

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

BURKE NEWEL REES
TX-1337933-L

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DOCKETED COMPLAINT NO.
10-086 & 13-142

AGREED FINAL ORDER

On the 22 day of NOV, 2013, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the certification of Burke Newel Rees (the "Respondent").

In order to conclude this matter, Burke Newel Rees 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 "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 is a Texas state licensed residential real estate appraiser who holds license number, TX-1337933-L, and was licensed by the Board during all times material to the above-noted complaints.
2. Respondent appraised real property (collectively, "the properties") located at:
 - a. 8602 Willowick Drive, Austin, Texas 78759 (the "Willowick property"), on or about October 16, 2009; and,
 - b. 5372 Southern Avenue, Dallas County, Dallas, Texas (the "Dallas property") on or about January 4, 2013.
3. Thereafter, Board staff received the above-noted complaints. The complaints 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 and 22 TEX. ADMIN. CODE CHPT. 153 and 155 (the "Rules").
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 (the "Act"), 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)¹ and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal reports for the properties:

- a) USPAP Record Keeping Rule – Respondent failed to maintain a work file containing all data, information, and documentation necessary to support the appraiser's opinions and conclusions for both the properties;
- b) USPAP Standards 1-2(e)(i) and 2-2(b)(iii) – Respondent failed to identify and report the improvements description adequately;
- c) USPAP Standards 1-2(e)(iv) and 2-2(b)(viii) – Respondent failed to identify and report the specific zoning classification correctly for the Dallas property;
- d) USPAP Standards 1-3(b) and 2-2(b)(ix) – Respondent failed to provide a brief summary and supporting rationale for his determination of highest and best use which was also reported incorrectly;
- e) USPAP Standards 1-4(b)(i) and 2-2(b)(viii) – Respondent failed to use an appropriate method and technique to develop an opinion of site value since he failed to provide supporting documentation for his determination of the site value for the Dallas property;
- f) USPAP Standards 1-4(b)(ii) and 2-2(b)(viii); 1-4(b)(iii) and 2-2(b)(viii); 1-1(a) and 1-4(b) – Respondent failed to collect, verify, analyze and reconcile the cost new of improvements and accrued depreciations and failed to employ recognized methods and techniques in his cost approach for the Dallas property;
- g) USPAP Standards 1-4(a) and 2-2(b)(viii) & 1-1(a) and 1-4(a) – Respondent failed to collect, verify, analyze and reconcile comparable sales data adequately and failed to employ recognized methods and techniques in his sales comparison approach for both the properties;
- h) USPAP Standards 1-4(c)(i) and 1-4(c)(iii) and 2-2(b)(viii) – Respondent failed to collect, verify, analyze and reconcile comparable rental data for subject rent and/or the potential earnings capacity of the property to estimate the gross income potential of the subject and failed to collect, verify, analyze and reconcile comparable data to estimate capitalization and/or discount rates;
- i) USPAP Standards 1-4(c)(iv) and 2-2(b)(viii) & 1-1(a) and 1-4(c) – Respondent failed to base projections of future rent or income potential land and expenses on reasonable clear and appropriate evidence and did not employ recognized methods and techniques in income capitalization approach;
- j) USPAP Standards 1-5(b) and 2-2(b)(viii); 1-1(b); 1-6(a), 1-6(b) and 2-2(b)(viii) – Respondent omitted material facts concerning a prior sale of the Willowick property and failed to disclose, analyze and reconcile this significant and material information regarding that prior sale; and

¹ Effective December 27th, 2010, this rule was renumbered without substantive changes.

k) USPAP Standards 1-1(a), 1-1(b), 1-1(c), 2-1(a) and 2-1(b) – For the reasons detailed above, for both the properties Respondent produced appraisal reports that were misleading and contained several substantial errors of omission or commission by not employing correct methods and techniques.

6. Respondent made misrepresentations and omissions of material fact with respect to his appraisals of the properties as detailed above.

7. The parties enter into this consent order in accordance with TEX. OCC. CODE 1103.458.

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)².

3. Respondent violated 22 TEX. ADMIN. CODE 153.20(9)³ by making misrepresentations and 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 March 22nd, 2014, Respondent shall submit documentation of attendance and successful completion of the classes set out below to the Board. All classes required by this 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 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. A minimum, fifteen (15) classroom course in USPAP;

b. A minimum, seven (7) class hours classroom course on highest and best use and market data analysis;

² Effective December 27th, 2010, this rule was renumbered without substantive changes.

³ Effective December 27th, 2010, this rule was renumbered without substantive changes.

2. MENTORSHIP. On or before February 22nd, 2014. Respondent shall complete eight (8) 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 Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion.
 - a. Two (2) hours highest and best use and market data analysis;
 - b. Three (3) hours on depreciation and obsolescence; and,
 - c. Three (3) hours on sales comparison approach
3. Respondent shall fully and timely comply with all of the provisions of this Agreed Final Order; and
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 TEXAS APPRAISER LICENSING AND CERTIFICATION ACT OR THE ADMINISTRATIVE PROCEDURE ACT, 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. 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.

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. Respondent shall retain documentation (reply email, fax confirmation, return receipt, etc.) confirming receipt by the board of all the necessary documents.

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.

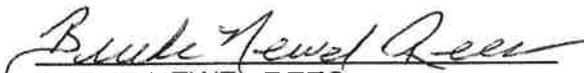
I HAVE READ AND REVIEWED THIS ENTIRE AGREED FINAL ORDER FULLY AND AM ENTERING INTO IT OF MY OWN FREE WILL TO AVOID THE EXPENSE OF LITIGATION AND TO REACH AN EXPEDITIOUS RESOLUTION OF THE MATTER. I NEITHER ADMIT NOR DENY THAT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW CONTAINED HEREIN ARE CORRECT. I UNDERSTAND ALL OF MY COMPLIANCE OBLIGATIONS UNDER THIS AGREED FINAL ORDER AND THE CONSEQUENCES FOR FAILING TO COMPLY WITH THOSE OBLIGATIONS.

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).

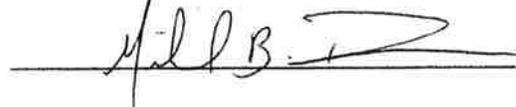
This agreement may be executed in one or more counterparts, in form of electronic mail, facsimile, or other written expression of agreement, each of which shall be deemed an original and together shall comprise evidence of full execution of the agreement.

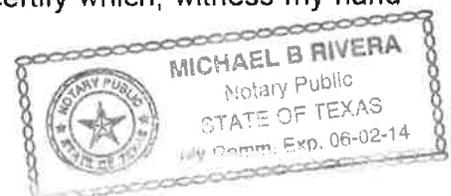
THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 18th day of October, 2013.


BURKE NEWEL REES

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this 18 day of October, 2013, by BURKE NEWEL REES, to certify which, witness my hand and official seal.







Notary Public Signature

Michael Rivera
Notary Public's Printed Name

Signed by the Standards and Enforcement Services Division this 23rd day of OCTOBER, 2013.

Troy Beaulieu
Troy Beaulieu, TALCB Staff Attorney

Signed by the Commissioner this 22 day of NOV, 2013.

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

Approved by the Board and Signed this 22 day of NOV, 2013.

Walker Beard
Walker Beard, Chairperson
Texas Appraiser Licensing and Certification Board