TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD	§	
vs.	§	DOCKETED COMPLAINT NO. 15-133
BARRY KEITH DUNCAN TX-1322178-R	§	

AGREED FINAL ORDER

On the 20 day of November, 2015, the Texas Appraiser Licensing and Certification Board (the "Board"), considered the matter of the certification of Barry Keith Duncan (the "Respondent").

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

FINDINGS OF FACT

1. Respondent is a Texas state certified residential real estate appraiser who holds certification number TX-1322178-R and was certified by the Board during all times material to the above-noted complaint.

2. Respondent appraised residential real property located at 9403 Highmeadow Dr., Houston, Texas 77063 (the "Property"), on or about October 7, 2014.

3. Thereafter, the complaint, numbered 15-133, was filed with the Board by an appraisal management company, on or about January 23, 2015. The Board investigated the complaint to ensure compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), TEX. OCC. CODE CH. 1103 (the "Act") and 22 TEX. ADMIN. CODE CHS. 153 and 155 (the "Rules").

4. The Board, in accordance with the mandate of TEX. GOV'T CODE CH. 2001 (the "APA") and the Act, notified Respondent of the nature of the accusations involved, on or about February 3, 2015. Respondent was afforded an opportunity to respond to the accusations in the complaint and was also requested to provide certain documentation to the Board. Thereafter, the Respondent responded with documentation, on or about March 13, 2015.

5. As a result of the Board's investigation, the Board finds that Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(6) and 155.1 by the

following acts or omissions which did not conform to USPAP in effect at the time of the appraisal of the Property:

a. USPAP Record Keeping Rule – Respondent failed to create and maintain a workfile containing all data, information, and documentation necessary to support the opinions and conclusions in the appraisal report;

b. USPAP Standards Rules 1-4(a) and 2-2(a)(viii); 1-1(a) and 1-4(a); 1-6(a) and 2-2(a)(viii); 1-1(b); and 2-1(a) – Respondent failed to collect, verify, analyze and reconcile comparable sales data adequately and has not employed recognized methods and techniques in the sales comparison approach; Respondent did not provide appropriate supporting documentation nor reasoning and a summary of analysis of the sales comparison approach; Respondent also failed to make appropriate adjustments and did not disclose the analysis and reasoning behind the adjustments made or not made; Respondent failed to reconcile the quality and quantity of the data within the sales comparison approach used in the appraisal report; Respondent produced an appraisal report for the Property that contained substantial errors of omission or commission. This resulted in an appraisal report that was not credible.

6. In order to reach an expeditious resolution of this matter and avoid the time and expense of litigation, the parties enter into this Agreed Final Order in accordance with TEX. OCC. CODE § 1103.458.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Act.

2. Respondent violated the above-noted provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1 and 153.20(a)(6).

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

ORDER

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

1. **EDUCATION**. On or before May 20, 2016, Respondent shall submit documentation of attendance and successful completion of the classes set out below to the Board. All classes required by this Agreed Final Order must be classes approved by the Board. Unless otherwise noted below, all classes must require in-class attendance. If the class requires an exam, Respondent must receive a passing grade on the exam. None of the required class hours will count toward Respondent's continuing education requirements for licensure. Respondent is solely responsible for locating and scheduling classes to timely

satisfy this Agreed Final Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion of the course in the event of course cancellation or rescheduling by the course provider.

a. A classroom course on unique and complex property appraisal, a minimum of eighteen (18) class hours, on or before May 20, 2016.

2. **ADMINISTRATIVE PENALTY**. On or before December 10, 2015, Respondent shall pay to the Board an administrative penalty of five hundred dollars ($500.00), by cashier's check or money order, within twenty (20) days of the effective date of this Agreed Final Order.

3. Respondent shall fully and timely comply with all of the provisions of this Agreed Final Order; and

4. Respondent shall comply with all provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

ACKNOWLEDGMENT AND WAIVER

IF RESPONDENT FAILS TO TIMELY COMPLY WITH ANY TERM IN THIS AGREED FINAL ORDER, WHICH HAS A SPECIFIC, STATED DUE DATE, RESPONDENT SHALL BE ASSESSED A $1,000 ADMINISTRATIVE PENALTY AND RESPONDENT'S LICENSE, CERTIFICATION, AUTHORIZATION OR REGISTRATION SHALL BE SUSPENDED, UNTIL RESPONDENT IS IN FULL COMPLIANCE WITH THE TERMS OF THIS ORDER AND THE $1,000 ADMINISTRATIVE PENALTY HAS BEEN RECEIVED BY THE BOARD.

ANY SUCH SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE ACT OR THE APA, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS.

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 or to bring any civil suit in state or federal court regarding the validity or enforcement of this Agreed Final Order, regardless of the claims asserted. This Agreed Final Order, the findings of fact and the conclusions of law contained in it have been fully and fairly litigated or the parties had an opportunity to so litigate. This matter has been finally adjudicated and resolved via this Agreed Final Order. This Agreed Final Order shall be treated as res judicata, precluding any re-litigation of those claims and extinguishing the right to bring suit on the matter by the parties or those in privity with them. 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).

DELIVERY OF DOCUMENTS AND PAYMENTS FOR COMPLIANCE

Respondent is solely responsible for timely delivery to the Board of all documents and payments necessary for compliance of this Agreed Final Order. Payment of any administrative penalties due must be in the form of a cashier's check or money order made payable to the "Texas Appraiser Licensing and Certification Board" and delivered via certified mail, return receipt requested. Respondent shall retain documentation (reply email, fax confirmation, return receipt, etc.) confirming timely receipt by the Board of all the documents necessary for compliance of this Agreed Final Order.

Respondent shall send all documents and payments necessary for compliance by: (1) email to: compliance.talcb@talcb.texas.gov; (2) fax to: (512) 936-3966, attn: Compliance; or (3) certified mail, return receipt requested, to: Standards & Enforcement Services, Texas Appraiser Licensing & Certification Board, Stephen F. Austin Building, 1700 N. Congress Ave., Suite 400, Austin, TX 78701.

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 17TH day of AUGUST, 2015.

Barry Keith Duncan

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on the 17th day of August, 2015, by Barry Keith Duncan, to certify which witness my hand and official seal.

BRIANA CAPE
Notary Public
STATE OF TEXAS
My Comm. Exp. June 20, 2018

Briana Cape
Notary Public's Signature

STANDARDS AND ENFORCEMENT SERVICES DIVISION

Signed by the Standards and Enforcement Services Division this 18th day of August, 2015.

Kyle Wolfe, Staff Attorney
Texas Appraiser Licensing and Certification Board

COMMISSIONER

Signed by the Commissioner this 18 day of Aug, 2015.

Douglas Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

CHAIRPERSON

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

Jamie Wickliffe, Chairperson
Texas Appraiser Licensing and Certification Board