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TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD	§ §	DOCKETED COMPLAINT NOS. 03-008, 05-002 & 05-003
vs.	§ §	
LYLE FRANCIS GALLAGHER TX-1326850-G	§ §	HEARING HELD IN AUSTIN TRAVIS COUNTY, TEXAS

BE IT REMEMBERED that on the 10th day of July, 2006, a hearing was convened in the above-entitled matter. Petitioner, the Texas Appraiser Licensing and Certification Board (TALCB), appeared through its Enforcement Attorney. Respondent, Lyle Francis Gallagher, having been duly notified of the hearing and of the Statement of Charges against him, appeared in person and by counsel. Both parties announced ready, and the case proceeded to hearing.

The Administrative Law Judge designated by the Board, having read the allegations set forth in the Statement of Charges and having considered the evidence and arguments presented by the parties, makes the following Findings of Fact and Conclusions of Law and enters the stated Order:

GENERAL DISCUSSION AND STATEMENT OF REASONING

This case involves appraisals performed by Lyle Francis Gallagher, a state certified general real estate appraiser, on July 18, 2000, at 2906 Santa Monica Street, Denton, Texas; on July 16, 2001, at a property on Heather Brook Lane near Justin, Texas; and on July 10, 2002, at 6208 Westcoat Drive, Colleyville, Texas. Each of these appraisals was conducted on behalf of a mortgage company.

As detailed in the Findings of Fact below, Lyle Francis Gallagher erred in performing each appraisal. Mr. Gallagher committed several violations of the Uniform Standards of Professional Appraiser Practice (USPAP), some more serious than others, and utilized the designation SRA at a time when he was not authorized to do so by the issuing organization.

In view of the violations of USPAP committed by Mr. Gallagher and the misrepresentation of his professional credentials, some disciplinary action against his certification is supported by the evidence; however, it is not concluded that Mr. Gallagher acted with an intent to harm anyone's interest, and his unauthorized use of the SRA designation appears to have arisen from a genuine misunderstanding. In consideration of Mr. Gallagher's many years of professional service with no previous record of disciplinary action, the complex nature of the appraisals at issue in this matter, and subsequent reforms made by Mr. Gallagher in his practice, it is believed and expected that any further violations of law may be prevented by the deterrent effect of a public reprimand, with the reminder that the Findings of Fact, Conclusions

of Law, and Order entered may be considered in the determination of the Board's action in any future administrative proceedings.

I

FINDINGS OF FACT

a) that on or about October 25, 1995, the TALCB issued to Lyle Francis Gallagher Certification No. TX-1326850-G, whereby he became a state certified general real estate appraiser;

b) that the certification issued to Lyle Francis Gallagher currently remains in effect until October 31, 2007;

c) that Lyle Francis Gallagher has been a real estate appraiser for a total of more than 20 years;

d) that on or about July 18, 2000, Lyle Francis Gallagher performed an appraisal of real property known as 2906 Santa Monica Street, Denton, Texas, on behalf of American United Mortgage Services, Lake Dallas, Texas, and issued a written report of his opinions and conclusions;

e) that Lyle Francis Gallagher's appraisal of the property was based solely on an exterior inspection from the street in compliance with the client's wishes;

f) that the report was identified as a Limited Appraisal Analysis-Summary Appraisal Report and was prepared on Fannie Mae Form 2055;

g) that Lyle Francis Gallagher indicated that he used only the sales comparison approach to value but did not invoke the USPAP Departure Rule;

h) that Lyle Francis Gallagher also indicated in his report that he gave consideration to all three approaches to value but did not develop the cost and income approaches through agreement with the client;

i) that the property was somewhat obscured by a wooded area and was not fully visible from the street;

j) that relying upon data from the tax records of the Denton County Appraisal District, Lyle Francis Gallagher mistakenly believed that the subject property

contained a two story home with detached living quarters and based his appraisal upon this impression;

k) that the property actually consisted of two homes;

l) that Lyle Francis Gallagher also relied upon the tax records to obtain square footage of the property;

m) that Lyle Francis Gallagher believed the information he received from the Denton County Appraisal District to be reliable;

n) that Lyle Francis Gallagher failed to summarize with support and rationale his determination of the highest and best use of the property;

o) that Lyle Francis Gallagher failed to explain and support his exclusion of the cost approach to value, believing that this was inapplicable to the subject property and that it was not within the client's expectations;

