

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

RANDY R. CASTILLO
TX-1334675-R

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BEFORE THE TEXAS
APPRAISER LICENSING AND
CERTIFICATION BOARD

DOCKET NO.
329-10-0834.ALC

FINAL ORDER

On this 20th day of May, 2011, 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. Staff filed exceptions and the respondent filed a response; the ALJ declined to modify 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, the evidence in the record, and the provisions of Tex. Occ. Code §§1103.405 and 1103.518 and 22 TEX. ADMIN. CODE §§153.20, 153.24 and 155.1, modifies the conclusions of law of the ALJ contained in the proposal for decision and issues this Final Order for the reason outlined below in accordance with TEX. GOV'T CODE §2001.058(e). The findings of fact and conclusions of law numbers 1-7 of the PFD are adopted without modification as if such were fully set out and separately stated in this Final Order. Conclusions of law numbers 8 and 9 are modified as indicated herein. 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. 8

Conclusion of law number 8 is modified to read, "Based on the foregoing Findings of Fact and Conclusions of Law, the Board should suspend Respondent's appraiser certification for five years and probate the last three years of the suspension subject to terms and conditions established by the Board, including the condition that Respondent not be allowed to supervise any appraiser trainees for the remainder of his licensure."

Conclusion of Law No. 9

Conclusion of law number 9 is modified to read, "Based on the foregoing Findings of Fact and Conclusions of Law, the Board should assess an administrative penalty of \$5,000."

Legal Justification for Modifications

The legal justification for these changes is that, pursuant to 22 TEX. ADMIN. CODE §§153.20(b) and other law, the Board has discretion in determining the appropriate penalty for any violation under section 153.20(a), subject to the guidelines outlined in the penalty matrix, 22 TEX. ADMIN. CODE §153.24. Under these circumstances, suspension for a period of five years, with the last three years probated, and an administrative penalty of \$5,000 is appropriate.

NOW, THEREFORE, IT IS ORDERED by the Texas Appraiser Licensing and Certification Board that the appraisal certification of RANDY R. CASTILLO is hereby **SUSPENDED** for a period of five years, with the last three years probated, effective twenty days after the date RANDY R. CASTILLO is notified of this Final Order.

IT IS FURTHER ORDERED that RANDY R. CASTILLO is prohibited from supervising any appraiser trainees for the remainder of his licensure.

IT IS FURTHER ORDERED that RANDY R. CASTILLO is assessed an administrative penalty of \$5,000, due no later than one year after the effective date of this order.

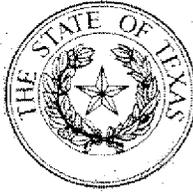
If enforcement of this Final Order is restrained or enjoined by an order of a court, this order shall become effective upon a final determination by said court or appellate court in favor of the Texas Appraiser Licensing and Certification Board.

Approved by the Board and signed this 20th day of May, 2011.



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

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

April 18, 2011

Douglas E. Oldmixon
Administrator
Texas Appraiser Licensing and Certification Board
1101 Camino La Costa
Austin, Texas 78752

INTER-AGENCY

RE: Docket No. 329-10-0834.ALC; Texas Appraiser Licensing and Certification Board, Petitioner v. Randy R. Castillo, Respondent

Dear Mr. Oldmixon:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Lilo D. Pomerleau".

Lilo D. Pomerleau
Administrative Law Judge

LDP:nl

Enclosure

xc: Sadiyah A. Evangelista, Attorney, P.O. Box 1092, Houston, TX 77251 – VIA REGULAR MAIL
Troy Beaulieu, 1101 Camino La Costa, Austin, TX 78752 – (with 1 hearing CD; Certified Evidentiary Record) VIA-INTER-AGENCY

SOAH DOCKET NO. 329-10-0834.ALC

TEXAS APPRAISER LICENSING AND
CERTIFICATION BOARD,
Petitioner

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BEFORE THE STATE OFFICE

OF

V.

RANDY R. CASTILLO,
Respondent

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-1334675-R held by Randy R. Castillo (Respondent), based on allegations that he violated the Texas Appraiser Licensing and Certification Act and the Board’s rules. Specifically, Staff alleged that Respondent, who was supervising a trainee appraiser, signed three appraisal reports performed by the trainee 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 for five years, but that the suspension be probated for the last four years and six months of the five-year term, subject to terms and conditions established by the Board. Additionally, the ALJ recommends that Respondent pay an administrative penalty and be prohibited from supervising appraiser trainees while he remains licensed as an appraiser.

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.

The hearing convened February 11, 2011, before ALJ Lilo D. Pomerleau at the William P. Clements State Office Building, 300 West 15th Street, Austin, Texas. Staff was represented by its attorney Troy Beaulieu. Respondent was represented by his attorney, Sadiyah A. Evangelista. The record was left open until February 18, 2011, to allow the parties time to submit additional briefing.

II. DISCUSSION

A. Brief Overview

This case concerns three appraisal reports prepared in May 2006 for newly-constructed residences located in Houston, Texas, at 4906 Trailing Clover Court; 4939 Trailing Clover Court; and 4915 Dwarf Honeysuckle Court.

The three homes are in the same neighborhood. The appraisals were part of a large mortgage fraud scheme investigated and ultimately prosecuted by the Harris County District Attorney's Office (Harris County DA). The entire scheme involved 40 properties and related losses of \$2 to \$3 million. At the time of the hearing, 22 people had been indicted, with all but one of those cases successfully prosecuted. Respondent was not indicted.

Concerning the three properties in this case, there is no dispute that the appraisals were significantly over-valued and that the person who appraised the properties used inappropriate methods or techniques in their analysis, including a failure to provide any support for various findings in either the appraisal reports or workfiles. Bank losses related to the three properties were estimated at \$700,000.

During the fraud investigation, on separate occasions, Respondent and Robert A. Canales, an appraiser trainee who was being supervised by Respondent at the time, met with a Harris County DA and an investigator. Mr. Canales admitted to the Harris County DA that he performed the appraisals. However, the appraisals contain Respondent's signature not Mr. Canales'.

Staff's Original Statement of Charges consists of two charges:

1. Respondent violated TEX. OCC. CODE ANN. (Code) § 1103.405 and 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by failing to comply with multiple USPAP standards in effect at the times the appraisals were conducted;¹ and

¹ 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

2. Respondent is subject to disciplinary action for making material misrepresentations and omissions of material facts in each of the three appraisals.

On January 25, 2011, Staff filed a Supplemental Statement of Charges adding allegations that:

1. Respondent made material misrepresentations and omissions of material facts by indicating in the three appraisal reports that he alone conducted the appraisal reports, the inspection and the data research and analysis, in violation of 22 TEX. ADMIN. CODE § 153.20(a)(9) and 153.20(a)(3) and 155.1, which required him to disclose his trainee's involvement in the appraisals; and
2. Respondent failed to actively, personally, and diligently supervise Mr. Canales, an appraiser trainee, at the time the appraisal reports were written.

Staff offered the appraisal reports, its expert witness' investigative report, recordings of the Harris County DA interviews, and related documents into the record. Staff also called Respondent to testify and offered the testimony of its expert witness, Mark Loftus.²

B. Applicable Law

Appraiser trainees may appraise properties, under the active, personal, and diligent supervision of one or more sponsoring certified appraisers and are subject to the USPAP in effect at the time of the appraisal.³ Diligent supervision includes, but is not limited to:

1. direct supervision and training as necessary;
2. ongoing training and supervision as necessary after the sponsor determines that the trainee no longer requires direct supervision;

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 TEX. ADMIN. CODE § 155.1(a). Pursuant to 22 TEX. ADMIN. CODE § 153.20(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.

² Mr. Loftus is a state certified residential appraiser and an investigator for the Board. He also has 17 years of experience as a salesperson and broker.

³ 22 TEX. ADMIN. CODE § 153.8 (April 1, 2001). This Proposal for Decision applies the laws and USPAP standards in effect during the May 2006 appraisals.

3. communication with and accessibility to the trainee; and
4. review and quality control of the trainee's work.⁴

Appraisers who sponsor appraiser trainees and sign the trainee's appraisal reports are required to be responsible to the public and to the Board for the conduct of the appraiser trainee.⁵ 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.⁶ 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.⁷

C. Evidence Concerning the Appraisals

Respondent testified that 99% of the appraisals he performs are for mortgage finance purposes. Appraisals are necessary to determine the value of collateral for a mortgage finance transaction, a loan allowing the seller to purchase real estate. According to Respondent, an appraiser is the "eyes to the asset" for the lender, which has no way of knowing the value of the property.

Respondent is a self-employed real estate appraiser, now living in the Dallas area. He has been a licensed appraiser for approximately 11 years. He became an appraiser trainee when working for the McGregor/Eckols Group (now Verappraise) in Dallas. When Verappraise opened a branch in Houston, he was the sole appraiser in the branch office. In 2005, Respondent earned a residential state certified appraiser license (the highest level of licensure for a residential appraiser).

⁴ 22 TEX. ADMIN. CODE §§ 153.21(g) and 153.20(15).

⁵ 22 TEX. ADMIN. CODE § 153.21

⁶ 22 TEX. ADMIN. CODE § 153.20(a)(2),(3), and (9).

⁷ 22 TEX. ADMIN. CODE § 153.20(b) and (c).

The Verappraise partners hired Mr. Canales as a trainee in 2005, but let him go shortly thereafter. Mr. Canales moved to Houston and, on April 4, 2005, he applied for approval as an appraiser trainee under the sponsorship of Respondent. At that time Respondent was still working for Verappraise but Mr. Canales was not. Mr. Canales' application included a notarized Sponsor's Certification, signed by Respondent, which states the following:

I hereby agree to sponsor the above named person as an Appraiser Trainee. I have reviewed the application and to the best of my knowledge the information is true, correct and complete. I have carefully investigated this person and in my opinion, the person is honest, trustworthy and a person of integrity. . . . If this applicant is granted Appraiser Trainee status, I agree to be responsible for the person's professional conduct and to have the trainee perform appraisals only under my active, personal and diligent direction and supervision. I agree to actively, personally and diligently supervise and direct the appraiser trainee and to sign the trainee's reports, until such time as I notify both the Texas Appraiser Licensing and Certification Board and the appraiser trainee, in writing, that our association has been terminated. (Emphasis in the original.)⁸

Respondent acknowledged that, as a supervisor, he was responsible for "teaching [Mr. Canales] the ropes," including inspecting houses and selecting comparables. He stated that he initially went with Mr. Canales to the property sites and assisted him in the field work, including the choice of three candidate properties for comparables. However, as Mr. Canales grew more proficient, Respondent's supervision consisted of reviewing the trainee's appraisals and workfiles. Respondent testified that he received from Mr. Canales \$50 for every appraisal performed by Mr. Canales and reviewed by him.

In May 2006, when the three appraisals were performed, Mr. Canales had been conducting appraisals with Respondent for almost a year. As stated above, the three appraisals were used in a mortgage fraud scheme, which was investigated by the Harris County DA. Because the appraisals were signed by Respondent, he was interviewed by the DA and the fraud investigator. Respondent told the DA and the investigator that Mr. Canales did the actual inspections and the appraisals for the three properties, but he had reviewed all the paperwork. He brought to the interview some paperwork associated with two of the three properties. And Respondent stated that when he and Mr. Canales went over the work, it surprised him that the

⁸ Staff Ex. 26, Bates 672.

lender came back with a fourth comparable. According to Respondent, at the time the appraisals were conducted, Mr. Canales was entirely on his own, with his own client base, although he was still reviewing his appraisal reports.⁹

During Mr. Canales' interview with the DA, he often responded to questions using the pronoun "we." When asked why he used the term "we" and not "I," Mr. Canales explained that he worked with Respondent often, "we are a team." Yet Mr. Canales admitted that he had performed the inspections of the homes; he conducted the three appraisals. Mr. Canales did not recall whether Respondent was still looking over his work carefully when the appraisal reports were issued. When questioned again, Mr. Canales indicated that he had assumed Respondent reviewed his appraisals, but they would discuss his work only if Respondent had a question about it. Mr. Canales admitted to the DA that he had "messed up" doing the appraisals because, although he thought that the comparable properties had come from the builder, they might have come from the mortgage broker (a representative of the lender and a party to the transaction). He also was not sure whether he had retained the associated workfiles.

The appraisals do not indicate that they were performed by Mr. Canales and overseen by Respondent. Instead, Respondent is listed as the appraiser by printed name and electronic signature. However, the company name, RAC Residential Valuation, appears to be associated with Mr. Canales, whose initials are RAC. Although the standardized appraisal reports had a separate signature side and signature line for a supervisory appraiser, this was not used for these appraisals.¹⁰

On May 23, 2006, Mr. Canales submitted an Appraisal Experience Affidavit (Affidavit) to the Board to secure his license. The Affidavit covers 2,876 hours of appraisal work performed by Mr. Canales under the supervision of Respondent during April 22, 2005, through January 3, 2006, and January 6 through April 21, 2006, a 12-month period. Included in the Affidavit is a certification signed by Respondent and notarized on May 22, 2006, which affirms that Mr. Canales:

⁹ Staff Ex. 7, Respondent interview.

¹⁰ See Staff Ex. 8, Bates 25, 50 and 34.

[P]erformed the hours of work claimed herein under my direct supervision as evidenced either by the person signing the report or by being named in the certification as providing significant assistance. I certify that I have in my possession at this time copies of all workfiles required to substantiate compliance herein. . . . Furnishing false information on this Affidavit is a violation of the Texas Appraiser Licensing and Certification Act and is a Class B misdemeanor.¹¹

The Affidavit includes a data log of all the appraisals totaling the hours of appraisal work Mr. Canales included to meet Board licensure standards. There are approximately 400 appraisals listed in the data log: the three appraisals investigated by the Harris County DA are included.¹² Respondent acknowledges that he certified that Mr. Canales performed the work under his direct supervision, but admitted he did not go over “one by one” all 400 appraisals listed on the log to see what properties were appraised.

Subsequent to the DA interviews, Mr. Loftus initiated a complaint against Respondent, and the Board sent Respondent questionnaires for each of the three properties. Respondent filed a response on April 8, 2009. He did not respond to the questionnaires but did explain that he did not perform the three appraisals, has no affiliation with the named lender, and did not receive solicitations to perform the appraisals. He stated that he did not have any workfiles for the appraisals or any record of them on his system. Respondent indicated that he did not have prior knowledge of the appraisals until an investigator from the Harris County DA contacted him.

On May 21, 2009, Respondent filed a complaint with the Board against Mr. Canales on the grounds that Mr. Canales used his name and signature on the three appraisals without his knowledge or permission. Respondent stated in the complaint that, to the best of his knowledge, these were the only appraisals completed without his knowledge, and that they had been brought to his attention by the Harris County DA investigator, Doug Osterburg. Respondent further stated that he had no affiliation with the lender/client named on the reports, he never received solicitations from this group, and he did not have any workfiles for the appraisals. Further,

¹¹ Staff Ex. 10 at Bates 137.

