

TEXAS APPRAISER LICENSING  
AND CERTIFICATION BOARD

vs.

KENNETH J. SMITH  
TX-1337793-L

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DOCKETED COMPLAINT NO. 10-048

### AGREED FINAL ORDER

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2012, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the licensure of Kenneth J. Smith, (Respondent). The Board makes the following findings of fact and conclusions of law and enters this Order:

In order to conclude this matter Kenneth J. Smith 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 Kenneth J. Smith is a state licensed real estate appraiser and has been licensed by the Board 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 3506 Orchard Mews Drive, Sugar Land, Texas 77498-7436 ("the property") on or about May 28<sup>th</sup>, 2009.
4. On or about October 19<sup>th</sup>, 2009, a staff-initiated complaint was filed with the Board based on allegations that the Respondent had produced an appraisal report that did not comply with the USPAP.
5. On or about October 21<sup>st</sup>, 2009, 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 failed to identify and report the site and improvement(s) description adequately and did not identify and analyze the effect on use and value of existing land use regulations, economic supply & demand, physical adaptability of the real estate and market area trends;
- c) Respondent failed to provide support and his analytical rationale for his highest and best use determination for the property;
- d) Respondent failed to employ recognized methods and techniques in his cost approach and failed to collect, verify, analyze and reconcile the cost new of improvements and accrued depreciation and failed to provide support and analysis for his site value determination for the property;
- e) Respondent failed to collect, verify, analyze and reconcile comparable sales data adequately and did not employ recognized methods and techniques in his sales comparison approach; and,
- f) Respondent's report contains substantial errors of commission or omission as detailed above which resulted in a misleading appraisal report for the property.

## **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); 1-2(e)(i) & 2-2(b)(iii); 1-3(a) & 2-2(b)(viii); 1-3(b) & 2-2(b)(ix); 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(a); 1-1(b); 1-1(c); and, 2-1(a).

3. Respondent made material misrepresentations and omitted material facts in violation of 22 TEX. ADMIN. CODE § 153.20(a)(9).

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

- 1) Within 6 months of the effective date of this order, Respondent shall complete 7 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;
- 2) Attend and complete a minimum, 7 classroom-hour course in Staying Out of Trouble or Quality Control;
  - i. No examination shall be required for this course;
- 3) Attend and complete a minimum, 7 classroom-hour course in Valuation by Comparison;
  - i. No examination shall be required for this course;
- 4) 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 or certification. Respondent is solely responsible for locating and scheduling classes to timely satisfy the terms of this agreement.

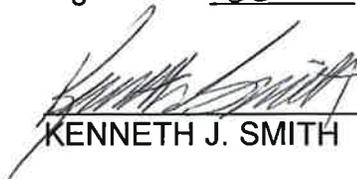
*Failure to comply with any of the terms of this Agreed Final Order within the time allotted shall result in **IMMEDIATE REVOCATION** of the Respondent's license pursuant to notice to the Respondent from the Board indicating that the Respondent has not fulfilled the requirements of this Agreed Final 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 shall be notified of any such revocation by mail, to the last known address as provided to the Board.

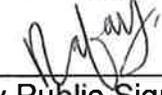
Respondent, by signing this Agreed Final Order, waives the Respondent's right to a formal hearing and any right to seek judicial review of this Agreed Final Order. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's web site.

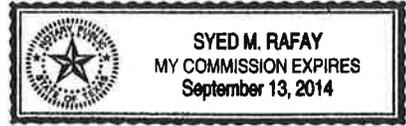
THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 22<sup>nd</sup> day of MARCH, 2012.

  
KENNETH J. SMITH

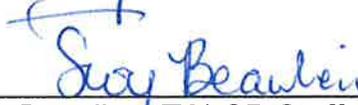
SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 22<sup>nd</sup> day of MARCH, 2012, by KENNETH J. SMITH, to certify which, witness my hand and official seal.

  
Notary Public Signature



SYED M. RAFAY  
Notary Public's Printed Name

Signed by the Standards and Enforcement Services Division this 17<sup>th</sup> day of May, 2012.

  
Troy Beaulieu, TALCB Staff Attorney

Signed by the Commissioner this 18 day of May, 2012.

  
Douglas Oldmixon, Commissioner  
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 11 day of May, 2012.

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