p) that due to his use of erroneous information as to the nature and square footage of the structures located at 2906 Santa Monica Street, Lyle Francis Gallagher's sales comparison approach to value was skewed, with the result that he failed to adequately collect, verify, analyze, and reconcile comparable sales data;

q) that Lyle Francis Gallagher failed to explain and support his exclusion of the income approach to value, believing this to be inapplicable to what was primarily an owner occupied neighborhood;

r) that in his appraisal report for the Santa Monica Street property, Lyle Francis Gallagher indicated that it was not listed for sale, relying upon his research through the Multiple Listing Service;

s) that the property had been previously listed but had been taken off the market at a time roughly coinciding with the date of the appraisal and had then been put back on the market later;

t) that the property sold approximately two weeks after the appraisal at a sales price lower than Lyle Francis Gallagher's opinion of value;

u) that although Lyle Francis Gallagher performed his physical inspection of the property on July 18, 2000, and noted that date in his report as the effective

date of the appraisal, his work file shows that he continued to gather data until July 21, 2000, when he delivered the completed report to his client;

v) that in his appraisal report of the Santa Monica Street property, Lyle Francis Gallagher included the designation "SRA" after his name;

w) that in 1990, Lyle Francis Gallagher had earned the SRA designation from the Society of Real Estate Appraisers and had continued membership with its successor The Appraisal Institute through 1998, when he elected not to renew his membership;

x) that after his membership expired, Lyle Francis Gallagher continued to identify himself with the SRA designation under the mistaken belief that the authorization to use it had survived expiration;

y) that after contacts from The Appraisal Institute, Lyle Francis Gallagher agreed to discontinue the use of the designation;

z) that although Lyle Francis Gallagher appraised the property at 2906 Santa Monica Street, Denton, Texas, in the manner wished by his client, the subject was probably too complex to be adequately serviced through a drive by appraisal;

aa) that Lyle Francis Gallagher did not perform the appraisal of the Santa Monica Street property with the intent to mislead anyone or to harm anyone's interest.

CONCLUSIONS OF LAW

a) that in his appraisal of the property located at 2906 Santa Monica Street, Denton, Texas, Lyle Francis Gallagher has been guilty of failing to observe the highest standards of professional conduct and record keeping in violation of the 2000 USPAP Ethics Rule;

b) that Lyle Francis Gallagher has also been guilty of violations of the 2000 USPAP Departure Rule and of 2000 USPAP Rules 1-1(a), 1-1(b), 1-2(e)(i), 1-3(b), 1-4(a), 1-4(c), 2-1(a), 2-2(b)(iii), 2-2(b)(ix), 2-2(b)(x), and 2-2(b)(xi);

c) that through the violations enumerated above, Lyle Francis Gallagher has failed to comply with the Uniform Standards of Professional Appraisal Practice in effect at the time of the appraisal of the property located at 2906 Santa Monica Street, Denton, Texas, as required by 22 TAC §155.1(a), and

that this violation of law is cause for the suspension or revocation of his certification pursuant to 22 TAC §153.20(a)(3) or for other disciplinary action authorized by 22 TAC §153.20 or by §1103.518 of the Texas Occupations Code;

d) that through his unauthorized use of the SRA designation, Lyle Francis Gallagher has been guilty of making a material misrepresentation in violation of 22 TAC §153.20(a)(9), and that this violation of law is cause for the suspension or revocation of his certification pursuant to 22 TAC §153.20(a)(3) or for other disciplinary action authorized by 22 TAC §153.20 or by §1103.518 of the Texas Occupations Code.

II

FINDINGS OF FACT

a) that on or about October 25, 1995, the TALCB issued to Lyle Francis Gallagher Certification No. TX-1326850-G, whereby he became a state certified general real estate appraiser;

b) that the certification issued to Lyle Francis Gallagher currently remains in effect until October 31, 2007;

c) that Lyle Francis Gallagher has been a real estate appraiser for a total of more than 20 years;

d) that on or about July 16, 2001, Lyle Francis Gallagher performed an appraisal of real property located on Heather Brook Lane near Justin, Texas, on behalf of Universal Lending Group, Southlake, Texas, and issued a written report of his opinions and conclusions;

e) that the report was identified as a Complete Appraisal Analysis-Summary Appraisal Report and was prepared on Fannie Mae Form 1004;

f) that Lyle Francis Gallagher received no engagement letter, as the client chose to request the appraisal telephonically;

g) that no tax records or Multiple Listing Service data existed for the property at the time of Lyle Francis Gallagher's appraisal;

h) that although Lyle Francis Gallagher did not prominently or expressly identify the intended use of his opinions and conclusions, he did insert the word "Refinance" into both pages of his written report in an effort to convey its purpose;

i) that although Lyle Francis Gallagher did not expressly indicate in his written appraisal report that because the property was proposed construction, the property was assumed to be complete as of the effective date of value, he believed that he used equivalent language by describing the property as proposed construction, by noting that there were no physical inadequacies because the property was new construction, by commenting that a final inspection was required, by checking the box in the reconciliation section which showed that the appraisal was made subject to completion per plans and specifications, and by information in an addendum;

j) that Lyle Francis Gallagher failed to state his evaluation of the highest and best use of the Heather Brook Lane property;

k) that in comments in his written appraisal report for the Heather Brook Lane property, Lyle Francis Gallagher stated that his cost data was from Marshall & Swift;

l) that the use of Marshall & Swift alone would not support the figure of $55.00 per square foot used by Lyle Francis Gallagher in his estimated cost new of improvements;

m) that Lyle Francis Gallagher in fact used other sources in addition to Marshall & Swift, as noted in an addendum to his appraisal report;

n) that Lyle Francis Gallagher did not provide support for his estimate of site value for the Heather Brook Lane property;

o) that inasmuch as the proposed construction at the Heather Brook Lane property was manufactured housing, with attendant difficulties of obtaining sales data, and that Lyle Francis Gallagher was given to understand that the home would be of superior quality to others in the area, the sales comparison approach was unusually complicated;

p) that Lyle Francis Gallagher attempted to alert the client to the difficulties of appraisals of new manufactured homes in an extensive addendum to his appraisal report;

q) that Lyle Francis Gallagher ultimately used sales of stick built homes to obtain his comparable sales data, relying upon his years of experience as an appraiser in the area to produce his best judgment as to the indicators of value for the Heather Brook Lane property;

r) that in his appraisal report of the Heather Brook Lane property, Lyle Francis Gallagher included the designation "SRA" after his name;

s) that in 1990, Lyle Francis Gallagher had earned the SRA designation from the Society of Real Estate Appraisers and had continued membership with its successor The Appraisal Institute through 1998, when he elected not to renew his membership;

t) that after his membership expired, Lyle Francis Gallagher continued to identify himself with the SRA designation under the mistaken belief that the authorization to use it had survived expiration;

u) that after contacts from The Appraisal Institute, Lyle Francis Gallagher agreed to discontinue the use of the designation;

v) that Lyle Francis Gallagher did not perform the appraisal of the Heather Brook Lane property with the intent to mislead anyone or to harm anyone's interest.

CONCLUSIONS OF LAW

a) that in his appraisal of the property located at Heather Brook Lane near Justin, Texas, Lyle Francis Gallagher has been guilty of violations of 2001 USPAP Rules 1-1(c), 1-2(h). 1-3(b), 1-4(a), 1-4(b)(i), 1-4(b)(ii), 2-1(c), 2-2(b)(iii), 2-2(b)(ix), and 2-2(b)(x);

b) that through the violations enumerated above, Lyle Francis Gallagher has failed to comply with the Uniform Standards of Professional Appraisal Practice in effect at the time of the appraisal of the property located at Heather Brook Lane near Justin, Texas, as required by 22 TAC §155.1(a), and that this violation of law is cause for the suspension or revocation of his certification pursuant to 22 TAC §153.20(a)(3) or for other disciplinary action authorized by 22 TAC §153.20 or by §1103.518 of the Texas Occupations Code;

c) that through his unauthorized use of the SRA designation, Lyle Francis Gallagher has been guilty of making a material misrepresentation in violation of 22 TAC §153.20(a)(9), and that this violation of law is cause for the suspension or revocation of his certification pursuant to 22 TAC §153.20(a)(3) or for other disciplinary action authorized by 22 TAC §153.20 or by §1103.518 of the Texas Occupations Code.

