

TEXAS APPRAISER LICENSING  
AND CERTIFICATION BOARD

vs.

ANTONIO REFUGIO GUTIERREZ  
TX-1329053-R

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DOCKETED COMPLAINT NO.  
06-074, 06-113 & 06-132

**COPY**

**AGREED FINAL ORDER**

On this the \_\_\_\_\_ day of April, 2007, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the certification of Antonio Refugio Gutierrez, (Respondent). The Board makes the following findings of fact and conclusions of law and enters this Order.

**FINDINGS OF FACT**

1. Respondent Antonio Refugio Gutierrez is a state certified residential real estate appraiser, holds license number TX-1329053-R, and has been certified by the Board since November 8<sup>th</sup>, 1999.
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 his appraisals.
3. On or about February 11<sup>th</sup>, 2003, the Respondent appraised the subject property located at 401 Pine Street, Donna, Texas ("the Pine property"), for the client, Wells Fargo Home Mortgage of McAllen, Texas.
4. The Complainant, Deloris Kraft-Longoria, an investigator with the Board, complained that the Respondent had performed an appraisal of the Pine property that was not in compliance with USPAP because the comparable sales were superior in location and quality of construction. This staff-initiated complaint was based upon information submitted from the Fraud Unit of the Texas Department of Insurance.
5. On or about February 21<sup>st</sup>, 2006, the Board, in accordance with the mandate of the Administrative Procedure Act (the APA), TEX. GOV'T CODE ANN. Chapter 2001, and TEX. OCC. CODE § 1103.001 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 or about February 3<sup>rd</sup>, 2006, the Respondent appraised the subject property located at 2810 Blake Street, Harlingen, Texas ("the Blake property"), for the client, Landmark Mortgage of Dallas, Texas.

7. The Complainant, Robert Thompson, complained to the Board alleging that the Respondent had produced an appraisal report that was misrepresentative and incorrect, particularly with regard to incorrect square footage calculations.

8. On or about May 22<sup>nd</sup>, 2006, the Board, in accordance with the mandate of the Administrative Procedure Act (the APA), TEX. GOV'T CODE ANN. Chapter 2001, and TEX. OCC. CODE § 1103.001 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.

9. On or about December 27<sup>th</sup>, 2005, the Respondent appraised the subject property located at 21194 Vista Drive, Harlingen, Texas 78550 ("the Vista property"), for the client, Hometown Mortgage d/b/a Rioplex Mortgage of Harlingen, Texas.

10. The Complainant, Mark Liley, Assistant Vice President and Chief Appraiser of Flagstar Bank in Troy, Michigan, complained to the Board alleging that the Respondent had produced an appraisal report for the Vista property that was inflated and gave a misrepresentative opinion of value.

11. On or about April 19<sup>th</sup>, 2006, the Board, in accordance with the mandate of the Administrative Procedure Act (the APA), TEX. GOV'T CODE ANN. Chapter 2001, and TEX. OCC. CODE § 1103.001 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.

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

- a. USPAP Standards 2-2(b) – Respondent failed to state what report option he used;
- b. USPAP Standards 1-2(f) & 2-2(b)(vii) – Respondent failed to discuss his scope of work (i.e. his process of collecting, confirming and reporting data);

