

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

EDGAR ALVIN BADE
TX-1329649-R

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DOCKETED COMPLAINT NO.
06-033, 06-046 & 06-114

FINAL ORDER

On this ____ day of _____, 2008, the Board considered the above-noted matter.

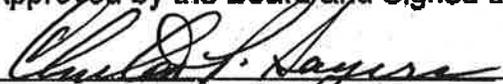
After proper notice was given, the above case was heard by an Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH). The ALJ made and filed a proposal for decision containing findings of fact and conclusions of law. The proposal for decision was properly served on all parties, who were given an opportunity to file exceptions and replies as part of the administrative record, which the parties did do. The ALJ reviewed the exceptions and replies, denied the exceptions and did not modify his proposal for decision.

The Texas Appraiser Licensing and Certification Board, after review and due consideration of the proposal for decision, attached as Exhibit A hereto, adopts the findings of fact and conclusions of law of the ALJ contained in the proposal for decision and incorporates those findings of fact and conclusions of law into this Final Order as if such were fully set out and separately stated in this Final Order. All proposed findings of fact and conclusions of law submitted by any party that are not specifically adopted in this Final Order are denied.

NOW, THEREFORE, IT IS ORDERED by the Texas Appraiser Licensing and Certification Board that the certification of Edgar Alvin Bade in this matter is hereby **REVOKED**, effective twenty days after the date Edgar Alvin Bade is notified of this Final Order. Edgar Alvin Bade shall not be entitled to apply for reinstatement in accordance with TEX. OCC. CODE § 1103.522 until 5 years have elapsed from the effective date of this Order and under the terms that if he does so, he shall submit an entirely new application for licensure or certification and comply with all the requirements for licensure or certification in effect at the time of any such application.

If enforcement of this Final Order is restrained or enjoined by an order of a court, this order shall become effective upon a final determination by said court or appellate court in favor of the Texas Appraiser Licensing and Certification Board.

Approved by the Board and Signed this 19 day of December, 2008.



Clinton P. Sayers, Chairperson
Texas Appraiser Licensing and Certification Board

SOAH DOCKET NO. 329-08-3188

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD,
Petitioner

v.

ALVIN E. BADE,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Appraiser Licensing and Certification Board (Staff/Board) brought this action seeking the revocation of the real property appraiser certification held by Alvin E. Bade (Respondent). The basis for this action was Respondent's alleged failure to comply with the Uniform Standards of Professional Appraisal Practice (USPAP) in violation of TEX. OCC. CODE ANN. (CODE) § 1103.405 and 22 TEX. ADMIN. CODE ANN. (TAC) §§ 153.20(a)(3), (7), (8), and (9), and 155.1(a). The Administrative Law Judge (ALJ) recommends that Respondent's license should be revoked.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing convened September 8, 2008, before ALJ Roy G. Scudday in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Staff was represented by Troy Beaulieu, attorney. Respondent was represented by attorney Michael T. Savage. The record closed at the end of the hearing.

Staff offered competent evidence establishing jurisdiction and that appropriate notice of the hearing was provided to Respondent. Those matters are set out in the findings of fact and conclusions of law.

II. REASONS FOR DECISION

A. Background and Applicable Law

Respondent is a state certified residential real property appraiser doing business as Alvin's Appraisal Service. Between 2002 and 2005, Respondent performed three real estate appraisals that were the subject of complaints to the Board.

Pursuant to Code § 1103.005, a person is not legally authorized to perform a real estate appraisal unless he is certified or licensed by the Board, approved as an appraiser trainee, certified or licensed as a real estate appraiser in another state, or is a licensed real estate broker or salesperson. Pursuant to Code § 1103.154(a), the Board adopted rules requiring licensed or certified appraisers to comply with standards of competency, professional conduct, and ethics prescribed by USPAP. The Board may pursue disciplinary action against a licensed or certified appraiser who fails to comply with USPAP, including suspending or revoking the appraiser's license or certification.

B. Staff's Allegations

Staff's first allegation is that Respondent failed to comply with USPAP in violation of 22 TAC §§ 153.20(a)(3) and 155.1(a) in regard to three appraisals. Staff's second allegation is that Respondent violated 22 TAC § 153.20(a)(9) in regard to the three appraisals. Staff's third allegation is that Respondent violated 22 TAC § 153.20(a)(7) and (8) in regard to the three appraisals.

