

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

vs.

DOCKETED COMPLAINT NO. 06-022 & 07-003

PHILIP JAY DILL TX-1324408-R

§  
§  
§  
§  
§  
§  
§  
§

AGREED FINAL ORDER

On this the <sup>10<sup>th</sup></sup> ~~2<sup>nd</sup>~~ day of ~~May~~ August, 2007, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the certification of Philip Jay Dill, (Respondent). The Board makes the following findings of fact and conclusions of law and enters this Order:

FINDINGS OF FACT

1. Respondent Philip Jay Dill, a state certified residential real estate appraiser, holds certification number TX-1324408-R, and has been certified continuously since October 29<sup>th</sup>, 1998 and was also certified during the time period of December 23<sup>rd</sup>, 1992 thru December 31<sup>st</sup>, 1996.
2. Respondent is subject to the jurisdiction of the Board, the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103 et. seq. (the Act), the Rules of the Board, 22 TEX. ADMIN. CODE §§153, 155, 157 (the Rules), and the Uniform Standards of Professional Appraisal Practice (USPAP) in effect at the time of the appraisal.
3. On or about March 3<sup>rd</sup>, 2004, Respondent appraised a portion of the subject property located at 3228 Wager Road, Texas ("the Wager property") for the client, Marie and Steven Hartzfeld.
4. On October 26<sup>th</sup>, 2005, TALCB received a staff-initiated complaint against Respondent from Deloris Kraft Longoria, in accordance with TEX. OCC. CODE § 1103.451. The complaint alleged that Respondent's appraisal report on the subject property had used an improper methodology to value the partial taking involved in the appraisal assignment.
5. On or about November 2<sup>nd</sup>, 2005 the Board, in accordance with the mandate of the Administrative Procedure Act (the APA), TEX. GOV'T CODE ANN. § 2001 et. seq., notified Respondent of the nature and accusations involved and Respondent was afforded an opportunity to respond to the accusations alleged by the Complainant. Respondent's response was received.
6. On August 25<sup>th</sup>, 2006, TALCB received a complaint against Respondent from Noel Washington, in accordance with TEX. OCC. CODE § 1103.451. The complaint alleged that Respondent had failed to provide the appraisal report which he had been paid to perform.

7. On or about September 11<sup>th</sup>, 2006 the Board, in accordance with the mandate of the Administrative Procedure Act (the APA), TEX. GOVT CODE ANN. § 2001 et. seq., notified Respondent of the nature and accusations involved and Respondent was afforded an opportunity to respond to the accusations alleged by the Complainant. Respondent's response was not received and a second notice of the complaint was sent on October 9<sup>th</sup>, 2006. After receiving a letter response from Respondent, but no appraisal report and work file, a statement of charges and notice of hearing were sent to Respondent. Finally, prior to the hearing date, Respondent provided the requested documentation, several months after it was initially requested.

8. The Enforcement Division concluded that the Respondent's appraisal report for the Wager property violated the Act, the Rules of the Board, and USPAP by the following acts or omissions:

- a) USPAP Competency Rule – Respondent did not properly identify the problem to be addressed nor did he have the knowledge and experience necessary to complete the appraisal assignment competently nor did he disclose his lack of experience and then become competent;
- b) USPAP Standards 1-2(b) & 2-2(b)(ii) – Respondent failed to identify correctly the intended use of his opinions and conclusions. He indicated the report was for lending purposes when it was actually used for acquisition of a right-of-way for the widening of a roadway;
- c) USPAP Standards 1-2(c) & 2-2(b)(v) – Respondent failed to identify the source of his market value definition;
- d) USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent failed to identify and report the site description adequately;
- e) USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent has not identified and reported adequately the improvement(s) description. Numerous pictures of the Wager property were taken, but only the partial taking strip of land was described. The report indicates the Wager property is zoned for single family use and being used as such, but no improvements were described or valued. The only apparent improvement was a fence within the partial taking;
- f) USPAP Standards 1-3(b) & 2-2(b)(x) – Respondent did not correctly develop an opinion of highest and best use nor did he provide a brief summary of his rationale for his determination of the Wager property's highest and best use;
- g) USPAP Standards 1-4(a) & 2-2(b)(ix) – Respondent failed to collect, verify, analyze and reconcile the comparable sales data correctly since the partial taking of the Wager property is not a separate economic unit. The "across the fence" and/or the value via contributory value of the whole tract should have

been used but was not. Additionally, Respondent made inconsistent adjustments and/or incorrect adjustments and Respondent failed to provide adequate explanations of the adjustments that were made;

- h) USPAP Standards 1-1(a) & 1-4(a) – Respondent did not employ recognized methods and techniques correctly because he treated the partial taking as a separate economic unit when it is not due to the zoning restrictions applicable to the Wager property;
- i) USPAP Standard 1-1(a) – Respondent did not employ recognized methods and techniques to produce a credible appraisal. Respondent did not properly determine the Wager property's highest and best use which led him to gather and analyze incorrect land sales. Furthermore, he only described the partial taking of land, when he should have described the whole property due to the strictures of the assignment;
- j) USPAP Standard 1-1(b) – As noted above, Respondent committed substantial errors of omission or commission that significantly affected the appraisal;
- k) USPAP Standard 2-1(a) – Respondent did not produce an appraisal report that was not misleading because he used incorrect methods and techniques and failed to correctly identify the Wager property's highest and best use. Additionally, Respondent failed to analyze the most appropriate sales data and did not support his adjustments. Finally, Respondent incorrectly indicates that he meets the requirements of the Appraisal Institute when he is not a member or associate member; and,
- l) USPAP Standard 2-1(b) – The intended user is not able to rely on the appraisal because it incorrectly identified the assignment, and appropriate methods and techniques were not used to complete the assignment.

