

TEXAS APPRAISER LICENSING  
AND CERTIFICATION BOARD

vs.

DONALD LAIL  
TX-1320942-R

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DOCKETED COMPLAINT NO. 11-169

**AGREED FINAL ORDER**

On this the 18<sup>th</sup> day of May, 2012, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the certification of Donald Lail (Respondent).

In order to conclude this matter Donald Lail 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, Donald Lail, is a state certified residential real estate appraiser who currently holds and held certification number TX-1320942-R during all times material to the above-noted complaint case.
2. Respondent appraised 12500 FM 917, Alvarado, Texas ("the property") with a report date on or about January 23<sup>rd</sup>, 2008, with an effective date on or about January 22<sup>nd</sup>, 2008.
3. On or about December 20<sup>th</sup>, 2010, Carole L. Shoemaker, a Mortgage Appraisal Analyst with SunTrust Mortgage, Inc., filed a complaint with the Board based on allegations that the Respondent had produced an appraisal report for the property that contained various misrepresentations, omissions and USPAP violations.
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, notified Respondent of the nature of the accusations involved and Respondent was afforded an opportunity to respond to the accusations in the complaint. Respondent's response to the complaint was received.
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 property:

- a) Respondent failed to comply with the record keeping provisions of the Ethics Rule;
  - b) Respondent failed to identify and analyze the effect on use and value of existing land use regulations, zoning ordinances, economic supply and demand, physical adaptability of the real estate and market area trends;
  - c) Respondent has failed to provide a brief summary of his supporting rationale for his determination of the property's highest and best use. Because the surrounding, immediate area was primarily developed with industrial buildings, this was a significant issue that needed to be analyzed and reported as required by USPAP;
  - d) Respondent failed to use an appropriate method or technique to determine site value and did not provide support for the site value determination, failed to collect, verify, analyze and reconcile the cost of improvements and accrued depreciations, and generally failed to employ recognized methods and techniques in his cost approach. In particular, Respondent used an overstated remaining economic life (50 years) given the transitional nature of the immediate area and the lack of single family housing present;
  - e) Respondent failed to collect, verify, analyze and reconcile comparable sales data adequately and failed to employ recognized techniques in his sales comparison approach;
  - f) Respondent failed to explain and support his exclusion of the income approach in the property appraisal;
  - g) Respondent failed to analyze, reconcile and report the prior sale of the property at \$170,000 in the year prior to his report's effective date and did not reconcile or analyze this information in conjunction with the pending contract of sale and listing of the property for \$220,000; and,
  - h) Respondent's property appraisal report contains substantial errors of commission or omission as detailed above which resulted in a misleading appraisal report for the property.
6. Respondent has made material misrepresentations and omitted material facts 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 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 Standards: 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(a) & 2-2(b)(viii); 1-5(b) & 2-2(b)(viii); 1-6(a) & (b) & 2-2(b)(viii); 1-1(a); 1-1(b); 1-1(c); and 2-1(a).
3. Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(9) by making material misrepresentations and omitting material facts.

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

- a. Have his certification revoked for twenty-four (24) months, beginning on Friday, May 18<sup>th</sup>, 2012, with this revocation being fully probated under the following terms and conditions:
  - i. At every six month period of the twenty-four month period (i.e. November 19<sup>th</sup>, 2012, May 18<sup>th</sup>, 2013, November 19<sup>th</sup>, 2013 and May 18<sup>th</sup>, 2014), Respondent shall submit on a form prescribed by the Board, an appraisal experience log to the Board. The log shall detail all real estate appraisal activities he has conducted for the previous six month period. This experience log shall be signed by Respondent and contain a notarized affidavit attesting that the log is true, complete and fully accurate. Such experience logs must be timely and promptly submitted on every six month anniversary of the effective date of this order (i.e. on or before November 19<sup>th</sup>, 2012, May 18<sup>th</sup>, 2013, November 19<sup>th</sup>, 2013 and May 18<sup>th</sup>, 2014) during the entire 24 month probationary period;
  - ii. Upon request from the Board, Respondent shall timely and promptly provide copies of his appraisal reports and work files for any appraisal assignments identified on the experience log within the twenty (20) days of notice by the Board of any such request;
  - iii. Respondent shall not sponsor any real estate appraiser trainees during the entire 24 months of probation;
- b. Attend and complete a minimum, 15 classroom-hour course in Highest and Best Use and Market Data Analysis;

c. Attend and complete a minimum, 7 classroom-hour course in Staying Out of Trouble;

i. No examination shall be required for this course;

d. Attend and complete a minimum, 7 classroom-hour course in Valuation by Comparison;

i. No examination shall be required for this course;

e. Within 3 months of the effective date of this order (i.e. on or before August 19<sup>th</sup>, 2012) Respondent shall complete 15 hours of in-person mentorship conducted by a certified USPAP instructor approved by the Board. At least 5 of the 15 hours of in-person mentorship must be completed within 30 days of the effective date of this order (i.e. on or before June 19<sup>th</sup>, 2012). Upon completion of the requisite mentorship hours, and, within the above-noted timeframes, Respondent shall submit on a form provided by the Board, two separate, signed, notarized affidavits attested by the certified USPAP instructor. The first such affidavit shall confirm completion of the first 5 hours of mentorship and the second affidavit shall confirm completion of the entire 15 hours of mentorship;

f. Respondent shall pay a \$3,000.00 administrative penalty with \$1,500.00 of the \$3,000.00 probated under the condition that Respondent, within 30 days of completing the each of the courses indicated above (i.e. not later than June 18<sup>th</sup>, 2013), shall submit a signed, dated, written, 2 page report to the Board for each of these three courses which shall indicate: (i) what he learned from the course and (ii) how he intends to apply the course material to his appraisal practice in the future to avoid similar violations. If any of these conditions are not timely met then the remaining \$1,500.00 probated portion of the administrative penalty is due in full and must be tendered (via certified funds) within 20 days of notice from the Board indicating non-compliance with the requirements of this agreed final order,

g. 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 non-probated portion of the **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 June 7<sup>th</sup>, 2012).

**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 (i.e. on or before May 18<sup>th</sup>, 2013) 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. **Respondent is solely responsible for locating and scheduling classes and any required mentorship to timely satisfy the terms of this agreement and is urged to do so well in advance of any compliance deadlines to ensure adequate time for completion of the courses in the event of course cancellation or rescheduling by the course provider or mentor.**

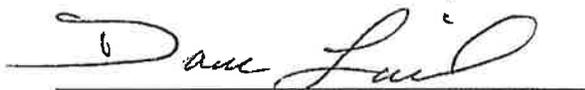
**Failure to comply with any of the terms of this Agreed Final Order within the time allotted shall result in IMMEDIATE AND PERMANENT REVOCATION of the Respondent's license or certification pursuant to notice to the Respondent from the Board indicating that the Respondent has not fulfilled the requirements of this Agreed Final Order.**

**ANY SUCH REVOCATION 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 PROCEDURES ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS.** Respondent shall be notified of any such revocation by first class mail or e-mail to the last known address as provided 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.

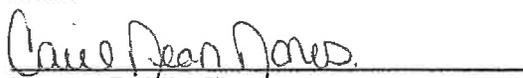
THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

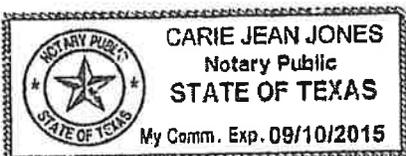
Signed this 25 day of April, 2012.



DONALD LAIL

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 25 day of April, 2012, by DONALD LAIL, to certify which, witness my hand and official seal.

  
Notary Public Signature



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Notary Public's Printed Name

Signed by the Standards and Enforcement Services Division this 17<sup>th</sup> day of May, 2012.

Troy Beaulieu  
Troy Beaulieu, TALCB Staff Attorney

Signed by the Commissioner this 16 day of May, 2012.

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

Approved by the Board and Signed this 18 day of May, 2012.

Luis De La Garza  
Luis De La Garza, Chairperson  
Texas Appraiser Licensing and Certification Board