

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

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vs.

DOCKETED COMPLAINT NO.
14-211

APRIL LYNNE ACKER
TX-1360168-R (EXPIRED)

AGREED FINAL ORDER

On the 8th 20 day of JANUARY Feb, 2015, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the expired probationary certification of April Lynne Acker (Respondent).

In order to conclude this matter, April Lynne Acker neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order. The Board makes the following findings of fact and conclusions of law and enters this Order in accordance with TEX. OCC. CODE § 1103.458:

FINDINGS OF FACT

1. Respondent, April Lynne Acker, was a probationary Texas state certified residential real estate appraiser who held certification number TX-1360168-R, and was certified by the Board during all times material to the above-noted complaint case.
2. On or about February 3rd, 2014 Respondent appraised a 112 acre, income producing farm located at: 638 Tejas Trail, Blanco, Texas 78606-5192 (the "property").
3. Thereafter, on or about May 9th, 2014, Laura Raposo, an employee of Servicelink, filed a complaint with the Board based on mandatory reporting requirements contained in the Dodd-Frank Wall Street Reform and Consumer Protection Act. The complaint allegations relate to real property appraisal services performed by Respondent, alleging a variety of deficiencies in Respondent's appraisal of the Property.
4. Thereafter, on or about May 14th, 2014, the Board notified Respondent of the nature of the accusations involved and Respondent was afforded an opportunity to respond to the accusations in the complaint. Respondent was also requested to provide certain documentation to the Board. Respondent's response to the complaint was received on or about July 14th, 2014.
5. Since the time of this complaint, Respondent's state certification as a real estate appraiser has expired and Respondent no longer desires to hold a license, certification, authorization or registration from the Board. Respondent acknowledges that her probationary state certification has lapsed and she is hereby agreeing not to seek renewal

of the certification, nor to apply for any authorization, license, certification or registration with the Board in the future.

6. Respondent appraised a 112 acre, income producing farm, even though she is only a residential certified appraiser and does not hold the general certification required to do such commercial work. Respondent did not associate with a general certified appraiser who could have assisted her in doing the assignment and signed the report.

7. Respondent failed to comply with USPAP in effect at the time of her appraisal or appraisal practice for the Property. Specifically, these violations include:

- a) USPAP Record Keeping Rule – Respondent failed to maintain a work file containing all documentation necessary to support her analyses, opinions and conclusions contained in her appraisal report for the Property;
- b) USPAP Competency Rule – Respondent was not competent to perform the appraisal of the Property because it was a working, 112 acre farm and required a general certification to appraise, which Respondent did not possess. Additionally, Respondent did not associate with a general certified appraiser who could have assisted her in doing the assignment and signed the report. Additionally, Respondent did not perform the assignment competently for the reasons detailed below;
- c) USPAP Scope of Work Rule; 1-2(h) & 2-2(a)(v)(ii); 1-1(b); and, 2-1(a) – Respondent failed to perform the scope of work necessary to develop credible assignment results and disclose that scope of work in the report. Respondent’s failure to do so was a serious omission and misrepresentative to her clients and intended users of her report;
- d) USPAP Standards 1-2(e)(ii) & 2-2(a)(iv) – Respondent failed to identify the real property interest she was appraising correctly;
- e) USPAP Standards 1-2(e)(i) & 2-2(a)(iii) – Respondent has failed to identify and describe the Property’s site adequately, concluding failing to address whether the property resides in a flood plain and the Property’s approximately 3,000 feet of river frontage (along the Blanco river) and 6,000 feet of frontage on a paved highway;
- f) USPAP Standards 1-2(e)(v) & 2-2(a)(viii) ; 1-1(b); and, 2-1(a) – Respondent failed to identify, consider and describe agricultural and cattle leases for the Property and analyze the impact on value, if any. Respondent’s failure to do so was a serious omission and misrepresentative to her clients and intended users of her report;
- g) USPAP Standards 1-3(b) & 2-2(a)(ix); 1-1(b); and, 2-1(a) – Respondent failed to develop an appropriate highest and best use and summarize her rationale for her determination of the Property’s Highest and Best Use. Respondent misrepresented and misled users of the report about the Property’s highest and best use. In fact, the comments Respondent did make in her report about land value being “over 80% of the total market value” of the Property should have raised concerns about her determination that the Property’s highest and best use was for residential and not commercial purposes;

