

TEXAS APPRAISER LICENSING §
AND CERTIFICATION BOARD

vs.

THEODORE GUS TROSTEL
TX-1321843-R

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DOCKETED COMPLAINT NO. 08-067

AGREED FINAL ORDER

On this the 23rd day of July, 2010, 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:

In order to conclude this matter Theodore Gus Trostel 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 Theodore Gus Trostel is a state certified residential real estate appraiser, holds certification number TX-1321843-R, and has been certified 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 3213 Mint Springs Street, Fort Worth, Texas ("the Mint property") on or about March 4th, 2006.
4. Respondent appraised real property located at 10937 Caldwell Lane, Fort Worth, Texas ("the Caldwell property") on or about March 13th, 2006.
5. On or about February 26th, 2008, the Complainant, Deloris L. Kraft-Longoria, filed a staff-initiated complaint with the Board based on allegations that the Respondent had produced appraisal reports that did not comply with the USPAP.
4. On or about July 2nd, 2009, the Board, in accordance with the mandate of the Administrative Procedure Act (the APA), TEX. GOV'T CODE ANN. Chapter 2007, 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.

5. 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 Mint property:

- a. Respondent failed to consider and report easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances or other items of a similar nature;
- b. Respondent failed to provide a brief summary of his basis and underlying rationale for his determination of the property's highest and best use;
- c. Respondent failed to use an appropriate method or technique to develop an opinion of the site value and failed to collect, verify, analyze and reconcile the cost new of improvements. In general, Respondent failed to employ recognized methods and techniques in his cost approach;
- 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;
- e. Respondent failed to collect, verify, analyze and reconcile comparable rental data for subject rent, failed to base projections of future rent and expenses on reasonable clear and appropriate evidence, and failed to employ recognized methods and techniques in his income capitalization approach;
- f. Respondent failed to analyze all the agreement of sale current as of the effective date of the appraisal;
- g. Respondent's report contains substantial errors of commission or omission as detailed above which resulted in a misleading appraisal report for the property.

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 Caldwell property:

- a. Respondent failed to consider and report easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances or other items of a similar nature;
- b. Respondent failed to provide a brief summary of his basis and underlying rationale for his determination of the property's highest and best use;

- c. Respondent failed to use an appropriate method or technique to develop an opinion of the site value and failed to collect, verify, analyze and reconcile the cost new of improvements. In general, Respondent failed to employ recognized methods and techniques in his cost approach;
 - 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;
 - e. Respondent failed to analyze the agreement of sale and listing for the Caldwell property, current as of the effective date of the appraisal and misrepresented that no such listing existed; 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.
7. Respondent omitted material facts and made material misrepresentations as detailed above.

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; USPAP Standards: 1-2(e)(iv) & 2-2(b)(ix); 1-3(b) & 2-2(b)(x); 1-4(b)(i) & 2-2(b)(ix); 1-4(b)(ii) & 2-2(b)(ix); 1-1(a) & 1-4(b); 1-4(a) & 2-2(b)(ix); 1-1(a) & 1-4(a); 2-2(b)(xi); 1-4(c)(i) & 2-2(b)(ix); 1-4(c)(iv) & 2-2(b)(ix); 1-1(a) & 1-4(c); 1-5(a) & 2-2(b)(ix); 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 omitting material facts and making material misrepresentations.

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

- a. Have his certification suspended for eighteen months with this suspension being fully probated under the following conditions:
 - i. During the entire probated, eighteen month suspension 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 sponsor no new trainees during the entire suspension;
 - iii. Respondent shall fully and timely comply with all of the provisions of this Agreed Final Order.
- b. Attend and complete a minimum, 15 classroom-hour course in USPAP;
 - c. Attend and complete a minimum, 7 classroom-hour course in Whatever Happened to Quality Assurance: Avoiding Risky Appraisals and Risky Loans or Valuation by Comparison: Residential Analysis and Logic;
 - i. No examination shall be required for this course;
 - d. Attend and complete a minimum, 7 classroom-hour course in Residential Analysis for Small Income Property Appraisals or the Income Approach for Residential Properties;
 - e. Pay an administrative penalty of \$1,000; and,
 - f. Comply with all 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 eighteen-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 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 or lifting of probation by certified mail, return receipt requested, to the last known address as provided to the Board. If Respondent's certification is suspended on such a basis, the suspension shall remain in effect until the remainder of the eighteen month probation period expires.

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.

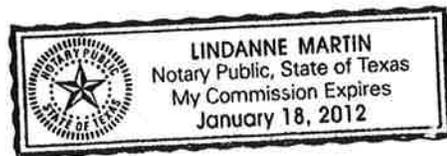
THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 23rd day of July, 2010.

Theodore Gus Trostel
THEODORE GUS TROSTEL

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 23rd day of July, 2010, by THEODORE GUS TROSTEL, to certify which, witness my hand and official seal.

Lindanne Martin
Notary Public Signature



Lindanne Martin
Notary Public's Printed Name

Signed by the Standards and Enforcement Services Division this 19th day of AUGUST, 2010.

Troy Beaulieu
Troy Beaulieu, TALCB Staff Attorney

Signed by the Commissioner this 20 day of Aug, 2010.

Douglas Oldmixon
Douglas Oldmixon, Commissioner

Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 20 day of Aug, 2010.



James B. Ratliff, Chairperson
Texas Appraiser Licensing and Certification Board