

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

JOHN PATRICK BAIN
TX-1329923-R

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DOCKETED COMPLAINT NO.
05-014, 06-061 AND 06-090

AGREED FINAL ORDER

On this the 5th day of May, 2008, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the certification of John Patrick Bain (Respondent). 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 John Patrick Bain is a Texas state certified residential real estate appraiser, holds certification number TX-1329923-R, and has been certified by the Board during all times material to the above-noted complaint cases.
2. Respondent is subject to the jurisdiction of the Board, the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103 et. seq. (the Act), the Rules of the Board, 22 TEX. ADMIN. CODE §§153, 155, 157 (the Rules), and the Uniform Standards of Professional Appraisal Practice (USPAP) in effect at the time of the appraisal.
3. On or about June 25th, 2002, Respondent appraised real property located at 5827 Vickery Blvd., Dallas, Texas 75206 ("the Vickery property").
4. On or about January 2nd, 2004, Respondent appraised real property located at 1800-1802 Summit Avenue, Dallas, Texas 75206 ("the Summit property").
5. On or about December 31st, 2003, Respondent appraised real property located at 5245-5247 Bonita Avenue, Dallas, Texas 75206 ("the Bonita property").
6. On or about April 5th, 2003, Respondent appraised real property located at 5616-5618 Willis Avenue, Dallas, Texas 75214 ("the Willis property").
7. Thereafter three complaints were filed against Respondent based on these real property appraisal reports. Respondent was afforded an opportunity to respond to the accusations in the complaints and his responses to the complaints were received.
8. Respondent, by signing this Agreed Final Order, does not admit that the findings of fact and conclusions of law herein set forth are correct; however, Respondent consents to the entry of this Agreed Order to avoid the expense of litigation and to reach an expeditious

resolution of this matter. Respondent also agrees to satisfactorily comply with the mandates of this Agreed Final Order in a timely manner.

9. Based upon information available, the Board believes that Respondent committed the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal reports at issue:

- a) Respondent has failed to identify and report the improvements description adequately for the Vickery and Summit property appraisal reports;
- b) Respondent failed to analyze prior sales of the comparables he used in his appraisal report on the Vickery property in conformity with the supplemental standards required by Fannie Mae;
- c) Respondent has failed to consider and report easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of a similar nature in his Vickery property appraisal report;
- d) Respondent did not provide a summary of his reasoning behind his highest and best use determination for all four of the properties being appraised, which was particularly important given the changing nature of these properties' neighborhood;
- e) Respondent used inappropriate methods or techniques in his cost approach analysis, including his site value determination, depreciation calculations and cost of improvements analysis for all four of the appraisal reports;
- f) Respondent failed to analyze and reconcile sales comparison data properly, used non-market tested, unpublished sales based on HUD-1 statements and not arms-length, MLS confirmed sales, and used inappropriate and dissimilar properties as comparables when more appropriate comparables were available and used improper methods and techniques;
- g) Respondent used improper methods and techniques in his income approach analysis, including failing to collect, verify, analyze and reconcile comparable rental data, using incorrect comparable rent data, failing to collect, verify, analyze and reconcile comparable data to estimate capitalization and/ or discount rates, failing to collect, verify analyze and reconcile comparable operating expenses, and not basing his projections of future rent and expenses on reasonable, clear and appropriate evidence;
- h) Respondent did not disclose and analyze the listing history of the Vickery property; and,
- i) Respondent's four reports all contained some substantial errors of omission or commission that significantly impacted all of the appraisal assignments.

10. The Board believes Respondent made some material misrepresentations and omissions of material facts in his appraisal reports on all of the properties by failing to use market-tested, arms length transactions in his sales comparison analysis, failing to provide a brief summary of his rationale for his determination of highest and best use and, failing to disclose and analyze the listing history of the Vickery property and the prior sales of the comparables he used in his appraisal report on the Vickery property.

CONCLUSIONS OF LAW

1. The Texas Appraiser Licensing and Certification Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103 et. seq.
2. Respondent violated various provisions of USPAP as prohibited by 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3).
3. Respondent has violated 22 TEX. ADMIN. CODE §153.20(a)(9) by making omissions of material facts.

Based on the above findings of fact and conclusions of law, the Board **ORDERS** that the Respondent: shall:

- a. Have his certification suspended for twenty-four months with the suspension being fully probated under the following conditions:
 - i. During the entire twenty-four month suspension Respondent shall submit an appraisal experience log to the Board every three months. The log shall detail all real estate appraisal activities he has conducted during the previous three month period. This experience log shall be signed by Respondent and contain a notarized affidavit attesting that the log is true, complete and fully accurate; and
 - ii. Respondent shall timely comply with all requirements of this Order;
- b. Pay to the Board an administrative penalty of \$2,000.00;
 - i. Payment of the administrative penalty shall be made in four equal, \$500.00 installments with the first payment being due within 30 days of the effective date of this order and the remaining payments being due every 60 days thereafter until paid in full;
- c. Attend and complete a minimum, 15 classroom-hour course in USPAP;
- d. Attend and complete a minimum, 15 classroom-hour course in the Sales Comparison Approach;

- e. Attend and complete a minimum, 15 classroom-hour course in Residential Case Studies;
- f. Attend and complete a minimum, 15 classroom-hour course in Income Approach for Small Properties; and,
- g. Comply with all provisions of the Act, the Rules of the Board, and USPAP in the future, or be subjected to further disciplinary action.

Payment of the **ADMINISTRATIVE PENALTY** must be by certified funds, and must be completed in accordance with the provisions of this Agreed Final Order.

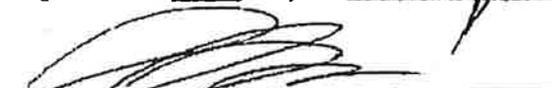
ALL CLASSES required by this Agreed Final Order must be classes approved by the Board and must be completed within **TWELVE MONTHS** of the date of this Order and documentation of attendance and successful completion of the educational requirements of this Order shall be delivered to the Board on or before the end of the twelve-month period indicated. None of the classes or seminars required by this Order may be taken through correspondence courses. Unless indicated otherwise in this Order, all classes must be in-class, have an exam, and Respondent must have a passing grade on the exam given in each class. None of these required classes will count toward Respondent's continuing education requirements for certification.

Failure to comply with any of the terms of this Final Agreed Order shall result in initiation of a contested case proceeding against Respondent and after opportunity for a hearing, possible imposition of disciplinary sanctions against Respondent.

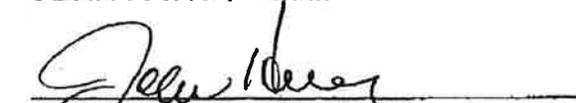
Respondent, by signing this Agreed Final Order, waives the Respondent's right to a formal hearing and any right to seek judicial review of this Agreed Final Order. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published in the Board's newsletter and/or on the Board's web site.

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.

Signed this 5th day of May, 2008.



 JOHN PATRICK BAIN



 JOHN HENRY, ATTORNEY FOR

RESPONDENT

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 8th day of May, 2008, by JOHN PATRICK BAIN, to certify which, witness my hand and official seal.

Donna Hanley
Notary Public Signature



Donna Hanley
Notary Public's Printed Name

Signed by the Commissioner this _____ day of _____, 2008.

Timothy K. Irvine, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this _____ day of _____, 2008.

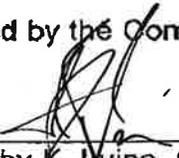
RESPONDENT

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the _____ day of _____, 2008, by JOHN PATRICK BAIN, to certify which, witness my hand and official seal.

Notary Public Signature

Notary Public's Printed Name

Signed by the Commissioner this 8th day of May, 2008.



Timothy K. Irvine, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 8th day of MAY, 2008.



CLINTON P. SAYERS, CHAIRPERSON
TEXAS APPRAISER LICENSING + CERTIFICATION
BOARD