

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

DAVID TY-NHO MA
TX-1338179-R

§
§
§
§
§
§
§

COMPLAINT CASE NUMBER
14-077

DEFAULT FINAL ORDER

On this 4TH day of December, 2014, the Texas Appraiser Licensing and Certification Board ("TALCB" or "Board"), through the delegation of authority to the Commissioner, considered the above-noted matter.

After proper notice was given, David Ty-Nho Ma (the "Respondent") failed to respond and request a hearing in this matter.

The Texas Appraiser Licensing and Certification Board through the delegation of authority to the Commissioner, after review and due consideration of the Notice of Violation and Penalty, incorporated by reference and attached hereto as Exhibit A, makes the following findings of fact and conclusions of law. All proposed findings of fact and conclusions of law submitted by any party that are not specifically adopted in this Final Order are denied.

FINDINGS OF FACT

1. Respondent, David Ty-Nho Ma, is a Texas state certified residential real estate appraiser who currently holds and held certification number TX-1338179-R during all times material to the above-noted complaint case.
2. On or about June 21, 2013 Respondent appraised residential real property located at: 3803 Jackson Avenue, Austin, Texas (the "Property").
4. On August 11 and 25, 2014, Board staff sent Respondent a settlement offer with an agreed final order and received no response from Respondent.
5. On October 15, 2014, the Board staff sent the Respondent a Notice of Violation and Penalty ("Notice") to the address Respondent provided to the TALCB: 6204 Amberly Place, Austin, Texas 78759.
6. On October 15, 2014, the Board staff also sent the Notice to the email address Respondent provided to the TALCB, DMA1@austin.rr.com.
7. The Notice alleged that Respondent committed certain "acts or omissions which did not conform to USPAP [Uniform Standards of Professional Appraisal Practice] in effect at the time of the appraisal report for the Property."

Respondent has therefore violated 22 TEX. ADMIN. CODE §§ 153.20(a)(6) and 155.1 and TEX. OCC. CODE § 1103.405.

8. The Notice recommended the revocation of Respondent's certification and recommended the imposition of a \$5,000 administrative penalty.
9. In the Notice, Respondent was informed that failure to respond, no later than the 20th day after the date of receiving the Notice, would result in the submission of an order imposing the above recommendations to the Board.
10. Respondent failed to respond to the Notice in any manner.

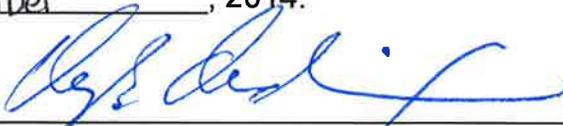
CONCLUSIONS OF LAW

1. The TALCB has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act (the "Act"), TEX. OCC. CODE § 1103 et. seq.
2. Respondent is authorized to send Notice pursuant to TEX. OCC. CODE § 1103.5011.
3. The notice alleged Respondent committed certain acts or omission that did not conform to USPAP in effect at the time of Respondent's appraisal reports. Respondent therefore violated 22 TEX. ADMIN. CODE §§ 153.20(a)(6) and 155.1 and TEX. OCC. CODE § 1103.405 by failing to comply with USPAP in his appraisal reports.
4. The Notice also alleged that "Respondent made material misrepresentations and omissions of material fact in his appraisal of the Property." Respondent therefore violated 22 TEX. ADMIN. CODE §§ 153.20(a)(12) by making material misrepresentations and omitting material facts in his appraisal report for the Property.
5. The Notice recommended the revocation of Respondent's certification and recommended the imposition of a \$5,000 administrative penalty.
6. Pursuant to TEX. OCC. CODE § 1103.5011, no later than the 20th after the date of receiving the Notice, Respondent may accept the Board's determination or make a written request for a hearing.
7. Respondent failed to respond to the Notice in any manner.
8. Pursuant to TEX. OCC. CODE § 1103.5012, if the Respondent fails to respond to the Notice in a timely manner, the TALCB is authorized to approve the determinations in the Notice, order payment of the recommended penalty and impose the recommended sanction.

NOW, THEREFORE, IT IS ORDERED by the Texas Appraiser Licensing and Certification Board through the delegation of authority to the Commissioner that the certification of David Ty-Nho Ma in this matter is hereby **REVOKED** and assessed an administrative penalty of \$5,000, effective twenty days after the date David Ty-Nho Ma is notified of this Final Order.

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 Texas Appraiser Licensing and Certification Board through the delegation of authority to the Commissioner and Signed this 4th day of December, 2014.



Douglas Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

RIGHT TO REHEARING AND JUDICIAL REVIEW OF FINAL ORDER

You are entitled to apply for a rehearing of this Final Order. A rehearing may be obtained by filing an application for rehearing within 20 days of being notified either in person or by certified mail, return receipt requested, of the Final Order. The application for rehearing must state the specific grounds for rehearing and the relief sought. The application for rehearing will be denied if the Board does not grant it before the 20th day after the date the Commissioner is served with the application. In the absence of a timely application for rehearing, the final order will be final on the expiration of the period for filing an application for rehearing. A decision becomes final and appealable on the date of rendition of the order overruling application for rehearing, or on the date the application for rehearing is overruled by operation of law.

An application for rehearing is a prerequisite to judicial review. Judicial review may be obtained by filing in the Travis County, Texas, District Court, within 30 days after the order of the board is final and appealable.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Default Final Order was sent certified mail, return receipt requested to:

David Ty-Nho Ma
6204 Amberly Place
Austin, Texas 78759

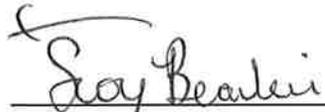
VIA CMRRR # 91 7199 9991 7032 9861 2961

VIA E-MAIL: DMA1@AUSTIN.RR.COM

David Ty-Nho Ma
14309 Montour Drive
Austin, Texas 78717-4996

VIA CMRRR# 91 7199 9991 7032 9861 2954

On this 5TH day of December, 2014



Troy Beaulieu
TALCB Attorney

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

§ DOCKETED COMPLAINT NUMBER
§
§ 14-077
§
§
§
§

vs.

DAVID TY-NHO MA
TX-1338179-R

NOTICE OF VIOLATION AND PENALTY

In accordance with TEX. OCC. CODE § 1103.5011, please take notice of the following:

I. FACTS

1. Petitioner is the Standards and Enforcement Services Division of the Texas Appraiser Licensing and Certification Board (the "TALCB" or "Board").
2. David Ty-Nho Ma (the "Respondent") is a Texas state certified residential real estate appraiser whose address as provided to TALCB is: 6204 Amberly Place, Austin, Texas 78759.
3. Respondent currently holds and held certification number TX-1338179-R during all times material to the below-noted violations.

II. SUMMARY OF ALLEGED VIOLATIONS

4. On or about June 21, 2013 Respondent appraised residential real property located at: 3803 Jackson Avenue, Austin, Texas (the "Property").
5. On or about November 26th, 2013, complaint 14-077 was filed with the Board by Deb Pribnow, an employee of RELS, which alleged Respondent violated various provisions of the Uniform Standards of Professional Appraisal Practice ("USPAP").
6. On or about December 5th, 2013, the Board, in accordance with the mandate of TEX.GOV'T CODE ANN. CHPT. 2001, the Administrative Procedure Act (the "APA"), and the Act, notified Respondent of the nature of the accusations involved. 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 provided the documentation.

7. 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 report for the Property:

- a) USPAP Record Keeping Rule -- Respondent failed to maintain a work file containing the documentation necessary to support of his analyses, opinions and conclusions;
- b) USPAP Competency Rule – Respondent was not competent to perform the appraisal of the Property;
- c) USPAP Scope of Work Rule 1-2(h) & Standard 2-2(vii) – Respondent failed to develop and perform the scope of work necessary to develop credible assignment results;
- d) USPAP Standards 1-2(g), 2-1(c) & 2-2(b)(x) – Respondent failed to report hypothetical conditions used in his appraisal of the property and indicate that such conditions resulted in credible assignment results. Use of such conditions did not produce credible assignment results;
- e) USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent failed to identify and report adequately the site and improvements description;
- f) USPAP Standards 1-4(f) & 2-2(b)(viii) – Respondent failed to consider and report anticipated public and private improvements located on or off the site and did not address how the proposed contemporary duplex Respondent was appraising would conform with the neighborhood surroundings;
- g) USPAP Standards 1-3(a) & 2-2(b)(viii); 1-3(b) & 2-2(b)(ix) – Respondent failed to identify and analyze the effect on use and value of economic supply and demand and market area trends and failed to provide a summary of his rationale for his determination of the property’s highest and best use;
- h) USPAP Standards 1-4(b)(i) & 2-2(b)(viii); 1-1(a) & 1-4(b) – Respondent failed to utilize an appropriate method or technique to develop an opinion of site value and did not employ recognized methods and techniques and provide support for his site value determination;
- i) USPAP Standards 1-4(b)(ii) & 2-2(b)(viii); 1-1(a) & 1-4(b) – Respondent failed to collect, verify, analyze, and reconcile the cost of new improvements and did not employ recognized methods and techniques in the cost approach;

- j) USPAP Standards 1-4(b)(ii) & 2-2(b)(viii); 1-1(a) & 1-4(b) – Respondent failed to collect, verify, analyze, and reconcile accrued depreciation in conjunction with external obsolescence stemming from the Property’s nonconformity with the area’s commercial nature;
- k) USPAP Standards 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a) – Respondent failed to correct, verify, analyze and reconcile comparable sales data adequately and did not employ recognized methods and techniques correctly in the Sales Comparison Approach;
- l) USPAP Standards 1-4(c) & 2-2(b)(viii); 1-4(c)(ii) & 2-2(b)(viii); 1-1(a) – Respondent failed to conduct an income approach when doing so was necessary for credible assignment results and thus did not employ recognized methods and techniques in this context;
- m) USPAP Standards 1-5(a) & 2-2(b)(viii) – Respondent failed to report and analyze all agreements of sale, options or listings of the Property current as of the effective date of the appraisal;
- n) USPAP Standards 1-2(e)(v) & 2-2(b)(viii) – Respondent failed to examine and retain plans, specifications, or other documents sufficient to identify the extent and character of the proposed improvements; and,
- o) USPAP Standards 1-1(a), 1-1(b), 1-1(c), and, 2-1(a) – For the reasons detailed above, Respondent produced an appraisal report for the Property that contained several substantial errors of omission or commission which significantly impacted the appraisal and resulted in a misleading appraisal report.

8. Respondent made material misrepresentations and omissions of material fact in his appraisal of the Property as detailed above.

III. RECOMMENDED SANCTION AND PENALTY

9. Petitioner recommends the revocation of Respondent’s certification and the imposition of a \$5,000.00 administrative penalty.

IV. RESPONDENT’S RIGHT TO A HEARING

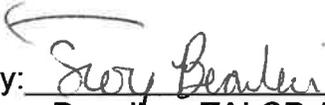
10. Pursuant to TEX. OCC. CODE § 1103.5011, Respondent has the right to a hearing to contest:

- a. the alleged violation;
- b. the recommended sanctions and penalty; or,

c. both the alleged violation and recommended sanctions and penalty.

11. However, if Respondent fails to respond to this notice and does not affirmatively request in writing a hearing within the next 20 days, a final order, imposing the recommended sanctions and penalty outlined above will be automatically entered and imposed against Respondent by default.

Respectfully Submitted,

By: 

Troy Beaulieu, TALCB Attorney
Texas Bar No. 24044518
Texas Appraiser Licensing & Certification Board
P.O. Box 12188
Austin, TX 78711-2188
Telephone: (512) 936-3623
Fax: (512) 936-3966

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Notice of Violation and Penalty was sent certified mail, return receipt requested to:

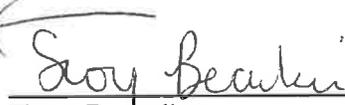
David Ty-Nho Ma
6204 Amberly Place
Austin, Texas 78759

(VIA CMRRR #: 91 7199 9991 7032 9918 0605)
(VIA EMAIL: DMA1@AUSTIN.RR.COM)

David Ty-Nho Ma
14309 Montour Drive
Austin, Texas 78717-4996

(VIA CMRRR# 91 7199 9991 7032 9863 6059)

On this 15TH day of OCTOBER, 2014



Troy Beaulieu
TALCB Attorney