



Case Summary: 2024-02

Appeal Sub-Committee Hearing Date: April 22, 2022

General Summary

**File Opened:** September 18, 2018

**Adjudicating Sub-Committee Decision:** October 21, 2021

**Appeal Application:** December 22, 2021

The complaint file arose from a complaint made by a mortgage lender, regarding over-estimate, Hypothetical Assumption that property could be developed, inaccurate sales listing history, no inspection, inaccurate description of characteristics of property and detrimental conditions, in an appraisal report by AIC Member **Carlo Esposito, P. App, AACI**. The Complainant claimed to have relied on the appraisal in order to purchase a partial interest in a third mortgage.

The AIC review of the report uncovered further issues arising related to: Exposure Time, Land Use Controls, Highest and Best Use, Description and analysis of data, and a misleading report due to an aggregate of mistakes in the report.

Complaint Allegations

1. Over-estimate
2. Hypothetical Assumption that property could be developed
3. Inaccurate sales listing history
4. No inspection
5. Inaccurate description of characteristics of property and detrimental conditions

Issues Arising from the Complaint Review

1. Exposure Time
2. Land Use Controls
3. Highest and Best Use
4. Description and analysis of data
5. A misleading report due to an aggregate of mistakes in the report

**Appeal Decision dated May 27, 2022**

The Appeal Sub-Committee affirmed the Adjudicating Sub-Committee’s Decision dated October 21, 2021 recommending Expulsion from the AIC.

**Appeal Issues**

Having reviewed the parties’ submissions, and the Standard of Review set out in Regulation 5.29, the Appeal Sub-Committee Hearing Panel must consider two questions:

- 1) Was the decision that the Member’s report did not comply with CUSPAP correct?
- 2) If the answer to the first question is yes, are the sanctions and fines imposed reasonable?

**Rationale**

**1) Was the decision that the Member’s report did not comply with CUSPAP correct?**

The Appeal Sub-Committee found that the decision of the Adjudicating Sub-Committee was correct.

With respect to its decision that the member violated CUSPAP Ethical Rule 4.3.3 “It is unethical for a Member to knowingly act in a matter that is misleading,” the member admitted, in his oral testimony before the Appeal Sub-Committee, to deliberately producing a misleading report. He further admitted knowing that the report would be used in a fraud attempt.

The Adjudicating Sub-Committee found that the member had knowingly acted in a manner that was misleading when he prepared a misleading report. The member admitted that he had given the client “what he wanted”, understood the client was a lender, that in its instructions, the lender “was fantasizing on what might happen, if it could happen”, that the lack of adjustments to the comparable sales in the report was not typical for him, and that the report would have been different if he had known it was going to be used to purchase a 31% interest in a 3rd mortgage. (CUSPAP 4.3.3).

Regulation 5.29.4 stipulates that a finding of fact may only be set aside by the Appeal Sub-Committee if there is no evidence to support it or the finding of fact is otherwise unreasonable. Having reviewed the decision of the Adjudicating Sub-Committee, the Appeal Sub-Committee was satisfied that the member had not established that the factual findings made by Adjudicating Sub-Committee were unsupported by the evidence or were otherwise unreasonable.

This ground of appeal failed.

The Adjudicating Sub-Committee found that the appraisal report failed to identify all assumptions and limiting conditions and that the appraisal report’s assumption that the subject

property could be developed as a higher-density retirement residence apartment use was reckless. Further, the member used the term “In State Viewed” throughout the report, as opposed to clearly outlining the Extraordinary Assumption and Hypothetical Conditions invoked, which contemplated a use other than that in existence. The Adjudicating Sub-Committee found this statement to be “clearly, misleading, unclear and not supported” (CUSPAP 2016, 6.29 and 7.9).

Having reviewed the decision of the Adjudicating Sub-Committee, the Appeal Sub-Committee was satisfied that the member had not established that the factual findings made by Adjudicating Sub-Committee were unsupported by the evidence or were otherwise unreasonable.

This ground of appeal failed.

**2) If the answer to the first question is yes, are the sanctions and fines imposed reasonable?**

The Appeal Sub-Committee found that that the Adjudicating Sub-Committee’s decision to impose sanctions is discretionary and as such may not be set aside unless the member establishes that the decision is “patently unreasonable”. The Appeal Sub-Committee found that the Adjudicating Sub-Committee’s decision was not “patently unreasonable”.

