

## **DISCIPLINARY REPORT**

**September 18, 2014**

**AB-13-37** – On July 17, 2014, the Board approved a Consent Settlement Order with a Certified Residential appraiser William M. Robbins (R00223) where Licensee agreed to pay an administrative fine of \$3,500 to the Board and complete a 15 hour USPAP course with exam. The violations in the reports are as follow: The licensee did not gather significant information about the proposed sales or sales contract to make a thorough analysis such as: days on market, relationship between buyer and seller. Licensee failed to develop and perform a scope of work that intended users and Licensee’s peers would expect by: selecting sales that were not comparable to the subject in terms of size, age and condition when there were sales closer to the subjects size, age and condition that Licensee chose not to use. Licensee did not correctly employ the sales comparison approach when he selected comparable sales where size, age, and condition were superior to the subject and did not adjust the sales price with market based adjustments. Licensee did not demonstrate that he understood the proper execution of the sales comparison approach to value. Licensee made an unsupported assumption that the subject 86 year old home had an effective age of 20 years. Licensee stated under the section titled verification source, MLS/AGDA/CRS. These are not verification, these are data sources. Verification is with a party to the transaction. Licensee has no support or justification in the appraisal report or the work file for the site value utilized and the value was not developed utilizing an appropriate appraisal method or technique. Licensee did not have date to support his opinion of effective age and the adjustments to the comparable sales based on that effective age. **Violations: SCOPE OF WORK RULE, Standards Rule 1-1(a), 1-1(b), 1-3(a), 1-4, 1-4(b)(i), 2-1(b), USPAP, 2012-2013 Ed.**

**AB-13-39** – On July 17, 2014, the Board approved a Consent Settlement Order with a Certified Residential appraiser Alan Lloyd Daniel (R01205) where Licensee agreed to pay an administrative fine of \$3,500 to the Board and complete a 15 hour USPAP course with exam. The violations in the reports are as follow: The letter of engagement specified that the assignment was to meet FHA guidelines and that the assignment “can only be completed by the approved appraiser to whom it has been assigned”. Licensee did not personally inspect the interior of the subject as required by FHA guidelines. The Licensee certified in Item 2, Page 8, “I have performed a complete visual inspection of the interior and exterior areas of the subject property.” Additionally, in Item 8, page 30 Licensee certifies: “I have personally inspected the interior and exterior area of the subject property”. Licensee did not personally inspect the interior of the subject property and disclosed that the Trainee inspected the interior only when the AMC made a post appraisal inquiry. On page 6, in the Cost Approach section, Licensee supports the opinion of site value by stating “There is insufficient data to help establish a market value for the site and the tax appraisal for the site value is utilized in helping determine the site value of this appraisal.” The use of ad valorem tax values is not a recognized method to

develop an opinion of site value. The use of ad valorem tax values is not an appropriate method to develop an opinion of site value. Licensee falsely certified he inspected the subject property. Licensee falsely certified he inspected the subject property. Licensee failed to disclose the significant real property appraisal assistance of a Trainee appraiser and falsely certified that the work was his own until the AMC ordering the appraisal requested an explanation based on the homeowner's statement that the interior inspection was made by a female. Licensee altered the appraisal report submitted to the Board when the copy of the report was requested for investigation. . **Violations: SCOPE OF WORK RULE, Standards Rule 1-1(a), 1-4(b)(i), 2-1(a), 2-3, USPAP, 2012-2013 Ed.; §34-27A-20(a)(6), Code of Alabama, 1975.**

**AB-08-100** Joshua Matthew Smith is a Certified Residential Property Appraiser, Certificate Number R00770, who serves as a mentor appraiser. While he had no current trainees at the time of this hearing, he had previously mentored Charles William Jagers, who held a Trainee Real Property Appraiser's Certificate numbered T00662. During the course of this mentor/trainee relationship, Mr. Smith received, on November 10, 2006, a Request for Appraisal from First Commonwealth Mortgage. This Request for Appraisal dealt with the subject property, which is a single-family residence located at 357 County Road 429, Fruithurst, Alabama, 36262, in the County of Cleburne. Mr. Smith assigned this appraisal to Mr. Jagers, his trainee who inspected the property, otherwise researched the necessary data, and prepared the report. The final appraisal report was issued on November 14, 2006, effective November 13, 2006. Both Mr. Jagers and Mr. Smith executed the final report which was transmitted to the client, First Commonwealth. Thereafter, on or about August 18, 2008, the Board received a complaint against Mr. Smith related to this appraisal. The Board notified Mr. Smith about the complaint and initiated an investigation of the matter. The Board provided Mr. Smith with a copy of the complaint, redacting the name of the complainant. Mr. Smith was asked to turn over his working file on this appraisal and he submitted his file to the Board. Further, an attorney on Mr. Smith's behalf filed a response to the complaint on or about May 15, 2009. In the hearing of this matter, Mr. Smith acknowledged that he is responsible for the report and for assuring that the report meets both the Ethical Rules and the standards set forth in the Uniform Standards of Professional Appraisal Practice. Mr. Smith served as the supervisory appraiser for this report. As such, he made certain certifications which are found on page 6 of 6 of the Uniform Residential Appraisal Report. This report is found in Board's Exhibit 8. The relevant certifications are as follows: "SUPERVISORY APPRAISERS CERTIFICATION: The supervisory appraiser certifies and agrees that: I directly supervised the appraiser for this appraisal assignment, have read the appraisal report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification. I accept full responsibility for the contents of this appraisal report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification. This appraisal report complies with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of the Appraisal Foundation and that were in place at the time this appraisal report was prepared." Based upon the evidence presented in the hearing of this matter, it is clear that the instant report failed to meet certain requirements of the Ethics Rule and the standards established by the 2006

Uniform Standards of Professional Appraisal Practice. There were two discrepancies between data set forth in the report regarding the subject property and the actual state of the subject property. The Respondent argues that it is impossible for the Board to know the state of the subject property in 2006 because the Board's investigator did not make his inspection until 2009. However, with respect to these two particular discrepancies, this argument is not persuasive for reasons that will be set forth herein. The discrepancies are as follows: The report states that the subject property had two upstairs bedrooms. Exhibit 8, which is a copy of the licensee's file contains a copy of the report. The report contains a printed building sketch, which is found at Bates #20 of Exhibit 8. The sketch shows that those two upstairs bedrooms are at opposite ends across the front of the structure. That sketch indicates that a closet exists in the outside corner of each of these bedrooms. The Board's investigator, upon inspection, determined that there are no closets in these bedrooms. While he was unable to enter the structure, he was able to look through the windows. He also took photographs through the windows of the interior of these bedrooms. There were no closets in these corners. Additionally, from the exterior of the structure, he measured the wall length available on these corners for a closet. Windows are present on both walls close to the corners where these closets were supposed to have been located, which restrict the available space. The measurements taken from the outside by the investigator indicate that only one foot, seven inches existed on the front measurement, and two feet 10 inches existed on the side wall measurement. This means that any such closet would be implausibly small. The only way to make a larger closet would be to obstruct the windows. Nevertheless, there is no indication in the photographs taken by the investigator and, indeed the investigator observed no signs that closets had ever been in these two corners. Indeed, Exhibit 8, page 28, is a hand sketch of the floor plan of this structure, which was probably made at the time of the licensee's inspection of the subject property. The sketch of the first floor shows two bedrooms with a notation that each of these bedrooms contains a closet. The sketch of the second floor shows two bedrooms, but shows that there are no closets present. Additionally, the licensee offered no reliable testimony to the effect that closets ever existed in these bedrooms. The licensee never made an inspection of the subject property. Therefore, there are four bases for finding that no closets existed in the upstairs bedroom when the licensee conducted his inspection. Those bases are (1) there was not enough room in these bedrooms for a closet to exist; (2) there were no closets in 2009 and there was no physical indication that there had ever been any closets in these corners; (3) the hand sketch of the licensee contained in the licensee's working file, Exhibit 8, demonstrates that there were no closets in these bedrooms at the time the sketch was drawn; and (4) the licensee did not submit any reliable testimony based on personal knowledge that closets did exist in these bedrooms in 2006. The licensee misrepresented in the report that closets existed in the upstairs bedrooms. The report states that this property contained a central heating and central air conditioning system. The report indicates that there were two individual units which, presumably, meant that there were two central A/C compressors. However, the investigation of the Board determined that this house contained two window units and no central heating and air conditioning. Again, the licensee argues that the Board's inspection was made in 2009, three years after the licensee's report, and that things could change in the structure in that time frame. However, this Hearing Officer finds that there was no central heating and air conditioning