- h) USPAP Standard 1-4(b) & 2-2(a)(viii) – Respondent failed to explain and support her exclusion of the cost approach. Given the existence of improvements on the property, the propriety of the Cost approach should have been at least considered in her report;
- i) USPAP Standards 1-4(b)(i) & 2-2(a)(viii); 1-1(b); and, 2-1(a) – Respondent did not summarize and analyze her rationale for her site value determination, did not employ recognized methods and techniques in her required reporting and analysis of the Property's site value and failed to maintain documentation necessary to support her opinions and conclusions regarding site value. Respondent's representation to users of the report that the Property's highest and best use is for residential purposes is misleading and misrepresentative. Respondent was not competent and did not hold the correct certification to even make such a determination;
- j) USPAP Standards 1-4(a) & 2-2(a)(viii); 1-1(a) & 1-4(a) – Respondent has failed to collect, verify, analyze and reconcile comparable sales data adequately and has not employed recognized methods and techniques in her sales comparison approach. Respondent has not provided supporting documentation nor her reasoning and a summary of her analysis her sales comparison approach. Generally, Respondent used inappropriate properties as comparable sales even though appropriate, more similar sales were readily available and should have been used. Respondent also failed to make appropriate adjustments or made inappropriate adjustments to the sales she did use, and did not discuss her analysis and reasoning behind the adjustments she made or elected not to make. Readily available commercial sales databases were not used by Respondent (such as Costar or Loop Net) even though a competent appraiser would have done so. In general, objective market data was ignored and not analyzed by Respondent even though a competent appraiser would have done so;
- k) USPAP Standards 1-4(c) & 2-2(a)(viii); 1-1(b); and, 2-1(a) – Respondent failed to conduct an income approach even though the Property is a 112 acre, income producing farm. Respondent also failed to explain her exclusion of the income approach adequately. Respondent's failure to conduct an income approach was a serious omission and misrepresentative to her clients and intended users of her report;
- l) USPAP Standards 1-4(c)(i) & 2-2(a)(viii); 1-4(c)(ii) & 2-2(a)(viii); 1-1(b); and, 2-1(a) – Respondent failed to collect, verify, and analyze comparable rental data or potential earnings capacity for the property to determine gross income potential. She also failed to collect, verify and analyze comparable operating expenses and did not employ recognized methods and techniques in relation to the income approach that a competent appraiser would have employed. Respondent's failure to do these things was a serious omission and misrepresentative to her clients and intended users of her report;
- m) USPAP Standards 1-5(a) & 2-2(a)(viii); 1-1(b); and, 2-1(a) – Respondent failed to analyze the agreement of sale for the property that was current as of the effective date of her report. She failed to address why that sales contract was roughly \$737,500 higher than her appraised value and reconcile this information in her appraisal analysis

as required by USPAP. Respondent's failure to do so was a serious omission and misrepresentative to her clients and intended users of her report;

- n) USPAP Standards 1-6(a), (b) & 2-2(a)(viii) – Respondent failed to reconcile the quality and quantity of the data within the approaches to value or the applicability of the approaches;
- o) USPAP Standards 1-4(d) & 2-2(a)(viii) – Respondent failed to analyze and report the effect on value of the terms and conditions of the lease(s) for the Property. Respondent's failure to do so was a serious omission and misrepresentative to her clients and intended users of her report;
- p) USPAP Standards 2-2(a)(vii), 2-2(a)(xi) & 2-3 & 2-1(a) – Respondent misrepresented and omitted involvement of another appraiser (her husband, Joseph Acker, who also is not a general certified appraiser) in conducting the inspection of the Property; and,
- q) USPAP Standards 1-1(a), 1-1(b), 1-1(c) and 2-1(a) – As detailed above, Respondent produced a misleading appraisal report for the Property that contained several substantial errors of omission or commission by not employing correct methods and techniques. This resulted in an appraisal report that was not credible or reliable.

