

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

THEODORE GUS TROSTEL
TX-1321843-R

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DOCKETED COMPLAINT NO.
02-028, 04-064, 04-065, 04-066
& 04-067

AGREED FINAL ORDER

On this the 10th day of August, 2007, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the certification of Theodore Gus Trostel (Respondent). The Board makes the following findings of fact and conclusions of law and enters this Order:

FINDINGS OF FACT

1. Respondent Theodore Gus Trostel, a state certified residential real estate appraiser, holds certification number TX-1321843-R, and has been certified since December 30th, 1991.
2. Respondent is subject to the jurisdiction of the Board, the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103 et. seq. (the Act), the Rules of the Board, 22 TEX. ADMIN. CODE §§153, 155, 157 (the Rules), and the Uniform Standards of Professional Appraisal Practice (USPAP) in effect at the time of the appraisal.
2. On or about January 28th, 2002, the Complainant, Mr. Rodger Barnes, formerly the Assistant Commissioner of TALCB, filed a staff-initiated complaint in accordance with TEX. OCC. CODE § 1103.451, based upon information from Joseph D. Biegel, Vice President of Credit Policy with Fannie Mae, alleging that Respondent had produced an appraisal report that did not conform to the Uniform Standards of Professional Appraisal Practice.
3. The complaint related to real property appraisal services performed by Respondent on property located at: 7712 Woodside Hill, Fort Worth, Tarrant County, Texas ("the Woodside property").
4. On or about April 12th, 2002, Respondent was notified of the complaint relating to the Woodside property and given an opportunity to respond. Respondent's response was received.
5. On or about May 18th, 2004, the Complainant, Deloris Kraft-Longoria, an investigator with TALCB, filed four different staff-initiated complaints in accordance with TEX. OCC. CODE § 1103.451, alleging that Respondent had produced four different appraisal reports that had numerous USPAP violations.

6. Each separate complaint related to real property appraisal services performed by Respondent on one of the following four properties located at: 416 Sioux Street, Keller, Tarrant County, Texas ("the Sioux property"), 6028 Nanci Drive, Watauga, Tarrant County, Texas ("the Nanci property"), 1301 Silver Creek-Azle Road, Azle, Tarrant County, Texas ("the Silver property"), 12675 Foster Circle, Azle, Tarrant County, Texas ("the Foster property").
7. On or about May 19th, 2004, Respondent was notified of the complaints relating to the Nanci, Foster, Silver and Sioux properties and given an opportunity to respond. Respondent's response to each complaint was received.
8. The Enforcement Division concluded that the Respondent violated 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 Woodside property:
 - a. USPAP Standards 1-2(c) & 2-2(a)(v) & 2-2(b)(v) – Respondent's determination of exposure time is inconsistent, not well documented and not reasonable because it is not supported from market data, which indicates a shorter exposure time;
 - b. USPAP Standards 1-3(b) & 2-2(b)(x) – Respondent did not provide a summary statement of his rationale for his determination of the Woodside property's highest and best use;
 - c. USPAP Standards 1-4(b)(i) & 2-2(b)(ix) – Respondent did not use an appropriate method or technique to develop an opinion of the Woodside property's site value. Respondent did not provide any support for his concluded site value;
 - d. USPAP Standards 1-4(b)(iii) & 2-2(b)(ix) – Respondent has not collected, verified, analyzed and reconciled accrued depreciation correctly. Respondent's determination that the Woodside property had a seventy year life is inappropriate given the age and quality of the house;
 - e. USPAP Standards 1-4(a) & 2-2(b)(ix) – Respondent has failed to collect, verify, analyze and reconcile adequately the comparable sales data for the Woodside property. Respondent used properties as comparables which were not appropriate for use as comparable sales. The quality of the comparable sales used was superior to the Woodside property in terms of quality of construction, location, additional improvements, and landscaping. More similar properties were available and should have been used. Additionally inappropriate adjustments and/or no adjustments were made for many of the dissimilar features;

