

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

GREGORY W. AUSTIN
TX-1322654-R

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DOCKETED COMPLAINT NO. 06-011
& 06-195

AGREED FINAL ORDER

On this the 5th day of October, 2007, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the certification of Gregory W. Austin, (Respondent). The Board makes the following findings of fact and conclusions of law and enters this Order:

FINDINGS OF FACT

1. Respondent Gregory W. Austin, a state certified residential real estate appraiser, holds certification number TX-1322654-R, and has been certified (although with some brief lapses in certification) since February 26th, 1992.
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.
3. On or about July 15th, 2004 and October 19th, 2000 respectively, Respondent appraised the subject properties located at 145 Canna Lily Circle, Driftwood, Texas 78619 ("the Canna Lily property") and, 242 Frog Pond Lane, Dripping Springs, Texas ("the Frog Pond property").
4. On or about November 9th, 2005, TALCB received a staff-initiated complaint against Respondent from Jeff Strawmyer in accordance with TEX. OCC. CODE § 1103.451. The complaint was based upon a referral from Andrew Walker, a regional chief appraiser for Landsafe Appraisal who alleged that Respondent's report for the Frog Pond property contained significant violations of USPAP.
5. On August 15th, 2006, TALCB received a complaint against Respondent from Mark Liley, the chief appraiser and assistance vice president of Flagstar Bank, in accordance with TEX. OCC. CODE § 1103.451. Mr. Liley alleged that Respondent's appraisal report on the Canna Lily property was erroneous and an incorrect valuation of the property.
6. On or about November 9th, 2005, and August 28th, 2006, the Board, in accordance with the mandate of the Administrative Procedure Act (the APA), TEX. GOV'T CODE ANN. § 2001 et. seq., notified Respondent of the nature and accusations involved and Respondent was

afforded an opportunity to respond to the accusations alleged by both Complainants. Respondent's responses to both complaints were received.

7. The Enforcement Division concluded that the Respondent's appraisal report for the Canna Lily property violated the Act, the Rules of the Board, and USPAP by the following acts or omissions:

- a) USPAP Ethics Rule – Respondent violated the record keeping requirements in his appraisal of the Canna Lily property because he failed to keep data, information and documentation necessary to support his opinions and conclusions in his work file.
- b) USPAP Standards 1-2(f) & 2-2(b)(vii) – Respondent failed to describe the extent of his process of collecting, confirming and reporting data.
- c) USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent failed to identify and report the site description adequately.
- d) USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent failed to identify and report the improvements description adequately by failing to properly address a free-standing refrigerator that is included in the kitchen equipment inventory.
- e) USPAP Standards 1-2(e)(iii), 1-4(g) & 2-2(b)(ix) – Respondent failed to identify, discuss and consider the effect on value of any personal property, trade fixtures or intangible items that are not real property but are included in the appraisal.
- f) USPAP Standards 1-2(e)(iv) & 2-2(b)(ix) – Respondent failed to consider and report easements properly.
- g) USPAP Standards 1-3(b) & 2-2(b)(x) – Respondent failed to provide a brief summary of his reasoning for his determination of the Canna Lily property's highest and best use.
- h) USPAP Standards 1-4(b)(i) & 2-2(b)(ix) – Respondent failed to use an appropriate method or technique to develop an opinion of the Canna Lily property's site value because he provided no support for his site value determination in his report or work file.
- i) USPAP Standards 1-4(b)(ii) & 2-2(b)(ix) -- Respondent has failed to collect, verify, analyze and reconcile the cost new of improvements.
- j) USPAP Standards 1-1(a) & 1-4(b) – Respondent has failed to employ recognized methods and techniques correctly in the cost approach analysis in his report.

