

Mo. Admin. 07-0992 RA (Mo.Admin.Hrg.Comm.), 2008 WL 4182680

Administrative Hearing **Commission**

State of **Missouri**

ADAM **NEWSOM**, Petitioner,

vs.

MISSOURI REAL ESTATE APPRAISERS COMMISSION, Respondent.

No. 07-0992 RA

July 31, 2008

DECISION

*1 We grant Adam **Newsom's** application for certification as a state-certified residential **real estate appraiser** ("certification") because he has shown that he is qualified for licensure.

Procedure

On June 15, 2007, **Newsom** filed a complaint appealing a decision by the **Missouri Real Estate Appraisers Commission** ("the MREAC") denying his application for certification. On July 18, 2007, the MREAC filed an answer. On November 14, 2007, we held a hearing on the complaint. Assistant Attorney General Craig H. Jacobs represented the MREAC. Nicole L. Sublet, with Carson & Coil, P.C., represented **Newsom**. The matter became ready for our decision on March 31, 2008, the date the last brief was due.

Findings of Fact

1. After graduating from college, **Newsom** took **appraisal** classes at Ozarks Technical Community College and Lowman & Company.
2. The courses provided by Lowman & Company focused on teaching the USPAP requirements for **real estate appraisers**. **Newsom** successfully completed the USPAP course and received a Certificate of Completion.
3. **Newsom** received a Certificate of Completion for Introduction to **Real Estate Appraisal** at Ozarks Technical Community College.
4. **Newsom** has also taken a Multi-State Listing Service ("MLS") class that taught him to evaluate listings on the multi-list system.
5. Since August 2004, **Newsom** has trained with a certified residential **real estate appraiser**.
6. **Newsom** is currently employed at the Assessor's Office in Springfield, **Missouri**, as a residential **appraiser**.
7. **Newsom's** job at the Assessor's Office requires him to evaluate new residential construction, additions, and **real estate** of that nature. He takes field notes and measurements and then returns to the office where he computes a value for the property.
8. **Newsom** has completed the education and training necessary for certification.

Application

9. On April 11, 2006, **Newsom** submitted an application for certification as a state-certified residential **real estate appraiser** in order to apply to take the certified residential **real estate appraisers** examination.

10. **Newsom's** application included the following 180 hours of education: (a) National USPAP course from Lowman & Co. (15 hours); (b) Introduction to **Real Estate Appraising** from Ozarks Technical Community College (30 hours); and (c) Principles of Macroeconomics, Basic Business Statistics, and Financial Management from **Missouri** State University (total of 135 hours).

11. **Newsom** successfully passed the certified residential **real estate appraisers** examination and was notified of this by the MREAC by letter dated June 12, 2006.

12. After passing the examination, on August 1, 2006, **Newsom** submitted his application for licensure, including the required **Appraisal** Experience Log, to the MREAC. **Newsom's appraisal** log included 3,430 hours of training.

13. After receipt of **Newsom's** log, the MREAC requested copies of two of the **appraisals** drafted by **Newsom**. **Newsom** submitted the **appraisal** reports for 2523 West Talmage and 1408 North Clifton, both in Springfield, **Missouri**.

*2 14. The MREAC did not indicate to **Newsom** that these two **appraisals** were improper in any regard.

15. After **Newsom** submitted the two **appraisal** reports requested, the MREAC requested 10 more of **Newsom's appraisal** reports for review. **Newsom** submitted the additional 10 **appraisal** reports.

16. The MREAC then requested that **Newsom** appear before it to discuss four of the 12 **appraisal** reports submitted. The MREAC requested **Newsom** to bring four **appraisal** files with him: West Talmage, North Clifton, Creekside, and Megan Lane.

17. Of these four files, the MREAC reviewed the following two **appraisals** submitted by **Newsom**:

- **appraisal** of Real Property located at 106 Creekside Drive, Pleasant Hope, **Missouri** 65725-8219, signed March 22, 2006, and effective as of March 21, 2006 (“the Creekside **appraisal** report”);¹ and
- **appraisal** of Real Property located at 954 Megan Lane, Willard, **Missouri** 65781-8199, signed May 11, 2006, and effective as of May 9, 2006 (“the Megan Lane **appraisal** report”).²

18. In preparing the two **appraisal** reports at issue, **Newsom** went to the homes, took multiple photos, measured the homes, prepared a sketch of the property, took exterior and interior notes, and went inside each home. **Newsom** pulled information on the comparable homes and went to each house, taking notes, and made notes on the different subdivisions, if applicable.