III

FINDINGS OF FACT

a) that on or about October 25, 1995, the TALCB issued to Lyle Francis Gallagher Certification No. TX-1326850-G, whereby he became a state certified general real estate appraiser;

b) that the certification issued to Lyle Francis Gallagher currently remains in effect until October 31, 2007;

c) that Lyle Francis Gallagher has been a real estate appraiser for a total of more than 20 years;

d) that on or about July 10, 2002, Lyle Francis Gallagher performed an appraisal of real property known as 6208 Westcoat Drive, Colleyville, Texas, on behalf of Chase Manhattan Mortgage Company, Diamond Bar, California, and issued a written report of his opinions and conclusions;

e) that the report was identified as a Complete Appraisal Analysis-Summary Appraisal Report and was prepared on Fannie Mae Form 1004;

f) that although Lyle Francis Gallagher did not expressly set out in his written appraisal report the hypothetical condition that the Westcoat Drive property was deemed complete as of the date of his report, he believed that he used equivalent language by describing the property as proposed construction, by noting that there were no physical inadequacies because the property was proposed construction, by commenting that a final inspection was required, by checking the box in the reconciliation section which showed that the appraisal was made subject to completion per plans and specifications, and by information in an addendum;

g) that Lyle Francis Gallagher failed to summarize and support with rationale the highest and best use of the property located at 6208 Westcoat Drive, Colleyville, Texas;

h) that inasmuch as the proposed construction on the Westcoat Drive property was of a new manufactured home, which was not typical of other properties in the area, and that the area contained a mix of home types, the sales comparison approach employed by Lyle Francis Gallagher was unusually difficult;

i) that Lyle Francis Gallagher attempted to alert the client to the difficulties of appraisals of new manufactured homes in an extensive addendum to his appraisal report;

j) that Lyle Francis Gallagher ultimately relied upon his years of experience as an appraiser in the area to produce his best judgment as to the indicators of value for the Westcoat Drive property by using comparable sales which he knew were not ideal;

k) that Lyle Francis Gallagher did not appraise the proposed improvements for the Westcoat Drive property only after examining and retaining the plans, specifications, evidence regarding time of completion and appropriate support for cost, anticipated earnings, occupancy, and anticipated competition at completion;

l) that by 2002, Lyle Francis Gallagher had many years of experience in the appraisal of manufactured housing;

m) that before completing his appraisal of the Westcoat Drive property, Lyle Francis Gallagher had examined a manufacturer's model at a dealer lot and had taken a factory tour;

n) that in the initial stages of his appraisal of the Westcoat Drive property, Lyle Francis Gallagher included the designation "SRA" after his name;

o) that by the time of completion of his final report, he had removed it;

p) that in 1990, Lyle Francis Gallagher had earned the SRA designation from the Society of Real Estate Appraisers and had continued membership with its successor The Appraisal Institute through 1998, when he elected not to renew his membership;

q) that after his membership expired, Lyle Francis Gallagher continued to identify himself with the SRA designation under the mistaken belief that the authorization to use it had survived the expiration;

r) that after contacts from The Appraisal Institute, Lyle Francis Gallagher agreed to discontinue the use of the designation;

s) that Lyle Francis Gallagher did not perform the appraisal of the Westcoat Drive property with the intent to mislead anyone or to harm anyone's interest.

CONCLUSIONS OF LAW

a) that in his appraisal of the property located at 6208 Westcoat Drive, Colleyville, Texas, Lyle Francis Gallagher has been guilty of violations of 2002 USPAP Rules 1-1(a), 1-2(h), 1-3(b), 1-4(a), 1-4(h), 2-1(a), 2-1(b), 2-1(c), 2-2(b)(viii), 2-2(b)(ix), and 2-2(b)(x);

b) that through the violations enumerated above, Lyle Francis Gallagher has failed to comply with the Uniform Standards of Professional Appraisal Practice in effect at the time of the appraisal of the property located at 6208 Westcoat Drive, Colleyville, Texas, as required by 22 TAC §155.1(a), and that this violation of law is cause for the suspension or revocation of his certification pursuant to 22 TAC §153.20(a)(3) or for other disciplinary action authorized by 22 TAC §153.20 or by §1103.518 of the Texas Occupations Code;

c) that through his unauthorized use of the SRA designation, Lyle Francis Gallagher has been guilty of making a material misrepresentation in violation of 22 TAC §153.20(a)(9), and that this violation of law is cause for the suspension or revocation of his certification pursuant to 22 TAC §153.20(a)(3) or for other disciplinary action authorized by 22 TAC §153.20 or by §1103.518 of the Texas Occupations Code.

ORDER

Lyle Francis Gallagher is hereby publicly reprimanded for his acts and omissions established by the evidence presented in this matter, with the

reprimand to be entered in his official record with the Texas Appraiser Licensing and Certification Board at 5:00 p.m., October 30, 2006.

IF ENFORCEMENT OF THIS ORDER is restrained or enjoined by an order of a court, this order shall then become effective upon a final determination by said court or appellate court in favor of the Texas Appraiser Licensing and Certification Board.

DATED: September 8, 2006

James E. Fletcher
Administrative Law Judge
TALCB