- c. **USPAP Standards 1-3(b) & 2-2(b)(x) – Respondent failed to provide a summary statement of his rationale and reasoning for his determination of the Pine property's highest and best use;**
- d. **USPAP Standards 1-4(b)(i) & 2-2(b)(ix) – Respondent failed to use an appropriate method or technique to develop an opinion of the Pine property's site value. Respondent indicated that his site value determination was based upon sales of similar sites, but there were no lot sales in his work file or his report to support this \$12,000.00 determination. Moreover, the county assessed value for the Pine property's lot was only \$8,390.00.**
- e. **USPAP Standards 1-4(b)(ii) & 2-2(b)(ix) – Respondent's cost per square foot for the Pine property's carport is inflated. Respondent used \$20.00 / square foot even though Marshall & Swift reflects that this cost should range from \$10-\$12 per square foot;**
- f. **USPAP Standards 1-4(a) & 2-2(b)(ix) – Respondent has failed to adequately collect, verify, analyze and reconcile comparable sales data. Respondent selected comparable sales that were not similar in terms of quality, age, and location. Respondent used properties with a date of sale more than 1 year old for comparables #2-#4 even though more recent sales were available. Additionally, the sales he did utilize were significantly larger than the Pine property in terms of living area size. Furthermore, Respondent failed to provide sales data in his work file to support the sales he used and neither comparable sales #1 or #3 exist in the Hidalgo County records. Sale #2 was located, but there was no deed recorded for the closing date Respondent indicated in his report (i.e. 8/22/2001). All six comparable sales used by Respondent were new or newer construction and inadequate adjustments were made to reflect the age difference between these newer homes and the Pine property, which is some 20 years old. Finally, Respondent failed to adjust for the 200 square foot mud room / bathroom found in the Pine property, but not found in the comparable sales used;**
- g. **USPAP Standards 1-1(a) & 1-4(a) – Respondent has failed to correctly employ recognized methods and techniques for the same reasons noted above;**
- h. **USPAP Standards 1-5(a) & 2-2(b)(ix) – Respondent failed to analyze all agreements of sale, options or listings current as of the effective date of the appraisal. Respondent indicated that there was a pending sale, but did not state the sales price nor comment on the sales agreement;**

- i. **USPAP Standards 1-5(b) & 2-2(b)(ix) – Respondent did not indicate whether there were any sales of the subject property within 3 years prior to the effective date of the appraisal. Additionally, while the subject was built in 1983, Respondent indicated that the Pine property was proposed construction;**
- j. **USPAP Standard 1-1(a) – Respondent did not correctly employ recognized methods and techniques to produce a credible appraisal report for the Pine property. Respondent did not select the most comparable properties, he utilized newer homes and made inadequate or no adjustments, and he made several errors and omissions that resulted in his report not being credible;**
- k. **USPAP Standard 1-1(b) Respondent committed a substantial error of omission or commission that significantly affected his appraisal report. Respondent failed to make adjustments for the Pine property's "mud room" and failed to made adequate adjustments for age; and,**
- l. **USPAP Standard 2-1(a) – Respondent did not clearly and accurately set forth his appraisal in a manner that will not be misleading. Respondent used sales that were over 1 year old and also used sales that were not similar to the Pine property in terms of age, which resulted in a misleading appraisal report.**

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

- a. **USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent incorrectly identified and reported the site description because he erroneously reported that the Blake property had gas utilities that were available when they are not;**
- b. **USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent inadequately identified and reported improvement(s) description because his floor plan sketch and living area calculations are incorrect and misleading to the reader of the report. Respondent's square footage calculations are several hundred square feet too large. Respondent erroneously included a garage area in his living area calculations and his floor plan sketch does not match his field notes contained in his work file. Additionally Respondent incorrectly reported the Blake property's street address, erroneously reported several different amenities that the property did not actually contain (dishwasher, gas utilities, sprinkler system etc.) and wholly failed to describe and report on the subject's porch and patio area;**

- c. **USPAP Standards 1-3(b) & 2-2(b)(x) – Respondent failed to provide a summary statement of his rationale and reasoning for his determination of the Blake property's highest and best use;**
- d. **USPAP Standards 1-4(b)(i) & 2-2(b)(ix) – Respondent failed to correctly collect, verify, analyze and reconcile the cost new of improvements. His cost approach is inflated because Respondent erroneously used inflated living area calculations which were several hundred feet larger than the actual square footage of the Blake property's living area;**
- e. **USPAP Standards 1-4(a) & 2-2(b)(ix) – Respondent has failed to adequately collect, verify, analyze and reconcile comparable sales data. Specifically, Respondent did not adequately and correctly make adjustments for dissimilarities with the Blake property. Respondent reported age adjustments based upon \$250 / year, but provided no adjustments and no discussion regarding how this adjustment was derived. Additionally, the comparable sales Respondent used in his analysis were significantly different than the Blake property. Better comparable sales were available in the Blake property's area which should have been used. Specifically, comparable sales #2 and #3 were significantly different in age, comparable sale #1 was reported as having a workshop, but no adjustment was made to reflect this different with the subject. Additionally sales #1 and #2 were reported as being in average condition even though MLS listing information indicated they were in better condition;**
- f. **USPAP Standards 1-1(a) & 1-4(a) – Respondent has failed to correctly employ recognized methods and techniques for the same reasons noted above;**
- g. **USPAP Standards 1-6(a) & (b) & 2-2(b)(ix) – Respondent failed to reconcile the quality and quantity of the data within the approaches used. Respondent failed to explain why his cost approach was significantly higher than his sales comparison approach and he reported inconsistent values within the sales comparison approach;**
- h. **USPAP Standards 1-1(a) – Respondent failed to correctly employ recognized methods and techniques to produce a credible appraisal because his measurements of the improvements were erroneous and resulted in an inflated determination of living area square footage which made the report not credible;**