C. Evidence

1. 131 Briar Oaks Lane (Briar) Appraisal

On June 13, 2002, Respondent issued an appraisal report effective June 7, 2002 for the residential property consisting of a manufactured home 1,537 square feet (sq. ft.) in size located on one acre at 131 Briar Oaks Lane, Azle, Texas, Staff Ex. 3. The report was prepared for North Texas Residential Mortgage, a mortgage broker, as the basis for a loan. The appraised value was shown in the report as being \$105,000 based on the use of the comparable sales method. Using a cost value method comparison, Respondent valued the subject tract as being \$105,801.

The properties used by Respondent for comparable sales were as follows:

PROPERTY	HOUSE SIZE	LOT SIZE		VALUE
Briar Oaks	1537 sq. ft.	1 acre		\$105,801
Comp 1	1804 sq. ft.	5 acres	1.17 miles	\$100,327
Comp 2	2280 sq. ft.	1 acre	6.23 miles	\$103,383
Comp 3	2277 sq. ft.	1 acre	12.87 miles	\$108,940
Comp 4	1430 sq. ft.	1 acre	.25 mile	\$99,593
Comp 5	1545 sq. ft.	20 acres	7.94 miles	\$138,491

The report states that it was intended for use in a mortgage finance transaction for the borrower and lender only and any other use is unauthorized. North Texas Residential is listed as the lender. The report further states that the subject property was zoned and met zoning requirements.

Mark Liley, Assistant Vice President and Chief Appraiser for Flagstar Bank in Troy, Michigan (Flagstar), the ultimate lender in the transaction, filed a complaint regarding the appraisal in 2006. Mr. Liley's complaint stated that

- the actual value of the property was \$60,000;
- the first comparable sale could not be verified;
- the second comparable sale was larger and in a more developed area;
- the third comparable sale was a site built house;
- the fourth comparable sale could not be verified;
- the fifth comparable sale was on a 20 acre tract with pond, barn, windmill, and creek.

In his response to the complaint, Respondent stated that

- because the order from the broker showed a value estimate of \$105,000, he looked for sales that would support the needed value rather than use a lower value;
- he pushed the value to try to build up a following and client base;
- a value estimate in the \$90,000 to \$95,000 range would have been reasonable;
- he changed the neighborhood from rural to suburban at the direction of the underwriter;
- he erred in calculating the adjustments for carport and garage;
- the first comparable sale was valid based on information he received from a local realtor;
- he neglected to note that the fourth comparable sale was pending.

Jack McComb, appraisal investigator for the Board, testified that Respondent made the following errors in the Briar appraisal:

- site value should be based on sales, not CAD values;
- Respondent's cost methodology was erroneous and not supported by a written analysis;
- the site of the third comparable sale at the time of his investigation in 2008 was a site-built house that was too far away from the subject tract; (Mr. McComb admitted that

a manufactured home could have been on the site at the time of Respondent's appraisal.)

- according to Multiple Listing Service (MLS) archives there were five sales in close proximity to the subject tract that could have been used. (He admitted that he did not know the condition of the five properties at the time of the sales nor whether they were distress sales.)

Respondent testified that the comparable sales were used because there were no other sales of manufactured homes on acreage in close proximity to the subject tract, and that he did not use two sales that were close because one was not on acreage and the other was a distressed sale. He admitted that he used the County Appraisal District (CAD) values to determine the land value of the subject tract but did not note that in his report, and that he used the zoning information from CAD which was incorrect.

2. 11458 Olen Drive (Olen) Appraisal

On November 12, 2002, Respondent issued an appraisal report effective November 6, 2002 for the residential property consisting of a manufactured home 1,343 sq. feet in size located on one acre at 1148 Olen Drive, Justin, Texas, Staff Ex. 6. The report was prepared for Vista Mortgage, a mortgage broker. The appraised value was shown in the report as being \$84,000 based on the use of the comparable sales method. Using a cost value method comparison, Respondent valued the subject tract as being \$84,422.

The properties used by Respondent for comparable sales were as follows:

PROPERTY	HOUSE SIZE	LOT SIZE	DISTANCE	VALUE
Olen	1343 sq. ft.	1 acre		\$84,422
Comp 1	1596 sq. ft.	2.5 acres	.96 mile	\$84,970
Comp 2	2250 sq. ft.	1 acre	.49 mile	\$65,930
Comp 3	1440 sq. ft.	1 acre	.78 mile	\$78,550

The Fraud Intake Unit of the Texas Department of Insurance filed a complaint regarding the appraisal in 2005. The complaint stated that the actual value of the property was \$60,000.

