

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

JOHN DAVID FITZGERALD
TX-1331664-R

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DOCKETED COMPLAINT NO. 09-004

AGREED FINAL ORDER

On this the 30 day of NOVEMBER, 2009, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the certification of John David Fitzgerald, (Respondent). The Board makes the following findings of fact and conclusions of law and enters this Order:

In order to conclude this matter John David Fitzgerald neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein and 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 Order in accordance with TEX. OCC. CODE § 1103.458:

FINDINGS OF FACT

1. Respondent John David Fitzgerald, is a state certified residential real estate appraiser, holds certification number TX-1331664-R, and has been certified by the Board during all times material to this complaint.
2. Respondent is subject to the jurisdiction of the Board, the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE Chapter 1103 (Vernon 2007) (the Act), the Rules of the Board, 22 TEX. ADMIN. CODE §§153, 155, 157 (West 2007) (the Rules), and the Uniform Standards of Professional Appraisal Practice (USPAP) in effect at the time of the appraisal.
3. On or about June 6th, 2008, the Respondent appraised real property located at 27903 Wild Bloom, San Antonio, Texas 78260.
4. On or about September 8th, 2008, the Complainant, Mr. Mark Liley, Vice President and Chief Appraiser at Flagstar Bank, filed a complaint with the Board based on allegations that the Respondent had produced an appraisal report that contained various deficiencies.
5. On or about September 12th, 2008, the Board, in accordance with the mandate of the Administrative Procedure Act (the APA), TEX. GOV'T CODE ANN. Chapter 2007, 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 to the complaint was received.

6. Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the property:

- a) Respondent violated the record keeping provisions of the Ethics Rule because he failed to maintain a work file containing all data, information, and documentation necessary to support his opinions and conclusions;
- b) Respondent failed to identify and report the site and improvement(s) description adequately;
- c) Respondent failed to consider and report easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances or other items of a similar nature;
- d) Respondent failed to identify and analyze the effect on use and value of existing land use regulations;
- e) Respondent failed to provide a brief summary of his basis and underlying rationale for his determination of the property's highest and best use;
- f) Respondent failed to use an appropriate method or technique to determine site value and provided no support for this determination;
- g) Respondent failed to collect, verify, analyze, and reconcile the cost new of improvements in his cost approach and did not employ recognized methods and techniques correctly in his cost approach;
- h) Respondent failed to correctly employ recognized methods and techniques in his sales comparison approach and did not collect, verify, analyze and reconcile comparable sales data adequately;
- i) Respondent failed to analyze all agreements of sale, options or listings of the property current as of the effective date of the appraisal;
- j) Respondent failed to analyze all sales of the property within 3 years prior to the effective date of the appraisal; and,
- k) Respondent's report contains substantial errors of commission or omission as detailed above which resulted in a misleading appraisal report for the property.

7. Respondent omitted material facts and made material misrepresentations in his appraisal report as detailed above.

CONCLUSIONS OF LAW

1. The Texas Appraiser Licensing and Certification Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE §§ 1103.451-1103.5535 (Vernon 2007).

2. Respondent violated the following provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3): USPAP Ethics Rule (record keeping provisions); USPAP Standards: 1-2(e)(i) & 2-2(b)(iii); 1-2(e)(iv) & 2-2(b)(viii); 1-3(a) & 2-2(b)(viii); 1-3(b) & 2-2(b)(ix); 1-4(b)(i) & 2-2(b)(viii); 1-4(b)(ii) & 2-2(b)(viii); 1-1(a) & 1-4(b); 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a); 1-5(a) & 2-2(b)(viii); 1-5(b) & 2-2(b)(viii); 1-1(a); 1-1(c); and 2-1(a).

3. Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(9) by omitting material facts and making material misrepresentations.

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

- a. Attend and complete a minimum, 15 classroom-hour course in USPAP;
- b. Pay to the Board an administrative penalty of \$500.00; and,
- c. Comply with all provisions of the Act, the Rules of the Board, and USPAP in the future, or be subjected to further disciplinary action.

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. Unless otherwise noted above, all classes must be in-class, have an exam, and Respondent must have a passing grade on the exam given in each class. None of these required classes will count toward Respondent's continuing education requirements for certification.

Payment of the **ADMINISTRATIVE PENALTY** must be by certified funds, and must be tendered within **TWENTY DAYS** of the date of this Agreed Final Order.

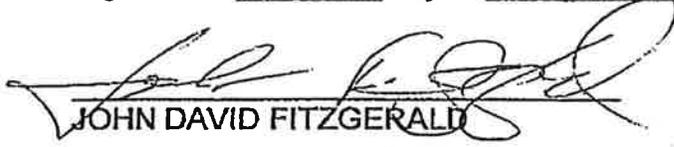
Failure to timely comply with any of the terms of this Final Agreed Order shall result in initiation of a contested case proceeding against Respondent and after opportunity for a hearing, possible imposition of disciplinary sanctions against Respondent as provided for by TEX. OCC. CODE § 1103.518.

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

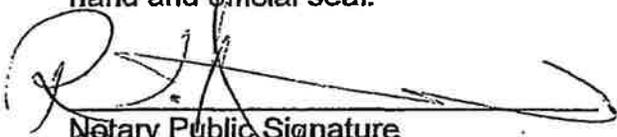
this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's web site.

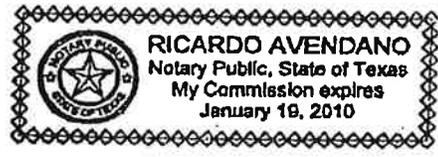
THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 30 day of November, 2009.


JOHN DAVID FITZGERALD

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 30 day of November, 2009, by JOHN DAVID FITZGERALD, to certify which, witness my hand and official seal.


Notary Public Signature
Ricardo Avendano
Notary Public's Printed Name



Signed by the Commissioner this 11 day of Dec, 2009.


Douglas Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 11 day of Dec, 2009.


Clinton P. Sayers, Chairperson
Texas Appraiser Licensing and Certification Board