

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

JAMES BRIAN BANKS
TX-1323923-R

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DOCKETED COMPLAINT NO.
12-203

AGREED FINAL ORDER

On the 16 day of Aug, 2013, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the certification of James Brian Banks (the "Respondent").

In order to conclude this matter, James Brian Banks 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 "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 is a Texas state certified residential real estate appraiser who holds certification number, TX-1323923-R, and was licensed by the Board during all times material to the above-noted complaints.
2. Respondent appraised real property located at: 1836 Woodvine Drive, Houston, Texas 770055 (the "property"), on or about September 20, 2007.
3. Thereafter, Board staff initiated the above-noted complaint. The complaint alleged that the Respondent produced appraisal reports for the properties that did not conform to the Uniform Standards of Professional Appraisal Practice (USPAP), TEX. OCC. CODE CHPT. 1103 (the "Act") and 22 TEX. ADMIN. CODE CHPT. 153 and 155 (the "Rules").
4. Thereafter the Board, in accordance with the mandate of the Administrative Procedure Act (the "APA"), TEX. GOV'T CODE ANN. CHPT. 2001, and TEX. OCC. CODE CHPT. 1103 (the "Act"), notified Respondent of the nature of the accusations involved and Respondent was afforded an opportunity to respond to the accusations in the complaint. Respondent was also requested to provide certain documentation to the Board.
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 reports for the properties:
 - a) USPAP Ethics Rule -- Respondent violated the Ethics Rule because he failed to adequately communicate assignment results;

- b) USPAP Record Keeping Rule – Respondent violated the Record Keeping Rule because he failed to maintain the data, information, and documentation necessary to support opinions and conclusions in the report as required by USPAP;
- c) USPAP Scope of Work Rule; 1-2(h) – Respondent failed to support his work with the relevant evidence and logic required to obtain credible assignment results;
- d) USPAP Supplemental Standards Rule – Respondent failed to consider published supplemental standards applicable to the assignment;
- e) USPAP Standards 1-2(e)(i) and 2-2(b)(iii) – Respondent failed to adequately identify and report the site description and failed to adequately report the lot size and the view from the properties;
- f) USPAP Standards 1-3(a) and 2-2(b)(viii); 1-1(b) – Respondent failed to identify and analyze factors affecting marketability (such as economic supply and demand, and market area trends), failed to adequately report the one-unit housing price range, and failed to provide supporting documentation and a summary of his reasoning in support of these required analyses, conclusions and determinations which are necessary to reach a credible and reliable market value determination;
- g) USPAP Standards 1-3(b) and 2-2(b)(ix) – Respondent failed to develop his opinion of highest and best use;
- h) USPAP Standards 1-4(b)(i) and 2-2(b)(viii); 1-1(a) and 1-4(b) – Respondent failed to use an appropriate method or technique to develop an opinion of site value determination, and did not provide supporting documentation or data for his determination, and no summary of his analysis and supporting rationale, for the site value determination;
- i) USPAP Standards 1-4(b)(ii) and 2-2(b)(viii); 1-1(a) and 1-4(b) – Respondent failed to provide documentary support or the required analysis for his determination of the cost new of improvements, failed to employ recognized methods and techniques, and did not properly collect, verify, analyze and reconcile this data;
- j) USPAP Standards 1-4(b)(iii) and 2-2(b)(viii); 1-1(a) and 1-4(b) – Respondent did not collect, verify, analyze and reconcile accrued depreciations and failed to employ recognized methods and techniques because he failed to provide written analysis, documentary support for depreciation and did not calculate external obsolescence caused by the property adjoining properties;
- k) USPAP Standards 1-4(a) and 2-2(b)(viii); 1-1(a) and 1-4(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 supporting documentation nor his reasoning and a summary of his analysis of the sales comparison approach;

- l) USPAP Standards 2-2(b)(viii) – Respondent failed to explain and support the exclusion of the income approach;
- m) USPAP Standards 1-5(a) and 2-2(b)(viii); 1-1(b); 1-6(a), 1-6(b) and 2-2(b)(viii) – Respondent failed to disclose, analyze and reconcile significant and material information regarding the property’s listing history, failed to disclose and analyze the contracts of sale and reconcile that information and data and failed to provide a summary of his supporting reasoning and analysis of all of this information and reconciliation;
- n) USPAP Standards 1-5(b) and 2-2(b)(viii); 1-1(b); 1-6(a), 1-6(b) and 2-2(b)(viii) – Respondent omitted material facts concerning the sale of the property and failed to disclose, analyze and reconcile this significant and material information (including summarizing any reasoning supporting any analyses, opinions and conclusions he may have made and failing to provide work file documentation in support of any analyses, opinions and conclusions he may have made) within the 3 years prior to the effect date of the appraisal report Respondent prepared for the property; and
- o) USPAP Standards 1-1(a), 1-1(b), 1-1(c), 2-1(a) and 2-1(b) – For the reasons detailed above, Respondent produced an appraisal report for the property that contained several substantial errors of omission or commission by not employing correct methods and techniques. This resulted in inflated appraisal reports that were not credible or reliable.

6. Respondent made omissions of material fact with respect to his appraisal of the property as detailed above.

7. The parties enter into this consent order in accordance with TEX. OCC. CODE § 1103.458.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103.

2. Respondent violated the above-noted provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3).

3. Respondent violated 22 TEX. ADMIN. CODE § 153.20(9) by making omissions of material fact.

4. 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**:

1. **EDUCATION.** On or before August 16, 2014. Respondent shall submit documentation of attendance and successful completion of the classes set out below to the Board. All classes required by this 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 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 classroom course in USPAP, a minimum of fifteen (15) class hours, on or before August 16, 2014.
 - b. A classroom course in residential market analysis, a minimum of fifteen (15) class hours, on or before August 16, 2014.
2. **ADMINISTRATIVE PENALTY.** On or before September 5, 2013. Pay to the Board an administrative penalty of one thousand five hundred dollars (\$1,500.00), by certified funds, within twenty (20) days of the effective date of this order (i.e. on or before September 5, 2013).
3. Respondent shall fully and timely comply with all of the provisions of this Agreed Final Order; and,
4. 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.

IF RESPONDENT FAILS TO TIMELY COMPLY WITH ANY TERM IN THIS AGREED FINAL ORDER, WHICH HAS A SPECIFIC, STATED DUE DATE, RESPONDENT SHALL BE ASSESSED A \$1,000 ADMINISTRATIVE PENALTY AND RESPONDENT'S LICENSE, CERTIFICATION, AUTHORIZATION OR REGISTRATION SHALL BE SUSPENDED, UNTIL THE RESPONDENT IS IN FULL COMPLIANCE WITH THE TERMS OF THIS ORDER AND THE \$1,000 ADMINISTRATIVE PENALTY HAS BEEN RECEIVED BY THE BOARD.

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, 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.

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.

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. Respondent shall retain documentation (reply email, fax confirmation, return receipt, etc.) confirming receipt by the board of all the necessary documents.

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 & Certification Board, Stephen F. Austin Building, 1700 N. Congress Ave., Suite 400, Austin, TX 78701.

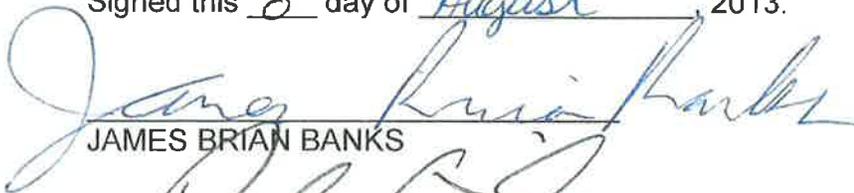
I HAVE READ AND REVIEWED THIS ENTIRE AGREED FINAL ORDER FULLY AND AM ENTERING INTO IT OF MY OWN FREE WILL TO AVOID THE EXPENSE OF LITIGATION AND TO REACH AN EXPEDITIOUS RESOLUTION OF THE MATTER. I NEITHER ADMIT NOR DENY THAT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW CONTAINED HEREIN ARE CORRECT. I UNDERSTAND ALL OF MY COMPLIANCE OBLIGATIONS UNDER THIS AGREED FINAL ORDER AND THE CONSEQUENCES FOR FAILING TO COMPLY WITH THOSE OBLIGATIONS.

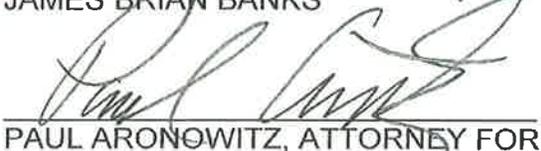
I UNDERSTAND THAT THE BOARD AND ITS STAFF CANNOT PROVIDE ME WITH LEGAL ADVICE. I AM AWARE OF MY RIGHT TO A HEARING, AND HEREBY WAIVE A HEARING AND ALSO WAIVE ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER, INCLUDING FOR ANY SUBSEQUENT ACTION RESULTING FROM MY FAILURE TO TIMELY COMPLY WITH AN ADMINISTRATIVE REQUIREMENT OF THIS AGREED FINAL ORDER, SUCH AS PAYMENT OF A PENALTY, COMPLETION OF COURSEWORK OR FAILURE TO PROVIDE EXPERIENCE LOGS.

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.

Signed this 8 day of August, 2013.

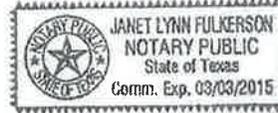

JAMES BRIAN BANKS


PAUL ARONOWITZ, ATTORNEY FOR

JAMES BRIAN BANKS

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 8 day of August, 2013, by JAMES BRIAN BANKS, to certify which, witness my hand and official seal.

Janet Lynn Fulkerson
Notary Public Signature



Janet Lynn Fulkerson
Notary Public's Printed Name

Signed by the Standards and Enforcement Services Division this 9 day of August, 2013.

Mark Mnolic
Kyle Wolfe, TALCB Staff Attorney Mark Mnolic, TALCB Director

Signed by the Commissioner this 16 day of Aug, 2013.

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

Approved by the Board and Signed this 16 day of Aug, 2013.

Walker Beard
Walker Beard, Chairperson
Texas Appraiser Licensing and Certification Board