As defined by the Consolidated Regulations, the role of the Appeal Sub-Committee is to confirm that the decision taken by the Adjudicating Sub-Committee to impose certain sanctions is not “patently unreasonable”. Regulation 5.29.3 defines a “patently unreasonable” decision as one that is exercised arbitrarily, in bad faith, for an improper purpose, or based on entirely irrelevant factors. As such, the question for the Appeal Sub-Committee was not whether there were mitigating or aggravating factors to consider (that was the role of the Adjudicating Sub-Committee) but whether the Adjudicating Sub-Committee acted in bad faith or applied irrelevant considerations when it decided to impose the sanctions it did.

Having found the member guilty of the breaches to CUSPAP as noted above, the Adjudicating Sub-Committee considered the member’s Professional Practice record – he had three prior discipline matters on record.

Expulsion of a member is the most severe discipline the Institute can impose on a member. To ensure the Expulsion discipline imposed on the member is not patently unreasonable, the Appeal Sub-Committee reviewed the Expulsion decisions issued in recent years.

The summary showed that expulsion is a discipline that accompanies severe ethical infractions, and a record of prior discipline points to discipline of a more severe nature.

Here, the member was found guilty of deliberately providing a misleading report, knowing that it was likely to be used in a fraud. His member record indicates that prior discipline had not been sufficient to lead him to provide appraisal services professionally and ethically. The Appeal Sub-

Committee has found no basis to conclude that the sanctions and fines imposed are patently unreasonable.

### Costs

The original costs of \$500 levied in the Adjudicating Sub-Committee Decision and an additional \$500 for a total of \$1,000 in costs are levied.

### Adjudicating Decision dated October 21, 2021

#### Breaches of CUSPAP 2014 (Technical Breaches) and CUSPAP 2016 (Ethical Breaches)

##### Complainant's Allegation No. 1: Canadian Standards: None

The allegation was set aside as it was outside of the Panel's mandate.

##### Complainant's Allegation No. 2: Canadian Standards (2016 Edition)

**Real Property Appraisal Standard Rule 6.2.9** In the report the Member must identify all assumptions and limiting conditions (including extraordinary assumptions and extraordinary limiting conditions); [see 7.9, 16.28, 16.29, 16.30]; and

##### **Real Property Appraisal Standard Comment 7.9 Assumptions and Limiting Conditions (including Extraordinary Assumptions and Extraordinary Limiting Conditions)**

**7.9.4** Extraordinary Limiting Condition refers to a necessary modification or exclusion of a Standard Rule which may diminish the reliability of the report. The burden is on the Member to explain and justify such necessity in the report, and to conclude, before accepting an assignment and invoking an Extraordinary Limiting Condition, that the scope of work applied will result in analyses, opinions and conclusions that are credible and not misleading.

The Allegation was **proven**.

##### Complainant's Allegation No. 3: Canadian Standards (2016 Edition)

**Real Property Appraisal Standard Rule 6.2.21** In the report the Member must analyze and comment on:

**6.2.21.ii.** all prior sales of the property, subject to 7.21

The Allegation was not **proven**.

##### Complainant's Allegation No. 4: Canadian Standards: None

The Allegation was not **proven**.

##### Complainant's Allegation No. 5: Canadian Standards: None

The Allegation was not **proven**.

**Issue Arising Allegation No. 6: Canadian Standards (2016 Edition)**

**Real Property Appraisal Standard Rule 6.2.5** In the report the Member must provide an analysis of reasonable exposure time linked to a market value opinion;

The Allegation was **proven**.

**Issue Arising Allegation No. 7: Canadian Standards (2016 Edition)**

**Real Property Appraisal Standard Rule 6.2.11** In the report the Member must identify and analyze land use controls; [see 7.11];

**Real Property Appraisal Standard Comment 7.11 Land Use Controls**

**7.11.1** Land Use Controls, including zoning, must be identified and their effect on use and value analyzed, together with any reasonably probable modifications of such regulations in light of economic demand, the physical adaptability of the real estate, and market area trends; and

**7.11.2** In the context of properties where the highest and best use is for land use change (e.g. rezoning or redevelopment), the Member must reasonably support the imminence or probability of the land use change.