Creekside Appraisal Report

19. In the Contract section of the Creekside **appraisal** report, **Newsom** failed to identify sales concessions of \$2,500 shown on line 5 of the sales contract.

20. In the sales comparison approach of the Creekside **appraisal** report, **Newsom** failed to make the following adjustments:

- No adjustments were made for differences in gross living area.
- No adjustment was made to Comparable No. 1 for an in-ground sprinkler system that the subject property did not have.
- No adjustment was made to Comparable No. 2 for \$6,000 of sales concessions.

- No adjustment was made to Comparable No. 3 for a fireplace.
- No adjustment was made to Comparable No. 4 for \$1,000 of sales concessions.

21. **Newsom** was not required to adjust for the \$6,000 of sales concessions, for the fireplace, or for the \$1,000 of sales concessions.

22. **Newsom** did not perform the cost approach for the two **appraisal** reports at issue because he agreed with the client beforehand not to prepare such an approach.

23. **Newsom** did consult the Marshall & Swift³ manual or online service to ensure that the cost approach value for each of the two properties was not substantially different from the market value approach. If the cost approach had been significantly different, he would have developed the cost approach.

Megan Lane **Appraisal** Report

24. In the Contract section of the Megan Lane **appraisal** report, **Newsom** failed to identify sales concessions in the contract from the builder of a refrigerator and a clothes dryer valued at approximately \$1,300.

*3 25. In the Contract section of the Megan Lane **appraisal** report, **Newsom** inaccurately identified the sales price as \$139,900, instead of \$142,500, because he failed to obtain and review the final and fully signed sales contract.

26. In the Sales Comparison Approach section of the Megan Lane **appraisal** report, **Newsom** failed to make the following adjustments:

- The sale price for Comparable No. 1 was misstated as \$144,900, when it was actually \$140,000. **Newsom** did not know the MLS reporting custom of the Springfield area to record a “z” by the sale price when the sale price has been withheld. **Newsom** did not verify the sale price with the realtors George Jacobs and Barbara Adkins who were identified in the MLS listing.

- Sales concessions of \$7,306.50 for Comparable No. 2 were not reported and **Newsom** did not adjust the sale price for the sales concessions. The sales concessions were apparent from the records in **Newsom's** work file, because Listing #5 17769 showed a sale price (\$147,050) higher than the original list price (\$142,500).

- Sales concessions of \$2,688.35 for Comparable No. 4 were not reported or adjusted for. The sales concessions were apparent from **Newsom's** work file because, as before, the sale price (\$142,900) was higher than the original listing price (\$139,900).

27. **Newsom** did not perform the cost approach.

Both **Appraisal** Reports

28. Each **appraisal** states that the value opinion to be developed was “market value.”

29. In the Scope of Work description in each **appraisal**, it states:

The scope of work for this **appraisal** is defined by the complexity of this **appraisal** assignment and the reporting requirements of this **appraisal** report form, including the following definition of market value[. ⁴

30. In a note to the Definition of Market Value in each **appraisal**, it states: "Adjustments to the comparables must be made for special or creative financing or sales concessions."⁵

31. In the Reconciliation section of both **appraisal** reports, **Newsom** states that the cost approach tends to support the sales comparison approach.

Denial of Application

32. On March 13, 2007, at the MREAC's request, **Newsom** appeared before the MREAC regarding his preparation of the **appraisal** reports.

33. On May 21, 2007, the MREAC denied **Newsom's** application for certification.

34. Upon review of the Creekside and Megan Lane **appraisal** reports, the MREAC decided that **Newsom** had violated Uniform Standards of Professional **Appraisal** Practice ("USPAP"), 2005 Edition, in developing and in reporting of the results of the **appraisal** reports.

Conclusions of Law

We have jurisdiction to hear **Newsom's** complaint.⁶ The applicant has the burden to show that he or she is entitled to licensure.⁷ We decide the issue that was before the MREAC,⁸ which is the application. We exercise the same authority that has been granted to the MREAC.⁹ Therefore, we simply decide the application *de novo*.¹⁰ When an applicant for licensure files a complaint, the agency's answer provides notice of the grounds for denial of the application.¹¹

I. Objection Taken with Case

*4 **Newsom** objected to the MREAC's Exhibit H, a joint motion for consent order and consent order in **Missouri RealEstate Appraisers Commission v. Glenn C. Newsom**, No. 06-0116 RA (AHC November 2, 2006). In that case, Glenn C. **Newsom**, **Newsom's** father and only supervisor in his training, was found subject to discipline. **Newsom** argues that there was never an issue in this case that his training was substandard. The MREAC asks us to look at issues of **Newsom's** training in making the discretionary decision as to whether we should grant his application. **Newsom** argues that the evidence is hearsay, irrelevant, prejudicial, and completely outside the scope of the pleadings in this case. We sustain **Newsom's** objection and do not admit Exhibit H into evidence.

II. Cause to Deny

The Board argues that there is cause to deny **Newsom's** application under § 339.532.1 and 2:

1. The [MREAC] **may** refuse to issue or renew any certificate or license issued pursuant to sections 339.500 to 339.549 for one or any combination of causes stated in subsection 2 of this section.

2. The [MREAC] may cause a complaint to be filed... for any one or any combination of the following causes:

* * *

(2) Failing to meet the minimum qualifications for certification or licensure or renewal established by sections 339.500 to 339.549;

* * *

5) Incompetency... in the performance of the functions or duties of any profession licensed or regulated by sections 339.500 to 339.549;

(6) Violation of any of the standards for the development or communication of **real estate appraisals** as provided in or pursuant to sections 339.500 to 339.549;

7) Failure to comply with the Uniform Standards of Professional **Appraisal** Practice promulgated by the **appraisal** standards board of the **appraisal** foundation;

(8) Failure or refusal without good cause to exercise reasonable diligence in developing an **appraisal**, preparing an **appraisal** report, or communicating an **appraisal**;

(9) Negligence or incompetence in developing an **appraisal**, in preparing an **appraisal** report, or in communicating an **appraisal**;

(10) Violating, assisting or enabling any person to willfully disregard any of the provisions of sections 339.500 to 339.549 or the regulations of the [MREAC] for the administration and enforcement of the provisions of sections 339.500 to 339.549;

* * *

(14) Violation of any professional trust or confidence[.]

(Emphasis added.)

Section 339.511.3, which sets forth the minimum qualifications for licensure or certification, states:

Each applicant for licensure as a state-licensed **real estate appraiser**, a state-certified residential **real estate appraiser** or a state-certified general **real estate appraiser** shall have demonstrated the knowledge and competence necessary to perform **appraisals** of residential and other **real estate** as the [MREAC] may prescribe by rule not inconsistent with any requirements imposed by the **appraiser** qualifications board.

*5 Regulation 20 CSR 2245-3.010(1), (3) and (5) sets forth specific requirements and policies regarding the licensing and certification of **appraisers**:

1) The [MREAC] shall pass upon the granting of all certificates and licenses with due regard to the paramount interest of the public as to the honesty, integrity, fair dealing and competency of applicants.

* * *

3) The [MREAC] may require each applicant for a certificate or license to furnish, at his/her expense, any information deemed necessary by the [MREAC] to determine the applicant's qualifications for a certificate or license.

* * *

5) Prerequisite for Certification.

* * *

(B) State-Certified Residential **Appraiser**.

1. The prerequisite for certification as a state certified residential **appraiser** shall be two thousand five hundred (2,500) hours of **appraisal** experience obtained continuously over a period of not less than twenty-four (24) months.... Hours may be treated as cumulative in order to achieve the necessary two thousand five hundred (2,500) hours of **appraisal** experience and there is no limitation on the number of hours which may be awarded in any year. Each applicant for certification shall furnish, under oath, a detailed listing of the **real estate appraisal** reports or file memoranda for each year for which experience is claimed by the applicant. Upon request, the applicant shall make available to the [MREAC] a sample of **appraisal** reports which the applicant has prepared in the course of the applicant's **appraisal** practice.

Section 339.535 provides that the professional standards for **real estate appraisers** are the USPAP standards: “State certified **real estate appraisers** and state licensed **real estate appraisers** shall comply with [USPAP.]”

The MREAC argues that **Newsom** has failed to demonstrate his knowledge and competence because the **appraisals** contain USPAP violations, and because the violations are significant and affect the credibility of his ultimate value estimates.

