

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

ROBERT ANTHONY CANALES
TX-1336168-L

§
§
§
§
§
§
§
§

DOCKETED COMPLAINT NO.
09-151

FINAL ORDER

On this 20th day of August, 2010, 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, which Petitioner did do. The ALJ reviewed the exceptions and any reply, granted the exceptions and modified her proposal for decision.

The Texas Appraiser Licensing and Certification Board, after review and due consideration of the proposal for decision, attached as Exhibit A hereto, adopts all findings of fact and conclusions of law numbers 1-9 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.

Conclusion of Law No. 10

Conclusion of law number 10 is modified to read, "Based upon the foregoing Findings of Fact and Conclusions of Law, the Board should suspend for three years and fully probate the suspension of Respondent's appraiser license subject to terms and conditions established by the Board and should assess an administrative penalty of \$500."

Legal Justification for Modification

The legal justification for this change is that the Board has authority to determine sanctions in administrative matters. 22 TEX. ADMIN. CODE §§153.24(9) establishes a penalty matrix for disciplinary cases and provides for administrative penalties as outlined therein. Consistent with prior decisions of the Board, an administrative penalty of \$500, in addition to the probated suspension of Respondent's license, is appropriate under these circumstances.

NOW, THEREFORE, IT IS ORDERED by the Texas Appraiser Licensing and Certification Board that Robert Anthony Canales is hereby assessed an administrative penalty of \$500 and the appraiser license of Robert Anthony Canales is hereby

SUSPENDED for thirty-six months, with this suspension being fully probated under the following conditions:

- 1) Every three months during the entire thirty-six month period, Respondent shall submit to the Board an appraisal experience log on a form prescribed by the Board. The log shall detail all real estate appraisal activities he has conducted during the previous three-month period. This experience log shall be signed by Respondent and contain a notarized affidavit attesting the log is true, complete and fully accurate. Upon request from the Board, Respondent shall provide copies of his appraisal reports and work files for any appraisal assignments he performs during the course of his period of probation within the twenty days of notice of any such request; and
- 2) Respondent shall:
 - a. attend and complete a minimum, 15 classroom-hour course in USPAP;
 - b. attend and complete a minimum, 15 classroom-hour course in Residential Case Studies;
 - c. attend and complete a minimum, 7 classroom-hour course in Valuation by Comparison: Residential Analysis and Logic (no examination shall be required for this course);
 - d. attend and complete a minimum, 7-classroom-hour course in Whatever Happened to Quality Assurance in Residential Appraisals: Avoiding Risky Appraisals and Risky Loans (no examination shall be required for this course); and
 - e. attend and complete a minimum, 15 classroom-hour course in Sales Comparison Approach.

ALL CLASSES required by this 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 twelve-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 licensure. Respondent is solely responsible for locating and scheduling classes to timely satisfy the terms of this agreement.

The \$500 administrative penalty in this matter shall be due within 30 days of the effective date of this Final Order.

Failure to timely comply with any of the terms of this Final Order shall result in initiation of a contested case proceeding against Respondent and, after opportunity for a hearing, possible imposition of disciplinary sanctions against Respondent as provided for by TEX. OCC. CODE §1103.518, including, but not limited to, revocation of probation and imposition of the suspension.

This order is effective twenty days after the date Robert Anthony Canales 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 20th day of August, 2010.



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

SOAH DOCKET NO. 329-10-0835.ALC

**TEXAS APPRAISER LICENSING AND
CERTIFICATION BOARD,**

Petitioner

V.

ROBERT A. CANALES,

Respondent

§
§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Appraiser Licensing and Certification Board (Staff/Board) brought this action to revoke real estate appraiser license number TX-1336168-L held by Robert A. Canales (Respondent), based on allegations that he violated the Texas Appraiser Licensing and Certification Act and the Board's rules. Specifically, Staff alleged that Respondent produced three appraisal reports that were deliberately misrepresentative and failed to conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as required. The Administrative Law Judge (ALJ) finds that the preponderance of the evidence establishes the alleged violations and recommends that Respondent's license be suspended, but that the suspension be fully probated, subject to terms and conditions established by the Board.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There were no contested issues of jurisdiction or notice. Therefore, those issues are set out in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing convened February 3, 2010, before Administrative Law Judge (ALJ) Ami L. Larson at the William P. Clements State Office Building, 300 West 15th Street, Austin, Texas. Staff was represented by its attorney Troy Beaulieu. Respondent appeared and represented

himself. The record closed on March 29, 2010, at the conclusion of the time allotted for the parties to submit closing briefs.¹

II. DISCUSSION

A. Overview of the Allegations and the Parties' Positions

This case concerns three appraisal reports prepared by Respondent in May 2006, for newly-constructed residential properties located in Houston, Texas.² For purposes of this Proposal, the appraisals and reports for those three properties shall be referred to collectively unless otherwise specified. All three of the subject properties appraised by Respondent are in the same neighborhood, and two are on the same street.

Respondent now holds a real estate appraiser license issued by the Board. At the time he conducted these appraisals, however, he was not yet licensed and was acting as an authorized appraiser trainee under the supervision of a licensed appraiser.

Staff's Original Statement of Charges consists of two overarching charges: In its first charge, Staff alleges Respondent violated TEX. OCC. CODE ANN. (Code) § 1103.405 and 22 TEX. ADMIN. CODE (TAC) § 155.1(a) by failing to comply with multiple USPAP standards in effect at the times he conducted the appraisals.³ In its second charge, Staff alleges Respondent is subject to

¹ Staff filed a closing brief, but Respondent did not.

² The subject property addresses are: 4906 Trailing Clover Court, Houston, Texas 77084; 4939 Trailing Clover Court, Houston, Texas 77084; and 4915 Dwarf Honeysuckle Court, Houston, Texas 77084.

³ Code § 1103.405 requires that licensed appraisers and Board-approved appraiser trainees must comply with the most current edition of the USPAP or other standards promulgated by the Board that are at least as stringent as USPAP. Board Rule 155.1(a) requires that an appraisal performed by a person subject to the Act must conform with the USPAP standards in effect at the time of the appraisal. 22 TAC § 155.1(a). Pursuant to 22 TAC § 155.20(a)(3), the Board may suspend or revoke the license of an appraiser at any time when it has been determined that the person has failed to comply with the applicable USPAP. The parties stipulated that the 2005 version of USPAP was the current edition at the time of the appraisals at issue here.

disciplinary action for making material misrepresentations and omissions of material facts in each of the three appraisals.⁴

According to Staff, Respondent's appraisal reports were inflated, misrepresentative, unreliable, and otherwise deficient. Staff argued that Respondent either deliberately inflated, or grossly incompetently performed, the appraisals. Either way, Staff argued, his license should be revoked. Additionally, Staff contended that Respondent should be permanently precluded from reinstatement of his license under Code § 1103.522.⁵

Respondent acknowledged that there were various errors in the way he completed the three appraisals at issue. He also noted that all three appraisal reports reflect the same errors because each report was for the same type of property and, therefore, he completed each one the same way. Respondent denied, however, that he deliberately inflated the value of the properties or engaged in any intentional wrongdoing. He asserted that, although he knows better now, he believed he was performing the appraisals correctly at the time he completed them. Respondent also noted that he was not yet licensed when he conducted these appraisals, and did not sign any of the resulting reports. Instead, he submitted those reports to his supervisor, a licensed appraiser, who signed the reports and was responsible for reviewing them. Respondent argued that he should be allowed to retain his license and continue his career as a real estate appraiser.

B. Applicable Law⁶

Appraiser trainees may appraise properties, under the active, personal and diligent supervision of one or more sponsoring certified⁷ appraisers and shall be subject to the USPAP in

⁴ 22 TAC § 153.20(a)(9)

⁵ Code § 1103.522 permits a person whose license has been suspended or revoked to apply for reinstatement and sets forth time frames for applying for reinstatement.

⁶ Staff indicated that, although amendments to the Act and Board's rules have taken place since the appraisals at issue were performed, the substance of the applicable law has not changed.

⁷ It is not clear from the record what, if any, difference there is between licensure and certification under the Appraiser Licensing and Certification Act. Both terms were used during the hearing without distinction and they are used

effect at the time of the appraisal.⁸ Board-approved appraiser trainees and license holders shall comply with the most current edition of the USPAP or other standards provided by Board rule that are at least as stringent as the USPAP.⁹ Certified appraisers who sponsor appraiser trainees and who sign a report shall be responsible to the public and to the Board for the conduct of the appraiser trainee under the Act.¹⁰ The Board may suspend or revoke a license issued under the Act at any time when it has been determined that the person holding the license has: (1) violated a provision of the Act or Board's rules; (2) failed to comply with the USPAP in effect at the time of the appraisal; or (3) made a material misrepresentation or omission of fact.¹¹ The Board has discretion in determining the appropriate penalty for violations of the Act and Board's rules and may probate a penalty or sanction, and impose conditions of probation.¹²

C. Summary of Evidence¹³

Staff offered into evidence the three appraisal reports at issue, as well as Respondent's corresponding work files, the investigator's reports and related documents, and a video of a Harris County non-custodial police interview with Respondent. Staff also called Respondent to testify and offered the testimony of its expert witness, Peter Mark Loftus, a certified real estate appraiser who is employed as an investigator for the Board.

Respondent testified on his own behalf and offered two exhibits consisting of his own written statement and a letter of recommendation.

interchangeably in this Proposal for Decision. 22 TAC § 153.1(32).

⁸ 22 TAC § 153.8 (April 1, 2001).

⁹ Code § 1103.405.

¹⁰ 22 TAC § 153.21 (March 20, 2006).

¹¹ 22 TAC §§ 153.20(a)(2),(3), and (9).

¹² 22 TAC §§ 153.20(b) and (c).

¹³ The majority of the evidence was undisputed.

Respondent received his real estate appraiser license in May 2006, and currently owns his own appraisal business. A residential real estate appraiser is responsible for evaluating the value of one or more homes in a given area by analyzing market, cost and income data and providing a written report that outlines the process he used to arrive at his conclusions. Appraisers in Texas, including authorized appraiser trainees, are required by law to comply with the minimum standards for development and reporting of appraisals as set forth by USPAP.

Most of the appraisals performed by Respondent are for mortgage finance purposes and are intended to help lenders determine the value of collateral for potential real estate loans. At the time of the appraisals at issue, Respondent was not yet certified, but was working as an authorized appraiser trainee under the supervision of licensed appraiser Randy Castillo.

At the time Respondent was authorized by the Board to practice as an appraiser trainee, he had been working for an appraisal management company for approximately two years, but had not received any education or training regarding appraisal practices or standards.¹⁴ By the time he completed the appraisals at issue, however, Respondent had received approximately 90 hours of training in appraisal practices and USPAP standards and had also received instruction on those topics by his supervisor. Additionally, Respondent had conducted approximately 300 appraisals before he conducted the appraisals at issue here.

Respondent agreed that he was primarily responsible for conducting these appraisals, and that he was close to the end of his 12-month training period when he did. However, he did not sign any of the corresponding reports. Instead, the reports were signed by his supervising sponsor, Randy Castillo.

The three approaches to determining value are the cost, sales, and income approaches. The cost approach involves analyzing data to determine value based on the cost to build a property minus depreciation plus the cost of the land. The sales comparison approach involves finding other

¹⁴ Although certain training is now required before the Board will authorize appraiser trainees, at the time of the

properties as similar as possible to the property being appraised. This is done in order to determine how the market has responded to those similar properties and would likely respond to the property being appraised. Factors considered in selecting comparable properties include location, gross living area, lot size, and age. Finally, the income approach is a process by which property value is determined by analyzing the property's income production, such as rental revenues.

All three of the subject properties for the appraisals at issue here are in the same neighborhood and two are on the same street. The same lender was involved for two of the properties. Respondent used only the sales and cost approaches for these three appraisals. He stated that the sales comparison approach is generally the most reliable approach for determining market value. However, because the appraisals at issue were for newly constructed homes, he opined that the cost approach should also be reliable for determining the value of those properties.

In Texas, the most typical way to search for comparable properties for the sales comparison approach is to use the Multiple Listing Service (MLS), which is an online database used by realtors to advertise and report various information about properties. The MLS may be searched to find properties based on certain criteria such as location or age. Each listing in the MLS contains specific information provided by real estate agents about the listed property, such as condition and size. Respondent explained that the term "bracketing sales" means searching for properties that are in a range close to the property being appraised for a specific feature or set of features. In conducting the appraisals at issue, Respondent stated that he consulted the MLS but was not able to find data for any sales in the same neighborhood as the properties he was appraising. Therefore, he relied on sales information sent from the builder, which he verified through HUD-1 closing statements he received from the lender.

Respondent acknowledged that, when he views the appraisal reports now, with the benefit of hindsight and his current level of knowledge, he realizes that they contain some errors. At the time he conducted the appraisals, however, he believed he was using the most reliable information

appraisals at issue, those requirements did not apply.

available. He is now aware that more reliable information was in fact available, but, at the time he completed those appraisals, he did not know how to find it.

Mr. Loftus works as an investigator appraiser for the Board, and is primarily responsible for investigating complaints against licensees. Mr. Loftus is certified by the Board as a real estate appraiser and has eight years of appraisal practice experience as a residential fee appraiser. Additionally, until recently, Mr. Loftus was also licensed by the Texas Real Estate Commission as a broker. Mr. Loftus stated that he has testified previously in SOAH and other court proceedings and has served as a consulting expert in various cases.

Mr. Loftus conducted an investigation of each of the three appraisals at issue conducted by Respondent. As part of his investigation, Mr. Loftus reviewed the Board's complaint, as well as Respondent's response, including Respondent's work files and the appraisal reports themselves. He also reviewed MLS and tax data and interviewed builders and agents in the area of the subject properties. Additionally, Mr. Loftus used a national data source to investigate the cost approach portions of the appraisals, and reviewed a DVD of non-custodial interview of Respondent by Harris County law enforcement officials. Mr. Loftus testified that he also went to the subject properties and photographed them. He personally viewed both the comparable properties used by Respondent and other comparable properties he located via MLS. Based on his investigation, Mr. Loftus concluded that, for each of the three appraisals, Respondent failed to comply with USPAP standards, and deliberately produced reports that were grossly inflated and were not credible or reliable.

As set forth below, both Mr. Loftus and Respondent¹⁵ specifically addressed Staff's allegations in this matter, including the various USPAP provisions alleged to have been violated by Respondent in each of the three appraisals.

¹⁵ Respondent did not specifically address each allegation, but his responses are included where applicable.

a. Ethics - Conduct¹⁶

Mr. Loftus testified that Respondent violated the USPAP Ethics standards by producing misleading appraisal reports. The reports were misleading because Respondent both omitted material facts and committed significant errors. Mr. Loftus drew this conclusion based on information and data he found during his investigation that would have been available to Respondent at the time he performed the appraisals. That information contradicts the information contained in Respondent's appraisal reports.

Respondent acknowledged that there were errors in the appraisal reports, but attributed them to his lack of knowledge about proper procedures. He denied knowingly or deliberately producing misleading reports.

b. Ethics – Record Keeping¹⁷

USPAP, Mr. Loftus explained, requires appraisers to prepare a work file for each appraisal that contains all of the data, information, and documentation necessary to support the appraiser's conclusions. Mr. Loftus testified that Respondent violated applicable USPAP standards by making representations in the appraisal reports at issue for which there is no supporting documentation in his work files.

Respondent indicated that he did not always keep MLS search or cost approach online program information in his work files, and that he did not retain that information for these appraisals. He noted, however, that he kept the HUD-1 statements and all other information required to be maintained. He explained that USPAP requires an appraiser to keep all data relevant to his or her findings, but that no appraiser keeps "every single thing." Respondent testified that was taught

¹⁶ Exh. P-5, page 7.

¹⁷ Exh. P-5, page 9.

to keep certain items and that those were the items he retained for appraisals he conducted, including these three.

c. Supplemental Standards¹⁸

Mr. Loftus testified that USPAP standards require appraisers to comply not only with USPAP itself, but also with other applicable supplemental standards, such as Fannie Mae guidelines regarding appraisal practices. In these appraisals, according to Mr. Loftus, Respondent's reliance on sales information from HUD-1 settlement statements involving the builder violated applicable Fannie Mae guidelines, which prohibit the selection of comparable properties that have been produced by an interested party. By failing to comply with the supplemental Fannie Mae guidelines, Respondent also failed to comply with USPAP.

Respondent testified that sales in new construction neighborhoods often are not published on the MLS. He conceded that the Fannie Mae guidelines constitute supplemental standards as referred to in USPAP and that those guidelines indicate that sales data from the developer or builder of a property should not be used if they are involved in the transaction. He explained, however, that the typical practice often deviates from that guideline. He further noted that he received the HUD-1 statements from the mortgage company and not the builder and that those transactions were not marketed among real estate agents or listed in MLS.

Respondent further noted that he had not received any training regarding the applicability or use of Fannie Mae guidelines as supplemental standards. Respondent indicated that, although he was aware of the existence of those guidelines, they rarely come into play. It has been his practice to rely on underwriters to advise him about whether something needed to be done according to a particular Fannie Mae guideline.

¹⁸ Exh. P-5, page 15.

d. Analysis of Economic Supply and Demand and Market Area Trends¹⁹

According to Mr. Loftus, Respondent failed to identify and analyze the effect on use and value of existing land use regulations, economic supply and demand, physical adaptability of the real estate, and market area trends as required by USPAP. Respondent's work files contained no comprehensive research which would support the contention that anything consistent with the neighborhood trends was collected or analyzed. Further, Mr. Loftus's review of MLS data,²⁰ using the neighborhood boundaries set forth in Respondent's appraisal reports, revealed a range of property values for the area in which the subject properties were located that were significantly lower than the ranges described in Respondent's reports.

Respondent admitted that, if he were doing those same appraisals today, he would use the same narrow neighborhood criteria that Mr. Loftus used to analyze and determine the neighborhood sales values. As a trainee, however, Respondent was taught to consider the broader area in which a home is located, without isolating a more specific limited area and comparable features, such as age and size. Because, for the appraisals at issue, Respondent looked only at sales figures within the broader area in which the subject properties were located, he found a wider price range for sales in the neighborhood than did Mr. Loftus.

e. Summary of Supporting Reasoning²¹

Mr. Loftus testified that Respondent violated USPAP standards by checking boxes in his reports to indicate certain information without including the required written explanation about how that information was determined.

¹⁹ USPAP Standards 1-3(a) and 2-2(b)(viii). P-5, page 19.

²⁰ Mr. Loftus testified that the MLS data he reviewed would have been available to Respondent in 2006 when he conducted these appraisals.

²¹ USPAP Standards 1-3(b) and 2-2(b)(ix). P-5, page 19.

f. Inappropriate Methods or Techniques in Cost Approach Analysis²²

Mr. Loftus concluded that Respondent used inappropriate methods or techniques in his cost approach analysis, including a failure to provide any support for his cost of new improvements in either his appraisal reports or work files. Further, according to Mr. Loftus, Respondent's cost of improvements determination is not, in fact, supported by the market data.

Mr. Loftus explained that he did a cost estimate for the properties at issue using "Marshall Valuation Service" for dates specific to the time of Respondent's appraisals. The cost values Mr. Loftus arrived at were between \$60 and \$70 per square foot, whereas the values noted by Respondent were substantially higher -- between \$80 and \$91 per square foot.

Mr. Loftus further noted that the validity of his cost approach value determinations was confirmed by the builder of the properties, Terramark Homes, who gave Mr. Loftus the actual sales prices for those properties. The actual sales prices were within \$2 per square foot of Mr. Loftus's estimates.

Additionally, Mr. Loftus stated that Respondent rated the quality of construction for the properties as being "good." During his investigation, however, Mr. Loftus obtained MLS photographs of the properties and was able to determine that the quality of construction was actually "average."²³ And, according to Mr. Loftus, Respondent had nothing in his work files to support his conclusions.

Respondent testified that he used a builder's cost online program for his cost approach analysis, although he acknowledged that he did not keep that information in his work files.

²² USPAP Standards 1-4(b), 2-2(b)(viii), and 1-1(a). P-5, pages 19 and 27.

²³ Mr. Loftus did not explain specifically the basis for this determination.

g. Inappropriate Methods or Techniques in Sales Comparison Approach²⁴

When using the sales comparison approach, Appraisers are required to analyze available comparable sales data to arrive at a conclusion about the value of a subject property. Respondent, however, failed to use MLS data that would have revealed the most accurate and appropriate comparable properties, according to Mr. Loftus. Instead, Respondent relied on incomplete HUD-1 documents based on sales reported by the builder, which reflected significantly inflated values.

Mr. Loftus explained that he found MLS data that would have been available to Respondent at the time he conducted the appraisals at issue. That MLS data showed that comparable properties were being sold in the same subdivision as the subject properties for significantly less than the values reflected in the HUD-1 documents upon which Respondent relied. Mr. Loftus also testified that, by conducting MLS searches using specific criteria, he was able to identify several properties that were at least as comparable, if not more so, than those used by Respondent for each of the three appraisals at issue. The sales prices associated with the comparable properties found on MLS for each of the three subject properties were substantially lower than the sales values reported by Respondent.

Respondent claimed that, while he was in training, he was taught to use HUD – 1 documents to obtain sales data for comparable properties. He explained that a lot of new construction sales do not go through real estate agents and, therefore, data concerning those sales is not posted on or available through MLS. Respondent testified that he was taught to work with the builder or other contact person to find similar sales in a new construction neighborhood and that is what he did in these cases.

²⁴ USPAP Standards 1-1(a), 1-4(a), and 2-2(b)(viii). Exh. P-5, page 19.

h. Failure to Analyze Agreement of Sale Including Seller's Concessions²⁵

Mr. Loftus testified that, although the specific information contained in each of the three appraisal reports varies, in each case Respondent omitted information that was required by USPAP to be revealed, such as seller concessions, *i.e.* money paid by the seller or a third party to help facilitate a closing transaction. Respondent indicated, in each of the appraisal reports, that he had analyzed the relevant sales agreements and that no financial assistance was paid by any party on behalf of the borrower.

However, Mr. Loftus explained that his investigation revealed seller concessions in the amounts of \$7,000 and \$14,000, paid to the borrower for two of the properties reviewed by Respondent. Those concessions were clearly listed on the purchase agreements for the properties, but were not disclosed in Respondent's appraisal reports.

Moreover, although Respondent claimed to have analyzed the purchase agreements for all three properties appraised, one of the corresponding work files contained no purchase agreement at all, and another contained only an incomplete agreement.

Respondent admitted that he knew, at the time he did the appraisals, that he was required to disclose seller concessions for both subject and comparable properties. He also conceded that there were seller concessions present in the comparables he used for the appraisals at issue, and that those concessions were listed on the HUD-1 settlement statements he relied upon. He was unable to explain why he failed to include that information in his appraisal reports, however, other than noting that he may not have known where to look for that information on the documents he had.

In addition to Respondent's omission of seller concessions, Mr. Loftus contended that some of the appraisal reports at issue contained misrepresentations. Mr. Loftus reiterated that Respondent

²⁵ USPAP Standards 1-5(a) and 2-2(b)(viii), Exh. P-5, pages 21; 26-27.

stated in his reports that he had analyzed the purchase agreements. Respondent's reports stated that the seller of the property was the owner of record. However, Mr. Loftus located tax data that would have been available to Respondent at the time of the appraisals, which revealed that the owners of public record were not, in fact, the sellers as listed in Respondent's reports.

Respondent agreed that he did not accurately list the owners of public record in his appraisal reports, but explained that, at the time, he believed the information he provided was accurate. He testified that, when he conducted the appraisals, he attempted, but was unable to locate any public records to indicate who owned the subject properties. Because he could not find that information in public records, he used other information, which he believed was reliable, but turned out to be inaccurate. He now realizes that there is always some type of public record available regarding property ownership, but he did not know how to find those records at that time. Respondent testified that it was his understanding that, if no public ownership records could be located, ownership information provided by the client or a title could be used instead.

Respondent also noted that the standard form provided by Fannie Mae to be used for residential appraisal reports was revised in 2005. The revised form was not required to be used, however, until some time in early 2006. Respondent testified that there was an interim period when both forms were accepted and his employer used the old version during that time. According to Respondent, the old version of the form simply asked for information regarding the "owner" and did not specify "owner of public record" as the revised form does. Respondent stated that he may have overlooked that these appraisals were done on the revised form. He contended that he did not intentionally misrepresent the information he provided in his reports.

Respondent also acknowledged that, after one of the reports had been completed, he received a follow-up fax requesting that the legal description reflected in the report be corrected. He conceded that the faxed request listed the correct owner of record for that property, which was Terramark Homes. He asserted, however, that because the fax concerned only a specific follow-up request and was sent after the report had been finished, he only looked at the pertinent information

regarding the legal description and did not notice the discrepancy between the owners of record listed in the fax and his report.

i. Failure to Analyze or Report Previous Sales²⁶

USPAP requires appraisers to analyze all sales of subject properties that occurred within three years prior to the effective date of the appraisal. Respondent did not consider or analyze the prior sales as required. According to Mr. Loftus, contrary to the information provided by Respondent in his reports, Terramark Homes, Ltd. was the builder and also the owner of record for each of the three subject properties at the time of the appraisals at issue. Each of the three properties had been sold twice within three years prior to the effective dates of the appraisal reports. First, the properties were sold by the developer.²⁷ Then, they were re-sold to Terramark Homes, Ltd. Mr. Loftus testified that Respondent's appraisal reports do not list the correct owner of record and fail to reveal, as required, either that the owner of record was actually the builder, or that the properties had been sold twice in the preceding three years.

j. Engaging in Substantial Errors of Commission or Omission Resulting in Deliberately Inflated, Misrepresentative, and Unreliable Reports²⁸

Mr. Loftus testified that Respondent was aware of, but chose to ignore, available MLS data regarding comparable properties and other information, such as data from other builders who were building in the same subdivision as the subject properties. That information, according to Mr. Loftus, would have revealed accurate information and lead to accurate appraisals. Respondent, however, opted to rely instead on incomplete and unreliable information as the basis for his findings.

²⁶ USPAP Standards 1-5(b) and 2-2(b)(viii), Exh. P-5, pages 21 and 26-27.

²⁷ It is unclear from the record to whom the developer made the initial sales.

²⁸ USPAP Standards 1-1(a), 1-1(b), 1-1(c), and 2-1(a); Exh. P-5, pages 16, 22.

In support of his contention that Respondent was aware of required USPAP standards but consciously decided to disregard them, Mr. Loftus pointed out that Respondent claimed to have accrued more than 2600 hours of appraisal work and prepared more than 300 appraisal reports before he completed the appraisals at issue. Additionally, in the month prior to his completion of the appraisals at issue, Respondent attended four training courses totaling approximately 90 hours of instruction regarding USPAP standards and general appraisal procedures.

Additionally, Mr. Loftus pointed out various sections in Respondent's appraisal reports in which he specifically referenced MLS data. According to Mr. Loftus, all of these facts demonstrate that Respondent was aware of the existence of MLS data at the time he completed these appraisals, but elected not to use it to obtain the most accurate information regarding comparable sales. Instead, Respondent relied on HUD-1 documents, which yielded sales figures that were \$80,000 - \$90,000 higher than the sales figures from more comparable properties available through the MLS.

Mr. Loftus also noted that Respondent not only failed to disclose the prior sales of the subject properties as required, but also failed to disclose prior sales of comparable properties as required by USPAP for the sales comparison approach.

Mr. Loftus hypothesized that the subject properties appraised by Respondent were part of a "simultaneous flip mortgage fraud model," which he described as a scheme involving the legitimate sale of a property to a buyer who then, almost simultaneously, tries to sell that property at an inflated price. The buyers in the second transaction are typically "straw buyers" who believe that they will make money from the transaction because they are not required to pay anything to make the initial purchase. Appraisers may facilitate such fraudulent schemes by ignoring accurate data and relying instead on dubious data to produce inflated determinations of value, which are then relied upon by lenders as a basis to approve a mortgage loans for the properties. The lender is misled into believing that the loan collateral is worth more than it really is, and the transactions often result in foreclosures, as was the case for each of the three subject properties here. According to Mr. Loftus, the loss to the lenders for the three properties appraised by Respondent was more than \$300,000.

Respondent denied any deliberate wrongdoing, and claimed that the mistakes he made were a

product of his fundamental lack of understanding about proper appraisal techniques. Respondent contended that he did not receive proper training and was not made aware of proper appraisal techniques either before or during the time he practiced as an appraiser trainee.

He acknowledged that he completed approximately 90 hours of courses regarding appraisal practices toward the end of his training period. He explained, however, that the courses he attended were held every day for two weeks and that he was not able to obtain the necessary information over a longer period of time in a way that would have allowed him to sufficiently understand and retain the information presented. Respondent added that he did not complete that training until a few weeks before he completed the appraisals at issue. He noted that, although he learned a lot during the training courses, at the time he completed these three appraisals a few weeks later, he had not had sufficient time to reconsider the way he had previously been taught to practice in light of the new information he received in those classes. He further opined that classes do not make a difference in the absence of proper training and practice, which he had not had.

Respondent further reiterated that he was a trainee at the time he completed these appraisals and that he did not sign any of the corresponding reports. Moreover, Respondent noted, his supervisor signed each of the three reports, after ostensibly reviewing them and finding no problems.

III. ANALYSIS AND RECOMMENDATION

Respondent did not fundamentally dispute Staff's allegations, but rather explained why he made the mistakes he did regarding the three appraisals at issue, and why he should be allowed to maintain his license notwithstanding those mistakes.

By his own admission, Respondent failed to comply with multiple USPAP standards as required when he conducted the three appraisals. Therefore, the ALJ finds that Respondent violated both the Act²⁹ and the Board's rules³⁰ and is subject to sanctions.³¹

²⁹ Code § 1103.405.

Respondent also acknowledged that he omitted or inaccurately represented the following information in the appraisal reports at issue: identity of the property owners of record, the existence of seller concessions for two of the three properties, and the fact that each subject property had been sold within the preceding three years. The evidence further establishes that those facts are material because they affected the veracity and reliability of the ultimate value conclusions made and reported by Respondent for the three subject properties. Accordingly, the preponderance of the evidence shows that Respondent is also subject to sanctions pursuant to 22 TAC § 153.20(a)(9).

Staff seeks to revoke Respondent's current certification and prevent him from being eligible for re-certification in the future. In support of its recommendation, Staff argued that, because Respondent had accrued significant training and experience by the time he completed these appraisals, his claims of ignorance about proper appraisal practices are not credible. Additionally, Staff argued that Respondent overlooked or ignored the most reliable and appropriate information available to him and used instead data of dubious reliability that consistently resulted in inflated values. Therefore, Staff argued, Respondent's "mistakes" must have been made deliberately for the purpose of reaching inflated value conclusions.

The ALJ finds that, based on this record, revocation of Respondent's license is not warranted or appropriate. Although Respondent's admitted mistakes were serious and resulted in serious financial harm to the lenders, the evidence is not sufficient to demonstrate that Respondent's violations were made knowingly or intentionally.

The ALJ places great significance on the fact that Respondent was a trainee at the time he completed these appraisals and that his supervising sponsor, who was a certified appraiser, signed each of the appraisal reports at issue without identifying or correcting any of the errors within them. These facts lend credibility to Respondent's claims that he was not trained properly and was merely

³⁰ 22 TAC § 155.1(a).

³¹ 22 TAC § 155.20(a)(3).

acting according to his training when he conducted these appraisals.

Similarly, the ALJ finds credible Respondent's explanation about why the training courses he completed three weeks prior to these appraisals did not cause him to change his erroneous practices when he completed these appraisals. Particularly if Respondent's supervisor had taught him incorrectly to that point, and had reinforced Respondent's incorrect practices by signing off on erroneous appraisal reports, it makes sense that a two-week seminar would be insufficient to cause Respondent to change what he had previously learned and been practicing about how to correctly perform appraisals.

The ALJ also finds it significant that no evidence was presented to suggest that Respondent benefitted or stood to gain in any way from his inflated value conclusions for the appraised properties.³² Similarly, there is no evidence to suggest that Respondent was aware of, much less a part of, any fraudulent sales scheme, as hypothesized by Mr. Loftus.

The ALJ agrees that Respondent made some serious mistakes in his appraisal reports, which had serious consequences. However, because Respondent's sponsoring appraiser, who, by law, is ultimately responsible to the public and the Board for Respondent's work, approved of the erroneous reports by signing them, it is unfair to punish Respondent for those errors by revoking his license.

Based on the totality of the evidence presented and the applicable law, the ALJ finds that Respondent's license should be suspended for a period of three years, but that the suspension should be fully probated and Respondent should be allowed to continue to practice as an appraiser during that period subject to his compliance with terms and conditions established by the Board.

³² The evidence establishes that the fee for each appraisal was \$350 of which Respondent received approximately \$240-280 for each. Exh. P-13, Bates 43.

IV. FINDINGS OF FACT

1. Robert A. Canales (Respondent) currently holds real estate appraiser license number TX-1336168-L, issued to him in May 2006, by the Texas Appraiser and Licensing Certification Board (Board).
2. On October 21, 2009, Staff sent Notice of Hearing to Respondent.
3. 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.
4. The hearing on the merits convened on February 3, 2010, at the State Office of Administrative Hearings, William P. Clements Office Building, 300 West 15th Street, Austin, Texas. Staff appeared through attorney Troy Beaulieu. Respondent appeared and represented himself. The record closed on March 29, 2010, to allow the parties to submit written closing arguments.
5. Before receiving his appraiser's license, Respondent was authorized by the Board to practice as an appraiser trainee under the sponsorship of a certified appraiser.
6. At the time he was authorized as an appraiser trainee, Respondent had not received any education or training regarding appraisal practices or standards.
7. Before becoming licensed as an appraiser, Respondent worked for approximately one year as an authorized appraiser trainee under the sponsorship and supervision of Randy Castillo, who was certified by the Board as a residential real estate appraiser under certificate number TX-1334675-R.
8. In March 2006, while working as an authorized appraiser trainee under the supervision of Mr. Castillo, Respondent conducted appraisals and prepared reports for three newly constructed residential properties located in the same neighborhood in Houston, Texas.
9. The Houston, Texas addresses of the subject properties appraised by Respondent as a trainee in May 2006 are: 4906 Trailing Clover Court, ; 4939 Trailing Clover Court; and 4915 Dwarf Honeysuckle Court (subject properties).
10. Respondent used the same methodology to conduct the appraisals of each of the subject properties because each property was of the same type.
11. Respondent conceded that the appraisal reports he produced for the subject properties contained multiple errors, including violations applicable USPAP standards with which he was required to comply.

12. Respondent did not sign any of the appraisal reports for the subject properties.
13. Respondent submitted the appraisal reports for the subject properties to Mr. Castillo, his supervising sponsor, who signed each of the reports without correcting, or notifying Respondent of, any errors contained in the reports.
14. Mr. Castillo failed to actively, personally, and diligently supervise Respondent during the time Respondent conducted appraisals of the subject properties.
15. Respondent's appraisals of the subject properties were for mortgage finance purposes to help lenders determine the value of the properties as collateral for real estate loans.
16. Approximately three weeks before completing the appraisals of the subject properties, Respondent completed approximately 90 hours of courses over a two-week period concerning appraisal practices and standards.
17. Respondent used the sales comparison and cost approaches to appraise the subject properties.
18. Respondent was familiar with the Multiple Listing Service (MLS) at the time he appraised the subject properties.
19. Relevant MLS data regarding sales of appropriate comparable properties was available at the time Respondent appraised the subject properties.
20. Respondent did not rely on MLS data to obtain comparable sales value information, but instead relied on HUD-1 closing statements he received from the lender regarding sales of properties that had been reported to him by the builder of the subject properties.
21. Respondent failed to maintain MLS or cost approach data he relied on in his work files for the appraisals of the subject properties.
22. In appraising the subject properties, Respondent failed to comply with applicable Fannie Mae guidelines, which prohibited the use of sales data from a builder or developer of a property if they are involved in the transaction.
23. The builder and owner of record of the subject properties at the time Respondent appraised them was Terramark Homes, Ltd.
24. Respondent failed to correctly identify the builder as the owner of record on the appraisal reports for the subject properties.
25. Respondent did not use sufficiently narrow criteria to properly analyze the market area trends, or economic supply and demand of the area in which the subject properties were located.

26. Respondent failed to reveal or adjust for the existence of seller concessions in the amounts of \$7,000 and \$14,000 for two of the subject properties.
27. Respondent's work files for two of the subject properties did not contain complete purchase agreements.
28. Respondent failed to analyze or report prior sales of the subject properties that had occurred in within three years prior to the effective dates of their corresponding appraisal reports.
29. The errors committed by Respondent in his appraisals of the subject properties resulted in inflated value determinations for each of the properties.
30. Respondent did not receive adequate training or supervision as an appraiser trainee.
31. The appraisal reports for the subject properties contained substantial errors including the omission of material information and the inclusion of inaccurate information.
32. Respondent did not knowingly or intentionally omit material information or include inaccurate or misleading information in the appraisal reports for the subject properties.
33. Respondent did not benefit from the errors he made in the appraisals of the subject properties.

V. 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. Respondent received adequate and timely notice of the hearing, as required by TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Staff had the burden of proof on its allegations. 1 TEX. ADMIN. CODE (TAC) § 155.427.
5. Appraisals must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) in effect at the time the appraisal is performed. Code § 1103.405 and 22 TAC § 155.1(a).
6. Based on the above Findings of Fact, Respondent violated multiple applicable USPAP Standards in effect in 2005.

7. Based on the above Findings of Fact and Conclusions of Law, Respondent violated Code § 1103.405 and 22 TAC § 155.1(a).
8. Based on the above Findings of Fact and Conclusions of Law, Respondent may be disciplined by the Board for the material misrepresentations and omissions of material facts contained in his appraisals of the subject properties. 22 TAC § 153.20(a)(9).
9. The Board may suspend or revoke the certification of an appraiser who has failed to comply with the applicable USPAP Standards. Code § 1103.518(2)(B) and 22 TAC § 155.20(a)(3).
10. Based on the foregoing Findings of Fact and Conclusions of Law, the Board should suspend for three years and fully probate the suspension of Respondent's appraiser license subject to terms and conditions established by the Board.

SIGNED May 27, 2010.

**AMI L. LARSON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**