in the subject property at the time of the licensee's inspection. When the Board made its inspection, there was absolutely no sign that central heating and air conditioning ever existed in this structure. The floors and the ceiling were visible and showed no signs of duct work or vents. There was no evidence that any ducts or vents ever existed in any part of the structure. The licensee says that perhaps all evidence of a preexisting central heating and air conditioning system had been removed. However, based upon the condition of the house, such a conclusion is unwarranted. Further, there is no indication that a pad for a central heating and air conditioning unit was ever situated outside the structure. The only indication of heating and air conditioning in the structure are the two gravity units in the walls. The licensee admits that he really does not know whether central heating and air conditioning ever existed in this structure because he did not inspect it. It is untenable to think that a central heating and air conditioning system existed in this structure. Therefore, this Hearing Officer finds that the licensee misrepresented in the report the fact that central heating and air conditioning existed in the subject property. In addition to the two discrepancies, there are inadequacies or failures of the licensee to properly prepare the report in accordance with the Uniform Standards of Professional Appraisal Practice and there are other errors in the factual reporting. These are as follows: On Page 2 of 6 of the Uniform Residential Appraisal Report (Bates Page 6 of Exhibit 8) there is a block beside "Sales Comparison Approach" labeled "Quality of Construction." The appropriate response to place in that block is an evaluation as to whether the subject property rates a fair, average, good, or some other similar designation. Instead of appropriately making the evaluation in this fashion, the licensee indicated that the subject property was "vinyl siding." For the comparables in the same block he indicated that they were brick/veneer siding, wood siding, and wood siding. These are inappropriate designations and do not comport with the requirements of USPAP. On Page 3 of 6 of the Uniform Residential Appraisal Report (Bates Page 7 of Exhibit 8) there is a block beside the designation "Cost Approach" which reads "Quality Rating from Cost Service." In this block the licensee stated that the rating was average. However, this is an incorrect rating for the subject property. As listed on the report, the source of this cost data is Marshall and Swift residential estimator. The investigator for the Board testified with respect to the Marshall and Swift estimator. Board Exhibit 15 contains a copy of criteria for residential construction quality from this Marshall and Swift publication. The Board's investigator testified that the subject property fell within the fair quality range, not average. Whereas, the Marshall and Swift fair quality criteria called for eight-foot interior ceilings, the subject property had two bedrooms with seven-foot interior ceilings. The fair quality criteria set forth therein lists "flat roof or low-pitch roof." The subject property had a low-pitched roof. The "fair" criteria referenced "low-quality fixtures" as a fixture count of ten or below. The subject property had only six fixtures. The "fair" quality criteria included an owner-built (not professional) reference, and the investigator determined, upon investigation, that some of the construction did indeed appear to be owner built. The investigator found below-quality workmanship, which is another criteria under "fair" quality construction. Indications of below-quality workmanship in the subject property include a wall-mounted heat pump with a large gap between the top of the heat pump and the wall; a countertop that does not fit properly, the lack of handrails on the stairs and very narrow stairs, a kitchen outlet with a hole in the sheetrock larger than the outlet cover, no doors on the downstairs closets, and outside

drain pipes emptying into the yard. These conditions are not the type that would likely develop from poor maintenance or destructive vice. This Hearing Officer finds that these conditions existed in 2006.

The licensee argued that there are certain features of the subject property that actually exceed the criteria for average quality. He also points out that the subject property meets or exceeds most of the average quality criteria in the Marshall and Swift estimator. In this regard, the Board's investigator, who is himself a well-qualified Real Property Appraiser, and the licensee disagree. The scales tip in favor of the Board's position on this point by virtue of the following explanation. The Board's investigator examined Property Record Cards on the subject property and the three comparables. The 2006 Property Record Card for the subject property lists the quality class as E minus. The Code definitions in the Alabama Department of Revenue's Alabama Appraisal Manual, which are found in Board's Exhibit 15 state that E minus means "fair" quality construction. The Department of Revenue has a classification code system for various levels of quality and uses plus and minus signs to indicate structures that fall between the classifications. For example, a Class C property is a good or better than average property. A Class D property is an average or standard class of property. A C minus or D plus would be a property falling between Classes C and D. Class E describes a residence that might be considered slightly below average or fair. Class F is a low-cost or poor type of structure. An E minus indicates a less than below average property. The E minus means that the subject property should be rated as "fair" quality construction. For all of the reasons set forth herein, the quality of construction of the subject property, using the cost approach, should have been identified as "fair," not average. The report fails to state the differences between the subject and the comparables. There clearly are differences between the subject and the comparables, but the licensee reported that there were no differences in certain material aspects. For example, on Page 2 of 6 of the report (Bates #6 of Exhibit 8) under Sales Comparison Approach, in the heating/cooling block the licensee states that all four properties have central heating and cooling. This is simply not true. Additionally, under Functional Utility, the licensee reports that all of the properties are average. This is clearly incorrect as will be further set forth herein. In the Uniform Residential Appraisal Report, Page 2 of 6 (Bates #6 of Exhibit 8) under the Sales Comparison Approach, the block entitled "Condition" describes all of the properties as average. Again, this is not correct. Additionally, there is no adjustment for differences in the ages of the properties. Some comment should have been made with respect to these differences. The licensee reported the subject property virtually throughout at a higher classification than warranted when comparing the subject to the comparables. As set forth in paragraph 8(c) above, the functional utility of the subject property is listed as average. This evaluation does not comport with the actual status of the property. The layout of the subject property is inferior to the layout of the comparables. Two upstairs bedrooms in the subject property without closets and the lack of an upstairs bathroom causes the bedrooms to be functionally obsolete. In fact, it is quite arguable that the two upstairs bedrooms should not have been listed as bedrooms at all. Further, the floor plan is functionally obsolete. All of the comparable properties had two bathrooms and the subject property had only one. The floor plan of the subject property required that a person in an upstairs bedroom traverse a narrow set of stairs with no hand rail through either the kitchen or one of the downstairs bedrooms to get to the

