

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

JAMES WALTER BROWN
TX-1336412-L

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DOCKETED COMPLAINT NO.
08-013

FINAL ORDER

On this 24th day of April, 2009, the Board considered the above-noted matter.

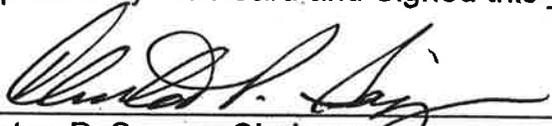
After proper notice was given, the above case was heard by an Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH). The ALJ made and filed a proposal for decision containing findings of fact and conclusions of law. The proposal for decision was properly served on all parties, 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 Respondent pay to the Board an administrative penalty of \$2,000.00. Payment of the ADMINISTRATIVE PENALTY must be by certified funds, and must be tendered within TWENTY DAYS of the date James Walter Brown 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 24th day of April, 2009.



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

SOAH DOCKET NO. 329-09-2281.ALC

TEXAS APPRAISER LICENSING AND
CERTIFICATION BOARD,
Petitioner

V.

JAMES W. BROWN,
TX-1336412-L,
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 to impose an administrative penalty against James W. Brown (Respondent), who held a real property appraiser certification. The Board alleges that the Respondent violated the Texas Appraiser Licensing and Certification Act (Act) and the Board's rules by producing an appraisal report that violated the standards in the Uniform Standards of Professional Appraisal Practice (USPAP). The Administrative Law Judge (ALJ) recommends that the Board assess an administrative penalty of two-thousand dollars (\$2,000.00) against Respondent.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing was convened March 11, 2009, before ALJ Richard R. Wilfong at the William P. Clements State Office Building, 300 West 15th Street, Austin, Texas. Staff was represented by its attorney Troy Beaulieu. Respondent did not appear and was not represented at the hearing. The record closed on the same day.

After establishing that appropriate notice of the hearing was provided to Respondent and that the Commission has jurisdiction, Staff moved for a default.¹ The default was granted in accordance with 1 TEX. ADMIN. CODE § 155.501, and the allegations were accepted as true.

II. FINDINGS OF FACT

1. James W. Brown (Respondent) held a State Certified General Real Property Appraiser license number TX-1336412-L issued by the Texas Appraiser Licensing and Certification Board (Board). Respondent's license expired on September 30, 2008.
2. Respondent's last known address of record on file with the Board is P.O. Box 142481, Austin, Texas 78714.
3. On or about June 27, 2007, Respondent performed appraisal services concerning real property located at 1008 Price Street, Taylor, Texas (Property).
4. Respondent failed to report two prior sales of the Property that had occurred within three years of Respondent's appraisal report.
5. Respondent failed to properly identify and report improvements to the property because he did not report or analyze the cause of the structural failure of the improvements or determine whether repairs and renovations were economically feasible.
6. Respondent failed to correctly identify and analyze the Property's zoning.
7. Respondent failed to provide a summary of his rationale for his determination of the Property's highest and best use and failed to analyze whether the Property was at the end of its economic life.
8. Respondent failed to properly collect, verify, analyze and reconcile sales comparison data and failed to employ recognized methods and techniques. Additionally, Respondent failed to adjust for seller-paid concessions and used inaccurate photographs of comparable sales.

¹ Staff stated that the notice of hearing sent to Respondent was returned to the Board marked "undeliverable," so it appears that Respondent did not actually receive the notice. However, this does not preclude a default judgment. In *Texas Real Estate Comm'n v. Howard*, 538 S.W.2d 429 (Tex. Civ. App.-Houston [1st Dist.] 1976, writ ref'd n.r.e.), the court held that under a statute authorizing notice by certified mail, proper service was effected when the notice of hearing was properly stamped, addressed, registered and mailed to the broker at her last known address, even though the letter was returned to the Real Estate Commission with the notation: "Unclaimed." Pursuant to TEX. OCC. CODE § 1103.403 and 22 TEX. ADMIN. CODE § 157.9(b), Respondent was required to notify the Board of any change of address, and service of the notice of hearing upon Respondent was complete and effective upon proper mailing of the notice to Respondent's most recent address as shown by the records of the Board.

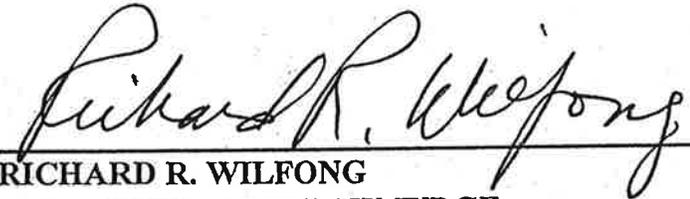
9. Respondent's appraisal report for the Property contains substantial errors of commission and omission as detailed above which resulted in a misleading appraisal report and violation of the USPAP.
10. On January 27, 2009, Staff sent its Notice of Hearing to Respondent by certified mail at his last known address reflected in Board records.
11. 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.
12. The Notice of Hearing stated, in at least 12-point, bold-faced font, that "failure to appear at the hearing will result in the original statement of charges being admitted as true, the relief sought by [the Board] granted, and a default judgment being taken against you."
13. The hearing on the merits was convened on February 11, 2009, at 9:00 a.m. at the State Office of Administrative Hearings, William P. Clements Office Building, 300 West 15th Street, Austin, Texas.
14. Staff appeared at the hearing through attorney Troy Beaulieu. Neither Respondent nor counsel for Respondent appeared at the hearing or filed a motion for continuance of the hearing.
15. Respondent failed to appear and failed to answer the allegations in Staff's Original Statement of Charges, nor has he filed any responsive pleading whatsoever.
16. Staff made a motion for default, which was granted following the admission of evidence establishing proper jurisdiction and notice.

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. 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. chs. 2001 and 2003.
3. Pursuant to TEX. OCC. CODE § 1103.403, Respondent was required to notify the Board of any change of his office address.

4. Pursuant to 22 TEX. ADMIN. CODE § 157.9(b), service of the notice of hearing upon Respondent was complete and effective upon proper mailing of the notice to Respondent's most recent address as shown by the records of the Board.
5. Staff provided proper notice of the hearing to Respondent. TEX. GOV'T CODE ANN. chs. 2001 and 2003.
6. Staff had the burden of proof on its allegations. 1 TEX. ADMIN. CODE (TAC) § 155.427.
7. The Board's rules require that appraisals must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) developed and published by the Appraisal Foundation and in effect at the time. 22 TAC § 155.1(a).
8. Based on the above Findings of Fact, Respondent committed multiple willful violations of USPAP with respect to his appraisal and corresponding report for the property located at 1008 Price Street, Taylor, Texas.
9. The Board is authorized to impose an administrative penalty against Respondent for violating the Board's rules or the USPAP standards. Code §§ 1103.518(2)(H) and 1103.552.
10. Based on the above Findings of Fact and Conclusions of Law, the Board should assess an administrative penalty of \$2,000.00 against Respondent. 22 TAC § 153.24(h).

SIGNED March 24, 2009.



RICHARD R. WILFONG
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS