

TEXAS APPRAISER LICENSING  
AND CERTIFICATION BOARD

vs.

BART LANDON GARDNER  
TX-1333054-R

§  
§  
§  
§  
§  
§  
§  
§

DOCKETED COMPLAINT NO.  
12-243

**AGREED FINAL ORDER**

On the 15<sup>th</sup> day of February, 2013, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the certification of Bart Landon Gardner (the "Respondent").

In order to conclude this matter, Bart Landon Gardner 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 Bart Landon Gardner is a Texas state certified residential real estate appraiser who holds certification number TX-1333054-R, and was certified by the Board during all times material to the above-noted complaint.
2. Respondent appraised real property located at: 4724 Carolina Trace, Arlington, Texas 76244 ("the Carolina property") on or about August 24, 2010 and 3310 Edgewater Court, Arlington, Texas 76016 ("the Edgewater property") on or about November 4, 2010.
3. Thereafter a complaint was filed with the Board. The complaint alleged that the Respondent produced appraisal reports for the property that did not conform to the Uniform Standards of Professional Appraisal Practice (USPAP), and 22 TEX. ADMIN. CODE CHPT. 153 and 155 (the "Rules").
4. Thereafter the Board, in accordance with the mandate of the Administrative Procedure Act (the "APA"), TEX. GOV'T CODE ANN. CHPT. 2001, and TEX. OCC. CODE CHPT. 1103 (the "Act"), notified Respondent of the nature of the accusations involved and Respondent was afforded an opportunity to respond to the accusations in the complaint. Respondent was also requested to provide certain documentation to the Board.
5. 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 Carolina Trace property:

- a) USPAP Ethics Rule (Conduct) – Respondent communicated an appraisal report that was knowingly misleading by failing to disclose his trainee’s participation in the appraisal report;
  - b) USPAP Ethics Rule (Record Keeping) – Respondent failed to comply with the USPAP ethics rule because he failed to maintain a work file containing all data, information, and documentation necessary to support the appraiser’s opinions and conclusions;
  - c) USPAP Standards 1-2(e)(iv) & 2-2(b)(viii) – Respondent failed to report the correct zoning classification; and,
  - d) USPAP Standards 1-4(b)(i) & 2-2(b)(viii) – Respondent failed to use an appropriate method or technique to develop an opinion of the site value;
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 Edgewater property:
- a) USPAP Ethics Rule (Conduct) -- Respondent communicated an appraisal report that was knowingly misleading by failing to disclose his trainee’s participation in the appraisal report;
  - b) USPAP Ethics Rule (Record Keeping) – Respondent failed to comply with the USPAP ethics rule because he failed to maintain a work file containing all data, information, and documentation necessary to support the appraiser’s opinions and conclusions;
  - c) USPAP Standards 1-2(e)(iv) & 2-2(b)(viii) – Respondent failed to report the correct zoning classification;
  - d) USPAP Standards 1-4(b)(i) & 2-2(b)(viii) – Respondent failed to use an appropriate method or technique to develop an opinion of the site value; and,
  - e) USPAP Standards 1-4(a) & 2-2(b)(viii) – Respondent failed to provide support for his adjustments in the sales comparison approach;
7. As part of an experience audit submitted to the Board in connection with his employee’s application to the Board, Respondent added his employee’s name to the appraisal reports for appraisals in which he participated; so that it appeared that his name was included when the report was prepared, when it actually was not so included. Even though the appraiser signing the reports should have included his employee’s name at the time the reports were prepared, the Board considers Respondent’s addition of his employee’s name when he submitted the reports to the Board to be misleading.
8. The parties enter into the following consent order in accordance with TEX. OCC. CODE § 1103.458.

## CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103.
2. Respondent violated the above-noted provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3).
3. Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(2) by specifically violating 22 TEX. ADMIN. CODE §153.9(e) by submitting false information in an application to the Board.
4. Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(9) by omitting material facts.
5. 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** that Respondent's Texas appraiser certification be suspended for a period of twenty four (24) months, effective 5:00 p.m., February, 15<sup>th</sup>, 2013.