A. Subdivisions (6), (7) and (10) - USPAP Violations

Each **appraisal** states that the value opinion to be developed was “market value.” In the Scope of Work description in each **appraisal**, it states:

The scope of work for this **appraisal** is defined by the complexity of this **appraisal** assignment and the reporting requirements of this **appraisal** report form, including the following definition of market value[.]

In a note to the Definition of Market Value in each **appraisal**, it states:

Adjustments to the comparable must be made for special or creative financing or sales concessions.

1. Sales Concessions

In the Contract section of the Creekside **appraisal** report, **Newsom** failed to identify sales concessions of \$2,500 shown on line 5 of the sales contract. In the Contract section of the Megan Lane **appraisal** report, **Newsom** failed to identify sales concessions in the contract from the builder of a refrigerator and a clothes dryer totaling approximately \$1,300. **Newsom** agrees with the MREAC's expert Robert Howell that concessions need to be adjusted for in preparing an **appraisal** report.

*6 By failing to fully note sales concessions provided by the sellers in the two **appraisals**, the MREAC argues that **Newsom** violated USPAP Standards Rule (“SR”) 1-5(a), which states:

In developing a real property **appraisal**, when the value opinion to be developed is market value, an **appraiser** must, if such information is available to the **appraiser** in the normal course of business:

(a) analyze all agreements of sale, options, or listings of the subject property current as of the effective date of the **appraisal**[.]

We agree. **Newsom** violated USPAP SR 1-5(a).

2. Inaccurate Sales Price

In the Contract section of the Megan Lane **appraisal** report, **Newsom** inaccurately identified the sale price as \$139,900, instead of \$142,500, because he failed to obtain and review the final and fully signed sales contract. The MREAC does not set forth a specific USPAP that this allegedly violated, but includes this allegation when discussing violation of USPAP for both reports. We will consider this allegation when the MREAC argues that both reports violate a USPAP in our discussion as follows.

3. Sales Comparisons

a. Creekside

In the sales comparison approach of the Creekside **appraisal** report, the MREAC alleges that **Newsom** failed to make the following adjustments and that these omissions violated professional standards:

- No adjustments were made for differences in gross living area.
- No adjustment was made to Comparable No. 1 for an in-ground sprinkler system that the subject property did not have.
- No adjustment was made to Comparable No. 2 for \$6,000 of sales concessions.
- No adjustment was made to Comparable No. 3 for a fireplace.
- No adjustment was made to Comparable No. 4 for \$1,000 of sales concessions.

Newsom used appropriate comparables in both of his **appraisal** reports. Howell was unable to find any better comparables.¹² Howell testified that using comparables and adjusting comparables is a discretionary matter for the **appraiser**.¹³ The **appraiser** has to use his or her individual, professional judgment in using comparables. Howell stated that adjustments for sales concessions in an **appraisal** report are just “an estimate.” The issue regarding the value of comparable adjustments is subjective and depends on the **appraiser**.¹⁴

Howell admitted that while adjusting comparables based on square footage in a house is normally done, there is an argument among **real estate appraisers** as to how much to adjust. There is no “magical number” such as a \$20 per square foot adjustment, but it is “common” for **appraisers** to adjust for square footage.¹⁵ There was no testimony that it was required. The MREAC also argued that no adjustment was made to Comparable No. 3 for a fireplace and that this was a problem, but its witness testified that there were no inaccuracies regarding #3.¹⁶ With regard to the \$1,000 sales concession adjustment in Comparable No. 4, Howell admitted that this should not have been considered an inaccuracy.¹⁷

b. Megan Lane

*7 In the sales comparison approach of the Megan Lane **appraisal** report, the MREAC argues that **Newsom** failed to make the following adjustments and that these failures violate professional standards:

- The sale price for Comparable No. 1 was misstated as \$144,900, when it was actually \$140,000. **Newsom** did not know the MLS reporting custom of the Springfield area to record a “z” by the sale price when the sale price has been withheld. **Newsom** did not verify the sale price with the realtors George Jacobs and Barbara Adkins who were identified in the MLS listing.
- Sales concessions of \$7,306.50 for Comparable No. 2 were not reported and **Newsom** did not adjust the sale price for the sales concessions. The sales concessions were apparent from the records in **Newsom's** work file, because Listing #5 17769 showed a sale price (\$147,050) higher than the original listing price (\$142,500).
- Sales concessions of \$2,688.35 for Comparable No. 4 were not reported or adjusted for. The sales concessions were apparent from **Newsom's** work file because, as before, the sale price (\$142,900) was higher than the original listing price (\$139,900).

