

TEXAS APPRAISER LICENSING  
AND CERTIFICATION BOARD

vs.

FREDRICK BYRD  
TX-1329257-R

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

DOCKETED COMPLAINT NO.  
09-122

**FINAL ORDER**

On this 16<sup>th</sup> day of October, 2009, the Board considered the above-noted matter.

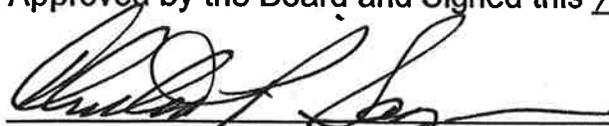
After proper notice was given, the above case was heard by an Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH). The ALJ made and filed a proposal for decision containing findings of fact and conclusions of law. The proposal for decision was properly served on all parties, 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 certification of Fredrick Byrd in this matter is hereby **REVOKED**, effective twenty days after the date Fredrick Byrd 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 16<sup>th</sup> day of October, 2009.



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

SOAH DOCKET NO. 329-09-4222.ALC  
(LICENSE NO. TX-1329257-R)

TEXAS APPRAISER LICENSING AND  
CERTIFICATION BOARD,  
Petitioner

V.

FREDRICK BYRD,  
Respondent

§  
§  
§  
§  
§  
§  
§  
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Appraiser Licensing and Certification Board<sup>1</sup> (Staff/Board) seeks to revoke the real estate appraiser license issued to Fredrick Byrd (Respondent). Staff alleges that Respondent violated the Board's rules by failing to comply with an Agreed Order. Respondent admitted to the allegations but said he has been unable to comply due to the difficult business climate. The Administrative Law Judge (ALJ) recommends that Respondent's license be revoked.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

On July 21, 2009, ALJ Tommy L. Broyles convened the hearing at the State Office of Administrative Hearings, William P. Clements State Office Building, 300 West 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. Staff Attorney Troy Beaulieu represented Staff. Respondent appeared *pro se*. The record closed on the same day.

Staff and Respondent stipulated those facts establishing jurisdiction and notice. Those matters are set out in the Findings of Fact and Conclusions of Law below.

---

<sup>1</sup> The Texas Appraiser and Licensing Certification Board is an independent subdivision of the Texas Real Estate Commission. TEX. OCC. CODE § 1103.051.

## II. DISCUSSION

The parties stipulated that Respondent has failed to comply with the 2008 Agreed Order he signed with the Board. More specifically, Respondent agreed that pursuant to the 2008 Agreed Order, he was to: (1) pay a \$5000.00 penalty and (2) to attend continuing education courses in USPAP and in report writing and case studies. He does not dispute that he has failed on all accounts. Rather, he only contests whether revocation is appropriate.

In support of his position, Respondent testified that he fully intended to comply with the 2008 Agreed Order when he signed it. However, his business declined with the recession, and he is behind on paying bills. Respondent stated he has even had a hard time having enough money to buy food. For this reason, he has been unable to pay the fine or to pay the fee to attend the classroom training. Because his failure to comply was not what he intended but was caused by his lack of money, Respondent asks for additional time to comply.

Staff noted that the 2008 Agreed Order is Respondent's third agreed order resulting from disciplinary action. Peter Mark Loftus, investigator for the Board, testified that in accordance with the Board's penalty matrix, the appropriate penalty for a 3<sup>rd</sup> time violation performed knowingly or willfully is revocation. Mr. Loftus opined that Respondent's present violation was knowingly or willfully committed and that his license should be revoked.

The ALJ agrees with Staff. Respondent testified that since 2007 his business has been almost non-existent and that he has been unable to make any money. However, he signed the 2008 Agreed Order on February 29, 2008, agreeing to attend the course work and to pay the fine. Respondent made these representations to settle alleged violations and has knowingly failed to comply with the 2008 Agreed Order. Moreover, this is Respondent's third violation of Board rules. After reviewing these factors, the Board's penalty matrix, and the Board's past actions in similar cases, the ALJ concludes Respondent's license should be revoked.

## III. FINDINGS OF FACT

1. Frederick Byrd (Respondent) holds, and held at all times material to the conduct alleged by Petitioner, real estate appraiser license number TX-1329257-R (license) issued by the Texas Appraiser License and Certification Board (Board).
2. Respondent's last address of record with the Board is: 8015 Coral Trail, San Antonio, Texas 78244.
3. On August 16, 2003, Respondent entered into an Agreed Final Order with the Board that was completed on August 18, 2003.
4. On May 5, 2006, Respondent entered into a second Agreed Final Order with the Board that was completed May 31, 2007.
5. On February 28, 2008, Respondent entered into a third Agreed Final Order (2008 Agreed Order) with the Board in Board Docketed Complaint No. 06-108. This agreed order required Respondent to: (a) complete certain remedial education and (b) pay the assessed administrative penalty.
6. Respondent failed to comply with both of the two required components of the 2008 Agreed Order.
7. On May 15, 2009, Staff sent Respondent its Original Statement of Charges (allegations) by certified mail to his last address of record on file with the Board.
8. On May 18, 2009, Staff sent its notice of hearing by certified mail to Respondent at his last known address of record on file with the Board.
9. The hearing notice contained a statement of the time, place, and nature of the hearing; a statement of 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.
10. The hearing on the merits convened on July 21, 2009, at the State Office of Administrative Hearings, William B. Clements Building, 300 West 15th Street, Austin, Texas.
11. Staff appeared at the hearing through Staff Attorney Troy Beaulieu. Respondent appeared *pro se*.

## IV. CONCLUSIONS OF LAW

1. The Texas Appraiser Licensing and Certification Board (Board) has jurisdiction over this matter. TEX. OCC. CODE ch. 1103.
2. The State Office of Administrative Hearings has jurisdiction over the hearing in this proceeding pursuant to TEX. OCC. CODE § 1103.508, 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 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 by certified mail to Respondent's most recent address as shown in the Board's records.
4. Staff provided proper notice of hearing to Respondent's most recent address in the Board's records. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052 and TEX. OCC. CODE § 1103.502.
5. Based on the above Findings of Fact, Respondent failed to comply with a final Board order, in violation of 22 TEX. ADMIN. CODE §§ 153.20(a)(21).
6. The Board is authorized to revoke the Respondent's appraiser license for violation of the Board's rules. TEX. OCC. CODE § 1103.518(2)(B).
7. Based on the above Findings of Fact and Conclusions of Law, the Board should revoke Respondent's real estate appraiser license.

SIGNED September 18, 2009.

  
\_\_\_\_\_  
TOMMY L. BROYLES  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS