appraisal reports and work files for the six appraisals listed on the log that he submitted to the Board on June 14, 2016. Brandy March contacted the United States Appraisal Management Company, which was listed as the client for the six appraisals on Respondent's log, and she spoke to "Sam" and "Rick." Ms. March was informed that Respondent had submitted all six of the appraisal reports to the client. One report was submitted in April and the other five reports were submitted to the client in June 2016. The last of these reports was submitted to the client on June 10, 2016. (March, Respondent testimony)

At hearing, Respondent admitted that he had submitted all six appraisal reports on his log to the client but that he has not submitted any of these reports or work files to the Board. Respondent testified that Dick Koestner has been his approved supervising appraiser since February 2016. According to Respondent, Mr. Koestner reviewed all six appraisal reports that appear on his log and made suggestions for changes to all of them. Respondent further testified that he has completed two additional appraisal reports, which do not appear on this log but have been sent to Mr. Koestner. Respondent testified that he has been having trouble getting Mr. Koestner's electronic signature on his reports due to a software issue. (Respondent testimony)

Respondent apologized to the Board. He stated that he has had a very difficult year and that the stress of his wife's illness has caused him to act irrationally and imprudently. He told the Board that he now has some help with the care of his wife and has a plan going forward if the Board will allow it. (Respondent testimony)

## CONCLUSIONS OF LAW

Iowa Code section 272C.3(2)(a)(2015) and 193F IAC 7.3(1) authorize the Board to revoke or suspend a license upon failure of the licensee to comply with a decision of the board imposing licensee discipline or for failure to comply with a settlement agreement or consent order. The preponderance of evidence in this record clearly established that Respondent has not complied with the requirements imposed on him by the Amendment to Consent Order, and he has therefore violated Iowa Code section 272C.3(2)(a)(2015) and 193F IAC 7.3(1).

The Amendment to Consent Order required Respondent to have all appraisal reports reviewed by his approved supervisor and signed by the supervisor in the same manner that a supervisor signs the reports of registered associates. *See* 193F IAC 4.2, 15.2, 15.3. A supervisor appraiser must sign and certify that the report is in compliance with USPAP. 193F IAC 15.3(1)"c." The Amendment to Consent Order further required Respondent to provide the Board with all appraisals and work files within 10 days of the date that each appraisal was issued to the client. After the Amendment to Consent Order was approved by the Board, Respondent prepared and released at least 6 appraisal reports to a client without first obtaining the signature of his supervising appraiser. Moreover, Respondent has failed to submit these appraisal reports and work files to the Board within 10 days of issuing the reports to the client. Based on Respondent's testimony, it appears that Respondent has prepared additional appraisals as well. It is unclear whether the additional reports were issued to the client.

The Board understands that Respondent has been dealing with difficult family issues, but the Board's first priority must be protection of the public. Respondent has been given ample opportunities to show compliance with the Amendment to Consent Order. His ongoing failure to comply with the terms of the Amendment to Consent Order leaves the Board no other reasonable option but to suspend Respondent's certificate.

## DECISION AND ORDER

**IT IS THEREFORE ORDERED** that Iowa Real Estate Appraiser Certificate No. CR01389, issued to Respondent James Hand, is hereby **SUSPENDED** pending further Order of the Board. The suspension is effective immediately upon service of this Decision and Order.

**IT IS FURTHER ORDERED** that Respondent shall promptly provide the following documents for review by the Board's discipline committee:

A. Copies of all signed appraisal reports (and associated work files) that he has issued to a client after February 29, 2016. Respondent must submit: all six appraisal reports (and work files) listed in his log at p. 28 of the state's exhibits, the two additional appraisal reports (and work files) mentioned by Respondent in his testimony at hearing, and any additional appraisal reports (and work files) completed after February 29, 2016 and not previously disclosed to the Board;

B. A signed and dated report from Respondent's approved supervisor (Dick Koestner) that specifically identifies each appraisal report (by file number and property address) that Mr. Koestner has reviewed for Respondent. With respect to each appraisal, Mr. Koestner's report shall include the date(s) of his review and what changes (if any) he recommended to bring the report into compliance with USPAP requirements. Mr. Koestner's report shall also state whether his recommended changes were made by Respondent before the report was issued to the client and whether Mr. Koestner has signed the final appraisal reports. If Mr. Koestner has not signed one or more of the reports, he shall state why he did not sign them. Respondent shall be responsible for all fees associated with Richard Koestner's review of his appraisal reports and for Mr. Koestner's preparation of the report to the Board; and

C. Any other document(s) requested by the discipline committee that are deemed by the committee to be relevant and necessary to their evaluation of Respondent's compliance with the current Board Orders.

After receiving these documents the discipline committee will review the appraisal reports, work files, and supervisor's report and make a recommendation to the full Board concerning whether or not it is in the public interest to allow Respondent's certificate to be reinstated and if so, under what restrictions. If reinstatement is recommended, the Board and Respondent may enter into another Consent Order to establish the terms and conditions of the reinstatement. If Respondent and the Board are unable to reach an agreement on reinstatement, Respondent may request a hearing.

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

Dated this 7<sup>th</sup> day of October, 2016.



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Amanda Luscombe, Appraiser  
Chairperson  
Iowa Real Estate Appraiser Examining Board

cc: Lucas Dawson, Assistant Attorney General

Judicial review of the Board's action may be sought in accordance with the Iowa administrative procedure act (Iowa Code chapter 17A), from and after the date of the Board's order. Consistent with Iowa Code section 17A.19(3), if a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the Board's final decision. 193 IAC 7.37.