Mr. McComb testified that Respondent made the following errors in the Olen appraisal:

- site value should be based on sales, not CAD values;
- Respondent's cost methodology was erroneous and not supported by a written analysis;
- the first comparable sale should have been adjusted for a metal shop building;
- the first comparable sale should have been adjusted an additional \$4,000 for the size of the site;
- the size of the second comparable sale was too large for comparison;
- Respondent under calculated the depreciation on the subject tract;
- Respondent chose the high side of the comparable sales that he did use;
- according to MLS archives there were six sales of similar size to the subject that could have been used, the average sales price of which was \$65,604.

Respondent testified that the comparable sales were used because they were sales of manufactured homes on acreage in the city limits. He admitted that he used the CAD values to determine the land value of the subject tract but did not note that in his report.

3. 3904 Periwinkle Dr. (Periwinkle) appraisal.

On November 1, 2005, Respondent issued an appraisal report effective October 28, 2005, for the residential property consisting of a brick home 1,653 sq. feet in size located on a subdivision lot at 3904 Periwinkle Dr., Fort Worth, Texas, Staff Ex. 4. The report was prepared for Vista Mortgage, a mortgage broker, as the basis for a loan. The appraised value was shown in

the report as being \$149,000 based on the use of the comparable sales method. Using a cost value method comparison, Respondent valued the subject tract as being \$151,847.

The properties used by Respondent for comparable sales were as follows:

PROPERTY	HOUSE SIZE	DISTANCE	VALUE
Periwinkle	1653 sq. ft.		\$149,000
Comp 1	1782 sq. ft.	.88 mile	\$137,130
Comp 2	1903 sq. ft.	.93 mile	\$149,000
Comp 3	1580 sq. ft.	1.61 miles	\$135,940

The report included a statement that "There have reportedly been no sales or listings of subject in preceding 36 months. Subject has not been listed for sale in the preceding 12 months and is not currently listed for sale." The report further states that it was intended for use in a mortgage finance transaction for the borrower and lender only and any other use is unauthorized. North Texas Residential is listed as the lender.

Kim Frazier, review appraiser for First Franklin Financial (Franklin), the ultimate lender, filed a complaint regarding the appraisal in 2005. Mr. Frazier's complaint stated the following:

- the property had been listed for \$120,000 just prior to the appraisal;
- the three comparable sales were outside the subdivision of the subject property;
- there had been over 60 sales within the subdivision six months prior to the appraisal.

In his response to the complaint, Respondent stated that

- the order from the broker showed a value estimate of \$165,000, but he only was able to estimate a value of \$120,000;

- the broker told him that a value of \$120,000 was too low and to find better comparable sales to get a higher value;
- he should not have gone beyond the immediate neighborhood for his comparable sales;
- he should have stayed with his value estimate of \$120,000.

Mr. McComb testified that Respondent made the following errors in the Periwinkle appraisal:

- site value should be based on sales, not CAD values;
- Respondent's cost methodology was erroneous and not supported by a written analysis;
- according to MLS archives there were 43 sales in the same subdivision that could have been used; (Mr. McComb admitted that he did not know the condition of the properties at the time of the sales nor whether they were distress sales.)
- the subject property had been listed by MLS listing for a period of five days 17 days prior to the effective date of the appraisal.

Respondent testified that he had been told by the client that the property had not been listed, and that he did not find a current MLS listing when he did his appraisal. He admitted that he used the CAD values to determine the land value of the subject tract but did not note that in his report. He asserted that the sales within the subdivision on the same side of the interstate had lower values on the tax rolls, were older properties, and many were distress sales.

C. Analysis and Recommendation

The rule at 22 TAC § 153.20(a)(3) provides that the Board may revoke a license when the appraiser has violated the version of USPAP in effect at the time of the appraisal and the rule at 22 TAC 155.1(a) provides that the appraisal must be performed in accordance with USPAP in

effect at the time of appraisal. Staff has cited specific USPAP standards that Respondent violated as follows:

- Ethics Rule-To promote and preserve the public trust inherent in professional appraisal practice, an appraiser must observe the highest standards of professional ethics.
 - . . . An appraiser must perform assignments ethically and competently, in accordance with USPAP and any supplemental standards agreed to by the appraiser in accepting the assignment.
 - An appraiser must not engage in criminal conduct. An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.
 - An appraiser must not accept an assignment that includes the reporting of predetermined opinions and conclusions
 - An appraiser must not communicate assignment results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report or knowingly permit an employee or other person to communicate a misleading or fraudulent report. . . .
- Standards Rule 1-1(a)-An appraiser must be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal.
- Standards Rule 1-1(b)-An appraiser must not commit a substantial error of omission or commission that significantly affects an appraisal.
- Standards Rule 1-1(c)-An appraiser must not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affect the credibility of those results.
- Standards Rule 1-2(b)-In developing a real property appraisal, an appraiser must identify the intended use of the applicant's opinions and conclusions.
- Standards Rule 1-2(e)- In developing a real property appraisal, an appraiser must identify the characteristics of the property that are relevant to the type and definition of value and

intended use of the appraisal, including: (i) its location and physical, legal, and economic attributes.