8. On or about November 9th, 2012, the Board approved an agreed final order ("AFO") signed by Respondent which granted issuance of a probationary, residential certification to her. That AFO specifically required Respondent to adhere to the disclosure requirements contained in TEX. OCC. CODE § 1103.2091, and disclose the probationary nature of her credential to all clients prior to accepting appraisal assignments.

9. Respondent performed appraisals in 2013 and 2014 (including the appraisal on the Property) without disclosing the probationary status of her certification to all clients before accepting appraisal assignments as required by law and the AFO she signed.

10. The parties enter into this consent order ("Order") in accordance with TEX. OCC. CODE § 1103.458.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103.

2. The parties are authorized to resolve their dispute by means of a consent order. TEX. OCC. CODE § 1103.458.

3. Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(6) and 155.1(a) by failing to comply with USPAP in effect at the time of her appraisal or appraisal practice for the Property.

4. Respondent made material misrepresentations and omissions of material fact with respect to her appraisal of the Property in violation of 22 TEX. ADMIN. CODE § 153.20(a)(12).

5. Respondent violated TEX. OCC. CODE § 1103.2091 and 22 TEX. ADMIN. CODE §§ 153.20(a)(1), (a)(12) and (a)(23) by performing appraisals without disclosing the probationary status of her certification to all clients before accepting appraisal assignments.

ORDER

Based on the above findings of fact and conclusions of law, the Board **ORDERS** that Respondent shall not seek renewal of her certification, nor apply to the Board for any authorization, license, certification or registration in the future.

ACKNOWLEDGMENT AND WAIVER

Respondent, by signing this Agreed Final Order, waives the Respondent's right to a formal hearing, any motion for rehearing, and any right to seek judicial review of this Agreed Final Order. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's website.

I have read and reviewed this entire Agreed Final Order fully and am entering into it of my own free will to avoid the expense of litigation and to reach an expeditious resolution of the matter. I neither admit nor deny that the findings of fact and conclusions of law contained herein are correct. I understand all of my compliance obligations under this Agreed Final Order and the consequences for failing to comply with those obligations.

I understand that the Board and its staff cannot provide me with legal advice and I am aware of my right to be represented by an attorney of my own choosing. I am aware of my right to a hearing, and hereby waive a hearing and also waive any right to seek judicial review of this Agreed Final Order, including for any subsequent action resulting from my failure to timely comply with an administrative requirement of this Agreed Final Order (e.g. payment of a penalty, completion of remedial education, or failure to provide logs).

EXECUTION

This agreement may be executed in one or more counterparts, in form of electronic mail, facsimile, or other written expression of agreement, each of which shall be deemed an original and together shall comprise evidence of full execution of the agreement.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

RESPONDENT

Signed this 8th day of January, 2015.

April Lynne Acker
APRIL LYNNE ACKER

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on the 8 day of Jan, 2015, by APRIL LYNNE ACKER, to certify which witness my hand and official seal.

Sunny Orr
Notary Public's Signature

Sunny Orr
Notary Public's Printed Name



STANDARDS AND ENFORCEMENT SERVICES DIVISION

Signed by the Standards and Enforcement Services Division this 9th day of JANUARY, 2015.

Troy Beaulieu
Troy Beaulieu, Staff Attorney
Texas Appraiser Licensing and Certification Board

COMMISSIONER

Signed by the Commissioner this 20 day of Feb, 2015.

Douglas Oldmixon
Douglas Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

CHAIRPERSON

Approved by the Board and Signed this 20 day of February, 2015.

Jamie Wickliffe
Jamie Wickliffe, Chairperson