TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD	§	
	§	
	§	
	§	
vs.	§	DOCKETED COMPLAINT NO. 15-321
	§	
	§	
JAMES M. DAVIS	§	
TX-1322767-R	§	

AGREED FINAL ORDER

On the 19 day of August, 2016, the Texas Appraiser Licensing and Certification Board (Board) considered the matter of the license of James M. Davis (Respondent).

In order to conclude this matter, Respondent neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein. Respondent further agrees to the disciplinary action set out in this Agreed Final Order. The Board makes the following findings of fact and conclusions of law and enters this Agreed Final Order in accordance with TEX. OCC. CODE § 1103.458.

FINDINGS OF FACT

1. Respondent is a Texas state certified residential real estate appraiser who holds license number TX-1322767-R and was licensed by the Board during all times material to the above-noted complaint.

2. Respondent appraised residential real property located at 1109 Farm 259 Road, El Paso County, Texas 79835 (Property), on or about June 16, 2015.

3. Thereafter, the complaint, numbered 15-321, was filed with the Board by a homeowner, on or about July 24, 2015. The Board investigated the complaint to ensure compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), TEX. OCC. CODE CH. 1103 (Act) and 22 TEX. ADMIN. CODE CHS. 153 and 155 (Rules).

4. The Board, in accordance with the mandate of the Act and TEX. GOV'T CODE CH. 2001 (APA), notified Respondent of the nature of the accusations involved, on or about August 24, 2015. Respondent was afforded an opportunity to respond to the accusations in the complaint and was also requested to provide certain documentation to the Board. Thereafter, the Respondent responded with documentation, on or about September 15, 2015.

5. As a result of the Board's investigation, the Board finds that Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(6) and 155.1 by the

following acts or omissions which did not conform to USPAP in effect at the time of the appraisal of the Property:

a. USPAP Ethics Rule – Respondent failed to disclose if he performed any services regarding the subject property within the three-year period immediately preceding acceptance of the assignment;

b. USPAP Record Keeping Rule – Respondent failed to maintain work file containing all data, information and documentation necessary to support his opinions and conclusions;

c. USPAP Standards 1-2(e)(i) & 2-2(a)(iii); 1-2(e) & 2-2(a)(iii); 1-2(e)(iv) & 2-2(a)(viii); 1-3(a) & 2-2(a)(viii); 1-3(b) & 2-2(ix) – Respondent failed to identify and describe the site adequately. Respondent failed to identify and describe the improvements adequately. Respondent failed to identify, consider and describe any known easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances or other items of a similar nature. Respondent failed to provide any land use or market analysis. Respondent failed to provide support for his opinion of the highest and best use;

d. USPAP Standards 1-4(a) & 2-2(a)(viii); 1-1(a); 1-6(a), 1-6(b) & 2-2(a)(viii) – Respondent failed to collect, verify and analyze comparable sales data adequately and did not employ recognized methods and techniques in the sales comparison approach. Respondent failed to reconcile the quality and quantity of the data within the sales comparison approach used;

e. USPAP Standards 1-1(a); 1-1(b); 1-1(c); and, 2-1(a) – For the reasons detailed above, Respondent committed several substantial errors resulting in an appraisal report that was not credible.

6. Respondent made omissions of material fact with respect to the appraisal of the Property as detailed above.

7. In order to reach an expeditious resolution of this matter and avoid the time and expense of litigation, the parties enter into this Agreed Final Order in accordance with TEX. OCC. CODE § 1103.458.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Act.

2. Respondent violated the above-noted provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1 and 153.20(a)(6).

3. Respondent violated 22 TEX. ADMIN. CODE § 153.20(a)(12) by making material omissions of material fact.

4. The parties are authorized to resolve their dispute by means of a consent order in accordance with TEX. OCC. CODE § 1103.458.

ORDER

Based on the above findings of fact and conclusions of law, the Board **ORDERS**:

1. **EDUCATION**. On or before February 15, 2017, Respondent shall submit documentation of attendance and successful completion of the classes set out below to the Board. All classes required by this Agreed Final Order must be classes approved by the Board. Unless otherwise noted below, all classes must require in-class attendance. If the class requires an exam, Respondent must receive a passing grade on the exam. None of the required class hours will count toward Respondent's continuing education requirements for licensure. Respondent is solely responsible for locating and scheduling classes to timely satisfy this Agreed Final Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion of the course in the event of course cancellation or rescheduling by the course provider.

   a. A minimum fifteen (15) classroom hour course in USPAP.

