

OPINION AND BEST PRACTICE ISSUES

Roberta Ouellette
Board Attorney
NCAB



Purpose

- ▣ Demonstrate some of the pitfalls of allowing opinion and best practice to affect and shape an investigation
- ▣ Show what might or can happen when best practice and opinion are considered during the prosecution of an appraisal regulatory case

Best Practice

- ▣ Definition of best practice :

noun

Commercial or professional procedures that are accepted or prescribed as being correct or most effective:

Oxford Advanced Learner's Dictionary

Regulation

- ▣ Definition of a regulation :

noun

A rule or directive made and maintained by an authority:

Oxford Advanced Learner's Dictionary

Opinion

- ▣ Definition of an opinion :

noun

A view or judgment formed about something, not necessarily based on fact or knowledge:

Oxford Advanced Learner's Dictionary

Fact

- ▣ Definition of a fact :

noun

A thing that is indisputably the case:

Oxford Advanced Learner's Dictionary

Opinion and the Appraisal Regulatory Case

▣ Opinion

- Can detract from the factual basis of the case
- Can promote confusion and create doubt in the minds of the hearing authority
- Can allow the respondent the ability to minimize certain aspects of the case and mire the hearing authority in inconsequential areas

Best Practice

- ▣ Best Practice
 - Often a matter of personal preference
 - Generally cannot be traced to any authoritative guideline, regulation, or law
 - When unchecked best practice can adversely affect the credibility of the results of an investigation

Differences in Opinion

- ▣ Legitimate reasons why opinions might vary
 - Scope of Work
 - ▣ Assignment Conditions
 - ▣ Intended Use
 - ▣ Intended User
 - ▣ Assumptions
 - Hypothetical
 - Extraordinary

Variations in Best Practice Opinions

- ▣ Formed from personal experiences
 - Experiences vary

- ▣ Promotes almost tunnel vision view of appropriate methodology
 - Narrow view

- ▣ Generally unrelated to any real requirement or rule

Case Example

- ▣ Investigation
 - Facts from the investigation
- ▣ Notice of Hearing
 - Building the case
- ▣ Hearing
 - Prosecution
- ▣ Decision
 - Rationale

General Situation

- ▣ Complaint issued from the Board
- ▣ Complaint resulted from a civil suit filed against a licensee involving their personal home
- ▣ The District Court's decision, which was upheld by the Court of Appeals indicated that the appraisal which was utilized as part of a loan decision was grossly overvalued
- ▣ The appraisal that was prepared for the licensee's loan was performed by an associate of the licensee

General Situation

Yes! The names have been changed to protect the innocent

General Situation

Case involved two licensees



Respondent-Barney Fife

Fife was the former employee of
Andy Griffith

Fife performed the appraisal that
was referenced in the civil suit



Andy Griffith

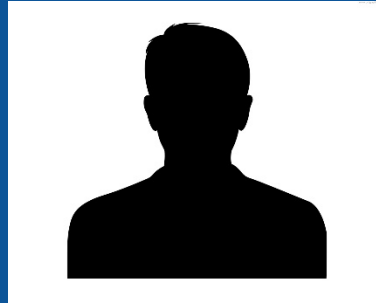
Former supervisor of Barney Fife

Griffith provided approx. 90% of
Fife's appraisal work

Griffith pays for Fife's MLS
subscription, appraisal software,
and Errors and Omissions Ins.

General Situation

Respondent



Respondent-Barney Fife

- Prepared the appraisal report
- Signed the appraisal report

Notice of Complaint

- ▣ Investigation request was approved by the Board
- ▣ Notice was provided to Respondent
- ▣ Response from Respondent was received
- ▣ Case assigned to investigator

Allegations

- ▣ Multiple allegations were developed by examination
 - Court documents
 - Respondent's appraisal report
 - Respondent's workfile
 - Applicable edition of USPAP
 - Board Rules
 - State Law

Allegations Developed

- ▣ The Respondent violated the ETHICS RULE of USPAP
 - Respondent did not disclose to the client he had a personal interest with respect to the parties involved
 - The Respondent grossly overvalued the subject property and issued a misleading report
 - The Respondent violated confidentiality by sharing assignment results with someone other than the client and intended user
 - The Respondent did not have an adequate workfile to show compliance with USPAP