In the Contract section of the Megan Lane **appraisal** report, **Newsom** identified the sale price as \$139,900, instead of \$142,500, because he failed to obtain and review the final and fully signed sales contract. In his deposition, **Newsom** excused his failure to verify by stating that calls to realtors went unanswered, so he tended to call less and less for verification. The MREAC's expert testified that information that cannot be verified should not be used in an **appraisal** report.¹⁸

c. USPAP Violations

The MREAC argues that based on **Newsom's** errors and omissions in the development and reporting of the sales comparison analysis, including but not limited to failing to verify the information stated in the **appraisal** reports, **Newsom** violated USPAP SR 1-4(a):

In developing a real property **appraisal**, an **appraiser** must collect, verify, and analyze all information applicable to the **appraisal** problem, given the scope of work identified in accordance with Standards Rule 1-2(f).

(a) When a sales comparison approach is applicable, an **appraiser** must analyze such comparable sales data as are available to indicate a value conclusion.

We find that Howell's testimony does not support finding a violation. Concerning the Creekside **appraisal** report, **Newsom's** testimony cast doubt on Howell's assertion that failing to make adjustments for differences in living areas was unprofessional. There is no testimony that the failure to adjust for the fireplace and \$1,000 of sales concessions violated the USPAP.

We are left with a failure to adjust for a sprinkler system and \$6,000 of sales concessions. **Newsom** noted the sprinkler system in his report; he just did not give a specific adjustment for it. Howell's testimony about the \$6,000 of sales concessions is confusing. He stated that the difference in the selling price and the listing price was “strange.” He testified that he was aware of the concessions because of information from his own office - not information that **Newsom** should have had access to.¹⁹ There was no other testimony or documentation that sales concessions of \$6,000 existed or should have been included as an adjustment.

*8 We find insufficient evidence that **Newsom** violated USPAP SR 1-4(a) with regard to the Creekside **appraisal**.

The violations in the Megan Lane **appraisal** report appear more serious, especially the failure to verify information. We find that **Newsom** violated USPAP SR 1-4(a).

4. Cost Approach

In both the Creekside **appraisal** report and the Megan Lane **appraisal** report, **Newsom** did not perform the cost approach. The MREAC argues that **Newsom's** failure to perform the cost approach when it was applicable is a violation of USPAP SR 1-4(b)(i)-(iii), which states:

In developing a real property **appraisal**, an **appraiser** must collect, verify, and analyze all information applicable to the **appraisal** problem, given the scope of work identified in accordance with Standards Rule 1-2(f).

* * *

(b) When a cost approach is applicable, an **appraiser** must:

i) develop an opinion of site value by an appropriate **appraisal** method or technique;

(ii) analyze such comparable cost data as are available to estimate the cost new of the improvements (if any); and

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

and USPAP Rule 1-6, which states:

In developing a real property **appraisal**, an **appraiser** must:

(a) reconcile the quality and quantity of data available and analyzed within the approaches used; and

b) reconcile the applicability or suitability of the approaches used to arrive at the value conclusion(s).

In the Reconciliation section of both **appraisal** reports, **Newsom** states that the cost approach tends to support the sales comparison approach. The MREAC presented evidence that in both **appraisal** reports, he should have performed the cost approach because he indicated that it supported another approach.²⁰ In the Megan Lane **appraisal** report, Howell testified that he should have performed the cost approach because it was new construction.²¹ But Howell was not clear as to whether this failure rose to the level of a violation. He testified:

He did not do a cost approach. There are some lenders that don't require it. Most **appraisers**, anymore, just go ahead and do it. And in the case of the Megan report, it's a new property, it **probably** should have been done.²²

Howell also testified that an **appraiser** does not have to perform the cost approach in preparing an **appraisal** report for a client, and that under USPAP it is acceptable for a client and an **appraiser** to agree to limit the scope of an **appraisal** so long as it does not substantially interfere with the determination of value. If **Newsom** had an agreement with a client that a cost approach would not be done, this is an acceptable practice under USPAP. **Newsom** testified that he had such an agreement. We find insufficient evidence that **Newsom** violated USPAP SR 1-4(b)(i)-(iii) or USPAP Rule 1-6.