2. **MENTORSHIP**. On or before November 17, 2016, Respondent shall complete eight (8) hours of in-person or video conferenced mentorship conducted by a mentor approved by the Board in accordance with the schedule and topics set out below. Respondent shall submit a certification of completion signed by the approved mentor and a signed copy of the Guidelines for Texas Appraiser Licensing and Certification Board Mentors and Mentees on or before the due date listed for each mentorship requirement. Respondent is solely responsible for locating and scheduling an approved mentor to timely satisfy this Agreed Final Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion.

   a. Two (2) hours of mentorship related to work file obligations under USPAP;

   b. Two (2) hours of mentorship related to selection of comparable sales and verification of comparable sales data;

   c. Two (2) hours of mentorship related to support of adjustments in the sales comparison approach; and

   d. Two (2) hours of mentorship related to the report writing obligations and explication of analysis required under USPAP.

3. Respondent shall fully and timely comply with all of the provisions of this Agreed Final Order; and

4. Respondent shall comply with all provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

ACKNOWLEDGMENT AND WAIVER

IF RESPONDENT FAILS TO TIMELY COMPLY WITH ANY TERM IN THIS AGREED FINAL ORDER, WHICH HAS A SPECIFIC, STATED DUE DATE, RESPONDENT SHALL BE ASSESSED A $1,000 ADMINISTRATIVE PENALTY AND RESPONDENT'S LICENSE, CERTIFICATION, AUTHORIZATION OR REGISTRATION SHALL BE SUSPENDED, UNTIL RESPONDENT IS IN FULL COMPLIANCE WITH THE TERMS OF THIS ORDER AND THE $1,000 ADMINISTRATIVE PENALTY HAS BEEN RECEIVED BY THE BOARD.

ANY SUCH SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE ACT OR THE APA, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS.

Respondent, by signing this Agreed Final Order, waives the Respondent's right to a formal hearing, any motion for rehearing, and any right to seek judicial review of this Agreed Final Order or to bring any civil suit in state or federal court regarding the validity or enforcement of this Agreed Final Order, regardless of the claims asserted. This Agreed Final Order, the findings of fact and the conclusions of law contained in it have been fully and fairly litigated or the parties had an opportunity to so litigate. This matter has been finally adjudicated and resolved via this Agreed Final Order. This Agreed Final Order shall be treated as res judicata, precluding any re-litigation of those claims and extinguishing the right to bring suit on the matter by the parties or those in privity with them. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's website.

I have read and reviewed this entire Agreed Final Order fully and am entering into it of my own free will to avoid the expense of litigation and to reach an expeditious resolution of the matter. I neither admit nor deny that the findings of fact and conclusions of law contained herein are correct. I understand all of my compliance obligations under this Agreed Final Order and the consequences for failing to comply with those obligations.

I understand that the Board and its staff cannot provide me with legal advice and I am aware of my right to be represented by an attorney of my own choosing. I am aware of my right to a hearing, and hereby waive a hearing and also waive any right to seek judicial review of this Agreed Final Order, including for any subsequent action resulting from my failure to timely comply with an administrative requirement of this Agreed Final Order (e.g. payment of a penalty, completion of remedial education, or failure to provide logs).

DELIVERY OF DOCUMENTS AND PAYMENTS FOR COMPLIANCE

Respondent is solely responsible for timely delivery to the Board of all documents and payments necessary for compliance with this Agreed Final Order. Payment of any administrative penalties due must be in the form of a cashier's check or money order made payable to the "Texas Appraiser Licensing and Certification Board" and delivered via certified mail, return receipt requested. Respondent shall retain documentation (reply email, fax confirmation, return receipt, etc.) confirming timely receipt by the Board of all the documents necessary for compliance of this Agreed Final Order.

Respondent shall send all documents and payments necessary for compliance by: (1) email to: compliance.talcb@talcb.texas.gov; (2) fax to: (512) 936-3966, attn: Compliance; or (3) certified mail, return receipt requested, to: Standards & Enforcement Services, Texas Appraiser Licensing & Certification Board, Stephen F. Austin Building, 1700 N. Congress Ave., Suite 400, Austin, TX 78701.

EXECUTION

This agreement may be executed in one or more counterparts, in the form of electronic mail, facsimile, or other written expression of agreement, each of which shall be deemed an original and together shall comprise evidence of full execution of the agreement.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

RESPONDENT

Signed this 4th day of August, 2016.

James M. Davis

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on the 4th day of August, 2016, by James M. Davis to certify which witness my hand and official seal.

ROSA A CHACON
Notary ID # 128026027
My Commission Expires
August 31, 2017

Rosa A. Chacon
Notary Public's Signature

STANDARDS AND ENFORCEMENT SERVICES DIVISION

Signed by the Standards and Enforcement Services Division this 5TH day of AUGUST, 2016.

Troy Beaulieu, Director
Standards and Enforcement Services Division
Texas Appraiser Licensing and Certification Board

COMMISSIONER

Signed by the Commissioner this 8 day of Aug, 2016.

Douglas Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

CHAIRPERSON

Approved by the Board and Signed this 19 day of August, 2016.

Jamie Wickliffe, Chairperson
Texas Appraiser Licensing and Certification Board