

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

MARK DAVID GRAY
TX-1337663-L

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DOCKETED COMPLAINT NO. 10-308,
11-048 AND DOCKETED
APPLICATION DENIAL

AGREED FINAL ORDER

On this the 9TH day of NOVEMBER, 2010, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the license of Mark David Gray (Respondent) and his application for certification.

In order to conclude this matter Mark David Gray 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, Mark David Gray, is a state licensed real estate appraiser who currently holds and held license number TX-1337663-L during all times material to the above-noted complaint case.
2. Respondent appraised 7504 Daugherty Street, Austin, TX ("the Daugherty property") on or about January 12th, 2008.
3. Respondent appraised 110 Six Flags Drive, Georgetown, TX ("the Six Flags property") on or about April 21st, 2010.
4. Respondent appraised 2328 Flite Acres Road, Wimberly, TX ("the Flite property") on or about April 24th, 2009.
5. Thereafter, Respondent filed an application for a state certification with the Board.
6. As part of the application process Respondent's experience (the Daugherty and Six Flags property appraisals) was audited for compliance with the Uniform Standards of Professional Appraisal Practice ("USPAP").
7. The application was initially denied by the Board Staff after his experience submitted in conjunction with application was evaluated.

8. The proposed denial of Petitioner's application was based upon alleged violations of TEX. OCC. CODE §§ 1103.203, 1103.205 and 1103.405 and 22 TEX. ADMIN. CODE §§ 153.15(c), (d) and (f), 153.20(a)(3) and 155.1(a) all stemming from the failure to comply with the USPAP in the Daugherty and Six Flags property appraisals.
9. On or about May 26th, 2010, Larry Handley, Vice President with Chase Home Lending, filed a complaint with the Board based on allegations that the Respondent had produced an appraisal report for the Flite property that contained various USPAP violations.
10. On or about May 27th, 2010 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, notified Respondent of the nature of the accusations involved and Respondent was afforded an opportunity to respond to the accusations in the Flite property complaint. Respondent's response to this complaint was received.
11. On or about October 7th, 2010, Deloris Kraft-Longoria, filed a staff-initiated complaint with the Board based on allegations that the Respondent had produced appraisal reports for the Daugherty and Six Flags properties that contained various USPAP violations.
12. On or about October 7th, 2010 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, notified Respondent of the nature of the accusations involved and Respondent was afforded an opportunity to respond to the accusations in the Daugherty and Six Flags properties complaint. Respondent voluntarily waived the filing of a response to this complaint, with the expectation of the parties resolving the matter by agreement.
13. Respondent and the Board have reached agreement on resolution of this application denial matter and all pending complaint matters and wish to fully resolve these proceedings by means of this Agreed Final Order.
14. 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 Flite property:
 - a) Respondent lacked the knowledge and experience to complete this assignment competently and failed to take the steps necessary to acquire the knowledge sufficient to become competent;
 - b) Respondent failed to identify the problem to be solved properly, determine the scope of work necessary to develop

credible assignment results and did not disclose the scope of work;

- c) Respondent failed to adequately identify and report the site description;
- d) Respondent incorrectly identified the specific zoning classification for the Flite property;
- e) Respondent has failed to provide his supporting rationale for his determination of the property's highest and best use. In particular, Respondent failed to disclose, analyze and address alternate uses of the property given its location in the immediate vicinity of the Blanco river, where many similar properties are marketed as bed and breakfasts or short-term residential rentals;
- f) Respondent failed to provide support for his site value determination, cost new of improvements and accrued depreciation and did not employ recognized methods and techniques in the cost approach;
- g) Respondent failed to collect, verify, analyze and reconcile comparable sales data adequately and did not employ recognized methods and techniques in the sales comparison approach; and,
- h) Respondent's report contains substantial errors of commission or omission as detailed above which resulted in a misleading appraisal report for the Flite property.

15. 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 Six Flags property:

- a) Respondent failed to analyze and report a listing of the Six Flags property which occurred within the twelve months prior to the effective date of his appraisal report.