- Standards Rule 1-3-When the value opinion to be developed is a market value, and given the scope of work identified in accordance with Standards Rule 1-2(f), an appraiser must
 - (a) identify and analyze the effect on use and value of existing land use regulations, reasonably probable modifications of such land use regulations, economic supply and demand, the physical adaptability of the real estate trends; and
 - (b) develop an opinion of the highest and best use of the real estate.
- Standards Rule 1-4-In developing a real estate appraisal, an appraiser must collect, verify, and analyze all information applicable to the appraisal problem, given the scope of work identified in accordance with Standards Rule 1-2(f).
 - (a) When a sales comparison approach is applicable, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.
 - (b) When a cost approach is applicable, an appraiser must (i) develop an opinion of site value by an appropriate appraisal method or technique; (ii) analyze such comparable cost data as are available to estimate the cost new of the improvements (if any); and (iii) analyze such comparable data as are available to estimate the difference between the cost new and the present worth of the improvements (accrued depreciation).
- Standards Rule 1-5(a)-In developing a real property appraisal, when the value opinion to be developed is market value, an appraiser must, if such information is available to the appraiser in the normal course of business analyze all agreements of sale, options, or listings of the subject property current as of the effective date of the appraisal.
- Standards Rule 2-1(a)-Each written or oral real property appraisal report must clearly and accurately set forth the appraisal in a manner that will not be misleading.
- Standards Rule 2-2-Each written real property appraisal report must be prepared under one of the following three options and prominently state which option is used: Self-

Contained Appraisal Report, Summary Appraisal Report, or Restricted Use Appraisal Report.

- (b) The content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum: . . .
 - (ii) state the intended use of the appraisal;
 - (iii) describe information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment; . . .
 - (ix) summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions;
 - (x) state the use of the real estate existing as of the date of value and the use of the real estate reflected in the appraisal; and, when the purpose of the assignment is market value, summarize the support and rationale for the appraiser's opinion of the highest and best use of the real estate.

1. First Charge

In support of its first charge that Respondent violated the above-stated rules and standards, Staff made the following allegations regarding the three appraisal:

Briar Appraisal-Specific Allegations

- a. Respondent produced a purposefully misleading and inflated market value opinion in violation of the Ethics Rule;
- b. Misrepresented that the property was zoned and in zoning compliance when in fact it was in an unincorporated area of Wise County that has no zoning ordinances in violation of Standards 1-3(a) and 2-2(b)(ix);
- c. Failed to provide a brief summary of his determination of the property's highest and best use in violation of Standards 1-3(b) and 2-2(b)(x);

- d. Gave no analysis or support of the site value in his appraisal report nor in his work file in violation of Standards 1-4(b)(i) and 2-2(b)(ix);
- e. Did not collect, verify, analyze, and reconcile the cost of new improvements for the property and added the cost of site improvements twice in violation of Standards 1-4(b)(ii) and 2-2(b)(ix);
- f. Failed to correctly employ recognized methods and techniques in his cost approach analysis of the property in violation of Standards 1-1(a) and 1-4(b);
- g. Did not collect, verify, analyze, and reconcile comparable sales data in his sales comparison approach for the property adequately and purposefully used inappropriate comparable sales (with respect to size and age) even though more appropriate and more similar sales were readily available in the area and should have been used in violation of Standards 1-4(a) and 2-2(b)(ix);
- h. Chose not to use recognized methods and techniques in his sales comparison approach correctly by not selecting houses of similar size and age and instead selecting those which would support a predetermined value in violation of Standards 1-1(a) and 1-4(a); and
- i. Although aware of recognized methods and techniques, chose not to employ them correctly and instead produced a purposefully inflated and misleading appraisal report that contained substantial errors of both omission and commission that affected the appraisal report for the property in violation of Standards 1-1(a), 1-1(b), and 2-1(a).

