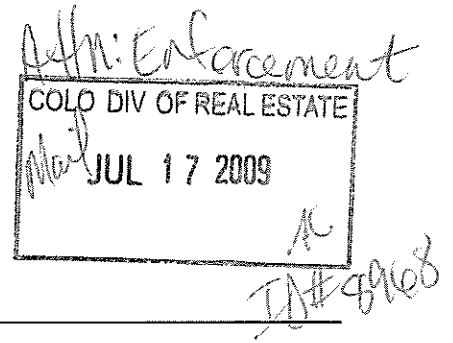


BEFORE THE BOARD OF REAL ESTATE APPRAISERS
STATE OF COLORADO

Case No. 2008081064



STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF THE DISCIPLINARY ACTION AGAINST THE APPRAISER'S
LICENSE OF **JOHN ZABRISKIE (LICENSE # AL40022958)**,

Respondent.

IT IS HEREBY STIPULATED by and between the Colorado Board of Real Estate Appraisers (the "Board") and Respondent, as follows:

1. At all times relevant hereto, Respondent was registered, licensed or certified as a real estate appraiser in the State of Colorado.
2. The Board has jurisdiction over Respondent, Respondent's license and the subject matter of this action.
3. The Board commenced an investigation of Respondent's activities based upon a complaint filed on the Board's own motion or by an individual with specific knowledge of Respondent's actions.
4. The Board notified Respondent of the complaint and of the investigation and provided to Respondent a copy of the complaint and investigative report. The Board offered Respondent the opportunity to give written data, views and arguments concerning the complaint, the investigation and the investigative report.
5. The Board considered the investigative report regarding the appraisal and the appraisal reporting of the property or properties identified on Exhibit A, attached hereto and incorporated herein, and found reasonable grounds exist to refer Respondent to hearing for violations of appraisal law. The Board authorized the preparation of this settlement agreement including the disciplinary terms set forth herein and set forth on Exhibit A as a means to resolve the matter without the need for formal hearing.
6. Respondent admits to factual findings and violations of appraisal laws, Board Rules and Uniform Standards of Professional Appraisal Practice as set forth in the investigative report identified on Exhibit A. The investigative report is incorporated herein by this reference.

7. Respondent agrees to and accepts the discipline set forth herein and set forth on Exhibit A.

a. If the discipline set forth on Exhibit A includes a fine, such fine shall be made payable to the "Colorado Board of Real Estate Appraisers" and shall be paid to the Board in good funds in one lump-sum payment when Respondent signs and returns this Stipulation and Final Agency Order to the Board. Respondent's failure to include payment for the fine when returning this signed Stipulation and Final Agency Order to the Board will not preclude the Board from executing and accepting this Stipulation and Final Agency Order which has been signed by Respondent. In such event, the Board may, in its sole discretion, execute this Stipulation and Final Agency Order signed by Respondent and treat Respondent's failure to provide payment of the fine as a failure to comply with the terms of this Stipulation and Final Agency Order.

b. If the discipline set forth on Exhibit A includes the completion of course work, Respondent shall enroll in and successfully complete the courses set forth on Exhibit A by the due dates set forth therein. Respondent shall also submit written proof of course work completion in a form and manner acceptable to the Board by such due dates. All such course work shall be completed in addition to any continuing education courses required by §12-61-706, C.R.S. and the rules and regulations of the Board.

c. If the discipline set forth on Exhibit A includes supervision, Respondent shall be directly supervised by an independent third party appraiser approved by the Board or the Board's designee. Respondent shall bear the responsibility and any costs associated with locating and retaining said review appraiser. During the period of supervision, Respondent's work product shall be reviewed by the supervisor in accordance with the terms and conditions set forth on Exhibit A.

d. If the discipline set forth on Exhibit A includes probation, Respondent shall be placed on probationary status for the period set forth on Exhibit A. During the period of probation, Respondent may continue to practice as an appraiser subject to the terms and conditions set forth on Exhibit A.

e. If the discipline set forth on Exhibit A includes suspension, Respondent shall be suspended from practicing as an appraiser commencing on the date set forth on Exhibit A and continuing for the period set forth on Exhibit A. During the period of suspension, Respondent shall not engage in any act requiring an appraiser registration, license or certificate as set forth in §12-61-706 and §12-61-712, C.R.S. Any registration(s), license(s), certificate(s) and/or pocket card(s) of Respondent shall be returned to the Board no later than the effective date of the suspension.

f. Respondent acknowledges that the Board will publish this Stipulation and Final Agency Order (or a summary of the disciplinary terms provided for herein) on the Board's website and in the Board's newsletter, and will treat this Stipulation and Final Agency Order and the investigative report as public records in the custody of the Board.

8. It is the intent and purpose of this Stipulation to provide for the settlement of the particular issues, allegations and/or charges raised by the investigation of Respondent's activities by the Board as set forth in paragraphs 3, 4 and 5 above and as set forth in the investigative report, except as provided in paragraph 11 below.

9. Upon execution by all parties, this Stipulation and Final Agency Order shall represent the entire and final agreement of the parties. In the event any provision of this Stipulation and Final Agency Order is deemed invalid or unenforceable by a court of law, it shall be severed and the remaining provisions of this Stipulation and Final Agency Order shall be given full force and effect.

10. Respondent expressly agrees and acknowledges that Respondent has entered into this Stipulation and Final Agency Order knowingly and voluntarily. After the opportunity to consult with legal counsel, Respondent affirms that Respondent has read this Stipulation and Final Agency Order and fully understands its nature, meaning and content. Respondent agrees that upon execution of this Stipulation and Final Agency Order, no subsequent action or assertion shall be maintained or pursued by Respondent asserting the invalidity in any manner of this Stipulation and Final Agency Order.

11. Respondent agrees that the following terms shall apply if Respondent fails to comply with any of the terms of this Stipulation and Final Agency Order:

a. In the event that Respondent fails to comply with any of the terms of this Stipulation and Final Agency Order, such failure shall constitute a violation of §12-61-710(1)(b), C.R.S., and the Board shall have the right to proceed with formal disciplinary action against Respondent pursuant to §12-61-710, §24-4-104 and §24-4-105, C.R.S. Completion of the terms of this Stipulation and Final Agency Order after the date required herein shall not excuse the failure to comply nor prohibit the Board from proceeding with such formal disciplinary action.

b. In a proceeding against Respondent for failing to comply with the terms of this Stipulation and Final Agency Order, this Stipulation and Final Agency Order shall be admissible as evidence, and the matters at issue shall be limited to the question of whether or not Respondent has failed to comply with any of the terms of this Stipulation and Final Agency Order. Any issues relating to the underlying complaint or investigation that formed the basis for disciplinary action against Respondent (and any defenses that Respondent may have to such complaint and investigation) shall specifically not be at issue in the proceeding against Respondent for failing to comply with the terms of this Stipulation and Final Agency Order.

c. In the event that Respondent is found, after a hearing, to have failed to comply with any of the terms of this Stipulation and Final Agency Order, Respondent stipulates and agrees that the appropriate form of formal discipline to be imposed by the Board shall consist of revocation of Respondent's appraiser registration, license or certificate. Upon such revocation, Respondent shall not engage in any act requiring an appraiser registration, license or certificate as set forth in §§12-61-706 and §12-61-712, C.R.S. Respondent shall

also be required to pay any unpaid fine provided for in this Stipulation and Final Agency Order. The Board shall also have the right to publish the Final Agency Order from the hearing (or a summary of the disciplinary terms therein) on the Board's website and in the Board's newsletter, and to continue thereafter to treat such Final Agency Order as a public record in the custody of the Board.

12. Respondent understands and knowingly and voluntarily enters into this Stipulation and Final Agency Order. Respondent further understands and knowingly and voluntarily waives the following rights:

- a. The right to a formal disciplinary hearing on the merits of the matters forming the basis of this Stipulation and Final Agency Order and the right to require the Board to meet its burden of proof in a formal hearing.
- b. The right to confront and cross-examine all witnesses against Respondent at a formal hearing.
- c. The right to subpoena witnesses, present evidence and to testify on Respondent's own behalf at a formal hearing.
- d. The right to be represented by counsel of Respondent's own choosing and at Respondent's expense at any stage of this proceeding.
- e. The right to engage in pre-hearing discovery of the Board's evidence.
- f. The right to appeal the Final Agency Order provided for by this Stipulation.

13. On the date upon which this Stipulation is executed by an authorized representative of the Board, it shall become the Final Agency Order of the Board.

EXECUTED BY THE BOARD this 14 day of JULY, 09.