IT IS FURTHER ORDERED that beginning at 5:00 p.m., February 15<sup>th</sup>, 2013 the suspension is to be fully probated for twenty four (24) months ending February 15<sup>th</sup>, 2015, subject to the following terms and conditions:

1. **EDUCATION.** On or before February 15<sup>th</sup>, 2014. Respondent shall submit documentation of attendance and successful completion of the classes set out below to the Board. All classes required by this Order must be classes approved by the Board. Unless otherwise noted below, all classes must require in-class attendance and have an exam. Respondent must receive a passing grade on the exam given in each class. None of the required classes will count toward Respondent's continuing education requirements for licensure. **Respondent is solely responsible for locating and scheduling classes to timely satisfy this 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, on or before February 15<sup>th</sup>, 2014.
2. **MENTORSHIP.** On or before February 15<sup>th</sup>, 2014. Respondent shall complete four (4) hours of in-person mentorship conducted by a certified USPAP instructor 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 certified USPAP instructor 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 Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion.

- a. Four (4) hours of mentorship concerning the USPAP Ethics Rule, USPAP Recordkeeping Rule, USPAP Competency Rule, and USPAP Scope of Work Rule, on or before February 15<sup>th</sup>, 2014.
3. **EXPERIENCE LOG.** On or before February 15<sup>th</sup>, 2015. Respondent shall submit to the Board an appraisal experience log on a form prescribed by the Board for the period of twelve (12) months starting after completion of education and mentorship (from February 15<sup>th</sup>, 2014 to February 15<sup>th</sup>, 2015). The log shall detail *all* real estate appraisal activities Respondent has conducted during that twelve (12) month period. This log shall be signed by Respondent and contain a notarized affidavit attesting the log is true, complete and accurate. Upon request from the Board, Respondent shall provide copies of his appraisal reports and work files for any appraisal assignments Respondent performs during the course of this period of probation within twenty days of receiving any such request.
4. **TRAINEES.** Respondent shall not sponsor any trainees during the first year of his twenty-four (24) month probation period.
5. **ADMINISTRATIVE PENALTY.** Pay to the Board an administrative penalty of five thousand dollars (\$5,000.00), by certified funds, within twenty (20) days of the effective date of this order (i.e. on or before March 7<sup>th</sup>, 2013).
6. Fully and timely comply with all of the provisions of this Agreed Final Order; and,
7. Comply with all future provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

Payment of the \$5,000 **ADMINISTRATIVE PENALTY** must be by certified funds, and must be tendered within **TWENTY (20) DAYS** of the date of this Agreed Final Order (i.e. on or before March 7<sup>th</sup>, 2013).

***Failure to comply with any of the terms of this Agreed Final Order within the time allotted shall result in IMMEDIATE SUSPENSION*** of the Respondent's certification pursuant to notice to the Respondent from Board staff indicating that the Respondent has not fulfilled the 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.** If Respondent's certification is suspended on such a basis, the suspension shall remain in effect until such time as Respondent is in full compliance with the terms of this Order and has provided adequate documentation of that compliance to the Board.

**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.** 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.

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. 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, SUCH AS PAYMENT OF A FEE, COMPLETION OF COURSEWORK OR FAILURE TO PROVIDE LOGS.

This agreement may be executed in one or more counterparts, in 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.

Signed this 11 day of JANUARY, 2013.



\_\_\_\_\_  
BART LANDON GARDNER



\_\_\_\_\_  
TED WHITMER, ATTORNEY FOR  
BART LANDON GARDNER

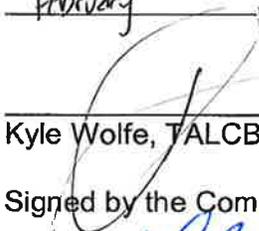
SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 11<sup>th</sup> day of January, 2013, by BART LANDON GARDNER, to certify which, witness my hand and official seal.

  
Notary Public Signature



Sang G. Lee  
Notary Public's Printed Name

Signed by the Standards and Enforcement Services Division this 15<sup>th</sup> day of February, 2013.

  
\_\_\_\_\_  
Kyle Wolfe, TALCB Staff Attorney

Signed by the Commissioner this 15<sup>th</sup> day of February, 2013.

  
\_\_\_\_\_  
Douglas Oldmixon, Commissioner  
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 15<sup>th</sup> day of February, 2013.

  
\_\_\_\_\_  
~~Luis De La Garza~~, Chairperson Walker Beard  
Texas Appraiser Licensing and Certification Board