Respondent admitted that he looked for sales that would support the value of \$105,000 set by his client rather than use a lower value, and that he pushed the value from a supported appraised value in the range of \$90,000 to \$95,000 to a value of \$105,000 in order to build up a following and client base. This is a clear violation of the Ethics Rule and Standards 1-1(a), 1-1(b), 1-4(a), and 2-1(a). Accordingly, Staff has proved allegations a, g, h, and i regarding the Briar appraisal.

Respondent also admitted to errors regarding the zoning, stating that it was zoned when in fact it was in an unzoned rural area, and that he did not give the source of his site value in

violation of Standards 1-3(a), 1-4(b)(i), and 2-2(b)(ix). As a result, Staff has proved allegations b and d regarding the Briar appraisal.

The evidence further shows that Respondent did not provide a brief summary of his determination of the property's highest and best use in violation of Standards 1-3(b) and 2-2(b)(x) and erroneously added the cost of improvements twice. Accordingly, Staff has proved allegation c and a portion of allegation e regarding the Briar appraisal.

As for the failure to collect, verify, analyze, and reconcile the cost of new improvements for the property in violation of Standards 1-4(b)(ii) and 2-2(b)(ix) and the failure to correctly employ recognized methods and techniques in his cost approach analysis of the property in violation of Standards 1-1(a) and 1-4(b), the evidence showed not that Respondent failed to do these things, but that he failed to properly document them. As a result, Staff has not proven a portion of allegation e nor allegation f regarding the Briar appraisal.

While some of these violations are more important than others, the most serious violations are those regarding violations of the Ethics Rule, using inappropriate comparable sales even though more appropriate and more similar sales were readily available in the area, selecting sales that would support a predetermined value and producing a purposefully inflated and misleading appraisal report that contained substantial errors of both omission and commission that affected the appraisal report for the property. According to the Sanctions adopted by the Board in 22 TAC § 153.24(h), the first time occurrence of a violation of the USPAP that was individually or collectively done willfully or in a grossly negligent manner is punishable by suspension or revocation and an administrative penalty of \$1,000 to \$3,000 per violation.

Olen Appraisal-Specific Allegations

- a. Respondent provided no analysis or support of the site value in his appraisal report nor in his work file in violation of Standards 1-4(b)(i) and 2-2(b)(ix);

- b. Failed to collect, verify, analyze, and reconcile accrued depreciations in violation of Standards 1-4(b)(iii) and 2-2(b)(ix);
- c. Failed to correctly employ recognized methods and techniques correctly in his cost approach analysis of the property in violation of Standards 1-1(a) and 1-4(b);
- d. Did not collect, verify, analyze, and reconcile comparable sales data in his sales comparison approach for the property adequately, used inappropriate comparable sales (with respect to design, quality, appeal, and size) even though more appropriate and more similar sales were readily available in the area and should have been used, and failed to make appropriate adjustments to the comparable sales he did use, including failing to adjust for a metal shop building in comparable sale 1 and the lot size of comparable sale 1 in violation of Standards 1-4(a) and 2-2(b)(ix);
- e. Did not correctly use recognized methods and techniques in his sales comparison approach because he did not select houses of similar size, quality, and design in violation of Standards 1-1(a) and 1-4(a);
- f. Although aware of recognized methods and techniques did not correctly employ them to produce a credible appraisal report in violation of Standard 1-1(a); and
- g. Produced a misleading appraisal report for the property that contained several substantial errors of omission and commission by not using correct methods and techniques resulting in an inflated appraisal report that was not credible or reliable in violation of Standards 1-1(a), 1-1(b), 1-1(c), and 2-1(a).

Respondent admittedly did not give the source of his site value in violation of Standards 1-4(b)(i), and 2-2(b)(ix). The evidence further shows that Respondent failed to adjust for a metal shop building as well as adjust for the size of the site in his first comparable sale in violation of Standards 1-4(a)(i), and 2-2(b)(ix). Accordingly, Staff has proved allegations a and d regarding the Olen appraisal.

As for the allegations regarding the failure to collect, verify, analyze, and reconcile accrued depreciations in violation of Standards 1-4(b)(iii) and 2-2(b)(ix), and the failure to correctly employ recognized methods and techniques in his cost approach analysis of the

property in violation of Standards 1-1(a) and 1-4(b), the evidence showed not that Respondent failed to do these things, but that he failed to properly document them. As a result, Staff has not proved allegations b and c regarding the Olen appraisal.