9. The Enforcement Division concluded that the Respondent violated 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by failing to conform to USPAP in effect at the time of the appraisal report for the Wager property.

10. The Enforcement Division concluded that the Respondent violated 22 TEX. ADMIN. CODE §§ 153.20(a)(9) by making material misrepresentations and omissions of material facts in the appraisal report of the Wager property. These material misrepresentations and omissions of material fact include: incorrectly indicating that he meets the requirements of the Appraisal Institute when he is not a member or associate member; misrepresenting the Wager property's highest and best when the partial taking is not a viable economic unit due to the applicable zoning restrictions; Respondent misrepresented and omitted important information about the improvement(s) description.

11. The Enforcement Division concluded that the Respondent violated 22 TEX. ADMIN. CODE §§ 153.20(a)(2) and 153.22 by repeatedly failing to respond timely to requests for information in conjunction with the complaint filed by Noel Washington.

### CONCLUSIONS OF LAW

1. The Texas Appraiser Licensing and Certification Board has jurisdiction over these matters pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE §§ 1103.451-1103.5535 (Vernon 2005).
2. Respondent violated the following USPAP provisions as prohibited by 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a): USPAP Competency Rule; USPAP Standards Rules: 1-2(b) & 2-2(b)(ii); 1-2(c) & 2-2(b)(v); 1-2(e)(i) & 2-2(b)(iii); 1-3(b) & 2-2(b)(x); 1-4(a) & 2-2(b)(ix); 1-1(a) & 1-4(a); 1-1(a), 1-1(b), 2-1(a), and 2-1(b).
3. Respondent violated 22 TEX. ADMIN. CODE §§ 153.20(a)(9) by making material misrepresentations and omissions of material facts in his Wager property appraisal report.
4. Respondent violated 22 TEX. ADMIN. CODE §§ 153.20(a)(2) and 153.22 by repeatedly failing to respond to requests for information in conjunction with the complaint filed by Noel Washington within the time periods required by Board rules.

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

1. Pay to the Board an Administrative Penalty of \$1,000.00;
2. Attend and complete a minimum, 15 classroom-hour course in USPAP; ✓
3. Attend and complete a minimum, 15 classroom-hour course in Highest and Best Use; ✓
4. Attend and complete a minimum, 30 classroom-hour course in Residential Case Studies / Sales Comparison and/ or Market Data Analysis; and, ✓
5. Comply with all provisions of the Act, the Rules of the Board, and USPAP in the future, or be subjected to further disciplinary action.

Payment of the **ADMINISTRATIVE PENALTY** must be by certified funds, and must be completed within **TWENTY DAYS** of the date of this Agreed Final Order. Failure to pay the administrative penalty within the time allotted shall result in **IMMEDIATE SUSPENSION** of Respondent's certification pursuant to notice to Respondent from the Board indicating that Respondent has not paid the administrative penalty.

**ALL CLASSES** required by this Agreed 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. 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 certification.

Failure to complete the education required by this Agreed Final Order within the time allotted shall result in **IMMEDIATE SUSPENSION** of the Respondent's license pursuant to notice to the Respondent from the Board indicating that the Respondent has not fulfilled the educational requirements of this Agreed Final Order.

**ANY SUCH SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT OR THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS.** Respondent shall be notified of any such suspension or lifting of probation by certified mail, return receipt requested, to the last known address as provided to the Board. If Respondent's certification is suspended on such a basis, the suspension shall remain in effect until such time as Respondent pays the Administrative Penalty or takes and passes the required educational courses and provides adequate documentation of same to the Board.

Respondent, by signing this Agreed Final Order, neither admits nor denies that the findings of fact and conclusions of law herein set forth are correct; however, Respondent consents to the entry of this Agreed Order to avoid the expense of litigation and to reach an expeditious resolution of this matter. Respondent also agrees to satisfactorily comply with the mandates of this Agreed Final Order in a timely manner.

Respondent, by signing this Agreed Final Order, waives the Respondent's right to a formal hearing and any right to seek judicial review of this Agreed Final Order. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published in the Board's newsletter and/or on the Board's web site.

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.

Signed this 5<sup>th</sup> day of July, 2007.

  
 \_\_\_\_\_  
 PHILLIP JAY DILL

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 5 day of July, 2007, by PHILIP JAY DILL, to certify which, witness my hand and official seal.

Tamera D. Kay  
Notary Public Signature

Tamera D. Kay  
Notary Public's Printed Name



Signed by the Commissioner this 10 day of July, 2007.

Loretta DeHay  
Loretta DeHay, Interim Commissioner  
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 10 day of August, 2007.

Larry Kokel  
Larry Kokel, Chairperson  
Texas Appraiser Licensing and Certification Board