

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

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vs.

DOCKETED COMPLAINT NO.
14-260 & 15-071

JOSEPH EDWARD ACKER
TX-1360097-R

AGREED FINAL ORDER

On the 14th day of August, 2015, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the certification of Joseph Edward Acker (the "Respondent").

In order to conclude this matter, Respondent neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein. Respondent further agrees to the disciplinary action set out in this Agreed Final Order (the "Agreed Final Order"). The Board makes the following findings of fact and conclusions of law and enters this Agreed Final Order in accordance with TEX. OCC. CODE § 1103.458.

FINDINGS OF FACT

1. Respondent is a Texas state certified residential real estate appraiser who holds certification number TX-1360097-R and was certified by the Board during all times material to the above-noted complaint.
2. Respondent appraised residential real property located at 105 Austin Drive, Spicewood, Texas (the "Spicewood Property"), on or about December 20, 2012, and Respondent appraised residential real property located at 103 The Hills Drive, Austin, Texas (the "Hills Property") on or about June 14, 2013.
3. Thereafter, complaint number 14-260, was staff-initiated with the Board on or about July 10, 2014. The Board investigated the complaint to ensure compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), TEX. Occ. CODE CH. 1103 (the "Act") and 22 TEX. ADMIN. CODE CH. 153 and 155 (the "Rules").
4. Respondent appraised commercial real property located at 638 Tejas Trail, Blanco, Texas 78606, Texas (the "Blanco Property"), on or about February 3, 2014.
5. Thereafter, complaint number 15-071 was staff initiated with the Board on or about November 7, 2014. The Board investigated the complaint to ensure compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), TEX. Occ. CODE CH. 1103 (the "Act") and 22 TEX. ADMIN. CODE CH. 153 and 155 (the "Rules").

6. The Board, in accordance with the mandate of TEx.Gov'T CODE ANN. CH. 2001, the Administrative Procedure Act (the "APA"), and the Act, notified Respondent of the nature of the accusations involved in these complaints, on or about July 14, 2014 and November 24, 2014, respectively. Respondent was afforded an opportunity to respond to the accusations in both complaints and was also requested to provide certain documentation to the Board. Thereafter, the Respondent responded with documentation, on or about August 21, 2014 and January 9, 2015, respectively.

7. As a result of the Board's investigation into complaint 14-260, the Board finds that 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 of the Hills Property and Spicewood Property:

- a. USPAP Record Keeping Rule – Respondent failed to maintain a work file containing all documentation necessary to support his analyses, opinions and conclusions;
- b. USPAP Scope of Work Rule; 1-2(h) and 2-2(b)(vii) – Respondent failed to perform the scope of work necessary to develop credible assignment results;
- c. USPAP Standards 1-2(e)(i) and 2-2(b)(iii) -Respondent failed to identify and describe the improvement(s)adequately;
- d. USPAP Standards 1-3(a) and 2-2(b)(viii) – Respondent failed to identify and analyze the effect on use and value of economic supply and demand, and market area trends;
- e. USPAP Standards 1-4(b)(i), 1-4(b)(ii) and 2-2(b)(viii); 1-l(a) – Respondent failed to employ recognized methods and techniques in developing his site value determination or cost new of improvements for the cost approach; failed to provide any supporting reasoning for his conclusions regarding site value in his appraisal of The Hills Property; did not collect, verify, and analyze comparable cost data to estimate the cost new of improvements; and, failed to provide a supporting rationale for his conclusions on this topic;
- f. USPAP Standards 1-4(a) and 2-2(b)(viii); 1-l(a), 1-l(b), 1-4(a), and 1-6(a) – Respondent has failed to collect, verify, analyze and reconcile comparable sales data adequately and has not employed recognized methods and techniques in his sales comparison approach; Respondent has not provided his reasoning and a summary of his analysis in his sales comparison approach. In addition, Respondent failed to provide his supporting rationale for his adjustments. In general, objective market data, which should have been reported and analyzed was overlooked by Respondent or incorrectly analyzed and disclosed; and Respondent failed to reconcile the quality and quantity of the data within the sales comparison approach for the Hills Property appraisal; and
- g. USPAP Standards 1-5(b) and 2-2(b)(viii); 1-l(b) – Respondent failed to report and analyze a prior sale of the Hills Property which occurred roughly 2 months prior to Respondent's appraisal.

8. Respondent made material misrepresentations and omitted material facts with respect to the appraisal of the Hills Property and Spicewood Property as detailed above.