The main conflict in the evidence regarding the Olen appraisal is the comparable sales used by Respondent. The properties used by Respondent for comparable sales were a larger manufactured home located on a larger site valued at \$84,970, a much larger manufactured home valued at \$65,930, and a similar sized manufactured home valued at \$78,550, on which comparison Respondent estimated a value of \$84,000, clearly choosing the high side of the comparable sales that he did use. However, according to the MLS archives, there were six sales of similar size to the subject that could have been used instead, the average sales price of which was \$65,604.

These facts tend to support the allegations that Respondent used inappropriate comparable sales even though more appropriate and similar sales were readily available in violation of Standards 1-4(a) and 2-2(b)(ix), did not correctly use recognized techniques by not selecting houses of similar size in violation of Standards 1-1(a) and 1-4(a), did not correctly employ recognized methods and techniques to produce a credible appraisal report in violation of Standard 1-1(a), and produced a misleading report that contained several substantial errors of omission and commission by not using correct methods and techniques resulting in an inflated report that was not credible or reliable in violation of Standards 1-1(a), 1-1(b), 1-1(c), and 2-1(a). Accordingly, Staff has proved allegations d, e, f, and g regarding the Olen appraisal.

Allegations d, e, f, and g are the most serious violations regarding the Olen appraisal. According to the Sanctions adopted by the Board in 22 TAC § 153.24(h), the second time occurrence of a violation (as opposed to a second violation of the same type as a previously adjudicated violation) of the USPAP that was individually or collectively done willfully or in a grossly negligent manner is punishable by revocation and an administrative penalty of \$2,000 to \$5,000.

Periwinkle Appraisal-Staff Allegations

- a. Respondent produced a purposefully misleading and inflated market value opinion in violation of the Ethics Rule;
- b. Respondent failed to identify the intended use of his opinions and conclusions in violation of Standards 1-2(b) and 2-2(b)(ii),
- c. Failed to identify and report the site description adequately in violation of Standards 1-2(e)(1) and 2-2(b)(iii);
- d. Gave no analysis or support of the site value in his appraisal report nor in his work file in violation of Standards 1-4(b)(i) and 2-2(b)(ix);
- e. Did not collect, verify, analyze, and reconcile the cost of new improvements for the property, providing no comment or support for the sources of his reproduction cost figures in violation of Standards 1-4(b)(ii) and 2-2(b)(ix);
- f. Failed to correctly employ recognized methods and techniques in his cost approach analysis of the property in violation of Standards 1-1(a) and 1-4(b);
- g. Chose not to use recognized methods and techniques in his sales comparison approach correctly by not similar properties and instead selecting those which would support a predetermined and inflated value in violation of Standards 1-1(a) and 1-4(a);
- h. Failed to disclose and analyze a prior listing of the property at a significantly lower price and reconcile that market information with his market value determination, resulting in an inflated appraisal report value for the property in violation of Standards 1-5(a) and 2-2(b)(ix);
- i. Although aware of recognized methods and techniques, chose not to employ them correctly and instead produced a purposefully inflated and misleading appraisal report that contained substantial errors of both omission and commission that affected the appraisal report for the property in violation of Standards 1-1(a), 1-1(b), and 2-1(a); and
- j. Did not collect, verify, analyze, and reconcile comparable sales data in his sales comparison approach for the property adequately and went outside of the subdivision and use inappropriate comparable sales that were superior to the property even though more appropriate and more similar sales were readily

available in the area and should have been used in violation of Standards 1-4(a) and 2-2(b)(ix).

Respondent admitted that although he initially estimated the value at \$120,000, he followed the directions of the broker to find more sales to support a value of \$165,000 rather than use the lower value and that he pushed the value from a supported appraised value of \$120,000 to a value of \$149,000. This is a clear violation of the Ethics Rule and Standards 1-1(a), 1-1(b), 1-4(a), 2-1(a), and 2-2(b)(ix). Accordingly, Staff has proved allegations a, g, i, and j regarding the Periwinkle appraisal.

The report does not include information about the site, which is a platted subdivision lot for which such information is public record, in violation of Standards 1-2(e)(i) and 2-2(b)(iii). Respondent also admitted that he did not give the source of his site value in violation of Standards 1-3(a), 1-4(b)(i), and 2-2(b)(ix). As a result, Staff has proved allegations c and d regarding the Periwinkle appraisal.

The report does include a statement that it is intended for use in a mortgage finance transaction for the borrower and lender only. And, while Respondent did fail to identify the previous five-day listing on the property, there was no current listing at the time of his report, and, as a result, no violation of Standards 1-5(a) and 2-2(b)(ix). Accordingly Staff has not proved allegations b and h regarding the Periwinkle appraisal.

As for the allegations regarding the failure to collect, verify, analyze, and reconcile the cost of new improvements for the property in violation of Standards 1-4(b)(ii) and 2-2(b)(ix) and failing to correctly employ recognized methods and techniques in his cost approach analysis of the property in violation of Standards 1-1(a) and 1-4(b), the evidence shows not that Respondent failed to do these things, but that he failed to properly document them. As a result, Staff has not proved allegations e and f regarding the Periwinkle appraisal.

While some of these violations are more important than others, the most serious violations are those regarding violations of the Ethics Rule, selecting sales that would support a predetermined value, producing a purposefully inflated and misleading appraisal report that contained substantial errors of both omission and commission that affected the appraisal report for the property, and going outside of the subdivision and using inappropriate comparable sales that were superior to the property even though more appropriate and more similar sales were readily available in the area. According to the Sanctions adopted by the Board in 22 TAC § 153.24(h), the third time occurrence of a violation (as opposed to a third violation of the same type as two previously adjudicated violations) of the USPAP that was individually or collectively done willfully or in a grossly negligent manner is punishable by revocation and an administrative penalty of \$5,000.

2. Second Charge

The Rule at 22 TAC § 153.20(a)(9) provides that the Board may revoke the certification of an appraiser who has made a material misrepresentation or omission of material fact. As discussed above, Staff has proved that Respondent made such material misrepresentations in all three of the appraisals.

3. Third Charge

The Rule at 22 TAC § 153.20(a)(7) and (8) provides that the Board may revoke the certification of an appraiser who has (1) accepted payment for services contingent upon a minimum, maximum, or pre-agreed value estimate except when such action would not interfere with the appraiser's obligation to provide an independent and impartial opinion of value and full disclosure of the contingency is made; and/or (2) has offered to perform appraiser services or has agreed to perform such services when employment to perform such services is contingent upon a minimum, maximum, or pre-agreed value estimate except when such action would not interfere

with the appraiser's obligation to provide an independent and impartial opinion of value and full disclosure of the contingency is made.

Staff alleges that Respondent violated this rule by being paid for and then producing an appraisal report for the Briar and Periwinkle properties based upon a pre-determined value. Staff has proved this charge regarding the Briar property.

Respondent's testimony was un rebutted that he was not paid for the Periwinkle appraisal. The fact that he was not paid when he failed to provide an appraisal with the value sought by the broker does not establish that when he agreed to perform the appraisal his employment was contingent upon a pre-agreed value estimate. As a result, Staff has not proved this charge regarding the Periwinkle property.

Staff has recommended revocation of Respondent's certification. Although it is true that the three appraisals represent only a small percentage of the appraisals performed by Respondent, each appraisal, particularly the Briar and Periwinkle, indicate a disturbing tendency of Respondent to inflate the appraised values to pre-determined values in order to satisfy his clients rather than provide objective, impartial, and independent appraisals. Respondent's actions support the revocation of his certificate.

Staff has also recommended that Respondent should not be entitled to apply for reinstatement of his license pursuant to Code § 1103.522. However, it would appear that Respondent has acknowledged the seriousness of his misconduct by admitting that he should not have inflated the values in the Briar and Periwinkle appraisals. For that reason, Respondent should be allowed to apply for reinstatement under such terms as established by the Board.

II. FINDINGS OF FACT

1. Alvin E. Bade (Respondent) holds a certificate as a state certified residential real property appraiser issued by the Texas Appraiser Licensing and Certification Board.
2. On May 28, 2008, staff of the Board (Staff) sent a statement of charges to Respondent proposing revocation of the license referred to in Finding of Fact No. 1.
3. On May 30, 2008 a notice of hearing was mailed to Respondent.
4. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short plain statement of the matters asserted.
5. The hearing on the merits was held on September 8, 2008, before Administrative Law Judge (ALJ) Roy G. Scudday in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. All parties appeared and participated in the hearing.
6. On June 13, 2002, Respondent issued an appraisal report effective June 7, 2002 for the residential property located at 131 Briar Oaks Lane, Azle, Texas. The appraised value was shown in the report as being \$105,000 based on the use of the comparable sales method. Using a cost value method as comparison, Respondent valued the subject tract as being \$105,801.
7. Respondent inflated the value of the Briar property to an appraised value of \$105,000 as requested by the mortgage broker rather than use a more supportable value estimate in the \$90,000 to \$95,000 range.
8. Respondent's report on the Briar property also contained errors regarding the zoning, specifically stating that the property was in a zoned area when it was actually in an unzoned rural area; did not give the source of his site value; did not provide a brief summary of his determination of the property's highest and best use; and erroneously added the cost of improvements twice.
9. Respondent did not document the collection, verification, analysis, and reconciliation of the cost of new improvements for the Briar property, and did not document that he correctly employed recognized methods and techniques in his cost approach analysis of the property.