RESPONDENT

COLORADO BOARD OF REAL ESTATE APPRAISERS

Joe Zabulka
Respondent

By: Marcia Waters
Erin Toll (or Designee of the Director)
Division of Real Estate
1560 Broadway, Ste. 925
Denver, CO 80202

EXHIBIT A
Stipulation and Final Agency Order

Respondent Name: JOHN ZABRISKIE
License Number: AL40022958
Case Number: 2008081064

<u>Property Appraised</u>	<u>Appraisal Report Date</u>
▪ 5880 S. Goldsmith Place, Greenwood Village, Colorado	February 18, 2006

Admissions: Respondent admits to the allegations, factual findings and conclusions of law in the investigative report dated February 12, 2009. Respondent admits these facts constitute a violation of: 12-61-710(1)(b), C.R.S., Board Rule 1.13, the Record Keeping Section of the Ethics Rule, and USPAP Standard Rules 1-1 (a), 1-1 (b), 1-4 and 2-1 (a).

Discipline: Respondent accepts the discipline set forth in paragraph 7 and the discipline set forth below:

- Fine: Respondent shall pay a fine of \$3,000. Respondent understands and acknowledges that, pursuant to section 24-34-108, C.R.S., the Executive Director of the Department of Regulatory Agencies shall impose an additional surcharge of 15% of this fine. Thus Respondent shall pay a total amount of \$3,450.00 [fine plus 15%]. Fine shall be stayed if the Respondent completes all of the conditions of this Stipulation satisfactorily, within six (6) months of the execution of this Stipulation. If after six (6) months all conditions of the Stipulation have not been met, the fine will be due in lump sum payable to the "Colorado Board of Real Estate Appraisers"; and

- Course Work:

75 or more hours of real estate appraisal education to be successfully completed within six (6) months after the execution of this Stipulation by the Board. To be "successfully completed", Respondent must pass any required examination given as part of the course. The required course work must include the following courses:

- 15-hour National USPAP Course (15 Classroom Hours)
- Residential Market Analysis and Highest and Best Use (15 Classroom Hours)
- Residential Sales Comparison and Income Approaches (30 Classroom Hours)
- Residential Report Writing and Case Studies (15 Classroom Hours)

* Pursuant to Board Rule 13.6, when a licensee is required to complete real estate appraisal education as part of a disciplinary action, no portion of any such courses or programs completed to satisfy the terms of a disciplinary action shall be creditable toward continuing education requirements; and

■ Supervision/Work Product Review:

Within thirty (30) days after the effective date of this Stipulation and Final Agency Order, the Respondent must obtain the approval of the Colorado Division of Real Estate, Appraiser Program Manager of an independent third party appraiser who will directly supervise the Respondent in an active, diligent and personal manner for a period of at least six (6) months.

During the three (3) month period of supervision, all aspects of the Respondent's work must be supervised by the approved supervisor. No work product is to be completed or submitted to a client without the supervisor's direct consent. The Respondent shall be responsible for correcting all deficiencies in the Respondent's work that are identified by the supervisor. The Respondent shall also implement all practice management strategies recommended by the supervisor. Respondent and the supervisor shall comply with Board Rule 11.2 in the preparation of all appraisal reports completed as part of this supervision.

Respondent must provide all of the appraisal reports completed by the Respondent to the supervisor within thirty (30) days of completion. Such reports provided to the supervisor shall be in either list form or in full form. If Respondent does not complete at least six (6) appraisal reports during the three (3) month period, the period of supervision shall continue until Respondent has completed six (6) appraisal reports. If the Respondent works as an unlicensed assistant during the period of the suspension set forth above, such work may be counted toward the required period of supervision, as long as the supervisor has been approved in advance by the Colorado Division of Real Estate, Appraiser Program Manager.

During the three (3) month work product review period, ten (10) appraisals shall be reviewed. The Respondent shall be responsible for correcting all deficiencies in the Respondent's work that are identified by the supervisor. The Respondent shall submit all review reports from the supervisor to the Board. The Respondent shall also implement all practice management strategies recommended by the supervisor.

Respondent shall be responsible for notifying the Colorado Division of Real Estate, Appraiser Program Manager in writing upon completion of the supervision and work product review required above. Upon receipt of such written notification, the Appraiser Program Manager may require Respondent to repeat the supervision set forth above for an additional period of six (6) months. In making the decision of whether to require this additional supervision, the Appraiser Program Manager will request input from the supervisor who supervised Respondent during the original supervision period.

Respondent may request a different supervisor for the subsequent supervision, but Respondent must obtain approval from the Appraiser Program Manager of the subsequent supervisor.

All fees and costs associated with the supervision of Respondent shall be paid by the Respondent.