

NORTH DAKOTA REAL ESTATE APPRAISER QUALIFICATIONS AND ETHICS BOARD

September 28, 2023 - Board Meeting Minutes

Chairman Kost called the meeting to order at 8:33 am. Roll call was taken.

Board Members present online: Chairman Corey Kost, Matt Schlenvogt, Brock DesLauriers, Nikki Mertz, and Joe Sheehan

Staff Present: Jodie Campbell and David Campbell

Legal Counsel: Joshua Amundson

Public Comment Period: No Comments

Applicants: **Brittin Callina** is making application for licensure. Ms. Callina meets the education, experience and examination requirements for licensure. Work product was submitted and reviewed for compliance with USPAP. Kathy Maier, Board Reviewer provided an overview of the reviews. Discussion took place. The Board determined Ms. Callina's work product was found to meet the minimum standards set forth in USPAP. Nikki Mertz moved to approve Brittin Callina for licensure. Matt Schlenvogt seconded the motion. Chairperson Kost called for further discussion. No further discussion took place. Chairperson Kost called for the vote. Nikki Mertz, Joe Sheehan, Brock DesLauriers, Matt Schlenvogt and Corey Kost all voted yes. The vote was unanimous. Motion carried.

Investigations: Case 216-160, Case 216-161, Case 216-164, Case 223-129, Case 223-131 and Case 223-132 involve the same appraiser.

Chairman Kost turned the meeting over to Josh Amundson, Board Legal Counsel, to assist the Board in determining how to proceed. Board Counsel provided an overview. Currently, this individual is involved in:

- 1) two active cases (Cases 220-108 and 220-111) that have been moved to administrative hearing.
- 2) three cases that are out for settlement (At the meeting of June 28, 2023, a selection of reports, as part of previous Settlement Agreement, were reviewed and found to be noncompliant with USPAP. The Board offered a Settlement Agreement)
- 3) three new cases (223-129, 223-131 and 223-132) that are on today's agenda for review.

The Settlement Agreement of 2020 says that any further complaints will elevate to an automatic suspension. The Board had questioned whether they could invoke an automatic suspension with Case 220-108 and Case 220-111. Board Counsel had discussions with Civil Litigation Counsel. In review of Case 220-108 and Case 220-111, and the prior Settlement Agreement, there is concern that these allegations came in prior to the Settlement Agreement being signed. In addition, Case 220-111 was elevated to a complaint right before the Settlement Agreement was signed. Litigation Counsel has a concern that a judge may question the timing of the allegations and the complaint and therefore, question whether they should automatically be raised to a level of suspension.

At the meeting of June 28, 2023, the Board reviewed a selection of reports as part of the 2020 Settlement Agreement. The reports were found to be noncompliant with USPAP. The Board moved to offer an Agreement to include two-year revocation. The Board's offer has been rejected, and the Board has received a counteroffer. Board Counsel is recommending the Board not accept the counteroffer. The counteroffer does not address the severity of the habitual issues with this appraiser.

Board member discussion continued. Until now, the Board did not have precedent for such a habitual case, where this number of allegations against one person have come to the Board. This appraiser has been found to have allegedly violated the same sections of USPAP over and over again. The appraiser has been given the opportunity time again to correct the areas of noncompliance. Based on the findings from the current reviews, it is clear the appraiser has not corrected the issue.

Board Counsel recommends the Board start new and sanction the appraiser based off the most recent six cases in front of the Board. Board Counsel provided a brief out of the process if the Board should choose this route:

- the Board would motion to decline the current counteroffer.
- the Board would make a second motion to retract the previous settlement agreement;
- after reviewing the three new cases before the Board, the Board would motion to join all six cases (cases from the settlement agreement and three new cases) together, decide on sanctions and propose a settlement agreement.

- if the offer of settlement is rejected, the Board would motion to instruct Board Counsel to forward a memo to litigation requesting an ALJ for litigating all six cases.

Board Counsel is of the opinion that joining all Cases would make a strong case.

Chairperson Kost commented. The Board has a signed Settlement Agreement with this individual from previous Cases. The terms of the Agreement included automatic suspension with any additional validated complaints by the Board. The Board now has three additional Cases that have been found to have similar issues to what has been in the past. He questioned whether the Board could motion to enact that automatic suspension. Based on all the interrogatory steps that have been taken, Board Counsel was of the opinion the Board would not have strong case to do so. His recommendation is to start new.

Chairperson Kost relayed concerns on the length of time these processes take; from his perspective it does not appear the Board is doing its job in protecting the public. The Board is dealing with an individual who has been found to continually violate the same standards of USPAP over and over again. It is disheartening when the Board cannot protect the public in a timelier way.