16. 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 Daugherty property:

- a) Respondent failed to maintain a work file containing all data, information and documentation necessary to support his analyses, opinions and conclusions;
- b) Respondent failed to report the specific zoning classification and incorrectly identified it as "R Residential";
- c) Respondent failed to provide support for his determination of economic supply and demand, and market area trends;
- d) Respondent failed to provide support for his site value determination, cost new of improvements and accrued depreciation and did not employ recognized methods and techniques in the cost approach;
- e) Respondent failed to collect, verify, analyze and reconcile comparable sales data adequately and did not employ recognized methods and techniques in the sales comparison approach;
- f) Respondent failed to explain and support his exclusion of the income approach; and,
- g) Respondent's report contains substantial errors of commission or omission as detailed above which resulted in a misleading appraisal report for the property.

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 et. seq.
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); USPAP Competency Rule; USPAP Scope of Work Rule; USPAP Standards: 1-2(h) & 2-2(b)(vii); 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); 1-4(b)(iii) & 2-2(b)(viii); 1-1(a) & 1-4(b); 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a); 2-2(b)(viii); 1-5(b) & 2-2(b)(viii); 1-1(a); 1-1(b); 1-1(c); 2-1(a); and 2-1(b).
3. Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(9) by making negligent, material misrepresentations and omitting material facts.

This Agreed Final Order entered into between Mark David Gray and the Board is hereby approved. Once Mark David Gray satisfies the terms of this Order, the Board

directs staff to issue Mark David Gray a state certification. Based on the above findings of fact and conclusions of law, the Board **ORDERS** that prior to issuance of a state certification the Respondent shall:

- a. Attend and complete a minimum, 15 classroom-hour course in USPAP;
- b. Attend and complete a minimum, 15 classroom-hour course in Highest and Best Use;
- c. Attend and complete a minimum, 7 classroom-hour course in Residential Case Studies or the Sales Comparison Approach or Valuation by Comparison: Residential Analysis and Logic;
 - i. No examination shall be required for this course;
- d. Attend and complete a minimum, 7 classroom-hour course in Appraising the Tough Ones or Appraising Complex Residential Properties; and,
 - i. No examination shall be required for this course;
- e. Mark David Gray shall complete a minimum of 400 additional hours of real estate appraisal activity over a minimum of 6 months which must satisfy experience credit criteria under the Texas Appraiser Licensing and Certification Act and applicable Board rules. Upon completion of the additional hours, Mark David Gray shall submit a signed and notarized experience log and affidavit to the Board for auditing to ensure the additional hours submitted comport with experience credit criteria.
- f. 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.

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 licensure or certification.

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 license or certification pursuant to notice to the Respondent from the Board 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. 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 license or certification is suspended on such a basis, the suspension shall remain in effect until such time as Respondent complies with all the terms of this Agreed Final Order.

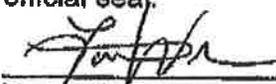
Respondent, by signing this Agreed Final Order, waives the Respondent's right to a formal hearing and any right to seek judicial review of this Agreed Final Order. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published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

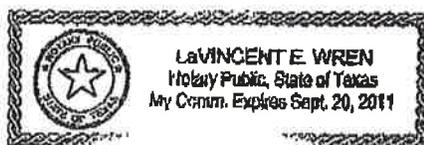
Signed this 9TH day of NOVEMBER, 2010.


MARK DAVID GRAY

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 9th day of November, 2010, by MARK DAVID GRAY, to certify which, witness my hand and official seal.


Notary Public Signature

Lavincent Wren
Notary Public's Printed Name



Signed by the Standards and Enforcement Services Division this 19th day of November, 2010.


Troy Beaulieu, TALCB Staff Attorney

Signed by the Commissioner this 19th day of November, 2010.


Douglas Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 19th day of November, 2010.



James B. Ratliff, Chairperson
Texas Appraiser Licensing and Certification Board