

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

VS.

RICKY BUEL BERRY
TX-1327470-R

§
§
§
§
§
§
§

DOCKETED COMPLAINT NO. 09-134

AGREED FINAL ORDER

On this the 20 day of Aug, 2010, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the certification of Ricky Buel Berry, (Respondent). The Board makes the following findings of fact and conclusions of law and enters this Order:

In order to conclude this matter Ricky Buel Berry 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 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 Ricky Buel Berry is a state certified residential real estate appraiser, holds certification number TX-1327470-R, and has been certified by the Board during all times material to this complaint.
2. Respondent is subject to the jurisdiction of the Board, the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE Chapter 1103 (Vernon 2007) (the Act), the Rules of the Board, 22 TEX. ADMIN. CODE §§153, 155, 157 (West 2007) (the Rules), and the Uniform Standards of Professional Appraisal Practice (USPAP) in effect at the time of the appraisal.
3. Respondent appraised real property located at 111 Briarwood Lane, Sulphur Springs, Texas 75482 ("the property") on or about November 12th, 2008.
4. On or about March 17th, 2009, the Complainant, Chris Diamond, filed a complaint with the Board based on allegations that the Respondent had produced an appraisal reports that did not comply with the USPAP.
5. On or about March 19th, 2009, the Board, in accordance with the mandate of the Administrative Procedure Act (the APA), TEX. GOV'T CODE ANN. Chapter 2007, notified Respondent of the nature of the accusations involved and Respondent was afforded an opportunity to respond to the accusations alleged by the Complainant. Respondent's response to the complaint was received.

6. 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 report for the property:

- a. Respondent failed to comply with the Scope of Work Rule;
- b. Respondent failed to identify the effective date of the his opinions and conclusions;
- c. Respondent failed to provide a brief summary of his basis and underlying rationale for his determination of the property's highest and best use;
- d. Respondent failed to use an appropriate method or technique to develop an opinion of the site value and failed to collect, verify, analyze and reconcile the cost new of improvements. Respondent failed to employ recognized methods and techniques in his cost approach;
- e. Respondent's report contains substantial errors of commission or omission as detailed above which resulted in a misleading appraisal report for the property.

7. Respondent affixed the digital signature of another appraiser (Chris Diamond) to an appraisal report for the property without that appraiser's knowledge, authorization or consent.

CONCLUSIONS OF LAW

1. The Texas Appraiser Licensing and Certification Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE §§ 1103.451-1103.5535.

2. Respondent violated the following provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3): USPAP Scope of Work Rule; USPAP Standards: 1-2(d) & 2-2(b)(vi); 1-3(b) & 2-2(b)(ix); 1-4(b)(i) & 2-2(b)(viii); 1-4(b)(ii) & 2-2(b)(viii); 1-1(a) & 1-4(b); 1-1(a); 1-1(b); 1-1(c); and, 2-1(a).

3. Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(9) by making material misrepresentations and omitting material facts.

4. Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(18) by misusing the certification of another appraiser.

Based on the above findings of fact and conclusions of law, the Board **ORDERS** that the Respondent shall:

- a. Attend and complete a minimum, 15 classroom-hour course in USPAP;
- b. Pay to the Board an administrative penalty of \$1,000.00;

c. Prepare a written, preventive policies and procedures policy which addresses the use and application of appraisers' signature, appraisal report updates and recertification of value in Respondent's appraisal practice.

i. The policy shall be drafted after Respondent has researched, read and reviewed Advisory Opinion #3 and Frequently Asked Questions #170-177.

ii. This comprehensive policy shall be submitted to the Board once completed and adhered to by Respondent at all times during his practice as a real estate appraiser.

d. Sponsor no trainees; and,

e. Comply with all provisions of the Act, the Rules of the Board, and USPAP in the future, or be subjected to further disciplinary action.

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 eighteen-month period indicated. None of the classes or seminars required by this Order may be taken through correspondence courses. Unless otherwise noted above, 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 certification. Respondent is solely responsible for locating and scheduling classes to timely satisfy the terms of this agreement.

Payment of the **ADMINISTRATIVE PENALTY** must be by certified funds, and must be tendered within **TWENTY DAYS** of the date of this Agreed Final Order.

Failure to comply with any of the terms of this Agreed Final Order within the time allotted shall result in **IMMEDIATE SUSPENSION** of the Respondent's certification pursuant to notice to the Respondent from the Board indicating that the Respondent has not fulfilled the 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 until such time as Respondent satisfies that portion of the Agreed Final Order which he has defaulted on and provides adequate documentation of same to the Board.

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 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 21st day of June, 2010.

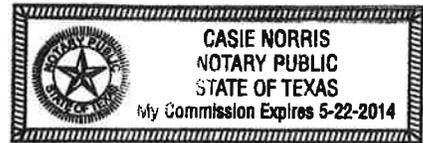
Ricky B. Berry
RICKY BUEL BERRY

Ted Whitmer
TED WHITMER, ATTORNEY FOR
RESPONDENT

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 21st day of June, 2010, by RICKY BUEL BERRY, to certify which, witness my hand and official seal.

Casie Norris
Notary Public Signature

Casie Norris
Notary Public's Printed Name



Signed by the Standards and Enforcement Services Division this 19th day of AUGUST, 2010.

Troy Beaulieu
Troy Beaulieu, TALCB Staff Attorney

Signed by the Commissioner this 20 day of Aug, 2010.

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

Approved by the Board and Signed this 20 day of Aug, 2010.

James B. Ratliff
James B. Ratliff, Chairperson
Texas Appraiser Licensing and Certification Board