

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

DAVID ANTHONY GARZA
TX-1329771-L

§
§
§
§
§
§
§

DOCKETED COMPLAINT NO. 10-278

AGREED FINAL ORDER

On this the 14 day of Sept., 2011, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the license of David Anthony Garza, (Respondent). The Board makes the following findings of fact and conclusions of law and enters this Order:

In order to conclude this matter David Anthony Garza 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 David Anthony Garza is and was a state licensed real estate appraiser during all times material to this complaint.

2. Respondent is subject to the jurisdiction of the Board, the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE Chapter 1103 (Vernon 2007) (the Act), the Rules of the Board, 22 TEX. ADMIN. CODE §§153, 155, 157 (West 2007) (the Rules), and the Uniform Standards of Professional Appraisal Practice (USPAP) in effect at the time of the appraisal.

3. Respondent appraised real property located at 5013 Pcikfair Street, Houston, Texas 77026 ("the property") on or about February 15th, 2007.

4. On or about May 13th, 2010, a staff-initiated complaint was filed based on allegations that the Respondent had produced an appraisal report that did not comply with the USPAP.

5. Thereafter, the Board, in accordance with the mandate of the Administrative Procedure Act (the APA), TEX. GOV'T CODE ANN. Chapter 2001, notified Respondent of the nature and accusations involved and Respondent was afforded an opportunity to respond to the accusations alleged by the Complainant. Respondent's response to the complaint was received.

6. 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) Respondent failed to comply with the record-keeping provisions of the Ethics Rule;
- (b) Respondent has failed to provide his supporting rationale for his determination of the property's highest and best use;
- (c) Respondent failed to explain and support his exclusion of the cost approach;
- (d) Respondent failed to employ recognized methods and techniques in his sales comparison approach and failed to collect, verify, analyze and reconcile comparable sales data adequately;
- (e) Respondent failed to analyze a prior sale of the property within 3 years prior to the effective date of his appraisal;
- (f) Respondent failed to reconcile the quality and quantity of the data within the approaches used and the applicability or suitability of the approaches; and,
- (g) Respondent's report contained substantial errors of commission or omission which resulted in a misleading appraisal report.

7. The parties enter into the following consent order in accordance with TEX. OCC. CODE § 1103.458.

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 § 1103.451-1103.5535.

2. Respondent violated the following provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3): USPAP Ethics Rule (record keeping provisions); USPAP Standards Rules: 1-3(b) & 2-2(b)(ix); 2-2(b)(viii); 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a); 1-5(b) & 2-2(b)(viii); 1-6(a) & (b) & 2-2(b)(vii); 1-1(a); 1-1(b); 1-1(c); and, 2-1(a).

3. Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(9) by making material misrepresentations and omitting material facts.

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

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

- 1) Have his license revoked for twenty-four months with the revocation fully probated under the following conditions:
 - i. During the probated, twenty-four month probation period Respondent shall submit to the Board an appraisal experience log on a form prescribed by the Board. The log shall be submitted every three months and 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 the log is true, complete and fully accurate. Upon request from the Board, Respondent shall provide copies of his appraisal reports and work files for any appraisal assignments he performs during the course of this period of probation within the twenty days of notice of any such request;
 - ii. Respondent shall fully and timely comply with all of the provisions of this Agreed Final Order;
- 2) Within 6 months of the effective date of this order, Respondent shall complete 10 hours of in-person mentorship conducted by a certified USPAP instructor approved by the Board. Upon completion of the requisite mentorship hours, and, within 6 months of the effective date of this order, Respondent shall submit on a form provided by the Board, a signed, notarized affidavit attested by the certified USPAP instructor confirming completion of the mentorship hours;
- 3) Attend and complete a minimum 15 classroom-hour course in USPAP or USPAP applications;
- 4) Attend and complete a minimum 7 classroom-hour course in the Cost Approach;
 - i. No examination shall be required for this course;
- 5) Attend and complete a minimum 7 classroom-hour course in Staying Out of Trouble;
 - i. No examination shall be required for this course;
- 6) Comply with all future provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

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 otherwise noted above, 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 licensure. Respondent is solely responsible for locating and scheduling classes to timely satisfy the terms of this agreement.

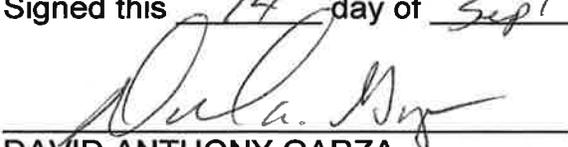
Failure to comply with any of the terms required by this Agreed Final Order within the time allotted shall result in **IMMEDIATE REVOCATION** of the Respondent's license pursuant to notice to the Respondent from the Board indicating that the Respondent has not fulfilled the required terms of this Agreed Final Order.

ANY SUCH REVOCATION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT OR THE ADMINISTRATIVE PROCEDURE ACT, 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 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.

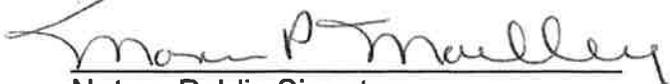
THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 14 day of Sept, 2011.



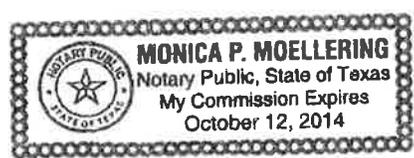
DAVID ANTHONY GARZA

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 14 day of September, 2011, by DAVID ANTHONY GARZA, to certify which, witness my hand and official seal.



Notary Public Signature

Monica P. Moellering
Notary Public's Printed Name



Signed by the Standards and Enforcement Services Division this 11th day of OCTOBER, 2011.

Troy Beaulieu
Troy Beaulieu, TALCB Staff Attorney

Signed by the Commissioner this 12th day of October, 2011.

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

Approved by the Board and Signed this 12th day of October, 2011.

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