5. Errors in Both **Appraisal** Reports

*9 The MREAC argues that **Newsom** violated USPAP SR 1-1, which states:

In developing a real property **appraisal**, an **appraiser** must:

(a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible **appraisal**;

(b) not commit a substantial error of omission or **commission** that significantly affects an **appraisal**; and

(c) not render **appraisal** services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an **appraisal**, in the aggregate affects the credibility of those results.

We found that **Newsom** should have more fully considered the concessions and failed to verify data on a sales comparison. We do not find that these are substantial errors. In light of the vague testimony as to what is required as opposed to what is probably better to do in an **appraisal**, the omissions do not show that **Newsom** was unaware of or failed to understand and employ recognized methods.

At most, the **appraisal** reports show a small degree of carelessness. We agree with the MREAC that **Newsom** violated USPAP SR 1-1(c).

The MREAC argues that **Newsom** violated USPAP SR 2-1, which states:

Each written or oral real property **appraisal** report must:

a) clearly and accurately set forth the **appraisal** in a manner that will not be misleading;

b) contain sufficient information to enable the intended users of the **appraisal** to understand the report properly;

and violated USPAP SR 2-2(b)(ix), which states:

(b) The content of a Summary **Appraisal** Report must be consistent with the intended use of the **appraisal** and, at a minimum:

* * *

(ix) summarize the information analyzed, the **appraisal** procedures followed, and the reasoning that supports the analyses, opinions, and conclusions.[]

Although there were some errors, we find them insufficient to render the **appraisals** misleading or inconsistent with their intended use. **Newsom** did not violate USPAP SR 2-1 or USPAP SR 2-2(b)(ix).

The MREAC argues that **Newsom** violated USPAP Standard 1, which states:

In developing a real property **appraisal**, an **appraiser** must identify the problem to be solved and the scope of work necessary to solve the problem, and correctly complete research and analysis necessary to produce a credible **appraisal**.

Newsom included information in his **appraisals** that he failed to verify. He violated Standard 1.

The MREAC argues that **Newsom** violated USPAP Standard 2, which states:

In reporting the results of a real property **appraisal**, an **appraiser** must communicate each analysis, opinion, and conclusion in a manner that is not misleading.

Again, we do not find that **Newsom's appraisal** reports were misleading. He did not violate Standard 2.

B. Subdivisions (5), (8) and (9) Incompetence, Negligence and Failure to Exercise Reasonable Diligence

*10 When referring to an occupation, incompetence relates to the failure to use “the actual ability of a person to perform in that occupation.”²³ It also refers to a general lack of, or a lack of disposition to use, a professional ability.²⁴ Negligence is the failure to use that degree of skill and learning ordinarily used under the same or similar circumstances by members of the profession.²⁵ Diligence is defined as “[v]igilant activity; attentiveness... [a]ttentive and persistent in doing a thing [.]”²⁶ Reasonable diligence is defined as:

[a] fair, proper and due degree of care and activity, measured with reference to the particular circumstances; such diligence, care or attention as might be expected from a man of ordinary prudence and activity.²⁷

Howell testified that **real estate appraisal** “is not an exact science,” but more of “an art.”²⁸ In the Comment section under SR 1-1(c), it states:

Perfection is impossible to attain, and competence does not require perfection. However, an **appraiser** must not render **appraisal** services in a careless or negligent manner. This Standards Rule requires an **appraiser** to use due diligence and due care.

We found that **Newsom** violated USPAP standards. There was no expert testimony that **Newsom** was incompetent. Howell testified:

Q: And this is an important question. Do you believe that Adam **Newsom** is incompetent based on the two reports that you've reviewed and the summary reports you have prepared, based on the thousands of hours that he submitted that you haven't seen?

A: Well, I've also done thousands and thousands of hours over the years that I've done, and I've trained several new **appraisers**. And

I saw some work that he did that was good. There's also a lot that he needs to learn. And that's what I saw on those reports, is, he needs a little more training in probably not so much of a one- or two-person **appraisal** office. He needs some training from a good **appraiser**.

Q: But you can't say he is, overall, generally incompetent?

A: He just needs some work.²⁹

Expert testimony is necessary except “where the want of skill or lack of care is so apparent as to be within the comprehension of laymen and requires only common knowledge and experience to understand and judge it[.]”³⁰ This is not such a case. Whether such things as failure to adjust a sales comparable falls below a professional standard requires expert testimony.

