

TEXAS APPRAISER LICENSING §  
AND CERTIFICATION BOARD

vs.

JERRY FRANK MOSBACHER  
TX-1336820-R

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DOCKETED COMPLAINT NO. 10-155  
& 10-321

**AGREED FINAL ORDER**

On this the 13 day of JAN, 2012, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the certification of Jerry Frank Mosbacher, (Respondent).

In order to conclude this matter Jerry Frank Mosbacher denies the truth of the Findings of Fact and Conclusions of Law contained herein but for purposes of swift resolution, 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 Jerry Frank Mosbacher is a state certified residential real estate appraiser who currently holds and held certification number TX-1336820-R during all times material to the above-noted complaint cases.
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 419 Brooks Street, Sugar Land, Fort Bend County, Texas ("the Brooks property") on or about August 20<sup>th</sup>, 2009.
4. Respondent appraised real property located at 318 Briar Hill Drive, Houston, Harris County, Texas ("the Briar Hill property") on or April 6<sup>th</sup>, 2009.
5. Thereafter, a staff-initiated complaint relating to each of these real estate appraisal reports was filed with the Board. The complaints alleged that Respondent's appraisals were deficient, in violation of the Uniform Standards of Professional Appraisal Practice and not completed properly.
6. On or about February 2<sup>nd</sup>, 2010 and June 21<sup>st</sup>, 2010, 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 in the complaints. Respondent's responses to the complaints were received.

7. 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 Brooks property:

- (a) Respondent failed to comply with the record-keeping provisions of the Ethics Rule;
- (b) Respondent failed to identify and report the site description adequately. In particular, the property fronted a busy state highway;
- (c) Respondent failed to provide support for the site value determination;
- (d) Respondent failed to collect, verify, analyze, and reconcile comparable sales data adequately, and failed to employ recognized methods and techniques in his sales comparison approach; and,
- (e) Respondent's report contains unintentional, but substantial errors of commission or omission as detailed above which resulted in a misleading appraisal report for the Brooks property.

8. Respondent omitted material facts and made material misrepresentations in the appraisal report for the Brooks property. These omissions and misrepresentations were not intentional.

9. 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 Briar Hill property:

- (a) Respondent failed to comply with the record-keeping provisions of the Ethics Rule;
- (b) Respondent failed to identify and report the site description adequately. In particular, the property fronted the Sam Houston Tollway (Beltway 8);
- (c) Respondent failed to use an appropriate method or technique to develop an opinion of the site value and failed to provide support for the site value determination;
- (d) Respondent failed to collect, verify, analyze, and reconcile the cost new of improvements and accrued depreciations, failed to

provide support for such determinations and failed to employ recognized methods and techniques in his cost approach;

- (e) Respondent failed to collect, verify, analyze, and reconcile comparable sales data adequately, and failed to employ recognized methods and techniques in his sales comparison approach;
- (f) Respondent's report contains unintentional, but substantial errors of commission or omission as detailed above which resulted in a misleading appraisal report for the Briar Hill property.

10. Respondent omitted material facts and made material misrepresentations in the appraisal report for the Briar Hill property. These omissions and misrepresentations were not intentional.

11. 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: 1-2(e)(i) & 2-2(b)(iii); 1-4(b)(i) & 2-2(b)(viii); 1-4(b)(ii) & 2-2(b)(viii); 1-4(b)(iii) & 2-2(b)(viii); 1-1(a) & 1-4(b); 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(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) Attend and complete a minimum, 15 classroom-hour course in USPAP;
- 2) Attend and complete a minimum, 7 or 8 classroom-hour course in Staying Out of Trouble;
  - (i) No examination shall be required for this course;

- 3) Within 12 months of the effective date of this order, Respondent shall complete 14 hours of in-person mentorship conducted by a certified USPAP instructor approved by the Board. Upon completion of the requisite mentorship hours, and, within 12 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;
- 4) Upon completion of the 14 hours of mentorship, Respondent shall submit an experience log and affidavit of all appraisal work completed in the year prior and shall submit copies of no more than 2 of his work files and reports selected by the Board, within 20 days of being requested by the Board;
- 5) Pay to the Board an administrative penalty of \$2,000.00, with \$500 probated under the condition that all terms of this order are complied with; and,
- 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 certification. Respondent is solely responsible for locating and scheduling classes to timely satisfy the terms of this agreement.

Payment of the **ADMINISTRATIVE PENALTY** must be by certified funds, and must be tendered within **TWENTY DAYS** of the effective date of this Agreed Final Order.

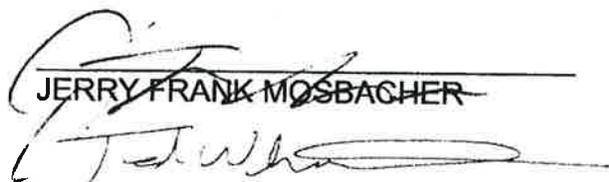
Failure to comply with any of the terms of this Agreed Final Order within the time allotted shall result in **IMMEDIATE SUSPENSION** of the Respondent's certification pursuant to notice to the Respondent from the Board indicating that the Respondent has not fulfilled the requirements of this Agreed Final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

**ANY SUCH SUSPENSION 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 shall be notified of any such suspension by certified mail, return receipt requested, to the last known address as provided to the Board. If Respondent's license or certification is suspended on such a basis, the suspension shall remain in effect until such time as Respondent complies with all the terms of this Agreed Final Order and the remaining portion of the administrative penalty

shall be due within 20 days of written notice. 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.

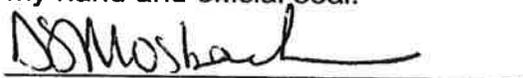
THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 17 day of November, 2011.

  
JERRY FRANK MOSBACHER

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TED WHITMER, ATTORNEY FOR  
RESPONDENT

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 17 day of November, 2011, by JERRY FRANK MOSBACHER, to certify which, witness my hand and official seal.

  
\_\_\_\_\_  
Notary Public Signature  
Debra S Mosbacher  
\_\_\_\_\_  
Notary Public's Printed Name



Signed by the Standards and Enforcement Services Division this 12<sup>th</sup> day of JANUARY, 2011.

  
\_\_\_\_\_  
Troy Beaulieu, TALCB Staff Attorney

Signed by the Commissioner this 13 day of JAN, 2012.

  
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Douglas Oldmixon, Commissioner  
Texas Appraiser Licensing and Certification Board

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

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