9. As a result of the Board's investigation into complaint 15-071, the Board finds that 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 of the Blanco Property:

- a. USPAP Ethics Rule (conduct) - Respondent knowingly permitted another person to communicate a misleading report by allowing the report to be submitted even though it wrongly claimed Respondent's wife, April Acker, inspected the property when in fact Respondent completed the interior/exterior inspection;
- b. USPAP Competency Rule - Respondent was not competent to perform the assignment, because this was an income producing farm that required competency in commercial appraising and a general certification. Respondent did not have either of these. Despite this, Respondent failed to acquire an understanding necessary to produce credible assignment results for the specific property type and market involved in an assignment, did not associate with a commercial appraiser and, failed to decline or withdraw from the assignment; and
- c. Scope of Work Rule and USPAP Standards 2-2(a)(vii) - Respondent failed to develop a scope of work that produced credible assignment results (including failing to draw upon commercial data sources to locate comparable sales and instead relying solely on the multiple listing service) and failed to identify those aspects of the assignment he was involved in.

10. Respondent made material misrepresentations and material omissions of material fact with respect to the appraisal of the Blanco Property as detailed above.

11. In order to reach an expeditious resolution of this matter and avoid the time and expense of litigation, the parties enter into this Agreed Final Order in accordance with TEX. OCC. CODE § 1103.458.

CONCLUSIONS OF LAW

12. The Board has jurisdiction over this matter pursuant to the Act.

13. Respondent violated the above-noted provisions of USPAP as prohibited by TEX. Occ. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1 and 153.20(a)(6).

14. Respondent violated 22 TEX. ADMIN. CODE § 153.20(a)(12) by making material misrepresentations and material omissions of material fact.

15. Respondent violated 22 TEX. ADMIN. CODE § 153.8 by performing commercial appraisal activity outside the scope of practice as a residential appraiser and without associating with a general certified appraiser.

16. The parties are authorized to resolve their dispute by means of a consent order in accordance with TEX. Occ. CODE § 1103.458.

ORDER

Based on the above findings of fact and conclusions of law, the Board **ORDERS** that Respondent's certification (TX-1360097-R) is hereby revoked, with this revocation being fully probated for six (6) months, under the following terms and conditions:

1. **EDUCATION.** On or before Monday, December 14, 2015, Respondent shall submit documentation of attendance and successful completion of the classes set out below to the Board. All classes required by this Agreed Final Order must be classes approved by the Board. Unless otherwise noted below, all classes must require in-class attendance. If the class requires an exam, Respondent must receive a passing grade on the exam. None of the required class hours will count toward Respondent's continuing education requirements for licensure. Respondent is solely responsible for locating and scheduling classes to timely satisfy this Agreed Final Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion of the course in the event of course cancellation or rescheduling by the course provider.
 - a. A minimum, 15 hour classroom course in USPAP.

2. **MENTORSHIP.** On or before Tuesday, January 12, 2016, Respondent shall complete sixteen (16) hours of in-person mentorship conducted by a certified USPAP instructor approved by the Board in accordance with the schedule and topics set out below. Respondent shall submit a certification of completion signed by the approved certified USPAP instructor and a signed copy of the Guidelines for Texas Appraiser Licensing and Certification Board Mentors and Mentees on or before the due date listed for each mentorship requirement. Respondent is solely responsible for locating and scheduling an approved mentor to timely satisfy this Agreed Final Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion.
 - a. Three (3) hours of mentorship concerning Scope of Work;
 - b. Four (4) hours of mentorship concerning Highest and Best Use;
 - c. Four (4) hours of mentorship concerning Sales Comparison Approach;
 - d. Three (3) hours of mentorship concerning Cost Analysis;
 - e. Two (2) hours of mentorship concerning Scope of Practice;

3. **ADMINISTRATIVE PENALTY.** On or before Thursday, September 3, 2015, Respondent shall pay to the Board an administrative penalty of One Thousand Dollars (\$1,000.00), by cashier's check or money order.

4. **TRAINEES.** Respondent shall not sponsor any trainees for six (6) months from the date this Agreed Final Order is fully executed.
5. Respondent shall comply with all provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

ACKNOWLEDGMENT AND WAIVER

RESPONDENT'S FAILURE TO TIMELY COMPLY WITH ANY TERM IN THIS AGREED FINAL ORDER-WHICH HAS A SPECIFIC, STATED DUE DATE-SHALL RESULT IN THE AUTOMATIC REVOCATION OF PROBATION AND THE REVOCATION IMPOSED IN THIS AGREED FINAL ORDER SHALL BE EFFECTIVE ON THE EFFECTIVE DATE OF THE REVOCATION PROBATION.

ANY SUCH REVOCATION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE ACT OR THE APA, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS.

Respondent, by signing this Agreed Final Order, waives the Respondent's right to a formal hearing, any motion for rehearing, and any right to seek judicial review of this Agreed Final Order or to bring any civil suit in state or federal court regarding the validity or enforcement of this Agreed Final Order, regardless of the claims asserted. This Agreed Final Order, the findings of fact and the conclusions of law contained in it have been fully and fairly litigated or the parties had an opportunity to so litigate. This matter has been finally adjudicated and resolved via this Agreed Final Order. This Agreed Final Order shall be treated as res judicata, precluding any re-litigation of those claims and extinguishing the right to bring suit on the matter by the parties or those in privity with them. 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 website.

I have read and reviewed this entire Agreed Final Order fully and am entering into it of my own free will to avoid the expense of litigation and to reach an expeditious resolution of the matter. I neither admit nor deny that the findings of fact and conclusions of law contained herein are correct. I understand all of my compliance obligations under this Agreed Final Order and the consequences for failing to comply with those obligations.

I understand that the Board and its staff cannot provide me with legal advice and I am aware of my right to be represented by an attorney of my own choosing. I am aware of my right to a hearing, and hereby waive a hearing and also waive any right to seek judicial review of this Agreed Final Order, including for any subsequent action resulting from my failure to timely comply with an administrative requirement of this Agreed Final Order (e.g. payment of a penalty, completion of remedial education, or failure to provide logs).

DELIVERY OF DOCUMENTS AND PAYMENTS FOR COMPLIANCE

Respondent is solely responsible for timely delivery to the Board of all documents and payments necessary for compliance of this Agreed Final Order. Payment of any administrative penalties due must be in the form of a cashier's check or money order made payable to the "Texas Appraiser Licensing and Certification Board" and delivered via certified mail, return receipt requested. Respondent shall retain documentation (reply email, fax confirmation, return receipt, etc.) confirming timely receipt by the Board of all the documents necessary for compliance of this Agreed Final Order.

Respondent shall send all documents and payments necessary for compliance by: (1) email to: compliance.talcb@talcb.texas.gov; (2) fax to: (512) 936-3966, attn: Compliance; or (3) certified mail, return receipt requested, to: Standards & Enforcement Services, Texas Appraiser Licensing and Certification Board, Stephen F. Austin Building, 1700 N. Congress Ave., Suite 400, Austin, Texas 78701.

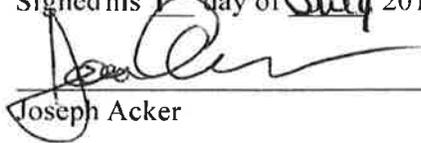
EXECUTION

This agreement may be executed in one or more counterparts, in form of electronic mail, facsimile, or other written expression of agreement, each of which shall be deemed an original and together shall comprise evidence of full execution of the agreement.

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.

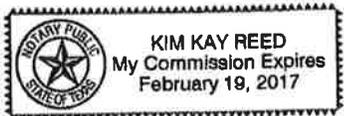
RESPONDENT

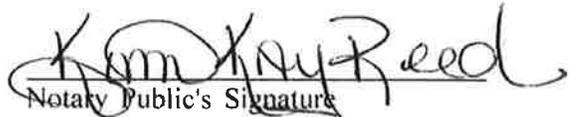
Signed his 7th day of July 2015.



Joseph Acker

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on the 7th day of July 2015, by Joseph Edward Acker, witnessed by my hand and official seal.





Notary Public's Signature

STANDARDS AND ENFORCEMENT SERVICES DIVISION

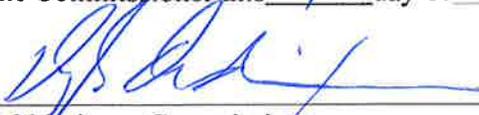
Signed this the 9TH day of July, 2015.



Troy Beaulieu
Director, Standards and Enforcement Services Division
Texas Appraiser Licensing and Certification Board

COMMISSIONER

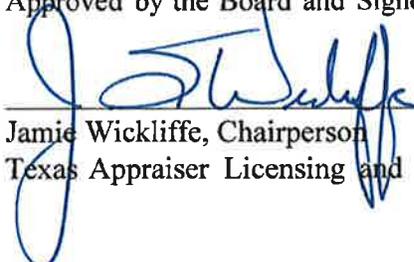
Signed by the Commissioner this 9 day of JULY, 2015.



Douglas E. Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

CHAIRPERSON

Approved by the Board and Signed this 14 day of August, 2015.



Jamie Wickliffe, Chairperson
Texas Appraiser Licensing and Certification Board