- f. USPAP Standards 1-1(a) & 1-4(a) – Respondent did not employ recognized methods and techniques correctly. Respondent chose sales that were poor and not similar to the subject, particularly when considering the period of time the Woodside property spent on the market and its listing price;
 - g. USPAP Standards 1-5(a) & 2-2(b)(ix) – Respondent failed to properly analyze any current agreement of sale, option or listing of the Woodside property;
 - h. USPAP Standard 2-1(a) -- Respondent's appraisal report was misleading because inappropriate comparable sales were used to support his market value determination. The report is also misleading because Respondent failed to correctly apply depreciation in his cost approach analysis;
 - i. USPAP Standard 2-1(b) – Respondent failed to provide sufficient information in his report to enable intended users to understand his report properly. Insufficient analysis of market data resulted in a report that could not be relied upon by intended users because it did not accurately portray the Woodside property and its market value.
8. The Enforcement Division concluded that the Respondent violated 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 Sioux property:
- a. USPAP Standards 1-2(c) & 2-2(a)(v) & 2-2(b)(v) – Respondent's determination of a 90-180 day exposure time is not reasonable because it is not supported from market data, which indicates a much shorter exposure time;
 - b. USPAP Standards 1-3(b) & 2-2(b)(x) – Respondent did not provide a summary statement of his rationale for his determination of the Sioux property's highest and best use;
 - c. USPAP Standards 1-4(b)(iii) & 2-2(b)(ix) -- Respondent has not collected, verified, analyzed and reconciled accrued depreciation correctly. Respondent's determination that the Sioux property had an eighty year life is inappropriate given the age and quality of the house;
 - d. USPAP Standards 1-4(a) & 2-2(b)(ix) -- Respondent has failed to collect, verify, analyze and reconcile adequately the comparable sales data for the Sioux property. Respondent used properties as comparables which were not appropriate for use as comparable sales. More similar properties were available and should have been used;

- e. USPAP Standards 1-1(a) & 1-4(a) – Respondent did not employ recognized methods and techniques correctly. Respondent failed to use four nearby, recent and similar comparable sales that should have been used. Instead, Respondent used comparable sales that were located outside the Sioux property's neighborhood. His choice of sales were poor and not similar to the subject, particularly when considering the period of time the Sioux property spent on the market and its listing price;
 - f. USPAP Standards 1-5(a) & 2-2(b)(ix) – Respondent failed to analyze properly any current agreement of sale, option or listing of the Sioux property;
 - g. USPAP Standard 1-1(b) – Respondent failed to gather and analyze the most recent, nearby and similar comparable sales. This substantial error significantly affected his appraisal report provided to his client;
 - h. USPAP Standard 2-1(a) -- Respondent's appraisal report was misleading because inappropriate comparable sales were used to support his market value determination and the previous listing information was not properly analyzed; and,
 - i. USPAP Standard 2-1(b) – Respondent failed to provide sufficient information in his report to enable intended users to understand his report properly. Insufficient analysis of market data resulted in a report that could not be relied upon by intended users because it did not portray accurately the Sioux property and its market value.
9. The Enforcement Division concluded that the Respondent violated 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 Nanci property:
- a. USPAP Standards 1-2(c) & 2-2(a)(v) & 2-2(b)(v) – Respondent's determination of a 90-180 day exposure time is not reasonable because it is not supported from market data, which indicates a much shorter exposure time;
 - b. USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent failed to identify and report the site description adequately. Respondent failed to indicate that the Nanci property had some deferred maintenance problems and needed some cosmetic work;
 - c. USPAP Standards 1-3(b) & 2-2(b)(x) – Respondent did not provide a summary statement of his rationale for his determination of the Nanci property's highest and best use;

- d. USPAP Standards 1-4(b)(iii) & 2-2(b)(ix) – Respondent has not collected, verified, analyzed and reconciled accrued depreciations correctly. Respondent's determination that the Nanci property had a seventy year life is inappropriate given the age and quality of the house;
 - e. USPAP Standards 1-4(a) & 2-2(b)(ix) -- Respondent has failed to collect, verify, analyze and reconcile comparable sales data adequately for the Nanci property. Respondent used properties as comparables which were not appropriate for use as comparable sales. More similar properties were available and should have been used. Additionally, Respondent failed to make appropriate adjustments to the comparable sales that were used;
 - f. USPAP Standards 1-1(a) & 1-4(a) -- Respondent did not employ recognized methods and techniques correctly. Respondent failed to use five nearby, recent and similar comparable sales that should have been used. Instead, Respondent used comparable sales that were superior to the subject;
 - g. USPAP Standards 1-5(a) & 2-2(b)(ix) – Respondent failed to analyze any current agreement of sale, option or listing of the Nanci property properly;
 - h. USPAP Standard 1-1(b) – Respondent failed to gather and analyze the most recent, nearby and similar comparable sales. This substantial error significantly affected his appraisal report provided to his client;
 - i. USPAP Standard 2-1(a) -- Respondent's appraisal report was misleading because inappropriate comparable sales were used to support his market value determination; and,
 - j. USPAP Standard 2-1(b) -- Respondent failed to provide sufficient information in his report to enable intended users to understand his report properly. Insufficient analysis of market data resulted in a report that could not be relied upon by intended users because it did not portray the Nanci property and its market value accurately.
10. The Enforcement Division concluded that the Respondent violated 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 Silver property:
- a. USPAP Standards 1-2(c) & 2-2(a)(v) & 2-2(b)(v) -- Respondent's determination of a 90-120 day exposure time is not reasonable because it is not supported from market data, which indicates a much shorter exposure time;
 - b. USPAP Standards 1-3(b) & 2-2(b)(x) – Respondent did not provide a summary statement of his rationale for his determination of the Silver property's highest and best use;

- c. USPAP Standards 1-4(b)(iii) & 2-2(b)(ix) – Respondent has not collected, verified, analyzed and reconciled accrued depreciation correctly. Respondent's determination that the Silver property had an eighty year life is inappropriate given the age and quality of the house as well as the lack of any reported and detailed major updates;
 - d. USPAP Standards 1-4(a) & 2-2(b)(ix) – Respondent has failed to collect, verify, analyze and reconcile adequately the comparable sales data for the Silver property. Respondent used properties as comparables which were not appropriate for use as comparable sales. More similar properties were available and should have been used;
 - e. USPAP Standards 1-1(a) & 1-4(a) – Respondent did not correctly employ recognized methods and techniques. Respondent chose sales that were not similar to the subject, particularly when considering the period of time the Silver property spent on the market and its listing price;
 - f. USPAP Standards 1-5(a) & 2-2(b)(ix) – Respondent failed to properly analyze any current agreement of sale, option or listing of the Silver property;
 - g. USPAP Standard 2-1(a) -- Respondent's appraisal report was misleading because inappropriate comparable sales were used to support his market value determination. The report is also misleading because Respondent failed to correctly apply depreciation in his cost approach analysis;
 - h. USPAP Standard 2-1(b) – Respondent failed to provide sufficient information in his report to enable intended users to understand his report properly. Insufficient analysis of market data resulted in a report that could not be relied upon by intended users because it did not accurately portray the Silver property and its market value.
11. The Enforcement Division concluded that the Respondent violated 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 Foster property:
- a. USPAP Standards 1-2(c) & 2-2(a)(v) & 2-2(b)(v) – Respondent failed to develop an opinion of reasonable exposure time even though his assignment purpose was to develop a market value opinion for the Foster property;
 - b. USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent failed to identify and report the site description adequately. Respondent misrepresented in his report that the Foster property was zoned single family residential. However, the Foster property is not located with in the City of Azle and therefore not encumbered by any zoning restrictions;

- c. USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent did not identify and report the improvement(s) description adequately. Respondent failed to report that the subject needed some cosmetic repairs and/or was in need of maintenance as indicated by the MLS data sheet for the Foster property. Respondent, although indicating that some updating had occurred to the Foster property, did not specifically note what had been updated, nor did he note in his report the finish out or layout of the basement;
- d. USPAP Standards 1-3(b) & 2-2(b)(x) – Respondent did not provide a summary statement of his rationale for his determination of the Foster property's highest and best use;
- e. USPAP Standards 1-4(b)(iii) & 2-2(b)(ix) – Respondent has not correctly collected, verified, analyzed and reconciled accrued depreciations. Respondent's determination that the Foster property had an eighty year life is inappropriate given the age and quality of the house;
- f. USPAP Standards 1-4(a) & 2-2(b)(ix) – Respondent has failed to adequately collect, verify, analyze and reconcile comparable sales data for the Foster property. Respondent used properties as comparables which were inappropriate in age, location, existence of a basement and condition. Moreover, many of these features were not accounted and consistently adjusted for in Respondent's adjustment grid;
- g. USPAP Standards 1-1(a) & 1-4(a) – Respondent did not correctly employ recognized methods and techniques in his sales comparison approach. The adjustments Respondent applied in his report are not supported and the adjusted prices are not reasonable in light of the Foster property's most recent list price;
- h. USPAP Standard 1-1(a) – Respondent's report was not credible because he failed to analyze and report relevant market data, and did not provide an adequate improvement description to enable the intended users to understand the condition and layout of the Foster property's basement;
- i. USPAP Standard 1-1(b) – Respondent failed to analyze and consider the Foster property's prior listing history which indicated that it had not sold after being on the market for roughly 1 year at a significantly lower price than the value Respondent indicated in his report. By failing to analyze this important market data, respondent committed a substantial error that significantly impacted his appraisal;
- j. USPAP Standard 2-1(a) – Respondent produced an appraisal report that was misleading. Respondent's report misled the user of the report by failing to adjust sales properly for age, condition and basement and reached a

value conclusion that is not well supported or reasonable based on all available market data; and,

- k. USPAP Standard 2-1(b) – Respondent's report does not contain sufficient information to enable the intended users to understand the report properly. Insufficient analysis of market data resulted in a report that could not be relied upon by intended users because it did not accurately portray the Foster property and its market value.

12. The Enforcement Division concluded that the Respondent violated 22 TEX. ADMIN. CODE §§ 153.20(a)(8) by making grossly negligent misrepresentations or omissions of material fact in his appraisal reports for the Woodside, Silver, Nanci, Sioux and Foster properties. These misrepresentations or omissions of material fact include:

- a. Foster Property: Respondent misrepresented in his report that the Foster property was zoned single family residential. However, the Foster property is not located within the City of Azle and therefore not encumbered by any zoning restrictions. Respondent failed to recognize and/or analyze the property's marketing and/or listing history. He also misrepresented the subject's owner of record at the time of the appraisal;
- b. Sioux Property: Respondent omitted pertinent sales or listings of other properties on the same street as the Sioux property as well as the property's current listing;
- c. Woodside Property: Respondent misrepresented and omitted material facts regarding the Woodside property. Respondent omitted or misrepresented information about the property's list price and / or contract of sale. Respondent omitted or misrepresented information about the comparable sales used in his report because he used superior quality sales that had features not similar to the Woodside property which Respondent failed to make adjustments for. More similar and more appropriate comparable sales were available which should have been used by Respondent, but were not;
- d. Nanci Property: Respondent misrepresented the similarity / comparability of the Nanci property to the comparable sales he used in his report. The sales Respondent used had been updated, but the Nanci property had not been updated. Other sales which were more similar in terms of age and condition were available, but Respondent did not use them;
- e. Silver Property: Respondent misrepresented and omitted material facts regarding the property. Respondent omitted or misrepresented information about the property's list price and / or contract of sale. Respondent omitted or misrepresented information about the comparable sales used in his report because he used superior quality sales that had

features not similar to the Silver property which Respondent failed to make adjustments for. More similar and more appropriate comparable sales were available which should have been used, but were not.

CONCLUSIONS OF LAW

1. The Texas Appraiser Licensing and Certification Board has jurisdiction over these matters pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE §§ 1103.451-1103.5535 (Vernon 2005).
2. Respondent violated the following USPAP provisions as prohibited by 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a): 1-2(c) & 2-2(a)(v) & 2-2(b)(v); 1-3(b) & 2-2(b)(x); 1-4(b)(iii) & 2-2(b)(ix); .
3. Respondent violated 22 TEX. ADMIN. CODE §§ 153.20(a)(8) by making grossly negligent misrepresentations or omissions of material fact in his appraisal reports for the Woodside, Silver, Nanci, Sioux and Foster properties.

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

1. Have his certification suspended, with the suspension being fully probated for a one year period under the conditions outlined below:
 - a. Respondent shall sponsor no more than one trainee during the entirety of his one year probation period;
 - b. 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 that the log is true, complete and fully accurate; and,
 - c. Respondent shall fully comply with the provisions of this Order.
2. Pay to the Board an Administrative Penalty of \$4,000.00;
3. Attend and complete a minimum, 15 classroom-hour course in USPAP;
4. Attend and complete a minimum, 15 classroom-hour course in Residential Case Studies;
5. Attend and complete a minimum, 15 classroom-hour course in the Cost Approach;

6. Attend and complete a minimum, 15 classroom-hour course in the Sales Comparison Approach;
7. Attend and complete a minimum, 15 classroom-hour course in the Income Approach;
8. Attend and complete a minimum, 15 classroom-hour course in Market Analysis and Highest and Best Use;
9. Attend and complete a minimum, 8 classroom-hour course in advanced URAR and Fannie Mae Guidelines; and,
10. Attend and complete a minimum, 6 classroom-hour course in red flags.
11. Comply with all provisions of the Act, the Rules of the Board, and USPAP in the future, or be subjected to further disciplinary action.

Payment of the **ADMINISTRATIVE PENALTY** must be by certified funds, and must be completed within **TWENTY DAYS** of the date of this Agreed Final Order. Failure to pay the administrative penalty within the time allotted shall result in **IMMEDIATE SUSPENSION** of Respondent's certification pursuant to notice to Respondent from the Board indicating that Respondent has not paid the administrative penalty.

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. 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.

Failure to complete the education required by 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 educational 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 or lifting of probation by certified mail, return receipt requested, to the last known address as provided to the Board.

08/03/2007 15:50 IFAX bpitcher@blazierlaw.com
08/03/07 FRI 15:46 FAX 512 485 3955

Betty Pitcher

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TX APP LIC & CERT BOARD

Respondent, by signing this Agreed Final Order, neither admits nor denies that the findings of fact and conclusions of law herein set forth are correct; however, Respondent consents to the entry of this Agreed Order to avoid the expense of litigation and to reach an expeditious resolution of this matter. Respondent also agrees to satisfactorily comply with the mandates of this Agreed Final Order in a timely manner.

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 in the Board's newsletter and/or 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 28th day of July, 2007.

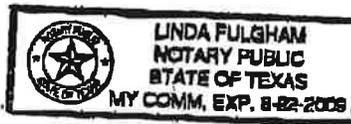
Theodore Gus Trostel
THEODORE GUS TROSTEL

Bruce Bigelow
BRUCE BIGELOW
ATTORNEY FOR RESPONDENT

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 28th day of July, 2007, by THEODORE GUS TROSTEL, to certify which, witness my hand and official seal.

Linda Fulgham
Notary Public Signature

Linda Fulgham
Notary Public's Printed Name



Signed by the Commissionner this 8th day of August, 2007.

Loretta DeHay
Loretta DeHay, Interim Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 10 day of August, 2007.



Larry Kokel, Chairperson
Texas Appraiser Licensing and Certification Board