

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

JOHN ROSS FANNING
TX-1324201-G

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DOCKETED COMPLAINT NO.
13-165

AGREED FINAL ORDER

On the 22nd day of November, 2013, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the certification of John Ross Fanning (the "Respondent").

In order to conclude this matter, John Ross Fanning 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 "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 is a Texas state certified general real estate appraiser who held certification number, TX-1324201-G, and was certified by the Board during all times material to the above-noted complaint case.
2. Respondent appraised real property located at: 1265 Beltway S., Abilene, Texas 79062 (the "property").
3. Thereafter, LSI, a Lender Processing Services Company, filed a complaint with the Board. The Board reviewed the complaint to ensure compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), TEX. OCC. CODE CHPT. 1103 (the "Act") and 22 TEX. ADMIN. CODE CHPT. 153 and 155 (the "Rules").
4. Thereafter the Board, in accordance with the mandate of the Administrative Procedure Act (the "APA"), TEX.GOV'T CODE ANN. CHPT. 2001, and the Act, 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, which was received.
5. Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the property:
 - a) USPAP Ethics Rule (Record Keeping) – Respondent failed to create and maintain a workfile containing all "data, information, and documentation necessary to support the appraiser's opinions and conclusions;

- b) USPAP Scope of Work Rule -- Respondent's scope of work was inadequate to address the complex nature of the appraisal assignment;
- c) USPAP Standards 1-2(a) & 2-2(i) – Respondent failed to properly identify the client of the appraisal;
- d) USPAP Standards 1-2(f), 2-1(c) and 2-2(x) – Respondent failed to identify and report a number of extraordinary assumptions;
- e) USPAP Standards 1-2(e)(i) and 2-2(b)(iii) – Respondent failed to identify and report the site description and improvements adequately;
- f) USPAP Standards 1-4(f) and 2-2(b)(viii) – Respondent failed to analyze anticipated improvements on or off the subject property;
- g) USPAP Standards 1-2(e)(iv) and 2-2(b)(viii) – Respondent failed to consider or report any easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances or other items of a similar nature;
- h) USPAP Standards 1-3(a) and 2-2(b)(viii); 1-1(b) – Respondent failed to support the opinions and conclusions in the Neighborhood section of the appraisal report;
- i) USPAP Standards 1-3(b) and 2-2(b)(ix) – Respondent did not provide support of his opinion of highest and best use;
- j) USPAP Standards 2-2(b)(v)(iii) – Respondent failed to explain and support the exclusion of the cost approach;
- k) USPAP Standards 1-4(b)(i), 1-4(b)(ii), 1-4(b)(iii) & 2-2(b)(viii); 1-1(a) & 1-4(b) – Respondent failed to use an appropriate method or technique to develop a site value determination; Respondent failed to use an appropriate method or technique to determine the cost new of improvements and failed to collect, verify, analyze and reconcile the cost new of improvements; Respondent failed to use an appropriate method or technique to determine accrued depreciations and failed to collect, verify, analyze and reconcile the accrued depreciations;
- l) USPAP Standards 1-4(a) and 2-2(b)(viii); 1-1(a) and 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 his sales comparison approach;
- m) USPAP Standards 2-2(b)(v)(iii) – Respondent failed to explain and support the exclusion of the income approach;
- n) USPAP Standards 1-4(c)(i), 1-4(c)(ii), 1-4(c)(iii), 1-4(c)(iv) & 2-2(b)(viii); 1-1(a) & 1-4(b) – Respondent failed to use an appropriate method or technique to determine

the gross income potential of the subject and failed to collect, verify, analyze and reconcile comparable rental data for subject rent and/or the potential earnings capacity of the property to estimate the gross income potential of the subject; Respondent failed to use an appropriate method or technique to determine the comparable operating expenses and failed to collect, verify, analyze and reconcile the comparable operating expenses; Respondent failed to use an appropriate method or technique to estimate capitalization and/or discount rates and failed to collect, verify, analyze and reconcile the estimate capitalization and/or discount rates; Respondent failed to base projections of future rent or income potential and expenses on reasonable clear and appropriate evidence;

- o) USPAP Standards 1-5(a) and 2-2(b)(viii); 1-1(b); 1-6(a), 1-6(b) and 2-2(b)(viii) – Respondent failed to disclose, analyze and reconcile significant and material information regarding the property’s current listing;
- p) USPAP 1-6(a), 1-6(b) and 2-2(b)(viii) – Respondent to reconcile the quality and quantity of the data within the sales comparison approach;
- q) USPAP Standards 1-4(d) and 2-2(b)(viii) – Respondent failed to consider, analyze and report the effect on value of terms/conditions of the lease in an appraisal of the leased fee or leasehold estate;
- r) USPAP Standards 1-4(e) and 2-2(b)(viii) – Respondent failed to appropriately analyze and report the effect on value, if any, on the assemblage of various estates or component parts of a property; and
- s) USPAP Standards 1-1(a), 1-1(b), 1-1(c), 2-1(a) and 2-1(b) – For the reasons 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.

6. Respondent made omissions of material fact with respect to his appraisal of the property as detailed above.

7. The parties enter into this 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. Respondent violated the above-noted provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3).

3. Respondent violated 22 TEX. ADMIN. CODE § 153.20(9) by making omissions of material fact.

4. 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 November 22, 2014. Respondent shall submit documentation of attendance and successful completion of the classes set out below to the Board. All classes required by this 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 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 in USPAP, a minimum of fifteen (15) class hours, on or before November 22, 2014.
2. **MENTORSHIP.** On or before November 22, 2014. Respondent shall complete six (6) hours of in-person mentorship conducted by a certified USPAP instructor approved by the Board in accordance with the schedule and topics set out below. Respondent shall submit a certification of completion signed by the approved certified USPAP instructor and a signed copy of the Guidelines for Texas Appraiser Licensing and Certification Board Mentors and Mentees on or before the due date listed for each mentorship requirement. **Respondent is solely responsible for locating and scheduling an approved mentor to timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion.**
 - a. Six (6) hours of mentorship, on or before November 22, 2014.
 - i. Two (2) hours on sales comparison approach.
 - ii. Two (2) hours on highest and best use.
 - iii. Two (2) hours on site valuation.
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 TERMS 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. 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 web site.

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. Respondent shall retain documentation (reply email, fax confirmation, return receipt, etc.) confirming receipt by the Board of all the necessary documents.

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.

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, INCULDING 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).

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.

Signed this 8th day of November, 2013.

John Ross Fanning
JOHN ROSS FANNING

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this 8th day of November, 2013, by JOHN ROSS FANNING, to certify which, witness my hand and official seal.

Patricia A. Cheek
Notary Public Signature



Patricia A. Cheek
Notary Public's Printed Name

Signed by the Standards and Enforcement Services Division this 14th day of November, 2013.

Kyle Wolfe
Kyle Wolfe, TALCB Staff Attorney

Signed by the Commissioner this 22 day of NOV, 2013.

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

Approved by the Board and Signed this 22 day of NOV, 2013.

Walker Beard
Walker Beard, Chairperson

Texas Appraiser Licensing and Certification Board