Evidence Collected via the Investigation

- ▣ Respondent did not disclose to the client that he had a personal interest with respect to the parties involved
 - Respondent relied upon Fife for approximately 99% of his appraisal assignments
 - The Respondent started in the appraisal profession as a trainee for Fife
 - Fife paid for the Respondent's MLS subscription, appraisal software, and Errors and Omissions Insurance

Evidence Collected via the Investigation

- ▣ Respondent did not disclose to the client that he had a personal interest with respect to the parties involved (continued)
 - Griffith operated an appraisal company known as Number Hitter Appraisal Company
 - Respondent Fife provided appraisal services to Number Hitter Appraisal Company and was paid on a fee split basis
 - The engagement order requesting the subject appraisal was addressed to Number Hitter Appraisal Company and named Fife as the appraiser

Evidence Collected via the Investigation

- ▣ Respondent did not disclose to the client that he had a personal interest with respect to the parties involved (continued)
 - Respondent signed appraisal report certifying

17. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction.

Evidence Collected via the Investigation

- ▣ The Respondent violated confidentiality by sharing assignment results with someone other than the client and intended user
 - The client for this assignment was All Star Mortgage Company
 - Fife and Griffith's business practice was for Fife to author appraisals and then transmit those appraisals to Griffith, who would then review the appraisals
 - After edits and alterations were made Griffith would then affix the signature of Fife and transmit the report to the client

Evidence Collected via the Investigation

- ▣ The Respondent violated confidentiality by sharing assignment results with someone other than the client and intended user (continued)
 - The investigation confirmed through the Fife's own admission that the subject report was provided to Griffith prior to its submission to the client
 - Griffith affixed the Respondent's, signature to the subject report

Evidence Collected via the Investigation

- ▣ The Respondent grossly overvalued the subject property and issued a misleading report
 - The court documents indicated that the subject property was grossly overvalued
 - The Respondent, Barney Fife signed the appraisal report
 - The court documents referenced an evaluation that was performed by a third party that estimated the value of the subject property to be significantly less than Griffith's appraised value

Evidence Collected via the Investigation

- ▣ The Respondent grossly overvalued the subject property and issued a misleading report (continued)
 - The sales chosen by the Respondent for comparison with the subject were located outside of the subject's immediate neighborhood
 - The subject property was located adjacent to a county airport, which was not disclosed or discussed within the subject report
 - The investigation found alternative comparable sales that were available but not addressed by the Respondent

Evidence Collected via the Investigation

- ▣ The Respondent did not have an adequate workfile
 - The workfile that was provided to the Board contained only MLS sheets, tax records, and appraisal request
 - The workfile did not contain a true copy of the Respondent's appraisal
 - The workfile for the assignment did not contain the necessary documentation to support the Respondent's opinions and conclusions, and to show compliance with USPAP

Evidence Evaluation



Evidence Evaluation

Respondent was dependent upon Griffith for 99% of his work

Subject assignment was addressed to Griffith's Company and named Fife as the appraiser

Nondisclosure of personal interest

Griffith paid for and provided Fife's appraisal software, MLS Access, and Errors and Omissions Ins.

Fife was the former trainee of Griffith and did not physically maintain any of the workfiles. All were kept by Griffith

Fife signed a certification indicating that he had no interest with regard to the parties of the transaction

Evidence Evaluation

Respondent provided a copy of the appraisal to Griffith prior to submission to the client

Respondent inappropriately shared assignment results

Griffith maintained custody of all the workfiles for assignments

The client for the assignment was All Star Mortgage Lending

There was no indication within the workfile that the client had given permission to Fife to discuss the subject report with anyone else

Evidence Evaluation

Workfile did not contain a true copy of the subject report

Respondent's workfile was insufficient

The workfile did not contain necessary documentation to support the opinions and conclusions

The Respondent's workfile contained only MLS sheets, tax information, and the appraisal request

Evidence Evaluation

Respondent ignored
adjacent county airport

Respondent grossly
overvalued the subject
property

Respondent did not apply
appropriate adjustments to
mitigate location differences

Respondent chose comparable
sales located outside of
subject's immediate
subdivision

Weighing the Evidence

- ▣ The evidence regarding the case was predominantly documentary
- ▣ The evidence was overwhelmingly conclusive and substantiated the allegations made
- ▣ With the exception of the allegation of overvalue

Weighing the Evidence

- ▣ The allegation of overvalue contained support that was largely grounded in the opinion of the investigator and the investigator's ideas of best practice
 - Selection of Comparable Sales
 - The influence if any of the adjacent airport
 - The appropriateness of the adjustments made
- ▣ Each of these had elements related to personal judgment or opinion and what would be considered best practice

Weighing the Evidence

- ▣ The decision was made by the Staff to proceed with all of the allegations developed
- ▣ The documentary evidence was compiled, marked, and provided to the Respondent
- ▣ Hearing date was scheduled

Hearing

- ▣ Hearing commenced and each party made opening statements
- ▣ The Board Staff recommended revocation
- ▣ The investigator was the State's only witness and testified primarily as a fact witness

Hearing

- ▣ The evidence was entered methodically and chronologically by the Board Attorney through the testimony of the investigator
- ▣ The investigator testified for some time as each of the allegations were considered
- ▣ The perception given was an extremely strong case right up until the Respondent was allowed to cross examine the investigator

Hearing

- ▣ Perhaps unknown to the Respondent, he actually benefitted from the fact that:
 - He was not represented by legal counsel
 - ▣ The Respondent was given significant latitude to present their case
 - ▣ As the Respondent was not an attorney, the Board was more lenient with regard to procedure
 - The Respondent largely capitulated to validity of the evidence
 - ▣ The Respondent largely accepted the evidence as entered, but did not necessarily agree with the interpretation of the evidence
 - ▣ The Respondent's demeanor was mostly conciliatory right up until....

Allegation of Overvalue

- ▣ This is where the Respondent dug in
- ▣ While not being able to deny the earlier evidence, the Respondent methodically picked apart the State's argument
- ▣ The Respondent was able to mount a credible challenge to the evidence provided by the State which was arguably opinion and best practice

Allegation of Overvalue

- ▣ The Respondent was prepared and had done his “homework”
- ▣ Having had the chance to review the State’s evidence, the Respondent methodically questioned the investigator on each of the 10 alternative sales that were entered into evidence
- ▣ Due to the latitude given the Respondent, this process was lengthy and excruciating

Allegation of Overvalue

- ▣ The challenge the Respondent made was directed at the three areas of the State's evidence
 - The county airport – The Respondent noted that while he did not necessarily discuss the airport, its proximity to the subject property was clearly noted on multiple sketches within the appraisal report
 - The Respondent also pointed out that all of the comparable properties that he selected were similarly affected by the proximity of the airport

Allegation of Overvalue

- ▣ Selection of Comparable Sales
 - The Respondent mounted aggressive challenges
 - ▣ Attacking and critiquing each alternative comparable
 - ▣ Emphasizing his geographic competence
 - ▣ Disputing the investigator's knowledge of the subject property focusing on the fact that the investigator had not physically inspected the interior of the subject property

Allegation of Overvalue

- ▣ Selection of Comparable Sales (continued)
 - The Respondent through cross examination and testimony was able to:
 - ▣ Reasonably show that while his opinion of value was near the top of the range for the market area; it was nonetheless within the range of value
 - ▣ That his selection of sales for comparison were just as reasonable as those alternative sales offered by the investigator

Allegation of Overvalue

- ▣ Respondent's strategy was somewhat effective as it:
 - Moved the area of sales comparison from fact to opinion and best practice

“Sales Comparison Case”

- ▣ Can be a difficult case to prosecute
 - Successful prosecution of the “Sales Comparison Case” works best when there are obvious flaws
 - The best strategy will often be to focus on major items and not to dwell on smaller issues such as adjustments or condition/quality issues as those are extremely subjective
 - The best tactic is to focus on historical market information particular to the location of the subject property

In the Matter of Mr. Fife

- ▣ The Board Staff asked for revocation
- ▣ The Board ordered:
 - 18 Months Suspension
 - 4 Months of which were active
 - Must successfully pass 15 hour USPAP Course and Exam
 - Complete a course in the cost approach

Lessons Learned

Thanks

- ▣ The final order is available from Roberta
- ▣ Roberta@ncab.org