

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

JOHN KELLY BAKER
TX-1333906-L

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DOCKETED COMPLAINT NO.
08-007 & 09-028

FINAL ORDER

On this 11 day of Dec, 2009, 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. No such exceptions or replies were filed.

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 license of John Kelly Baker in this matter is hereby **REVOKED**, effective twenty days after the date John Kelly Baker is notified of this Final Order.

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 11 day of Dec, 2009.



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

SOAH DOCKET NO. 329-10-0118.ALC

TEXAS APPRAISER LICENSING AND
CERTIFICATION BOARD,
Petitioner

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BEFORE THE STATE OFFICE

V.

OF

JOHN KELLY BAKER,
Respondent

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Appraiser Licensing and Certification Board (TALCB) brought this action seeking the suspension or revocation of the appraiser certification held by John Kelly Baker (Respondent). The basis for this action was Respondent's alleged failure to comply with 22 TEX. ADMIN. CODE (TAC) §§ 153.22, 153.20(a)(2), (3), (9), and (15), 155.1(a), and 153.8(c). The Administrative Law Judge (ALJ) recommends that Respondent's certification be revoked.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing convened October 19, 2009, 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, who moved for a default based on Respondent's failure to appear.

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. RECOMMENDATION

Based upon the following Findings of Fact and Conclusions of Law and in accordance with 1 TEX. ADMIN. CODE § 155.501, the ALJ granted Staff's motion for default and recommends that Respondent's certification be revoked.

III. FINDINGS OF FACT

1. John Kelly Baker (Respondent) holds a certificate as a state licensed real estate appraiser issued by the Texas Appraiser Licensing and Certification Board (TALCB).
2. On September 1, 2009, staff of the TALCB (Staff) sent a Statement of Charges to Respondent proposing suspension or revocation of the certificate referred to in Finding of Fact No. 1 by certified mail to 1602 Sutton, Street, Houston, TX 77006, the address of record for Respondent in the files of the TALCB. The return receipt was signed for by Respondent.
3. On September 9, 2009, a notice of hearing was mailed to Respondent, by certified mail to 1602 Sutton, Street, Houston, TX 77006. The notice was returned unclaimed by 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 notice contained the following language in capital letters in at least 12-point, boldface type: "FAILURE TO APPEAR AT THE HEARING WILL RESULT IN THE ORIGINAL STATEMENT OF CHARGES BEING ADMITTED AS TRUE, THE RELIEF SOUGHT BY TALCB GRANTED, AND A DEFAULT JUDGMENT BEING TAKEN AGAINST YOU."
6. The hearing convened October 19, 2009, in the William P. Clements Building, 300 West 15th Street, Austin, Texas.
7. Respondent did not appear and was not represented at the hearing. Staff was represented by attorney Troy Beaulieu.
8. Staff moved for a default, which was granted.
9. On or about October 12, 2007, and October 27, 2008, Staff notified Respondent by mail at his last known address indicated in TALCB records of two complaints, provided him the opportunity to respond to the allegations, and requested that Respondent provide certain documentation to Staff.
10. As of the present date, Respondent has failed to answer inquiries and provide certain documents related to the complaint despite two written requests that he promptly do so.
11. On or about July 7, 2008, Respondent submitted a check for payment of license renewal fees, which check was returned for insufficient funds. Even though Staff sent Respondent a notice of the returned check and request for payment, Respondent has failed to make payment of the returned check.

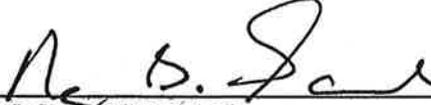
12. On or about September 14, 2007, Respondent appraised real property at 17302 Sunset Ranch Drive, Montgomery, Texas 77356, that had a transaction value over \$1,000,000.00, and in which appraisal Respondent did not provide a summary of the reasoning behind his highest and best use determination for the property; failed to select appropriate comparable sales that were available in the immediate neighborhood; and failed to analyze the prior listing history for the property and misrepresented that the property was currently listed for a particular price when it was not.

IV. 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. 1103.
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 § 1103.502 and by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Staff had the burden of proving the case by a preponderance of the evidence.
5. Pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.501, the failure of Respondent to appear at the hearing on the merits entitled Staff to have the facts in the Notice of Hearing deemed admitted and to the declaration of default by Respondent.
6. Based on Findings of Fact Nos. 9-10, Respondent violated 22 TAC § 153.22 by failing to answer the inquiries from the Board.
7. Based on Finding of Fact No. 11, Respondent violated 22 TAC § 153.20(a)(15) by failing to make payment within thirty days of Staff's notice of a returned check and request for payment.
8. Based on Finding of Fact No. 12, Respondent violated 22 TAC §§ 153.20(a)(3) and 155.1 by failing to comply with Uniform Standards of Professional Appraisal Practice (USPAP).
9. Based on Finding of Fact No. 12, Respondent violated 22 TAC §§ 153.20(a)(2) and 153.8 by appraising property with a transaction value in excess of \$1,000,000.00.
10. The Board is authorized by 22 TAC §§ 153.20(a) and 153.24(h) to revoke Respondent's certification for willfully violating a Rule of the Board.

11. Respondent's certification should be revoked.

SIGNED October 21, 2009.



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