¹² Staff Ex. 10 at Bates 148.

Respondent indicated that the appraisal business name, address, phone number, and email on the signature page of the appraisal reports belong to Mr. Canales.¹³

The Board reviewed the complaint and dismissed it on August 27, 2009. Mr. Loftus testified that the Board dismissed Respondent's complaint because Respondent had told the Harris County DA and investigator that he had reviewed the appraisal reports.

At the hearing, Respondent testified that Mr. Canales was almost like family to him and his gut reaction, during his interview with the Harris County DA, was to lie to protect his friend. He testified that he did not bring any workfiles to that interview because he did not do the appraisals. He stated that he did not receive any payment for the three appraisals. He explained that he used typical appraisal software, which allowed him to insert his signature electronically. Respondent believes that Mr. Canales used his electronic signature without his permission on the three appraisals. Respondent admitted that he did not subsequently notify the DA that he had filed a complaint against Mr. Canales or that he had misstated the facts when asked if he had reviewed the appraisals. Respondent indicated that he believed the Board was working together with the Harris County DA, therefore they would be in communication with each other. Respondent also testified that Mr. Canales was indicted and charged for fraud, and Respondent was subpoenaed to testify in Mr. Canales' case.¹⁴ Respondent has since moved back to the Dallas area, and he is no longer associated with Mr. Canales.

D. Appraisals Found to be Grossly Inflated

The Board's investigator, Mr. Loftus, became aware of the three appraisals when he was contacted by the Harris County DA investigator. As part of his investigation, he conducted a desk-top review of the three appraisal reports to determine if they conformed to USPAP, Board rules, and the Act.¹⁵ Mr. Loftus reviewed the appraisal reports and supplemental information, including workfiles, provided by Mr. Canales, who was also being investigated by the Board.

¹³ Staff Ex. 20.

¹⁴ Respondent did not state whether Mr. Canales was convicted.

¹⁵ Mr. Loftus noted that he was not familiar with the subjects as of the review date; the scope of the review pertained to compliance only, and he was expressing no opinion of the properties' values. Staff Ex.9, Tabs 7-9.

Mr. Loftus used the multiple listing service (MLS) and tax data and interviewed builders and agents in the area of the subject properties. Additionally, he used a national data source to investigate the cost approach portions of the appraisals, and reviewed the DVD interviews of Respondent and Mr. Canales by the Harris County DA. 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.

In the early stages of his investigation, Mr. Loftus believed that the appraisals contained inflated property values. After his thorough investigation, Mr. Loftus concluded that, for each of the three appraisals, Respondent failed to comply with USPAP standards and deliberately produced appraisal reports that were grossly inflated and were not credible or reliable.¹⁶

Mr. Loftus testified that a real estate appraiser must obtain market data, analyze the data, and determine the value of the real property. He explained the importance of obtaining a proper appraisal because the value of the real property, the collateral, must be sufficient for the mortgage company and the lender bank. If a borrower defaults on the loan, the bank needs sufficient collateral to recover the money lent to the borrower.

In his reviews, Mr. Loftus set out the applicable standards that applied to appraisers. The USPAP Ethics Rule requires appraisers to observe the highest standards of professional ethics and to retain all data relevant to an appraiser's findings. Moreover, 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. Mr. Loftus concluded that Respondent violated the following:¹⁷

- USPAP Ethics Standards: initially presented misleading results through the knowing or intentional omission of significant material information; made significant errors and misrepresentations, which produced a grossly inflated and predetermined value. Specifically, Respondent did not disclose Mr. Canales' involvement in the assignment and did not actively, personally, and diligently supervise his trainee.

¹⁶ *Id.*

¹⁷ Staff Ex. 9 at Tab 7-9.

- USPAP Ethics Record Keeping Standards: the work file lacked data, information, and documentation necessary to support the opinions and conclusions in the appraisal report.
- Supplemental Standards (in this case, the Fannie Mae 2002 Selling Guide): the use of the three partial HUD-1 Settlement Statements of sales from the subject subdivision that involved the builder failed to comport with the guide.
- USPAP Requirements 1-3(a) and 2-2(ix); 1-3(b) and 2-2(x); 1-4(b)(i) and 2-2(ix); 1-4(b)(ii); 1-1(a) and 1-4(b); (1-4(a): the appraiser failed to meet these specific requirements and failed to produce a report and workfile indicating that the sales data used for the evaluations were verifiable. The appraiser intentionally or knowingly did not employ recognized methods and techniques to appraise the property.
- Respondent supervised the intentional production and submission of appraisal reports whose values were grossly inflated in order to facilitate mortgage fraud.
- Respondent did not acknowledge in the appraisal reports the professional assistance received from the trainee.

E. Parties' Positions

As discussed above, Respondent testified that he was unaware of the appraisal reports until he was contacted by the Harris County DA. Respondent contends that he did not intentionally or knowingly commit fraud, and he did not "grossly fail to supervise" Mr. Canales. He requests that his license not be revoked.

Staff seeks revocation. Staff believes that Respondent performed the appraisals, noting that it was his signature on the reports and, during the Harris County DA interview, Respondent appeared to be familiar with the appraisal reports. Staff contends that Respondent is not credible and repeatedly made inconsistent statements at the hearing, during his interviews, and in his Board filings. Alternatively, Staff argues that Respondent failed in the performance of his duties as a sponsoring appraiser: he had an obligation to diligently, purposely, and actively supervise Mr. Canales. Staff notes that Respondent failed to take responsibility for his actions. Staff

argues that Respondent was grossly negligent in his duties and this negligence, plus the severity of the loss associated with the fraudulent appraisals, is sufficient basis for revocation.

F. Analysis

Consistent with his years of experience and level of licensure, Respondent presented a clear working knowledge of his role as an appraiser. In terms of his role as a supervisor, Respondent understood his role to teach but failed to acknowledge the seriousness of his responsibilities as a trainer.

As stated above, the Board charged Respondent with violating USPAP Standards and ethical rules, including making material misrepresentations and omissions of fact on the three appraisals. But the evidence supports a finding that that Mr. Canales, when he was a trainee, actually performed the three appraisals, not Respondent:

1. Mr. Canales admitted to the Harris County DA that he performed the appraisal reports;
2. Respondent testified at the hearing, stated to the DA, and, in response to the Board's complaint, wrote that Mr. Canales performed the appraisal reports;
3. Although Respondent's electronic signature is on the appraisal reports, the remaining appraiser information on those reports is related to Mr. Canales not to Respondent;
4. Mr. Canales received the original solicitations to conduct the appraisals;
5. Mr. Canales included the three appraisals on the Affidavit that he submitted to the Board for work he performed in order to obtain licensure; and
6. Mr. Canales, not Respondent, was charged with a criminal offense in relation to the three appraisals.

Therefore, the ALJ is not persuaded that Respondent intentionally inflated the values on the three appraisal reports, as alleged by the Board. Respondent did not violate the Code by failing to comply with USPAP standards.

The Board also charged that Respondent made material misrepresentations and omissions of material facts by indicating in the appraisal reports “that he alone conducted the appraisal reports, the inspection (sic), and the data research and analysis” without disclosing his trainee’s name.¹⁸ The ALJ finds insufficient evidence to support this charge because the appraisal reports were the work product of Mr. Canales. Even though Respondent’s electronic signature is on the appraisal reports, the remaining appraiser information (the company name) on those reports is related to Mr. Canales not to Respondent. Further, it is unclear from the record whether Respondent actually approved the placement of his electronic signature.

However, there is sufficient evidence that Respondent failed to actively, personally, and diligently supervise his appraiser trainee. Although Mr. Canales had been a trainee for almost a year, and Respondent no longer needed to be present when Mr. Canales performed his inspections, Respondent still had ethical and regulatory obligations to diligently supervise Mr. Canales.¹⁹

To determine the severity of Respondent’s violation, the record must include sufficient evidence to make a finding as to when Respondent became aware of the content of Mr. Canales’ three appraisals. If Mr. Canales acted on his own initiative by performing the fraudulent appraisals and placing Respondent’s signature on these appraisals without his knowledge, then Respondent’s failure to supervise consists of his: (1) lack of diligence in supervising Mr. Canales, including a failure to safeguard his electronic signature; and (2) failure to properly certify all 400 appraisals and have copies of all workfiles related to those appraisals in his supervision, in violation of the May 22, 2006 Affidavit. Under this scenario, Respondent is not responsible for the commission of fraud but is responsible for other violations.

On the other hand, if Respondent reviewed the appraisal reports or had the opportunity to review them yet failed to correct the material misrepresentations and omissions of material facts, then he failed to comply with the Board’s requirement to control the quality of a trainee’s work.²⁰

¹⁸ Staff Ex. 2, Tab 3 (Supplemental Statement of Charges).

¹⁹ See 22 TEX. ADMIN. CODE § 153.21(g).

²⁰ See 22 TEX. ADMIN. CODE § 153.21(g).

Respondent had the skills and knowledge to determine that the reports were grossly inaccurate and deficient. Thus, if Mr. Canales submitted the appraisal reports to Respondent for review, Respondent bears responsibility for failing to stop his trainee's participation in a fraudulent scheme.

The greater weight of the evidence supports this second scenario. Respondent told the Harris County DA and investigator that he was Mr. Canales' supervisor and had reviewed the reports. During the interview, Respondent possessed some knowledge of the appraisals because he told the DA that he was not sure why the lender had come back with a "fourth comparable." Respondent brought some workfiles or copies of at least two appraisal reports with him to the interview with the DA. And, during their individual interviews with the DA, both Respondent and Mr. Canales used the pronoun "we," which suggests that Respondent and Mr. Canales had a close working relationship. Respondent also indicated that they shared some overflow work.

The ALJ acknowledges that some evidence supports Respondent's position that he never saw the reports. Respondent testified that he did not make any money from the appraisals and did not know that the three appraisals were included in the Affidavit's data log. Respondent's answer to the Board's complaint is also consistent with his testimony that he did not review the appraisals. In terms of other evidence that may corroborate Respondent's position, Mr. Canales was receiving his own assignments—he was the appraiser contacted by the client to perform the three appraisals—and Mr. Canales was conducting his own appraisals separate from Respondent. Moreover, Mr. Canales told the DA that he was unsure if Respondent had reviewed the reports.

Staff points out that Respondent lacks credibility and made a number of inconsistent statements. The ALJ agrees. Respondent admitted that he misstated facts during a criminal investigation. That admission creates a level of uncertainty that undermines the credibility of Respondent's testimony that he did not see the appraisals until his interview (and therefore did not review them). Because Respondent lacks credibility, viewing the totality of the evidence, the ALJ concludes that Respondent likely had an opportunity to review the three appraisal reports. He then performed a review in such a cursory manner as to fail to provide ongoing training and supervision as well as quality control. Additionally, by his own admission, Respondent did not

carefully examine the three appraisal reports included in the Affidavit's data log that Mr. Canales submitted to the Board. The ALJ acknowledges that those three appraisals were listed with approximately 400 other appraisals, but Respondent signed an affidavit asserting that *all* the work in the log was performed under his direct supervision and that he had copies of *all the workfiles* required to substantiate compliance. He did not. The ALJ concludes that Respondent failed to use the care that a reasonably prudent and careful supervisor would have used when submitting an affidavit to the Board with the warnings contained on the affidavit; *i.e.*, furnishing false information on the affidavit is a violation of law and a Class B misdemeanor.

Respondent failed to actively, personally, and diligently supervise Mr. Canales in violation of the Board's rule at 22 TEX. ADMIN. CODE § 155.20(a)(13). The ALJ further concludes that Respondent is not credible, and he failed to take responsibility to diligently supervise an appraiser trainee.

The Board has discretion in determining the appropriate penalty for any violation. Additionally, the Board has a penalty matrix at 22 TEX. ADMIN. CODE 153.24(9), which provides for penalties ranging from suspension to revocation and an administrative penalty of \$500 to \$1,500 per violation for a first occurrence of a rule violation. Based on the evidence in the record and the applicable rules and law, the ALJ recommends that Respondent's license be suspended for a period of five years, but that the suspension be probated for the last four years and six months. Respondent should be allowed to continue to practice as an appraiser during the probationary period subject to his compliance with terms and conditions established by the Board. The ALJ further recommends that, as a condition of his probated suspension and for the remainder of the time Respondent holds an appraiser's license, he not be allowed to supervise other appraiser trainees. Additionally, the ALJ recommends a total administrative penalty of \$7,500, applying the maximum penalty of \$1,500 per violation. The evidence supports a finding that Respondent violated the Board's rule at 22 TEX. ADMIN. CODE § 155.20(a)(13) on these occasions:

1. He failed to properly review Mr. Canales' appraisal report for 4939 Trailing Clover Court; Houston, Texas 77084;

2. He failed to properly review Mr. Canales' appraisal report for 4915 Dwarf Honeysuckle Court, Houston, Texas 77084;
3. He failed to properly review Mr. Canales' appraisal report for 4906 Trailing Clover Court, Houston, Texas 77084;
4. On May 23, 2006, he failed to take reasonable care in verifying the list of appraisals included in Mr. Canales' Affidavit data log presented to the Board in order to support Mr. Canales receiving licensure; and
5. On May 23, 2006, he failed to have in his possession copies of all workfiles referenced in Mr. Canales' Affidavit.

The ALJ acknowledges that Staff recommends revocation. The ALJ agrees that a serious penalty should be imposed upon Respondent. However, to a great extent, Staff's charges are based on allegations that Respondent performed the appraisals himself or signed the appraisals, knowing that they contained grossly inaccurate information and omissions of material fact. These charges were not proved by a preponderance of the evidence. Rather, the evidence supports findings that Respondent failed to actively and diligently supervise his trainee. But there is uncertainty as to whether he either reviewed the three reports in such a cursory manner as to not see the inaccurate information and omissions or simply failed to review them at all. Stated another way, there is a lack of evidence as to *when* Respondent became aware of the content of the three appraisals. The existence of his electronic signature is not sufficient evidence when considering the totality of the evidence. Accordingly, the ALJ recommends a number of penalties but does not recommend revocation.

In conclusion, the ALJ agrees with the Staff that, as a sponsor of an appraiser trainee, Respondent had a duty and responsibility to carefully supervise his trainee. Respondent failed in his duty to supervise Mr. Canales.

III. FINDINGS OF FACT

1. Randy R. Castillo (Respondent) is a Texas State Certified Residential Real Estate Appraiser holding certificate number TX-1334675-R issued by the Texas Appraiser Licensing and Certification Board (Board).

2. On October 16, 2009, staff of the Board (Staff) sent an Original Statement of Charges to Respondent proposing sanctions, including the imposition of an administrative penalty; remedial education, and/or revocation of the certification referred to in Finding of Fact No. 1.
3. On October 21, 2009, Staff sent a Notice of Hearing to Respondent.
4. On January 25, 2011, Staff filed a Supplemental Statement of Charges.
5. 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.
6. The hearing on the merits convened on February 11, 2011, 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 was represented by attorney Sadiyah A. Evangelista. The record was held open until February 18, 2010, in order to allow the parties any additional briefing.
7. Respondent began performing residential real property appraisals as an appraiser trainee in 2001, received his state license certificate, and received his residential certified appraiser license on March 14, 2005.
8. A certified residential real estate appraiser license is the highest level of licensure.
9. Respondent has taken two certification exams to attain his current certification level and has performed thousands of appraisals.
10. Other than this action, Respondent has no disciplinary history with the Board.
11. On April 4, 2005, Robert A. Canales filed an application with the Board for approval as an appraiser trainee, sponsored by Respondent. He was Mr. Canales' appraiser trainee in March 2006.
12. A sponsoring appraiser has the obligation to diligently, purposely, and actively supervise an appraiser trainee.
13. In March 2006, Mr. Canales, as an appraiser trainee, appraised the following properties:
 - a. 4906 Trailing Clover Court, Houston, Texas 77084;
 - b. 4939 Trailing Clover Court, Houston, Texas 77084; and
 - c. 4915 Dwarf Honeysuckle Court, Houston, Texas 77084.

14. Respondent's electronic signature was on the appraisals listed in Finding of Fact No. 13.
15. The effective date and the inspection dates of the appraisals for 4939 Trailing Clover Court and 4915 Dwarf Honeysuckle Court, Houston, Texas 77084, was March 14, 2006.
16. The effective date and the inspection date of the appraisal for 4906 Trailing Clover Court, Houston, Texas 77084 was March 17, 2006.
17. The property appraisals in Finding of Fact No. 13 were prepared for the purpose of securing mortgage financing and to aid the lender in determining the value of the property as collateral.
18. The property appraisals in Finding of Fact No. 13 contained misleading and substantially incorrect information, including the omission of material information, which resulted in overly inflated property values.
19. The property appraisals listed in Finding of Fact No. 13 were part of a Harris County fraud investigation.
20. The property appraisals in Finding of Fact No. 13 contained misleading and substantially incorrect information, including the omission of material information, of a scope and magnitude that Respondent, an experienced appraiser holding the highest level of licensure for residential properties, should have investigated the appraisal reports.
21. Respondent failed to diligently, purposely, and actively supervise Mr. Canales, an appraiser trainee, in March 2006.
22. On May 23, 2006, Mr. Canales submitted an Appraisal Experience Affidavit (Affidavit) to the Board.
23. The Affidavit covered appraisal work performed by Mr. Canales under the supervision of Respondent during the time period April 22, 2005, through January 3, 2006, and January 6, 2006, through April 21, 2006, a 12-month period.
24. The Affidavit included a data log of approximately 400 appraisals and 2,876 hours of work that Mr. Canales performed under Respondent's supervision in order to meet the Board's licensure standards.
25. The three appraisals listed in Finding of Fact No. 13 are included in the data log.
26. The Affidavit also includes a notarized certification of the supervisor trainee, Respondent, affirming that the hours of work claimed by the trainee were performed under direct supervision and certifying that the supervisor trainee has copies of all workfiles required to substantiate compliance of the work performed by the trainee, Mr. Canales.

27. Respondent failed to keep adequate records of, or to check and verify, the properties that Mr. Canales included in the Affidavit's data log submitted to the Board for Mr. Canales' licensure.
28. Respondent failed to retain and/or possess the workfiles required to substantiate compliance with Mr. Canales' Affidavit for licensure.
29. Respondent violated the Board's rule at 22 TEX. ADMIN. CODE § 155.20(a)(13) on the following occasions:
 - a. He failed to properly review Mr. Canales' appraisal report for 4939 Trailing Clover Court, Houston, Texas 77084;
 - b. He failed to properly review Mr. Canales' appraisal report for 4915 Dwarf Honeysuckle Court, Houston, Texas 77084;
 - c. He failed to properly review Mr. Canales' appraisal report for 4906 Trailing Clover Court, Houston, Texas 77084;
 - d. On May 23, 2006, he failed to take reasonable care in supervising the list of appraisals included in Mr. Canales' Affidavit data log presented to the Board in order to support Mr. Canales receiving licensure; and
 - e. On May 23, 2006, he failed to have in his possession copies of all workfiles referenced in Mr. Canales' Affidavit.

IV. 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 § 155.427.
5. Based on the above Findings of Fact and Conclusions of Law, Respondent violated 22 TEX. ADMIN. CODE §§ 153.20(a)(15) and 153.21(g).

6. Based on the above Findings of Fact and Conclusions of Law, Respondent may be disciplined by the Board for failing to actively, personally, and diligently supervise an appraiser trainee under his sponsorship. 22 TEX. ADMIN. CODE §153.20(a)(15).
7. The Board may suspend or revoke the certification of an appraiser who has failed to actively, personally, and diligently supervise an appraiser trainee under his sponsorship. 22 TEX. ADMIN. CODE §153.20(a)(15).
8. Based on the foregoing Findings of Fact and Conclusions of Law, the Board should suspend for five years and probate the suspension of Respondent's appraiser license for the last four years and six months subject to terms and conditions established by the Board, including the condition that Respondent not be allowed to supervise any appraiser trainees for the remainder of his licensure.
9. Based on the foregoing Findings of Fact and Conclusions of Law, the Board should assess an administrative penalty of \$7,500.

SIGNED April 18, 2011.



**LILLO D. POMERLEAU
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

RANDY R. CASTILLO
TX-1334675-R

§ BEFORE THE STATE OFFICE
§
§ OF
§
§
§ ADMINISTRATIVE HEARINGS
§
§

PETITIONER'S EVIDENCE LIST

1. TALCB License History for Respondent (Exhibit 1)
2. Notice of Hearing & Statement of Charges:
 - 1) Original Statement of Charges (Exhibit 2-1)
 - 2) Original Notice of Hearing (Exhibit 2-2)
 - 3) Supplemental Statement of Charges (Exhibit 2-3)
3. 2005 Uniform Standards of Professional Appraisal Practice (Exhibit 3) –
SEPARATE BINDER
4. Castillo's Resume (Exhibit 4)
5. TALCB Complaint #09-188 against Randy R. Castillo (Exhibit 5)
6. Castillo's Response to TALCB Complaint #09-188 (Exhibit 6)
7. DVD Recording of Harris County Appraisal District Attorney's Office Interview of
Randy R. Castillo (Exhibit 7)
8. Appraisal Reports:
 - 4) 4915 Dwarf Honeysuckle Ct., Houston, TX 77084 (5/22/2006) (Exhibit 8-4)
 - 5) 4906 Trailing Clover Ct., Houston, TX 77084 (5/30/2006) (Exhibit 8-5)
 - 6) 4939 Trailing Clover Ct., Houston, TX 77084 (5/03/2006) (Exhibit 8-6)
9. Investigative Reports:
 - 7) 4915 Dwarf Honeysuckle Ct., Houston, TX 77084 (09-188a) (Exhibit 9-7)
 - 8) 4906 Trailing Clover Ct., Houston, TX 77084 (09-188b) (Exhibit 9-8)
 - 9) 4939 Trailing Clover Ct., Houston, TX 77084 (09-188c) (Exhibit 9-9)
10. Appraisal Experience Affidavit and Log signed by Castillo (Exhibit 10)
11. Stewart Title Deed History Reports:
 - 10) 4915 Dwarf Honeysuckle Court (Exhibit 11-10)
 - 11) 4702 Autumn Dawn Way (Exhibit 11-11)
 - 12) 4810 Twisting Road (Exhibit 11-12)

- 13) 4815 Twisting Road (Exhibit 11-13)
- 14) 4714 Cobble Grove Lane (Exhibit 11-14)
- 15) 4906 Trailing Clover Court (Exhibit 11-15)
- 16) 4702 Cobble Grove Lane (Exhibit 11-16)
- 17) 19007 Appletree Ridge Road (Exhibit 11-17)
- 18) 4939 Trailing Clover Court (Exhibit 11-18)

12. MLS Market Data Search Report:

- 19) 43 search results (Exhibit 12-19)
- 20) 17 search results (Exhibit 12-20)
- 21) 10 search results (Exhibit 12-21)

13. MLS Market Data Search Report:

- 22) 41 search results (Exhibit 13-22)
- 23) 33 search results (Exhibit 13-23)
- 24) 9 search results (Exhibit 13-24)

14. MLS Market Data Search Report for:

- 25) 4511 Edgeview Road (Exhibit 14-25)
- 26) 4738 Plum Forest (Exhibit 14-26)
- 27) 4523 Edgeview Road (Exhibit 14-27)
- 28) 4507 Edgeview Road (Exhibit 14-28)
- 29) 4710 Twisting Road (Exhibit 14-29)

15. FannieMae 406.01: Sources of Comparable Market Data (Exhibit 15)

16. FannieMae 406.02: Selection of Comparable Sales (Exhibit 16)

17. MLS Market Data Report Showing Sale Statistics for Report-Defined Boundaries for 09-188b (Exhibit 17)

18. County Appraisal District Generated Ownership History for 4906 Trailing Clover Court (Exhibit 18)

19. Cost Approach to Value Using Marshall Valuation Service:

- 30) Average Quality Rating (Exhibit 19-30)
- 31) Good Quality Rating (Exhibit 19-31)

20. TALCB Complaint #09-207 filed by Randy R. Castillo against Robert Anthony Canales (Exhibit 20)

21. Robert Anthony Canales' Response to TALCB Complaint #09-207 (Exhibit 21)

22. Request to Dismiss for TALCB Complaint #09-207 (Exhibit 22)

23. Notice of Case Resolution for TALCB Complaint #09-207 (Exhibit 23)

24. Gross Losses Sheet (Exhibit 24)

25. SOAH Proposal for Decision and Final Order for Chris Andre McNutt (Exhibit 25)

26. Application for Approval as an Appraiser Trainee for Robert Anthony Canales
(Exhibit 26)

27. HUD-1s from Terramark Homes, Ltd. (Exhibit 27)

28 - video of Canales