

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

MORGAN DAVID ECKROTH
TX-1338522-R

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BEFORE THE TEXAS
APPRAISER LICENSING AND
CERTIFICATION BOARD

DOCKET NO.
329-11-7031.ALC

FINAL ORDER

On this 13th day of January, 2012, the Board considered the above-noted matter.

After proper notice was given, the above case was heard by an Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH). The ALJ made and filed a proposal for decision containing findings of fact and conclusions of law. The proposal for decision was properly served on all parties, who were given an opportunity to file exceptions and replies as part of the administrative record. No such exceptions or replies were filed.

The Texas Appraiser Licensing and Certification Board, after review and due consideration of the proposal for decision, attached as Exhibit A hereto, adopts the findings of fact and conclusions of law of the ALJ contained in the proposal for decision and incorporates those findings of fact and conclusions of law into this Final Order as if such were fully set out and separately stated in this Final Order. All proposed findings of fact and conclusions of law submitted by any party that are not specifically adopted in this Final Order are denied.

NOW, THEREFORE, IT IS ORDERED by the Texas Appraiser Licensing and Certification Board that the certification of Morgan David Eckroth in this matter is hereby **REVOKED**, effective twenty days after the date Morgan David Eckroth is notified of this Final Order.

IT IS FURTHER ORDERED that Morgan David Eckroth is assessed an administrative penalty of \$3,000.

If enforcement of this Final Order is restrained or enjoined by an order of a court, this order shall become effective upon a final determination by said court or appellate court in favor of the Texas Appraiser Licensing and Certification Board.

Approved by the Board and Signed this 13th day of January, 2012.



Luis De La Garza, Chairperson
Texas Appraiser Licensing and Certification Board

DOCKET NO. 329-11-7031.ALC

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| TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD, | § | BEFORE THE STATE OFFICE |
| Petitioner | § | |
| | § | |
| vs. | § | OF |
| | § | |
| | § | |
| MORGAN DAVID ECKROTH, | § | |
| Respondent | § | ADMINISTRATIVE HEARINGS |

PROPOSAL FOR DECISION

The Staff of the Texas Appraiser Licensing and Certification Board (Staff/TALCB) seeks revocation of the certified residential real estate appraiser license held by Morgan David Eckroth (Respondent), as well as imposition of an administrative penalty of \$3,000 against Respondent. Staff alleges that Respondent violated the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE ch. 1103, and TALCB's rules by tendering as payment of application fees a check that was returned for insufficient funds, failing to respond to Staff's inquiry and complaint concerning the payment, and failing to maintain and inform TALCB of a fixed office address. Respondent did not respond to Staff's notice of hearing and did not appear at the hearing. The Administrative Law Judge (ALJ) recommends that Respondent's license be revoked and that an administrative penalty of \$3,000 be assessed against Respondent.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing convened August 1, 2011, before ALJ Pratibha J. Shenoy in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Mark Mrnak, Division Director for TALCB, represented Staff. Respondent did not appear and was not represented at the hearing. The record closed the same day.

After establishing that appropriate notice of the hearing was provided to Respondent and that TALCB has jurisdiction, Staff moved to proceed on a default basis. The ALJ granted Staff's motion and deemed Staff's factual allegations admitted pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.501.

II. DISCUSSION

The factual allegations deemed admitted pursuant to the default motion are contained in Staff's notice of hearing and are set out in the Findings of Fact, below. Based on those admitted allegations, the ALJ concludes Respondent violated TEX. OCC. CODE §§ 1103.403 and 1103.505 and 22 TAC § 153.20(a)(17). In support of its request for revocation of Respondent's license, Staff presented a past Proposal for Decision and TALCB Final Order¹ in which a license was revoked for violations substantially similar to those at issue here. In support of the imposition of an administrative penalty, Staff presented its Penalty Matrix, found at 22 TAC § 153.24(9), and referenced TEX. OCC. CODE § 1103.552, which permits an administrative penalty in an amount not to exceed \$1,500 for each violation or \$5,000 for multiple violations proven in a single case. The ALJ concludes an administrative penalty of \$3,000 should be assessed against Respondent.

III. FINDINGS OF FACT

1. Morgan David Eckroth (Respondent) holds real estate appraiser license (license) number TX-1338522-R, issued by the Texas Appraiser Licensing and Certification Board (TALCB).
2. On October 4, 2010, TALCB received a check in the amount of \$370.00 from Respondent, in payment of application filing fees. The check was returned for insufficient funds on October 20, 2010.
3. On October 28, 2010, by certified mail sent to Respondent's address of record, TALCB staff (Staff) requested that Respondent replace the insufficient funds check and pay a returned check fee of \$25.00 within 30 days. Staff's letter was returned as undeliverable on December 1, 2010.
4. On January 27, 2011, after initiating a complaint against Respondent, Staff notified Respondent of the complaint at his address of record, and provided Respondent with the opportunity to respond to the allegations and to produce certain documentation to Staff.
5. Despite an initial notice (sent on February 7, 2011) and a follow-up reminder notice requesting the documentation (sent on April 11, 2011), the requested material was never received from Respondent. The February 7, 2011 notice was returned as unclaimed.

¹ SOAH Docket No. 329-09-0825, *Texas Appraiser Licensing and Certification Board v. Kendle Renee McCaleb* (ALJ Egan) (PFD issued January 23, 2009; TALCB Order issued February 20, 2009).

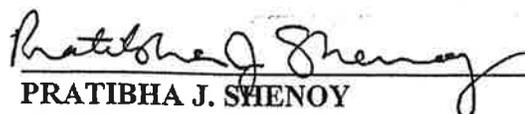
6. Respondent has failed to provide the requested documentation and to respond to Staff's complaint.
7. On June 23, 2011, Staff sent notice of the hearing in this matter to Respondent's address of record with TALCB. Staff received a return receipt for the notice of hearing indicating that the notice was received.
8. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
9. The notice included a disclosure, in at least 12-point, bold-face type, that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the notice could be granted by default, if Respondent failed to appear at the hearing.
10. The hearing was convened as scheduled before Administrative Law Judge (ALJ) Pratibha J. Shenoy on August 1, 2011, at the State Office of Administrative Hearings (SOAH) office in Austin, Texas. Staff appeared at the hearing through Division Director Mark Mrnak. Respondent did not appear and was not represented.
11. Staff moved for default, which was granted following the admission of evidence establishing jurisdiction and proper notice. The hearing was adjourned and the record closed the same day.

IV. CONCLUSIONS OF LAW

1. TALCB has jurisdiction over this matter pursuant to TEX. OCC. CODE §§ 1103.451-1103.552.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. OCC. CODE §§ 1103.508 and 1103.518 and TEX. GOV'T CODE ch. 2003.
3. Pursuant to TEX. OCC. CODE § 1103.403, Respondent is required to notify TALCB of any change of office address not later than the 10th day after the date he moved from a previously designated address.
4. Pursuant to 22 TEX. ADMIN. CODE (TAC) § 157.9(b), service of the notice of hearing upon Respondent was complete and effective upon proper mailing of the notice to Respondent's most recent address as shown by the records of TALCB.

5. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE §§ 2001.051 and 2001.052, 22 TAC § 157.9, and TEX. OCC. CODE § 1103.502.
6. Based on the Findings of Fact above, Respondent failed to make good on a payment presented to TALCB within thirty days after Staff mailed a request by certified mail to Respondent's address of record, in violation of 22 TAC § 153.20(a)(17).
7. Based on the Findings of Fact above, Respondent failed to answer Staff's complaint, in violation of TEX. OCC. CODE § 1103.505.
8. Based on the Findings of Fact above, Respondent failed to maintain and inform TALCB of a fixed office address, in violation of TEX. OCC. CODE § 1103.403.
9. TALCB is authorized to suspend or revoke Respondent's license for violations of TEX. OCC. CODE § 1103.001 *et seq.*, and TALCB rules. TEX. OCC. CODE § 1103.518(2)(B).
10. TALCB is authorized to impose an administrative penalty under TEX. OCC. CODE § 1103.518, in an amount not to exceed \$1,500 for each violation or \$5,000 for multiple violations proved in one contested case. TEX. OCC. CODE § 1103.552.
11. Based on the above Findings of Fact and Conclusions of Law, Respondent's license should be revoked, and an administrative penalty of \$3,000 should be assessed against Respondent.

SIGNED September 28, 2011.



PRATIBHA J. SHENOY

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS