

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD ("BOARD")

V.

TANISHA CARTER
TX-1333998-L

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§

BEFORE THE TEXAS
APPRAISER LICENSING AND
CERTIFICATION BOARD

DOCKET NO.
329-12-4786.ALC

FINAL ORDER

On this 17th day of August, 2012, the Board considered the above-styled case.

After proper notice was given, the above-styled case was heard by an Administrative Law Judge at the State Office of Administrative Hearings who made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law. This 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 exceptions or replies were filed to the Proposal for Decision.

The 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 Administrative Law Judge 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.

IT IS THEREFORE ORDERED by the Texas Appraiser Licensing and Certification Board that the license of Tanisha Carter is hereby **REVOKED**, effective twenty days after the date Tanisha Carter is notified of this Final Order.

IT IS FURTHER ORDERED that Tanisha Carter is assessed an administrative penalty of \$1,000.

If enforcement of this Final Order is restrained or enjoined by an order of a court, this Final Order shall then become effective upon a final determination by said court or appellate court in favor of the Board.

Approved by the Board and signed this 17th day of August, 2012.



Luis De La Garza, Chairperson
Texas Appraiser Licensing and Certification Board

SOAH DOCKET NO. 329-12-4786.ALC

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
TANISHA CARTER,	§	
TX-1333998-L,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Appraiser Licensing and Certification Board (Staff/Board) brought action against Tanisha Carter (Respondent) seeking to revoke her real estate appraiser license and impose a \$5,000 administrative penalty for allegedly violating the Texas Appraiser Licensing and Certification Act, Texas Occupations Code ch. 1103 (the Act) and the Board's rules. Specifically, Staff alleged that Respondent failed to comply with the terms of a prior Agreed Final Order entered into by Respondent and the Board.

The Administrative Law Judge (ALJ) finds that Respondent committed the alleged violation. The ALJ recommends that Respondent's license be revoked and that Respondent be assessed an administrative penalty of \$1,000.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, these matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing was convened on April 2, 2012, before ALJ Hunter Burkhalter, in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Staff was represented by attorney Kyle Wolfe. Respondent appeared *pro se*. Staff presented documentary

evidence, called Respondent as a witness, and also presented testimony from Board investigator Jeff Strawmyer. Respondent also presented some documents and testified on her own behalf. The hearing concluded and the record was closed on the same day.

II. DISCUSSION

A. Undisputed Facts

The following facts are undisputed by the parties. Respondent is a state licensed real estate appraiser, license number TX-1333998-L (License).¹

This is the third in a series of enforcement actions brought by the Board against Respondent. In 2009, Respondent and the Board entered into an Agreed Final Order (Order No. 1). The purpose of that order was to settle enforcement proceedings brought by the Board against Respondent based upon allegations that she had performed a number of appraisals in a manner that violated requirements of the Act and the Board's rules. The terms of Order No. 1 required that: (1) Respondent's License would be suspended for two years (with the first three months being a full suspension and the remaining one year and nine months being a probated suspension); (2) during the two-year suspension, Respondent would submit quarterly "appraisal experience logs" to the Board; (3) within six months of the effective date of Order No. 1, Respondent would take and pass a re-examination for her License; (4) Respondent would pay a \$3,000 administrative penalty (consisting of monthly payments of \$150); and (5) Respondent would attend and complete 90 hours of continuing education courses. Order No. 1 further specified that if Respondent failed to comply with any of its terms, then the Board would revoke her License. Order No. 1 became effective on February 20, 2009.²

¹ Staff Ex. 1.

² Staff Ex. 2.

Several months later, the Board initiated a new enforcement action against Respondent, after she had failed to comply with the requirements of Order No. 1. A contested case hearing was held at the State Office of Administrative Hearings (SOAH) in 2010, and a Proposal for Decision (PFD) was issued in which the presiding Administrative Law Judge (ALJ) confirmed that Respondent had failed to comply with the terms of the Order No. 1. However, the ALJ concluded that Respondent's failure to comply was due to injuries she had received in an automobile accident on March 6, 2009. Therefore, the ALJ declined to recommend revocation of Respondent's License. Instead, the ALJ recommended that the Board extend the deadline for Respondent to comply with the terms of Order No. 1 "by six or seven months."³ The Board accepted the ALJ's recommendation and issued a Final Order, dated May 21, 2010 (Order No. 2). In Order No. 2, the Board granted Respondent "an extension of 7 months to satisfy the requirements contained in [Order No. 1]."⁴

The ALJ notes that the verbiage of the extension in Order No. 2 is ambiguous. It is unclear from the text whether: (1) the seven-month extension runs from the various deadlines in Order No. 1, such that, for example, Respondent would have to have passed a re-examination for her License by March 20, 2010 (*i.e.*, six months after Order No. 1 plus an additional seven months); or (2) the seven-month extension runs from the date of Order No. 2, such that Respondent would have to have passed a re-examination for her License by December 21, 2010 (*i.e.*, seven months after Order No. 2). However, at the hearing, the parties agreed that the latter approach is the correct one. That is, the parties agreed that all applicable deadlines set forth in Order No. 1 were extended, via Order No. 2, to December 21, 2010.

On three separate occasions in early 2011, Respondent took the State Licensed Residential Appraiser examination, but received a failing grade each time.⁵

³ Staff Ex. 2 at 26-35.

⁴ Staff Ex. 2 at 38.

⁵ Staff Ex. 6.

The third (and current) enforcement proceeding against Respondent was initiated by Staff on April 4, 2011, after Staff determined that Respondent still had not complied with the terms of Order No. 1 as extended by Order No. 2. Specifically, Staff alleges that Respondent has not passed the State Licensed Residential Appraiser examination, and has not filed all required quarterly appraisal experience logs.⁶

B. Jeff Strawmyer's Testimony

Mr. Strawmyer is employed as an investigator for the Board. He explained that, in the course of his investigation of the numerous complaints against Respondent that led to the original enforcement proceeding, he and Staff became convinced that she lacked the requisite knowledge and skill to be an appraiser. Because of these concerns, the Board, in Order No. 1, required that Respondent complete a 90 hours of continuing education coursework and re-take the State Licensed Residential Appraiser examination. The goal, according to Mr. Strawmyer, was to ensure that Respondent gained the necessary knowledge and skills to be an appraiser. He testified that if Respondent cannot pass the exam, she should not be working as an appraiser in Texas.

Mr. Strawmyer testified that, after the issuance of Order No. 2, Respondent failed to comply with the orders in two respects. First, she submitted no quarterly experience logs during the period from March 2010 through February 2011. Second, Respondent failed to pass the exam within the required time frame.

The exam is not administered directly by the Board. Rather, it is administered through a company called PSI, a third-party under a contract with the Board. Mr. Strawmyer explained that PSI will not accept an application from a person wishing to take the exam until it receives notice from the Board that the person is eligible to take the exam. Mr. Strawmyer acknowledged that, at some point in the latter part of 2010, Respondent applied with PSI to take the test, but was denied because PSI had not been notified by the Board that she was eligible to take it. Respondent then

⁶ Staff Ex. 8.

complained to Staff that she was not being allowed to register for the exam. Mr. Strawmyer testified that, within roughly one week of being notified by Respondent, the Staff had corrected the internal error and notified PSI that she was eligible, thereby enabling Respondent to register for the exam. He testified that the error was corrected in late October 2010. Documentation provided by Staff corroborates Mr. Strawmyer's testimony on this point. Those documents indicate that, on September 29, 2010, Respondent emailed her then-attorney to notify her that PSI had not allowed her to register for the exam. Roughly one month later, on October 21, 2010, the attorney forwarded Respondent's email to Staff and asked that the problem be rectified. On October 27, 2010, Staff corrected the problem, thereby making Respondent eligible to take the test. Staff sent a letter to Respondent's counsel on October 29, 2010 explaining that Respondent was now eligible for the test.⁷

Mr. Strawmyer offered the opinion that Respondent's License should be revoked and she should be assessed an administrative penalty. He declined to offer an opinion as to what the size of the penalty should be, saying that he "usually leaves that to the lawyers."

C. Respondent's Testimony

Respondent conceded that she did not take the exam by the extended deadline of December 21, 2010 as contemplated by Order No. 2. She contended that she was not able to take the exam before the deadline because of the error in communication between the Board and PSI. She testified that, between May 27, 2010 and October 21, 2010, she made several unsuccessful attempts to register for the exam, and she made several calls to the Board to attempt to rectify the problem. She contends that the seven-month extension in Order No. 2 should be recalculated. In other words, she contends that the seven-month extension should be deemed to begin running from October 28, 2010, the date the registration error was cured by the Board and she became eligible to take the exam. This would have given her until May 27, 2011, to pass the exam.

⁷ Staff Ex. 12 at 118-125.

Respondent testified that she fully complied with the requirement to submit quarterly appraisal experience logs to the Board since issuance of Order No. 2, but she could not document that fact. She did produce one log for the month of January 2011, on which she stated that she has done no appraisal work from January 27, 2010, through January 27, 2011.⁸

Respondent acknowledged that she took the exam three times in January and February 2011 and failed each time. Finally, she asserted that, other than the requirement to pass the exam, she complied with all the requirements of Order No. 1.

D. ALJ's Analysis

The preponderance of the evidence establishes that Respondent failed to comply with the requirements of Final Orders No. 1 and 2, in two respects. First, she failed to file three of the four quarterly logs that were required for the period between March 2010 and February 2011. Respondent produced a copy of one log that was dated January 2011. Although she claimed to have filed the other logs, she could produce no documentation to support the claim. Mr. Strawmyer, on the other hand, testified that the logs were not filed. On balance, this evidence indicates that it is more likely than not that Respondent failed to file the required logs.

Second, it is undisputed that Respondent failed to pass the required exam by December 21, 2011, the extended deadline as contemplated in Order No. 2. It is regrettable that her ability to take the exam was delayed by a clerical error on Staff's behalf. However, the evidence indicates that Staff promptly rectified the error as soon as they were notified of it by Respondent's counsel. As a result, there was a sufficient period of time – from October 27 to December 21, 2010 – during which Respondent could have timely taken and passed the exam.⁹ For this reason, the ALJ declines Respondent's request to extend the deadline for her to pass the exam for an additional seven months. Furthermore, it is noteworthy that Respondent took, but failed, the exam three times shortly after the

⁸ Ex. C-1.

⁹ The parties agreed at the hearing that the exam is offered throughout the year, largely at the convenience of the taker.

deadline. This leads the ALJ to conclude that the outcome would have been no different if Respondent had sat for the exam in late 2010.

By its express terms, Order No. 1 empowers the Board to revoke Respondent's License if she failed to comply with the requirements of the order. Moreover, the Board is empowered by rule to revoke Respondent's License if she fails to comply with a final order of the Board. 22 Tex. Admin. Code § 153.20(a)(23). Having concluded that Respondent failed to comply with a final order, the ALJ recommends that Respondent's License be revoked.

In addition to revocation, Staff seeks the assessment of a \$5,000 administrative penalty. Staff offered no evidence or argument to justify the amount of \$5,000. By statute, the Board may impose an administrative penalty "in an amount not to exceed" (1) \$1,500 for each violation; or (2) \$5,000 for multiple violations proved in one contested case. Tex. Occ. Code §§ 1103.518(2)(H) and 1103.552(a). Presumably, Staff is requesting \$5,000 based upon the premise that Respondent committed two violations. The ALJ disagrees. Respondent committed one violation: she failed to comply with the terms of a Final Order of the Board in violation of 22 Tex. Admin. Code § 153.20(a)(23).¹⁰ Thus, the maximum possible administrative penalty that could be assessed against her is \$1,500.

The Board's penalty matrix, which is incorporated into 22 Texas Administrative Code § 153.24(9), establishes the parameters of sanctions imposed for violations of the Act or rules. For a second violation¹¹ that constitutes evidence of a serious deficiency on Respondent's part, the matrix recommends an administrative penalty of \$500 to \$1,500 per violation. Moreover, the amount of the penalty can be reduced or increased based on factors such as the seriousness of the violation and the degree of harm to the public. 22 Tex. Admin. Code § 153.24(9)(B)(i). In this case, the "degree of harm to the public" is nil, because Respondent testified that she has performed no appraisal work since entry of the orders against her. Accordingly, the ALJ recommends that Respondent be assessed

¹⁰ Notably, Staff's Original Statement of Charges alleges only one violation.

¹¹ The ALJ concludes that this is Respondent's second confirmed violation. The first was determined in Order No. 1. No violation was found in Order No. 2. Rather, that order merely extended Respondent's compliance deadlines.

an administrative penalty of \$1,000, which is squarely in the mid-range of penalty amounts authorized by the Board's penalty matrix for violations of this kind.

III. FINDINGS OF FACT

1. Tanisha Carter (Respondent) is a state licensed real estate appraiser who holds license number TX-1333998-L (License) issued by the Texas Appraiser Licensing and Certification Board (Board).
2. The Board's Staff (Staff) brought this enforcement action against Respondent to revoke her License and impose administrative penalties for violating the requirements of a prior Agreed Final Order issued by the Board.
3. The Board sent notice of the hearing to Respondent on March 2, 2012.
4. The notice 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.
5. The hearing was convened on April 2, 2012, before Administrative Law Judge Hunter Burkhalter, in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Both parties appeared. The hearing concluded and the record was closed on the same day.
6. In 2009, Respondent and the Board entered into an Agreed Final Order (Order No. 1) in order to settle an enforcement case brought by Staff against Respondent. The effective date of Order No. 1 was February 20, 2009.
7. Pursuant to Order No. 1, Respondent was required to, among other things: (1) submit quarterly appraisal experience logs (the logs) to the Board for two years; and (2) take and pass a re-examination for her License within six months.
8. Order No. 1 specified that if Respondent failed to comply with its terms her License would be revoked by the Board.
9. On May 21, 2010, the Board issued a Final Order (Order No. 2) which extended the deadlines in Order No. 1 by seven months.
10. Pursuant to Order No. 2, Respondent was required to take and pass a re-examination for her License by no later than December 21, 2010.

11. Respondent failed to take the exam for her License by the December 21, 2010 deadline.
12. In January and February 2011, Respondent took, and failed, the exam three times.
13. Respondent failed to file three of the four quarterly logs that were required for the period between March 2010 and February 2011.
14. Because Respondent has performed no appraisal work since entry of the orders against her, no harm to the public was caused by her violation of the terms of Orders Nos. 1 and 2.

IV. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, Texas Occupations Code chapter 1103 (the Act).
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law, pursuant to Texas Government Code chapter 2003.
3. Proper and timely notice was provided to Respondent pursuant to the Administrative Procedure Act, Texas Government Code chapter 2001.
4. Staff has the burden of proof, pursuant to 1 Texas Administrative Code § 155.427.
5. Respondent violated the express terms of Order No. 1 as modified by Order No. 2.
6. Based on the above Findings of Fact and Conclusions of Law, the Board is empowered to revoke Respondent's License. 22 Tex. Admin. Code § 153.20(a)(23).
7. The Board may impose an administrative penalty "in an amount not to exceed" \$1,500 for each violation. Tex. Occ. Code §§ 1103.518(2)(H), and 1103.552(a).
8. The Board's penalty matrix, which is incorporated into 22 Texas Administrative Code § 153.24(9), establishes the parameters for sanction to be imposed for violations of the Act or rules.
9. For a violation such as Respondent's, the matrix recommends an administrative penalty of \$500 to \$1,500 per violation. Moreover, the amount of the penalty can be reduced or increased based on factors such as the seriousness of the violation and the degree of harm to the public. 22 Tex. Admin. Code § 153.24(9)(B)(i).
10. The Board has the authority and cause to revoke Respondent's License.

11. The Board has the authority and cause to assess an administrative penalty of \$1,000 against Respondent.

SIGNED May 24, 2012.



HUNTER BURKHALTER
ADMINISTRATIVE LAW JUDGE/MEDIATOR
STATE OFFICE OF ADMINISTRATIVE HEARINGS