- k) USPAP Standards 1-4(a) & 2-2(b)(ix) – Respondent has not collected, verified, analyzed and reconciled comparable sales data adequately and properly. Inappropriate comparable sales that are not similar to the Canna Lily property were used instead of more appropriate and readily available properties in the immediate neighborhood that were more similar in size, quality, amenities and concessions. Additionally, adjustments were made or not made to the comparables that were used when they should or should not have been made. Finally, Respondent's age adjustments were random, inconsistent and reached via an invalid methodology.
- l) USPAP Standards 1-1(a) & 1-4(a) – Respondent failed to employ recognized methods and techniques correctly in his sales comparison analysis.
- m) USPAP Standard 1-1(a) – For the reasons outlined above, Respondent failed to employ recognized methods and techniques correctly to produce a credible appraisal report.
- n) USPAP Standard 1-1(b) – Due to the problems noted above, Respondent committed substantial errors of omission or commission that significantly affected his appraisal report, resulting in an inflated market value determination.
- o) USPAP Standard 1-1(c) – Due to the USPAP violations discussed above, Respondent performed appraisal services in a careless or negligent manner.
- p) USPAP Standard 2-1(a) – Respondent failed to clearly and accurately set forth the appraisal in a manner that was not misleading.
- q) USPAP Standard 2-1(b) – Respondent's report did not enable intended users to understand the report properly.

8. The Enforcement Division concluded that the Respondent's appraisal report for the Frog Pond property violated the Act, the Rules of the Board, and USPAP by the following acts or omissions:

- a. USPAP Ethics Rule – Respondent violated the record keeping requirements in his appraisal of the Frog Pond property because he failed to keep data, information and documentation necessary to support his opinions and conclusions in his work file.
- b. USPAP Standards 1-2(c) & 2-2(b)(v) – Respondent failed to provide a definition of value and its source.
- c. USPAP Standards 1-2(c) & 2-2(b)(v) – Respondent failed to mention the index to which the Frog Pond property's value is attached.

- d. USPAP Standards 1-2(g) or (h), 2-1(c) & 2-2(b)(viii) – Respondent failed to report clearly and disclose accurately a hypothetical condition that directly impacted his analysis, opinions and conclusions. Because he appraised the Frog Pond property “as is” and it was being converted from a duplex to a single-family residence he had a hypothetical condition that needed to be addressed in his report, but was not.
- e. USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent failed to identify and report the improvements description adequately.
- f. USPAP Standards 1-3(b) & 2-2(b)(x) – Respondent failed to provide a brief summary of his rationale for his determination of the Frog Pond property’s highest and best use.
- g. USPAP Standards 1-4(b)(i) & 2-2(b)(ix) – Respondent failed to use an appropriate method or technique to develop an opinion of the Frog Pond property’s site value because he provided no support for his site value determination in his report or work file.
- h. USPAP Standards 1-4(b)(ii) & 2-2(b)(ix) -- Respondent has failed to collect, verify, analyze and reconcile the cost new of improvements.
- i. USPAP Standards 1-4(b)(iii) & 2-2(b)(ix) – Respondent failed to collect, verify, analyze and reconcile accrued depreciations.
- j. USPAP Standards 1-1(a) & 1-4(b) – Respondent has failed to employ recognized methods and techniques correctly in the cost approach analysis in his report.
- k. USPAP Standards 1-4(a) & 2-2(b)(ix) – Respondent has not collected, verified, analyzed and reconciled comparable sales data adequately and properly. Inappropriate comparable sales that are not similar to the Frog Pond property were used instead of more appropriate and readily available properties in the immediate neighborhood that were more similar. Additionally, adjustments were made or not made to the comparables that were used when they should or should not have been made. Finally, Respondent’s size, room-count, age and garage/carport adjustments were random, inconsistent and reached via an invalid methodology.
- l. USPAP Standards 1-1(a) & 1-4(a) – Respondent failed to employ recognized methods and techniques correctly in his sales comparison analysis.
- m. USPAP Standards 1-4(h) & 2-2(b)(ix) – Respondent failed to examine and retain plans and specifications and other appropriate support materials

that were necessary given the supposed transition of the Frog Pond property from a duplex to a single-family residence.

- n. USPAP Standard 1-1(a) – For the reasons outlined above, Respondent failed to employ recognized methods and techniques correctly to produce a credible appraisal report.
- o. USPAP Standard 1-1(b) – Due to the problems noted above, Respondent committed substantial errors of omission or commission that significantly affected his appraisal report, resulting in an inflated market value determination.
- p. USPAP Standard 1-1(c) – Due to the USPAP violations discussed above, Respondent performed appraisal services in a careless or negligent manner.
- q. USPAP Standard 2-1(a) – Respondent failed to clearly and accurately set forth the appraisal in a manner that was not misleading.
- r. USPAP Standard 2-1(b) – Respondent's report did not enable intended users to understand the report properly.