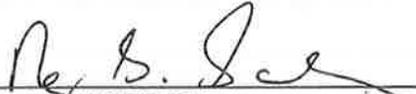
10. On November 12, 2002, Respondent issued an appraisal report effective November 6, 2002 for the residential property located at 1148 Olen Drive, Justin, Texas. The appraised value was shown in the report as being \$84,000 based on the use of the comparable sales method. Using a cost value method comparison, Respondent valued the subject tract as being \$84,422.
11. The properties used by Respondent for comparable sales for the Olen property were a larger manufactured home located on a larger site valued at \$84,970, a much larger manufactured home valued at \$65,930, and a similar sized manufactured home valued at \$78,550, rather than six sales of similar size to the subject with an average sales price of \$65,604. Respondent chose the high side of these comparable sales.
12. Respondent's report on the Olen property also did not give the source of his site value, and failed to adjust for a metal shop building and the size of the site in his first comparable sale.
13. Respondent did not document the collection, verification, analysis, and reconciliation of the cost of new improvements for the Olen property, and did not document that he correctly employed recognized methods and techniques in his cost approach analysis of the property
14. On November 1, 2005, Respondent issued an appraisal report effective October 28, 2005, for the residential property located at 3904 Periwinkle Dr., Fort Worth, Texas. The appraised value was shown in the report as being \$149,000 based on the use of the comparable sales method. Using a cost value method as comparison, Respondent valued the subject tract as being \$151,847.
15. Respondent inflated the value of the Periwinkle property in an attempt to estimate an appraised value closer to the value of \$165,000 requested by the mortgage broker rather than use the supported value of \$120,000.
16. Respondent's report on the Periwinkle property did not give the source of his site value, and did not include legal description information about the site, a platted subdivision lot for which such information is public record.
17. Respondent's report on the Periwinkle property included a statement that it was intended for use in a mortgage finance transaction for the borrower and lender only, and did not fail to include a current listing on the property.

18. Respondent did not document the collection, verification, analysis, and reconciliation of the cost of new improvements for the Periwinkle property, and did not document that he correctly employed recognized methods and techniques in his cost approach analysis of the property

III. CONCLUSIONS OF LAW

1. The Texas Appraiser Licensing and Certification Board (Board) has jurisdiction over this matter pursuant to TEX. OCC. CODE ANN. (Code) ch. 1503.
2. The State Office of Administrative Hearings has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Notice of the complaint and of the hearing on the merits was provided as required by Code § 1305.253 and by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Petitioner had the burden of proving the case by a preponderance of the evidence.
5. Based on Findings of Fact Nos. 7-9, Respondent violated Uniform Standards of Professional Appraisal Practice (USPAP) Ethics Rule and Standards Rules 1-1(a), 1-1(b), 1-3, 1-4, 2-1(a), and 2-2(b)(ix) and (x), made a material misrepresentation or omission of material facts, and accepted payment for services contingent upon a minimum value estimate.
6. Based on Findings of Fact Nos. 10-13, Respondent violated USPAP Standards Rules 1-1-1(a), 1-1(b), 1-1(c), 1-4, 2-1(a), and 2-2(b), and made a material misrepresentation or omission of material facts.
7. Based on Findings of Fact Nos. 14-18, Respondent violated USPAP Ethics Rule and Standards Rules 1-1(a), 1-1(b), 1-2(e), 1-3, 1-4, 2-1(a), and 2-2(b)(iii),(ix) and (x), and made a material misrepresentation or omission of material facts.
5. Based Conclusions of Law Nos. 5-7, Respondent violated Code § 1103.405 and 22 TEX. ADMIN. CODE ANN. (TAC) §§ 153.20(a)(3), (7), (8), and (9), and 155.1(a).
6. Respondent's license should be revoked, but Respondent should be allowed to apply for reinstatement under such terms as established by the Board.

SIGNED September 18, 2008.



ROY G. SCUDDAY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS