

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

DANIEL R. PALUMBO
TX-1327587-R

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DOCKETED COMPLAINT NO.
05-118 AND 07-076

AGREED FINAL ORDER

On this the 17th day of OCTOBER, 2008, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the certification of Daniel R. Palumbo (Respondent).

In order to conclude this matter, Daniel R. Palumbo 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 Daniel R. Palumbo is a Texas state certified residential real estate appraiser, holds certification number TX-1327587-R, and has been certified by the Board during all times material to the above-noted complaint cases.
2. On or about June 18th, 2001, Respondent appraised real property located at 206 West 1st Street, Smithville, Texas ("the Street property"). On or about January 27th, 2003 Respondent appraised real property located at 5622 Havenwoods, Houston, Texas ("the Havenwoods property").
3. Thereafter complaints were filed on the Street and Havenwoods property appraisals by Steve Safavi of Nationstar mortgage and First Magnus Financial Corporation. Both complaints alleged Respondent produced appraisal reports that were deficient, overvalued the properties and caused the complainants to suffer financial loss.
4. On or about February 27th, 2007 and June 27th, 2005 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 complaints. Respondent's responses to the complaints were received.
5. Respondent violated 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 Street and Havenwoods properties.

- a) Respondent failed to comply with the record keeping provisions of USPAP's Ethics Rule in the performance of the Havenwoods property appraisal report;
- b) Respondent, a state certified residential appraiser, violated the provisions of the Competency Rule by performing an appraisal on the Street property even though it was zoned commercial and had commercial market influences that required the competency, training and skills of a generally certified appraiser;
- c) Respondent failed to describe the intended use and users of the Street property appraisal report;
- d) Respondent failed to provide an opinion of reasonable exposure time in his report for the Street property;
- e) Respondent failed to report his scope of work for his Street property appraisal report;
- f) Respondent failed to adequately identify and report the site and improvement(s) description for the Street property;
- g) Respondent failed to consider and report anticipated public and private improvements located on or off the Street property's site;
- h) Respondent failed to identify and analyze existing land use regulations, economic demand and market area trends that were impacting the Street property;
- i) Respondent did not provide a summary of his reasoning behind his highest and best use determination for the Street and Havenwoods properties;
- j) Respondent used inappropriate methods or techniques in his cost approach analysis and failed to collect, verify, analyze and reconcile site value, cost of improvements, and depreciation in the Street and Havenwoods appraisal reports;
- k) Respondent failed to collect, verify, analyze and reconcile sales comparison data properly and failed to use appropriate methods or techniques in his sales comparison approach for the Street and Havenwoods appraisal reports;
- l) Respondent failed to analyze the agreement of sale for the Havenwoods property; and,
- m) Respondent's Street and Havenwoods appraisal reports contained substantial errors of commission or omission as detailed above which resulted in appraisal reports which were not credible and misleading.

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 22 TEX. ADMIN. CODE §§155.1(a) and 153.20(a)(3): the Record Keeping provisions of USPAP's Ethics Rule; USPAP Competency Rule; USPAP Standards Rules: 1-2(a) & 2-2(b)(i); 1-2(b) & 2-2(b)(ii); 1-2(c) & 2-2(a)(v) & 2-2(b)(v); 1-2(f) & 2-2(b)(vii); 1-2(e)(i) & 2-2(b)(iii); 1-4(f) & 2-2(b)(ix); 1-3(a) & 2-2(b)(ix); 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(b)(iii) & 2-2(b)(ix); 1-1(a) & 1-4(b); 1-4(a) & 2-2(b)(ix); 1-1(a) & 1-4(a); 1-5(a) & 2-2(b)(ix), 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 omissions of material facts.
4. Respondent violated 22 TEX. ADMIN. CODE §§153.8(b) and 153.37(c) by conducting an appraisal as a state certified residential real estate appraiser on an assignment that required a general certification.

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

- a. Have his certification revoked with the revocation being probated under the following conditions:
 - i. During the first month of probation Respondent's certification shall be fully suspended and he shall not engage in any real estate appraisal activity for which his certification is required;
 - ii. During the remaining twenty three months of probation Respondent shall submit on a form prescribed by the Board, an appraisal experience log to the Board every three months. The log shall detail all real estate appraisal activities he has conducted during the previous three 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. Upon request from the Board, Respondent shall provide copies of his appraisal reports and work files for any appraisal assignments he performs during the course of his period of probation within twenty days of notice of any such request;
 - iii. Respondent shall sponsor no appraiser trainees during the entire period of his probated revocation;

- iv. Respondent shall show compliance with the re-examination provisions of this Agreed Order; and,
 - v. Respondent shall timely remit payment of the administrative penalty, and timely complete all of the remedial coursework required in this Order;
- b. Attend and complete a minimum, 15 classroom-hour course in USPAP;
 - c. Attend and complete a minimum, 15 classroom-hour course in Highest and Best Use;
 - d. Attend and complete a minimum, 15 classroom-hour course in Residential Report Writing;
 - e. Attend and complete a minimum, 15 classroom-hour course in the Sales Comparison Approach or Residential Case Studies;
 - f. Pay to the Board an administrative penalty of \$5,000.00;
 - i. Payment of the administrative penalty shall be made in five equal, \$1,000.00 installments, with the first payment being due on or before September 1st, 2008 and the four remaining \$1,000.00 payments being due on the first of each month thereafter until paid in full; and,
 - g. Shall sit for and receive a passing grade on the same examination taken by those applying for their residential real estate appraisal certification;
 - i. Respondent shall submit examination results reflecting he has passed the examination within twelve months of the effective date of this order; and,
 - ii. Proof of successful passage of the examination within this timeframe is a condition of the probated revocation of his certification; and,
 - h. Comply with all 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 certification.

Payment of the **ADMINISTRATIVE PENALTY** must be by certified funds, and must be tendered in accordance with the provisions of this Agreed Final Order.

Failure to timely comply with any of the terms of this Final Agreed Order shall result in initiation of a contested case proceeding against Respondent and after opportunity for a hearing, possible imposition of disciplinary sanctions against Respondent as provided for by TEX. OCC. CODE § 1103.518, including, but not limited to possible revocation of the above-noted probation.

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 27 day of August, 2008.



This certificate is attached to a 7 page document dated AUG 27, 2008 entitled TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD.

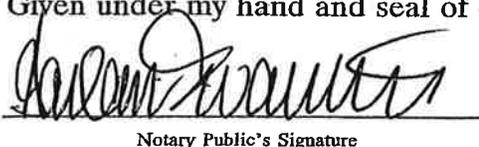
ACKNOWLEDGMENT CERTIFICATE

State of NEVADA
County of CLARK

Before me, HARLAN IWAMOTO, on this
day personally appeared DANIEL B. PALUMBO,
Name of Notary Public
Name of signer(s)

to be the person(s) whose name(s) is/are subscribed to the foregoing instrument and acknowledged to me that he/she/they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 27th day of AUGUST, 2008.
Year


Notary Public's Signature

Signer's Identity verified by:

- Personally known to me
- Identity proven on the oath Name of credible witness
- Identity proven on the basis of TX DL
Description of identity card or other document



Timothy K. Irvine, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 17 day of OCTOBER, 2008.



Clinton P. Sayers, Chairperson
Texas Appraiser Licensing and Certification Board