

TALCB COMPLAINT NO. 14-011

**TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD ("BOARD")**

V.

**RUSSELL EARL MILAN
LICENSE NO. TX-1323544-R**

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**BEFORE THE TEXAS APPRAISER
APPRAISER LICENSING AND
CERTIFICATION BOARD**

**SITTING IN AUSTIN
TRAVIS COUNTY, TEXAS**

ORDER GRANTING EXTENSION OF TIME

On August 19, 2016, the Texas Appraiser Licensing and Certification Board considered the Respondent's request for an extension of time in this matter.

Respondent Russell Earl Milan submitted a request for extension of time in this matter. The Board originally approved an Agreed Final Order in this matter on August 14, 2015. Among other things, the Agreed Final Order required the Respondent to complete the following in-person courses: a 15-hour USPAP course, a 15-hour course on the cost approach, a 15-hour course on report writing. The Agreed Final Order also required the Respondent to complete 4 hours of mentorship. All courses and required mentorship hours were to be completed on or before August 21, 2016. Respondent has been unable to complete these requirements and requests the Board to grant an extension of time until February 28, 2017, to allow him to complete the required courses and mentorship hours. Respondent has registered to take the required USPAP course on September 9-10, 2016.

Upon review, the Board GRANTS Respondent's request for extension of time IN PART as follows:

IT IS ORDERED that Respondent shall complete a 15-hour, in-person USPAP course and 4 hours of in-person mentorship as specified in the Agreed Final Order and submit satisfactory evidence of completion of this course and the required hours of mentorship to the Board on or before on or before November 30, 2016.

IT IS FURTHER ORDERED that Respondent shall complete a 15-hour, in-person course on the cost approach and a 15-hour, in-person course on report writing on or before February 28, 2017 as specified in the Agreed Final Order and submit satisfactory evidence of completion of these requirements to the Board on or before February 28, 2017.

Approved by the Board and signed this 19th day of August, 2016.



Jamie Wickliffe, Chair
Texas Appraiser Licensing and Certification Board

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

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vs.

DOCKETED COMPLAINT NO.
14-111

RUSSELL EARL MILAN
TX-1323544-R

AGREED FINAL ORDER

On the 14th day of August, 2015, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the certification of Russell Earl Milan (the "Respondent").

In order to conclude this matter, Respondent neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein. Respondent further agrees to the disciplinary action set out in this Agreed Final Order (the "Agreed Final Order"). The Board makes the following findings of fact and conclusions of law and enters this Agreed Final Order in accordance with TEX. OCC. CODE § 1103.458.

FINDINGS OF FACT

1. Respondent is a Texas state certified residential real estate appraiser who holds certification number TX-1323544-R and was certified by the Board during all times material to the above-noted complaint.
2. Respondent performed an appraisal review of an appraisal of residential real property located at 127 Woodhaven Lane, Seabrook, Texas, on or about June 18, 2013.
3. Thereafter, the complaint, numbered 14-111, was filed by Board staff, on or about February 3, 2014. The Board investigated the complaint to ensure compliance with 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. The Board, in accordance with the mandate of TEX. GOV'T CODE ANN. CHPT. 2001, the Administrative Procedure Act (the "APA"), and the Act, notified Respondent of the nature of the accusations involved, on or about February 4, 2014. Respondent was afforded an opportunity to respond to the accusations in the complaint and was also requested to provide certain documentation to the Board. Thereafter, the Respondent responded with documentation, on or about February 25, 2014.
5. As a result of the Board's investigation, the Board contends that Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(6) and 155.1 by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal review:

- a. USPAP Ethics Rule – Respondent communicated the assignment results in a grossly negligent manner;
 - b. USPAP Record Keeping Rule – Respondent failed to create and maintain a workfile containing all data, information, and documentation necessary to support the opinions and conclusions in the appraisal review;
 - c. USPAP Scope of Work Rule, USPAP Standards Rules 3-2(h) and 3-5(g) – Respondent failed to perform the scope of work necessary for credible assignment results;
 - d. USPAP Standards Rules 3-1(a) and 3-3 – Respondent failed to employ those methods and techniques necessary to produce a credible appraisal review;
 - e. USPAP Standards Rule 3-1(b) – Respondent committed substantial errors of omission and/or commission, which include: stating the cost approach was accurate, failing to address deficiencies “Market Analysis Section,” and failing to comply with Standard 1 and 2;
 - f. USPAP Standards Rules 3-2(e) and 3-5(e) – Respondent failed to identify the effective date in the appraisal review;
 - g. USPAP Standards Rules 3-3(a)(i), (a)(ii), and (a)(iii) – Respondent failed to develop an opinion as to whether the analyses are appropriate, failed to develop as to an opinion whether the opinions and conclusions are credible; and failed to develop any reasons for disagreement;
 - h. USPAP Standards Rules 3-3(b)(i), 3-3(b)(ii), and 3-5(h) – Respondent failed to develop an opinion as to whether the report is appropriate and not misleading and failed to develop any reasons for any disagreement;
 - i. USPAP Standards Rules 3-4(a) and 3-4(b) – Respondent failed to set forth an appraisal review in a manner that was not misleading and failed to provide sufficient information to enable intended users to understand the report properly; and
 - j. USPAP Standards Rules 3-5(i) and 3-3(c) – Respondent failed to state the information used in developing an opinion of value, failed to summarize any additional information relied on and the reasoning for the opinion of value, failed to state all extraordinary assumptions and hypothetical conditions connected with the opinion of value, and failed to comply with the USPAP Standards applicable to the opinion of value.
6. Respondent made material misrepresentations and material omissions of material fact with respect to the appraisal review as detailed above.