There is no evidence of incompetence, and we find that **Newsom's** errors on the **appraisals** do not rise to the level of negligence or failure to exercise reasonable diligence. There is no cause for denial under § 339.2(5), (8) and (9).

C. Subdivision (14) - Violation of Professional Trust or Confidence

*11 Professional trust is the reliance on the special knowledge and skills that professional licensure evidences.³¹ It may exist not only between the professional and his clients, but also between the professional and his employer and colleagues.³²

Newsom did not violate his client's professional trust by failing to perform the cost approach because that is what they had agreed upon. His failure to report the concessions did not significantly impact the **appraisals**. **Newsom** did not violate his clients' professional trust or confidence. There is no cause for denial under § 339.532.2(14).

III. Discretion

“May” means an option, not a mandate.³³ The appeal vests in this **Commission** the same degree of discretion as the Board, and we need not exercise it in the same way.³⁴

There is cause for denial under § 339.532.2(6) and (7) because **Newsom** violated USPAP standards. But we have found that these violations are not so significant that they rendered the **appraisals** misleading or useless for their purpose, nor did the MREAC demonstrate that they caused any material harm to his clients. They do not show that **Newsom** lacks a basic understanding of the principles and techniques of his profession.

Newsom testified that his office does from 800 to 2,000 **appraisals** a year and that he personally does 150 to 200 **appraisals** a year. He supervises **appraisers**. He testified as to his competence as a **real estate appraiser**, and we find him to be a credible witness. **Newsom** has assured us and the MREAC that in the future he will ensure to always write out all notes, phone calls, and calculations he uses to retain in his file rather than relying on mental processes without documentation.³⁵ We exercise our discretion and grant **Newsom's** application for certification.

Summary

There is cause for denial under § 339.532.2(6) and (7) because **Newsom** violated USPAP standards. There is no cause for denial under § 339.532.2(5), (8), (9) or (14).

We exercise our discretion and grant **Newsom's** application.

SO ORDERED on July 31, 2008.

JOHN J. KOPP
Commissioner

Footnotes

- 1 Resp. Ex. A.
- 2 Resp. Ex. C.
- 3 A method of developing the cost approach. Tr. at 179.
- 4 Resp. Ex. A at 1-7; Resp. Ex. C at 3-7.
- 5 Resp. Ex. A at 1-7; Resp. Ex. C at 3-7.
- 6 [Section 621.045, RSMo Supp. 2007](#). Statutory references, unless otherwise noted, are to RSMo 2000.
- 7 Section 621.120.
- 8 [Department of Soc. Servs. v. Mellas, 220 S.W.3d 778 \(Mo. App., W.D. 2007\)](#).

- 9 *J. C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20 (Mo. banc 1990).
10 *State Bd. of Regis'n for the Healing Arts v. Finch*, 514 S.W.2d 608, 614 (Mo. App., K.C.D. 1974).
11 *Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo. App., E.D. 1984).
12 Tr. at 127.
13 Tr. at 127.
14 Tr. at 156.
15 Tr. at 75-76.
16 Tr. at 70.
17 Tr. at 167.
18 Tr. at 101.
19 Tr. at 68-69.
20 Tr. at 83.
21 Tr. at 106.
22 Tr. at 113 (emphasis added).
23 Section 1.020(8).
24 *Johnson v. Missouri Bd. of Nursing Adm'rs*, 130 S.W.3d 619, 642 (Mo. App., W.D. 2004); *Forbes v. Missouri Real Estate*
Comm'n, 798 S.W.2d 227, 230 (Mo. App., W.D. 1990).
25 *Thiel v. Miller*, 164 S.W.3d 76, 82 (Mo. App., W.D. 2005).
26 BLACK'S LAW DICTIONARY 457 (6th ed. 1990).
27 *Id.*
28 Tr. at 126.
29 Tr. at 158-59.
30 *Hart v. Steele*, 416 S.W.2d 927, 932 (Mo. 1967).
31 *Trieseler v. Helmbacher*, 168 S.W.2d 1030, 1036 (Mo. 1943).
32 *Cooper v. Missouri Bd. of Pharmacy*, 774 S.W.2d 501, 504 (Mo. App., E.D. 1989).
33 *S. J. V. ex rel. Blank v. Voshage*, 860 S.W.2d 802, 804 (Mo. App., E.D. 1993).
34 *Finch*, 514 S.W.2d at 614.
35 Tr. at 197.

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