Chairperson Kost questioned Board Counsel as to whether his previous recommendation has changed after hearing additional discussion. Board Counsel indicated his previous recommendation has not changed. In his opinion, the Board should reject the counteroffer, withdraw the agreement of 2020 and if the three new cases are found to have issues of noncompliance, bundle all six remaining cases.

Cases 220-108 and 220-111 are currently in litigation. In light of the additional allegations, Legal Counsel requested direction on how the Board would like to proceed with these two Cases. Discussion took place. Board members were in agreement to move forward with the hearing. Chairman Kost instructed Board Counsel to inform Litigation Counsel to continue moving Cases 220-108 and 220-111 forward to administrative hearing.

As previously discussed, at the meeting of June 28, 2023, the Board reviewed a selection of reports as part of the 2020 Settlement Agreement. The reports were found to be noncompliant with USPAP. The Board moved to offer an Agreement to include revocation. The Board's offer has been rejected, and opposing Counsel submitted a counteroffer with the following terms:

- the appraiser will voluntarily refrain from doing appraisal work during the month of January 2024.
- the appraiser will complete education in the form of a one-week, online course on writing appraiser reports consistent with USPAP Standards.
- the appraiser will pay a reasonable penalty commensurate with his one-month voluntary abandonment of his appraisal work.
- the appraiser will voluntarily surrender his license on December 31, 2026.

Niki Mertz moved to reject the counteroffer. Matt Schlenvogt seconded the motion. Chairperson Kost called for discussion. Board members were in agreement that there appears to be no formal discipline within this counteroffer. It is not even close to acceptable. There needs to be some sort of reasonable period of suspension. Chairperson Kost called for the vote. Brock DesLauriers, Matt Schlenvogt, Joe Sheehan, Nikki Mertz and Corey Kost all voted yes to the motion. The vote was unanimous. Motion carried.

Chairperson Kost turned to Board Counsel for direction. Board Counsel advised the Board to recommend Board Counsel draft a memo to Litigation Counsel and opposing Counsel to inform both Counsels that the counteroffer has been rejected and the Board will be sending this matter to Civil Litigation for a hearing.

Joe Sheehan moved to withdraw the settlement agreement on Case 216 -161, Case 216-162 and Case 216-164. Nikki Mertz seconded the motion. Chairperson Kost called for discussion. No further discussion took place. Chairperson Kost called for the vote. Matt Schlenvogt, Nikki Mertz, Joe Sheehan and Brock DesLauriers and Corey Kost all voted yes to the motion. The vote was unanimous. Motion carried.

Case 223-129, Case 223-131 and Case 223-132: Board Chairperson provided a brief overview. All three cases involve the same individual. Cases 223-129 and Case 223-131 originated from Fannie Mae and Case 223-132 from another appraiser.

Case 223-129: Board Chairperson Kost turned the meeting over to Board Reviewer, Kathy Maier. Board Reviewer detailed the issues identified by Fannie Mae:

- failure to adjust comparables
- inadequate comparable adjustments
- comparable sale transaction details reported incorrectly
- adjusted value of comparable sales failed to support appraised value

- use of dissimilar comparable sales due to site characteristics
- use of physically dissimilar comparable sales-total finished living area

Board Reviewer found the issues identified by Fannie Mae did have merit. In her review of the appraisal, the Reviewer found a number of additional areas of noncompliance, some of which include:

- the highest and best use was found to be noncompliant with USPAP, it needs to be analyzed
- the appraisal lacked analysis, rationale, or market derived support for the absence of site or view adjustments
- failed to support opinions and conclusions on effective ages, as well as condition adjustments
- no support or rationale for other adjustments within the report
- verification of sales was not acceptable
- reconciliation failed to provide reasoning or logic
- the report lacked credibility

Board Reviewer concluded that the allegations submitted by Fannie Mae have merit. Furthermore, the Reviewer recommends the allegations be elevated to a complaint due to appraisal services which have been rendered in a manner which is not USPAP compliant.

Board member discussion took place. Board members were in agreement with the Reviewer's findings.

Case 223-131: Board Chairperson Kost turned the meeting over to Board Reviewer, Kathy Maier. Board Reviewer detailed the issues identified by Fannie Mae:

- failure to adjust comparables
- inadequate comparable adjustments
- use of dissimilar comparable sales due to site characteristics
- use of physically dissimilar comparable sales relative to age
- use of physically dissimilar comparable sales relative to condition/quality of construction

Board Reviewer found the issues identified by Fannie Mae did have merit. In her review of the appraisal, the Reviewer found a number of additional areas of noncompliance, some of which include:

- the highest and best use was found to be noncompliant with USPAP- it needs to be analyzed
- the appraisal lacked analysis, rationale, or market derived support for the absence of site or view adjustments
- failed to support opinions and conclusions on effective ages, as well as condition adjustments
- the report and work file provided no market derived support or rationale for other adjustments within the report
- reconciliation failed to provide rationale or logic
- the report lacked credibility

Board Reviewer concluded that the allegations submitted by Fannie Mae have merit. Furthermore, the Reviewer recommends the allegations be elevated to a complaint due to appraisal services which have been rendered in a manner which is not USPAP compliant.