7. In order to reach an expeditious resolution of this matter and avoid the time and expense of litigation, the parties enter into this Agreed Final Order in accordance with TEX. OCC. CODE § 1103.458.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Act.
2. Respondent violated the above-noted provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1 and 153.20(a)(6).
3. Respondent violated 22 TEX. ADMIN. CODE § 153.20(a)(12) by making material misrepresentations and material omissions of material fact.
4. 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**:

1. **EDUCATION.** On or before August 21, 2016, Respondent shall submit documentation of attendance and successful completion of the classes set out below to the Board. All classes required by this Agreed Final Order must be classes approved by the Board. Unless otherwise noted below, all classes must require in-class attendance. If the class requires an exam, Respondent must receive a passing grade on the exam. None of the required class hours will count toward Respondent's continuing education requirements for licensure. Respondent is solely responsible for locating and scheduling classes to timely satisfy this Agreed Final 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. An in-classroom 15-hour National USPAP Course, on or before August 21, 2016.
 - b. A classroom course on the cost approach, a minimum of fifteen (15) class hours, on or before August 21, 2016.
 - c. A classroom course on report writing, a minimum of fifteen (15) class hours, on or before August 21, 2016.
2. **MENTORSHIP.** On or before August 21, 2016, 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 and a signed copy of the Guidelines for Texas

Appraiser Licensing and Certification Board Mentors and Mentees 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 Agreed Final 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 appraisal review and the above-noted violations in the findings of fact, on or before August 21, 2016.
3. Respondent shall fully and timely comply with all of the provisions of this Agreed Final Order.
4. Respondent shall comply with all provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

ACKNOWLEDGMENT AND WAIVER

IF RESPONDENT FAILS TO TIMELY COMPLY WITH ANY TERMS IN THIS AGREED FINAL ORDER, WHICH HAS A SPECIFIC, STATED DUE DATE, RESPONDENT SHALL BE ASSESSED A \$1,000 ADMINISTRATIVE PENALTY AND RESPONDENT'S LICENSE, CERTIFICATION, AUTHORIZATION OR REGISTRATION SHALL BE SUSPENDED, UNTIL RESPONDENT IS IN FULL COMPLIANCE WITH THE TERMS OF THIS ORDER AND THE \$1,000 ADMINISTRATIVE PENALTY HAS BEEN RECEIVED BY THE BOARD.

ANY SUCH SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE ACT OR THE APA, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS.

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 or to bring any civil suit in state or federal court regarding the validity or enforcement of this Agreed Final Order, regardless of the claims asserted. This Agreed Final Order, the findings of fact and the conclusions of law contained in it have been fully and fairly litigated or the parties had an opportunity to so litigate. This matter has been finally adjudicated and resolved via this Agreed Final Order. This Agreed Final Order shall be treated as res judicata, precluding any re-litigation of those claims and extinguishing the right to bring suit on the matter by the parties or those in privity with them. 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 website.

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.

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I understand that the Board and its staff cannot provide me with legal advice and I am aware of my right to be represented by an attorney of my own choosing. 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 (e.g. payment of a penalty, completion of remedial education, or failure to provide logs).

DELIVERY OF DOCUMENTS AND PAYMENTS FOR COMPLIANCE

Respondent is solely responsible for timely delivery to the Board of all documents and payments necessary for compliance of this Agreed Final Order. Payment of any administrative penalties due must be in the form of a cashier's check or money order made payable to the "Texas Appraiser Licensing and Certification Board" and delivered via certified mail, return receipt requested. Respondent shall retain documentation (reply email, fax confirmation, return receipt, etc.) confirming timely receipt by the Board of all the documents necessary for compliance of this Agreed Final Order.

Respondent shall send all documents and payments necessary for compliance by: (1) email to: compliance.talcb@talcb.texas.gov; (2) fax to: (512) 936-3966, attn: Compliance; or (3) certified mail, return receipt requested, to: Standards & Enforcement Services, Texas Appraiser Licensing & Certification Board, Stephen F. Austin Building, 1700 N. Congress Ave., Suite 400, Austin, TX 78701.

EXECUTION

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.

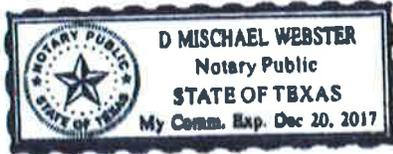
THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

RESPONDENT

Signed this 6 day of May, 2015.

Russell Earl Milan
Russell Earl Milan

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on the 6th day of May, 2015, by Russell Earl Milan, to certify which witness my hand and official seal.



D. Michael Webster
Notary Public's Signature

STANDARDS AND ENFORCEMENT SERVICES DIVISION

Signed by the Standards and Enforcement Services Division this 6th day of May, 2015.

Kyle Wolfe
Kyle Wolfe, Staff Attorney
Texas Appraiser Licensing and Certification Board

COMMISSIONER

Signed by the Commissioner this 8 day of May, 2015.

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

CHAIRPERSON

Approved by the Board and Signed this 14 day of August, 2015.

J. Wickliffe
Jannie Wickliffe, Chairperson
Texas Appraiser Licensing and Certification Board

Agreed Final Order
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