The Allegation was **proven**.

**Issue Arising Allegation No. 8: Canadian Standards (2016 Edition)**

**Real Property Appraisal Standard Rule 6.2.13** In the report the Member must define, analyze and resolve the highest and best use;

**Real Property Appraisal Comment 7.13 Highest and Best Use**

**7.13.1** The report must contain the Member's opinion as to the highest and best use of the real estate; unless an opinion as to highest and best use is irrelevant.

**7.13.2** If the purpose of the assignment is market value, the Member's support and rationale for the opinion of highest and best use is required.

**7.13.3** The Member's analysis of the highest and best use (as if vacant and as improved) and reasoning in support of the opinion and conclusion must be provided with the level of depth and detail required in relation with its significance to the appraisal, and based on the relevant legal, physical and economic factors. [see 7.13.4]

**7.13.4** As land is usually appraised as though vacant and available for development to its highest and best use, opinions are required both as to:

**7.13.4.i** the land, as if vacant, and;

**7.13.4.ii** the property, as improved.

The Allegation was **proven**.

**Issue Arising Allegation No. 9: Canadian Standards (2016 Edition)**

**Real Property Appraisal Standard Rule 6.2.14** In the report the Member must describe and analyze all data relevant to the assignment;

**Real Property Appraisal Comment 7.14 Describe and Analyze All Data Relevant to the Assignment**

**7.14.1** The Member must take reasonable steps to ensure that the information and analyses provided are sufficient for the client and intended users to adequately understand the rationale for the opinion and conclusions.

**7.14.2** In the process of collecting and verifying relevant information the Member must perform this function in a manner consistent with the “Reasonable Appraiser” standard.

**7.14.3** All three approaches to value require the collection of comparable data. The decision to inspect the comparable data and the extent of verification of data will be determined by the scope of the assignment, but in all cases the Member must conform to the “Reasonable Appraiser” standard.

The Allegation was **proven**.

**Issue Arising Allegation No. 10: Canadian Standards (2016 Edition)**

**Ethics Standard Rule: 4.3.3** It is unethical for a Member to knowingly act in a manner that is misleading; [see 5.3, 16.2.1];and

**Ethics Standard Comment 5.3 Misleading Report**

**5.3.3** A misleading report can be caused by omission or commission and may result from a single large error or a series of small errors that, when taken in aggregate, lead to a report that is deemed to be misleading.

The Allegation was **proven**.

**Rationale**

The Panel listened carefully during the Member’s testimony given the gravity of the allegation that the report under review was misleading and the assumptions made in it were reckless. The Panel understood its responsibility to the AIC, the Public, and future Clients of the Member.

Members of the AIC pledge to conduct themselves in a manner that is not detrimental to the public, the Institute, or the real property appraisal profession. Expulsion is the most severe ruling that an Adjudicating Subcommittee Panel can make, and it must be for good reasons as it has a permanent impact on the financial future of a Member.

The Member admitted that he had given the Complainant, his client, what they wanted and that the report was as requested by the Complainant. The Panel noted other errors and omissions within the appraisal report. The Member may have qualified his opinion, but it all falls to the reasonableness of the assumptions regarding rezoning.

Members are required to know and understand CUSPAP and relying on a Client's instructions that are contrary to CUSPAP, or to what may actually occur on the property, is irresponsible.

#### Discipline

1. **Section 5.36.2: Suspension.** A temporary revocation of a Member's privileges of membership in the AIC. The Adjudicating Sub-Committee has decided on a Suspension of the Member's privileges of membership in the AIC which shall include: use of the Member's AACI, P.App Designation and the rights and privileges which attach to it for a period of not less than one (1) year.

The suspension sanction shall be permanently recorded on the Member's Professional Practice Record.

2. **Section 5.36.4: Expulsion.** Expulsion of a Member means the removal of a Member from membership in the AIC.

Expulsion from the AIC is to be entered into and remain permanently on the Member's Professional Practice Record.

#### Costs

Costs in the amount of \$500 were levied.