Board discussion took place. The reviews indicate the same issues of noncompliance. Board members were in agreement with the Reviewer's findings.

Case 223-132: These allegations were filed by an appraiser. They relate to an appraisal completed for a purchase finance transaction relative to a single-family property. Board Reviewer detailed the issues identified by the Complainant:

- inadequate contract for sale analysis
- insufficient geographic competency
- insufficient highest and best use analysis
- differing opinion of subject effective age
- insufficient identification of the inclusion of personal property
- use of dissimilar comparable sales- location within different communities
- failure to adjust comparable sales properly relative to location, site, gross living area
- the entire appraisal report lacked analysis, rationale, or market derived support
- reconciliation failed to provide reasoning or logic

Board Reviewer found the issues identified by the complainant did have merit. In her review of the appraisal report, the Reviewer found a number of additional areas of noncompliance, some of which include:

- highest and best use analysis is not USPAP compliant – no analysis

- the appraisal lacks analysis and rationale for the selection of the comparable sales which are not located in the subject city
- failure to provide market derived support for the absence of location adjustments
- the report and work file offer no market derived support for other adjustments which are (or are not) given within the appraisal
- reconciliation failed to provide rationale or logic
- the report lacked credibility

Board Reviewer concluded that the allegations submitted by the Complainant have merit. Furthermore, the Reviewer recommends the allegations be elevated to a complaint due to appraisal services which have been rendered in a manner which is not USPAP compliant.

Board Chairperson offered the respondent the opportunity to comment. The respondent was not in attendance.

Board discussion took place. Once again, the reviews indicate the same issues of noncompliance. Board members were in agreement with the Reviewer's findings.

Matt Schlenvogt made a motion to move elevate all three Cases (Case 223-129, Case 223-131 and Case 223-132) to a complaint. Brock DesLauriers seconded the motion. Chairperson Kost called for discussion. Joe Sheehan discussed the impact on an appraisal can have on lender and consumers relative to costs, mortgage insurance, etc. Discussion concluded. Chairperson Kost called for the vote. Matt Schlenvogt, Nikki Mertz, Joe Sheehan and Brock DesLauriers and Corey Kost all voted yes to the motion. The vote was unanimous. Motion carried.

Matt Schlenvogt moved to bundle all six cases (Case 223-129, Case 223-131, Case 222-132 and the reports reviewed as part of the 2020 Settlement Agreement). Nikki Mertz seconded the motion. Chairperson Kost called for further discussion. No further discussion took place. Chairperson Kost called for the vote. Nikki Mertz, Joe Sheehan, Brock DesLauriers, Matt Schlenvogt and Corey Kost all voted yes to the motion. The vote was unanimous. Motion carried.

Discussion turned to an offer of Settlement for the six bundled Cases. In previous agreements offered to this appraiser the Board offered revocation. The Board has precedence in revocations, suspensions and voluntary surrender. Staff did a quick review from 2012 to present day. In that timeframe, the Board has revoked a permit in each of the years 2015, 2016 and 2021; suspensions in 2014 and 2019 and voluntary surrenders in 2015 and 2017.

The Board discussed recovery of investigative costs. Staff indicated the reviews on the last three allegations were \$2550. This would be a baseline as Staff did not have the costs of the other reviews at hand.

Based on the number of complaints and violations, Board members were in agreement to keep in line with the original agreement of revocation. With all the costs incurred in the numerous reviews, a fine would be appropriate. Board Counsel indicated while he was in full support of revocation, he advised the Board to stay clear of a permanent revocation.

Chairperson Kost moved to offer a settlement agreement with the terms to include: 1) a two-year revocation of the appraiser's permit, after two years the appraiser may reapply through a new application and 2) a \$5000 monetary fine. Matt Schlenvogt seconded the motion. Chairman Kost called for discussion. Nikki Mertz, Brock DesLauriers, Joe Sheehan and Matt Schlenvogt all voted yes to the motion. The vote was unanimous. Motion carried.

The Board tentatively set a Special Meeting for 9:00 am October 18th.

Chairperson Kost called for adjournment at 10:59am.

Respectfully submitted,

Jodie R. Campbell
Executive Secretary