9. The Enforcement Division concluded that the Respondent violated 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by failing to conform to USPAP in effect at the time of the appraisal reports for the Canna Lily and Frog Pond properties.

10. The Enforcement Division concluded that the Respondent violated 22 TEX. ADMIN. CODE §§ 153.20(a)(9) by making material misrepresentations and omissions of material facts in the appraisal reports for the Canna Lily and Frog Pond properties. These material misrepresentations and omissions of material fact for the Canna Lily property include: misrepresenting that the comparable sales used were the most appropriate and actually comparable to the Canna Lily property when they were not; omitting a discussion of the appraiser's rationale for his highest and best use determination; and, omitting the information and data sources in the report and the work file that were necessary to support cost approach and sales comparison analysis determinations. These material misrepresentations and omissions of material fact for the Frog Pond property include: misrepresenting that the comparable sales used were the most appropriate and actually comparable to the Frog Pond property when they were not; omitting a discussion of the appraiser's rationale for his highest and best use determination and, omitting the information and data sources in the report and the work file that were necessary to support cost approach and sales comparison analysis determinations.

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): USPAP Ethics Rule; USPAP Standards Rules: 1-2(f) & 2-2(b)(vii); 1-2(e)(i) & 2-2(b)(iii); 1-2(e)(i) & 2-2(b)(iii); 1-2(e)(iii), 1-4(g) & 2-2(b)(ix); 1-2(e)(iv) & 2-2(b)(ix); 1-2(c) & 2-2(b)(v); 1-3(b) & 2-2(b)(x); 1-4(b)(i) & 2-2(b)(ix), 1-4(b)(ii) & 2-2(b)(ix), 1-2(g) or (h), 2-1(c) & 2-2(b)(viii); 1-4(h) & 2-2(b)(ix); 1-1(a) & 1-4(b); 1-4(a) & 2-2(b)(ix); 1-1(a); 1-1(b); 1-1(c); 2-1(a); and, 2-1(b).
3. Respondent violated 22 TEX. ADMIN. CODE §§ 153.20(a)(9) by making material misrepresentations and omissions of material facts in his Canna Lily and Frog Pond property appraisal reports.

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 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. 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 his period of probation within twenty days of notice of any such request; and,
 - b. Respondent shall fully comply with the provisions of this Order.
 - c. Pay to the Board an Administrative Penalty of \$3,000.00 which shall be made in ten equal, \$300.00 monthly installments with the first payment due on Friday, August 24th, 2007 and the remaining payments due on the same date of each subsequent month until the penalty is paid in full. Timely payment of all installments shall be a condition of Respondent's probation;
2. Attend and complete a minimum, 15 classroom-hour course in USPAP;

3. Attend and complete a minimum, 15 classroom-hour course in Sales Comparison;
4. Attend and complete a minimum, 15 classroom-hour course in Residential Case Studies; and,
5. 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 in accordance with the terms of this Agreed Final Order. Failure to pay the administrative penalty within the time allotted shall result in termination of Respondent's probation and **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 licensure or certification.

Failure to complete the education required by this Agreed Final Order within the time allotted shall result in termination of Respondent's probation and **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. If Respondent's certification is suspended on such a basis, the suspension shall remain in effect for the longer of either the remainder of Respondent's one year suspension period or until Respondent complies with the requirements of this Order.

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.

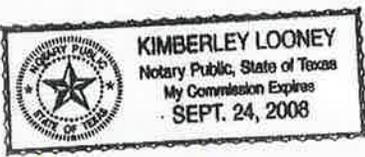
THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 10 day of August, 2007.

[Signature]
GREGORY W. AUSTIN

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 10 day of Aug, 2007, by GREGORY W. AUSTIN, to certify which, witness my hand and official seal.

[Signature]
Notary Public Signature
Kimberley Looney
Notary Public's Printed Name



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

[Signature]
Loretta DeHay, Interim Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 5 day of Oct, 2007.

[Signature]
Larry Kokel, Chairperson
Texas Appraiser Licensing and Certification Board