- i. **USPAP Standards 1-1(b) – Respondent committed a substantial error of omission or commission that significantly affected his appraisal report when he erroneously measure the living area square footage of the Blake property and ended up inflating the square footage as a result;**
- j. **USPAP Standards 1-1(c) – Respondent rendered appraisal services that were careless or negligent. Respondent made several errors such as living area calculations; omitting adjustments for age, condition, and amenities, and stated the incorrect subject address;**

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

- a. **USPAP Standards 1-3(b) & 2-2(b)(x) – Respondent failed to provide a summary statement of his rationale and reasoning for his determination of the Vista property's highest and best use;**
- b. **USPAP Standards 1-4(b)(ii) & 2-2(b)(ix) – Respondent has failed to collect, verify, analyze and reconcile the cost new of improvements. Respondent failed to account for the Vista property's septic system and his cost per square foot of \$98 is inflated when compared to Marshall & Swift cost data. Additionally, since the Vista property is new construction, Respondent's cost approach should be a reliable indicator of value, but it does not support his final value conclusion of \$450,000.00.**
- c. **USPAP Standards 1-4(a) & 2-2(b)(ix) – Respondent has failed to adequately collect, verify, analyze and reconcile comparable sales data. Specifically, Respondent did not select comparable sales that were comparable in terms of quality, living are size, site characteristics, and date of sale. These chosen sales resulted in an inflated estimate of market value. More similar comparables were readily available in close proximity to the subject, but those sales were not utilized. With regard to sales date, comparables #2-#5 were all over 1 year old, even though more recent comparables were available. Comparable sale #1 was inappropriate because it was lakefront property with a nice view. Comparable sale #3 was inappropriate because it was located on a golf course. Comparable sale #4 was inappropriate because it was situated on 12.5 acres of land. Each of these comparables was inappropriate because they all appealed to a different market of buyer than the Vista property. Additionally Respondent used comparables with incorrect square footage and there was significant difference between the Vista**

property and the comparables in terms of square footage. Furthermore, comparable sales #1, #3, #4, and #5 all had superior quality roofs compared to the Vista property, but Respondent failed to make any adjustments for this difference. Finally, comparable sale #4 contained a guest house that was not reported nor adjusted for by Respondent;

- d. USPAP Standards 1-1(a) & 1-4(a) – Respondent has failed to correctly employ recognized methods and techniques for the same reasons noted above;
- e. USPAP Standard 2-2(b)(xi) – Respondent has failed to explain and support his exclusion of the income approach;
- f. USPAP Standards 1-6(a) & 1-6(b) & 2-2(b)(ix) – Respondent indicated that the sales comparison approach was given the most weight in his analysis, but he failed to explain this rationale. The market value indicated by his cost approach was significantly lower than the sales comparison approach and should have been a good indication of value since the Vista property was new construction;
- g. USPAP Standard 1-1(a) – Respondent did not correctly employ recognized methods and techniques to produce a credible appraisal. Respondent failed to select the most recent and similar comparable sales which caused his report to not be credible;
- h. USPAP Standards 1-1(b) – Respondent committed substantial errors of omission or commission that significantly affected his appraisal report. Respondent failed to report and adjust for the guest house for comparable sale #4 and did not provide lot and land sales to support his site adjustments; and,
- i. USPAP Standard 2-1(a) – Respondent failed to set forth his appraisal in a manner that will not be misleading. Respondent did not select comparable sales which were similar to the subject; more recent and more similar sales were readily available and should have been used instead of the comparables erroneously used by Respondent.

