

TEXAS APPRAISER LICENSING  
AND CERTIFICATION BOARD

vs.

FERNANDO MARQUEZ  
TX-1332798-L (EXPIRED)

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DOCKETED COMPLAINT NO. 12-206

### CONSENT AGREEMENT

On the 8 day of October, 2012, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the license of Fernando Marquez (the "Respondent").

In order to conclude this matter, Fernando Marquez 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 Final Agreement.

### **FINDINGS OF FACT**

1. Respondent is a Texas state licensed real estate appraiser who held license number, TX-1332798-L, and was licensed by the Board during all times material to the above-noted complaint.
2. Respondent appraised real property located at Lot 19, Block 1, Heron Cove Estates, Brownsville, Texas 78521 (the "Lot 19" property) on or about March 22, 2010; Lot 20, Block 1, Heron Cove Estates, Brownsville, Texas 78521 (the "Lot 20" property) on or about March 22, 2010; and 2415 Kerr Street, Harlingen, Texas 78552 (the "Kerr Street" property) on or about March 20, 2006.
3. Thereafter a complaint was filed with the Board. The complaint alleged that the Respondent produced appraisal reports for the properties that did not conform to the Uniform Standards of Professional Appraisal Practice (USPAP), TEX. OCC. CODE CHPT. 1103 (the "Act") and 22 TEX. ADMIN. CODE CHPT. 153 and 155 (the "Rules").
4. Thereafter the Board 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, which 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 Lot 19 & Lot 20 properties:

- a) USPAP Ethics Rule (Record Keeping) – Respondent failed to comply with the USPAP Ethics Rule because he failed to maintain a workfile containing the necessary data, information and documentation;
- b) USPAP Competency Rule – Respondent failed to identify the problem to be addressed;
- c) USPAP Scope of Work Rule & USPAP Standards 1-2(h) & 2-2(b)(vii) – Respondent failed to determine the scope of work necessary to develop credible assignment results and failed to support his work with the relevant data;
- d) USPAP Supplemental Standards Rule – Respondent failed to perform the assignment in accordance with the assignment conditions;
- e) USPAP Standards 1-2(a) & 2-2(b)(i) – Respondent failed to identify the client and other intended users of the report;
- f) USPAP Standards 1-2(b) & 2-2(b)(ii) – Respondent failed to identify the intended use of the appraiser's opinions and conclusions;
- g) USPAP Standards 1-2(c) & 2-2(b)(v) – Respondent failed to provide a definition of value and its source and did not indicate whether the estimated market value was in terms of cash or equivalent to cash;
- h) USPAP Standards 2-2(b)(vi) – Respondent failed to identify the date of the report;
- i) USPAP Standards 1-2(f) or 1-2(g), 2-1(c) & 2-2(b)(x) – Respondent failed to disclose limiting conditions that directly affect the analysis, opinions and conclusions;
- j) USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent failed to identify and report the site description adequately;
- k) USPAP Standards 1-2(e)(iv) & 2-2(b)(viii) – Respondent failed consider easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances or other items of a similar nature adequately;
- l) USPAP Standards 1-3(a) & 2-2(b)(viii) – Respondent failed to identify and analyze the effect on use and value of existing land use regulations, economic supply and demand, physical adaptability of the real estate and market area trends adequately;

- m) USPAP Standards 1-3(b) & 2-2(b)(ix) – Respondent failed to provide an explanation of his rationale for the development of his opinion of highest and best use;
- n) USPAP Standards 1-4(a) & 2-2(b)(viii); and 1-1(a) & 1-4(a) – Respondent failed to collect, verify, analyze and reconcile the comparable sales data adequately and did not employ recognized methods and techniques in his sales comparison approach;
- o) USPAP Standards 1-5(a) & 2-2(b)(viii) – Respondent failed to analyze all agreements of sale, options or listings of the subject current as of the effective date of the appraisal;
- p) USPAP Standards 1-4(e) & 2-2(b)(viii) – Respondent failed to analyze and report the effect on value, if any, on the assemblage of various estates or component parts of a property appropriately;
- q) USPAP Standards 1-1(a), 1-1(b), 1-1(c); 2-1(a); and 2-1(b) – Respondent produced a misleading appraisal report for the property that contained several substantial errors of omission or commission by not employing correct methods and techniques and not analyzing and reconciling significant and material information he had a duty to analyze and reconcile. This resulted in an appraisal report that was not credible or reliable; and
- r) USPAP Standards 2-3 & 2-2(b)(xiii) – Respondent failed to include a signed certification with his report.

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 Kerr Street property:

- a) USPAP Ethics Rule (Record Keeping) – Respondent failed to comply with the USPAP Ethics Rule because his workfile was lacking data, information, and documentation necessary to support opinions and conclusions contained in the report;
- b) USPAP Scope of Work Rule – Respondent failed to support his workfile with the relevant evidence and logic required to obtain credible assignment results;
- c) USPAP Standards 1-2(c) & 2-2(b)(v) – Respondent failed to provide the source for his definition of value;
- d) USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent failed to identify and report the site description adequately;

- e) USPAP Standards 1-2(e)(iv) & 2-2(b)(viii) – Respondent failed to consider and report easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances or other items of a similar nature adequately;
- f) USPAP Standards 1-3(a) & 2-2(b)(viii) – Respondent failed to identify and analyze the effect on use and value of existing land use regulations, economic supply & demand, physical adaptability of the real estate and market area trends and did not provide support for the opinions and conclusions reported;
- g) USPAP Standards 1-3(b) & 2-2(b)(ix) – Respondent failed to provide an explanation of his rationale for the development of his opinion of highest and best use;
- h) 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;
- i) USPAP Standards 1-4(b)(ii) & 2-2(b)(viii) – Respondent failed to collect, verify, analyze and reconcile the cost new of improvements adequately;
- j) USPAP Standards 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a) – Respondent failed to collect, verify, analyze and reconcile comparable sales data adequately and did not employ recognized methods and techniques in his sales comparison approach;
- k) USPAP Standards 1-1(a), 1-1(b), 1-1(c); and 2-1(b) – Respondent produced a misleading appraisal report for the property that contained several substantial errors of omission or commission by not employing correct methods and techniques and not analyzing and reconciling significant and material information he had a duty to analyze and reconcile. This resulted in an appraisal report that was not credible or reliable; and
- l) USPAP Standards 2-3 & 2-2(b)(xiii) – Respondent failed to include a signed certification with his report.

7. Respondent omitted material facts and made material misrepresentations as described in more detail above.

8. The parties enter into this consent agreement ("Agreement") in accordance with TEX. OCC. CODE § 1103.459.

#### **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)(9) by omitting material facts.
4. The parties are authorized to resolve their dispute by means of a consent agreement in accordance with Tex. Occ. Code §1103.459.

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

1. **AUDIT.** If Respondent elects to reapply for any credential with the Board he shall undergo a mandatory experience audit prior to issuance of any credential; and,
2. **MENTORSHIP.** Respondent shall complete fifteen (15) hours of in-person mentorship conducted by a certified USPAP instructor approved by Board Staff. Respondent shall submit a notarized Board affidavit form signed by the approved certified USPAP instructor on or before the date Respondent submits any application for a credential with the Board. Respondent is solely responsible for locating and scheduling an approved mentor to timely satisfy this Agreement and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion.
4. Fully and timely comply with all of the provisions of this Agreement; and,
5. Comply with all provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

**RESPONDENT, BY SIGNING THIS CONSENT AGREEMENT, WAIVES THE RESPONDENT'S RIGHT TO A FORMAL HEARING, ANY MOTION FOR REHEARING, AND ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS CONSENT AGREEMENT.** Information about this Consent Agreement is subject to public information requests and notice of this Consent Agreement will be published on the Board's web site.

I HAVE READ AND REVIEWED THIS FINAL AGREEMENT 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 FINAL AGREEMENT 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

CONSENT AGREEMENT, INCLUDING FOR ANY SUBSEQUENT ACTION RESULTING FROM MY FAILURE TO TIMELY COMPLY WITH AN ADMINISTRATIVE REQUIREMENT OF THIS CONSENT AGREEMENT, 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 CONSENT AGREEMENT 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 Final Agreement by the Texas Appraiser Licensing and Certification Board vote.

Signed this 26 day of October, 2012.

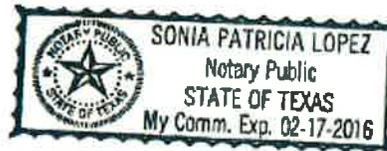
  
FERNANDO MARQUEZ

  
TED WHITMER, ATTORNEY FOR  
FERNANDO MARQUEZ

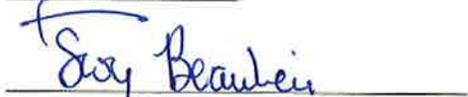
SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 26 day of October, 2012, by FERNANDO MARQUEZ, to certify which, witness my hand and official seal.

  
Notary Public Signature

Sonia Patricia Lopez  
Notary Public's Printed Name



Signed by the Standards and Enforcement Services Division this 9<sup>th</sup> day of NOVEMBER, 2012.

  
Troy Beaujeu, TALCB Staff Attorney

Signed by the Commissioner this 9<sup>th</sup> day of November, 2012.

  
Douglas E. Oldmixon, Commissioner

Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 9<sup>th</sup> day of November, 2012.

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