only bathroom in the house. The Board's investigator testified that none of the comparables suffered from functional obsolescence. Two of the comparables were ranch-style houses with all rooms on one floor. The licensee testified that the subject property was not functionally obsolete because the market data regarding Comparable Two, which had one bedroom upstairs without a bath, did not support that conclusion. However, the licensee is not comparing apples with apples. Further, the licensee did not address in testimony the other two comparables. His analysis and, therefore, his opinion in this regard fails. Further, the licensee did not address functional obsolescence in his cost approach. The licensee should have used a method calculated to account for functional obsolescence. For example, the licensee could have used a cost-to-cure factor in his analysis, but did not do so. Had the licensee not allowed the discrepancies referenced herein, and had the licensee not failed to comply with the Uniform Standards of Professional Appraisal Practice, there would have been a different outcome in this appraisal. The licensee denied any wrongdoing. He stated that he did not observe the subject property. However, his failure to inspect is irrelevant to the issues herein regarding the propriety of the report for which he was responsible. The licensee gave his opinions with regard to various aspects of the criticisms offered by the Board's investigator to the effect that he is right about all analysis performed and data reflected in the report. Many of these opinions have been previously addressed in this Order. Clearly, however, the licensee's opinions in these regards do not warrant much weight. The attorney for the licensee has admirably argued his client's case, and both the testimony of the licensee and the arguments of his attorney have been duly considered by this Hearing Officer and given the appropriate measure of weight. The licensee argues that a public reprimand or a suspension would harm him financially. This is certainly a consideration; however, it cannot be determinative of the issues and the ultimate recommendation of this Hearing Officer. This Hearing Officer finds that the licensee violated Uniform Standard of Professional Appraisal Practice Rule 1-1(a) in that he did not correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal. For example, the licensee did not properly employ the sales comparison approach. He failed to make proper adjustments for differences in the quality of construction between the subject property and the comparables. Each of the three comparables were of higher quality construction than the subject property, as demonstrated in this Finding of Fact. No adjustments were made for differences in age or functional utility, as referenced above. The licensee improperly reported that the subject property had central heating and air conditioning, and failed to make any adjustment for the fact that the comparables all had central heating and air conditioning. This Hearing Officer finds that the licensee violated Uniform Standard of Professional Appraisal Practice Rule 1-1(b) by committing substantial errors of omission or commission that significantly affected the appraisal. These errors have been sufficiently discussed above, however, they include the fact that closets were reported in the upstairs bedrooms where none existed, the licensee reported that the subject property had central heating and air conditioning, which it did not, and the licensee did not consider functional utility regarding the subject property, which had a functionally obsolete floor plan. This Hearing Officer finds that the licensee violated Uniform Standard of Professional Appraisal Practice Rule 1-4(a) by failing in the use of the sales comparison approach to analyze comparable sales data which was available to indicate a value conclusion. The licensee

did not verify and correctly analyze all of the pertinent information necessary for a credible result. The licensee did not verify pertinent facts and failed to properly analyze the differences in quality of construction, age, condition, and functional utility of the subject property in relationship to the three comparable sales. This Hearing Officer finds that the licensee violated Uniform Standard of Professional Appraisal Practice Rule 1-4(b)(2)(i) in the licensee's use of the cost approach by failing to analyze comparable cost data available for the purpose of estimating the cost new of improvements. The licensee priced out the house with central heating and air conditioning when the house actually had wall heat pumps. This Hearing Officer finds that the licensee violated Uniform Standard of Professional Appraisal Practice Rule 1-4(b)(3)(i) by failing to analyze comparable data available for the purpose of estimating the difference between the cost new and the present worth of the improvements. The licensee did not consider functional utility when calculating the depreciation from all causes. The two upstairs bedrooms were only eight by ten feet and neither had closets. The house suffered from a very bad floor plan that had the main entry to the house coming into the kitchen area with stairs leading upstairs into a living area that had to be crossed to reach the two upstairs bedrooms. Access to the bath from upstairs was back down the stairs, through the kitchen and the breakfast area. The licensee violated the Ethics Rule of Conduct found in Exhibit 14, Uniform Standard of Professional Appraisal Practice, page 7, lines 247, 248, and 249, in that he communicated assignment results in a misleading manner. The undersigned Hearing Officer sets forth the following Conclusions of Law with regard to this matter:

- a. The licensee breached the standards for the development and communication of real estate appraisals by virtue of the above-stated acts and omissions in violation of §34-27A-20(a)(6), Code of Alabama (1975).
- b. The licensee failed without good cause to exercise reasonable diligence in developing, preparing, and in communicating the appraisal report in violation of §34-27A-20(a)(7), Code of Alabama (1975).
- c. The licensee was negligent in developing, preparing and communicating the appraisal report in violation of §34-27A-20(a)(8).
- d. The licensee willfully disregarded the regulations of the Board for the administration and enforcement of the law in violation of §34-27A-20(a)(9), Code of Alabama (1975).

The Board hereby suspends the Certified Residential Real Property Appraiser License # R00770 of Joshua M. Smith for one month beginning on February 1, 2011 through February 28, 2011; Respondent Smith pay an administrative fine of \$5,000. This action has been taken and this Order issued by the State of Alabama Real Estate Appraisers Board effective January 20, 2011.