15. The Enforcement Division has concluded that with respect to the Pine, Blake and Vista property appraisals, the Respondent violated TEX. OCC. CODE § 1103.405 and 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 reports.

16. The Enforcement Division has concluded that with respect to the Pine, Blake and Vista property appraisals the Respondent violated 22 Tex.

ADMIN. CODE §§ 153.20(a)(9) by making a material misrepresentations or omissions of material fact in his reports. With respect to the Pine property appraisal this includes failing to use more appropriate and readily available comparable sales which should have been used in place of the ones Respondent chose; producing an inflated cost figure for the carport; and, failing to analyze and discuss the prior sales and listing history as well as any prior agreements of sale for the Pine property. With respect to the Blake property appraisal this includes failing to use more appropriate and readily available comparable sales which should have been used in place of the ones Respondent chose; erroneously reporting that the Blake property had gas utilities that were available when they are not; producing a floor plan sketch and living area calculations which were incorrect and misleading to the reader of the report; and incorrectly reporting the presence or lack of different amenities. With respect to the Vista property appraisal this includes failing to use more appropriate and readily available comparable sales which should have been used in place of the ones Respondent chose; misrepresenting that the sales comparison approach was the best indicator of value when it was actually the cost approach because the Vista property was new construction; and, omitting any discussion or analysis of the guest house in sales comparable #4.

#### **CONCLUSIONS OF LAW**

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 2005).

1. Respondent violated the following USPAP provisions as prohibited by TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a): USPAP Standards Rules: 2-2(b); 1-2(f) & 2-2(b)(vii); 1-3(b) & 2-2(b)(x); 1-4(b)(i) & 2-2(b)(ix); 1-4(b)(ii) & 2-2(b)(ix); 1-4(a) & 2-2(b)(ix); 1-1(a) & 1-4(a); 1-5(a) & 2-2(b)(ix); 1-5(b) & 2-2(b)(ix); 1-1(a); 1-1(b); 2-1(a); 1-2(e)(i) & 2-2(b)(iii); 1-6(a) & (b) & 2-2(b)(ix); 1-1(c); and, 2-2(b)(xi).

2. Respondent violated TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by failing to conform to USPAP in effect at the time of all three appraisal reports.

3. Respondent violated 22 TEX. ADMIN. CODE §§ 153.20(a)(9) by making a material misrepresentations or omissions of material fact in all three of his appraisal reports.

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

- a) Shall pay to the Board an Administrative Penalty of \$2,000.00;

- b) Attend and complete a minimum 15 classroom-hour course in USPAP;
- c) Attend and complete a minimum 30 classroom-hour course in the Sales Comparison Approach or Residential Market Data Analysis; 403
- d) Attend and complete a minimum 15 classroom-hour course in Residential Case Studies; and,
- e) 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 the **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 certification 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.

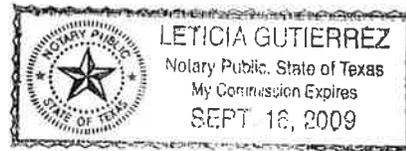
Signed this 3 day of May, 2007.

*Antonio Refugio Gutierrez*  
ANTONIO REFUGIO GUTIERREZ

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 3 day of May, 2007, by ANTONIO REFUGIO GUTIERREZ, to certify which, witness my hand and official seal.

*Leticia Gutierrez*  
Notary Public Signature

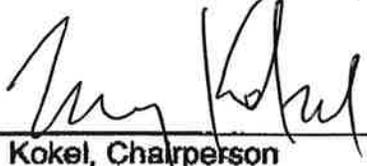
Leticia Gutierrez  
Notary Public's Printed Name



Signed by the Commissioner this 16th day of May, 2007.

*Wayne Thorburn*  
Wayne Thorburn, Commissioner  
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 11 day of May, 2007.



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Larry Kokel, Chairperson  
Texas Appraiser Licensing and Certification Board