

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

KATO SHERMAN, JR.
TX-1324453-G

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DOCKETED COMPLAINT NO.
04-059

HEARING HELD IN AUSTIN
TRAVIS COUNTY, TEXAS

BE IT REMEMBERED that on the 25th day of September, 2006, a hearing was convened in the above-entitled matter. Petitioner, the Texas Appraiser Licensing and Certification Board (TALCB), appeared through its Enforcement Attorney. Respondent, Kato Sherman, Jr., having been duly notified of the hearing and of the Statement of Charges against him, appeared in person. Both parties announced ready, and the case proceeded to hearing.

The Administrative Law Judge designated by the Board, having read the allegations set forth in the Statement of Charges and having considered the evidence and arguments presented by the parties, makes the following Findings of Fact and Conclusions of Law and enters the stated Order:

GENERAL DISCUSSION AND STATEMENT OF REASONING

This case may be considered in three parts, each concerning the acts and omissions of Kato Sherman, Jr., a state certified general real estate appraiser. The first involves professional misconduct in the appraisal of real property known as 35826 Stenzel Road, Brookshire, Waller County, Texas. This appraisal was made on behalf of a mortgage company. As detailed in the Findings of Fact below, Mr. Sherman was guilty of errors in performing this appraisal, in the process committing serious violations of the Uniform Standards of Professional Appraiser Practice (USPAP).

The second part of the case involves Mr. Sherman's conviction in federal court in August 2006 of the misdemeanor offense of conspiracy to make false statements to the Department of Housing and Urban Development (HUD). This conviction came after Mr. Sherman had pled guilty to conspiring and agreeing to make a false statement in an appraisal report regarding the value of residential real property known as 10443 Doc Holiday Trail, Austin, Travis County, Texas, for the purpose of influencing HUD regarding any loan, advance of credit, substitution of security, or mortgage insurance on the property.

The third component of the case involves Mr. Sherman's failure to answer inquiries and to provide documents requested by the Board for its investigation of a complaint. Mr. Sherman maintains that the requested documents are not actually within his possession and that they are currently held by the U.S. Attorney, who seized them in the course of a criminal investigation. Mr. Sherman did not attempt to employ legal

avenues available to those in his position through which access to his files may be obtained. Under the circumstances, Mr. Sherman is not deemed to have been diligent in responding to the Board's requests for documents.

In consideration of the case as a whole, particularly the recent criminal conviction involving conduct integral to the purposes for which a license or certification is required, the revocation of the certification issued to Mr. Sherman is an appropriate penalty in this matter.

I

FINDINGS OF FACT

- a) that on or about December 29, 1994, the TALCB issued to Kato Sherman, Jr., Certification No. TX-1324453-G, and he is currently a state certified general real estate appraiser;
- b) that the certification issued to Kato Sherman, Jr., is scheduled to expire on December 31, 2006;
- c) that on or about June 14, 2001, Kato Sherman, Jr., performed an appraisal of real property known as 35826 Stenzel Road, Brookshire, Texas, on behalf of Lender's Service, Coraopolis, Pennsylvania, and issued a written report of his opinions and conclusions;
- d) that the work file copy of the appraisal performed by Kato Sherman, Jr., did not contain a signed certification;
- e) that Kato Sherman, Jr., failed to mention the extent of the process of collecting, confirming, and reporting data;
- f) that Kato Sherman, Jr., did not adequately identify and report the site description of the property on Stenzel Road, nor did he state the lot dimensions or the lot size on his appraisal report form;
- g) that Kato Sherman, Jr., failed to report that the subject property contained a log home or log home type construction;
- h) that Kato Sherman, Jr., failed to summarize and provide supporting rationale explaining his determination of the highest and best use of the property;

- i) that in developing his opinion of the site value for the Stenzel Road property, Kato Sherman, Jr., stated that he relied upon information gathered from the Multiple Listing Service (MLS) and from the Harris County Appraisal District;
- j) that the work file of Kato Sherman, Jr., did not contain MLS data;
- k) that the property is in fact located in Waller County;
- l) that the site value stated in the appraisal report prepared by Kato Sherman, Jr., was approximately 50% greater than the assessed land value contained in the records of Waller County;
- m) that Kato Sherman, Jr., committed several errors in the sales comparison approach to value for the Stenzel Road property;
- n) that in the sales comparison approach, Kato Sherman, Jr., made adjustments with no explanation and omitted features;
- o) that the first comparable sale utilized by Kato Sherman, Jr., had a large adjustment for acreage difference without supporting data for the adjustment;
- p) that there was also an adjustment for differences in quality without adequate explanation of the differences;
- q) that Kato Sherman, Jr., erroneously reported the acreage for the second comparable sale which he utilized;
- r) that Kato Sherman, Jr., failed to make adjustments or to provide an analysis for an additional living area contained in the second comparable sale which he utilized;
- s) that neither of the comparable sales utilized by Kato Sherman, Jr., included fencing;
- t) that Kato Sherman, Jr., did not make adjustments to reflect partial fencing on the Stenzel Road property;
- u) that at the time of the appraisal of the Stenzel Road property completed by Kato Sherman, Jr., the property was listed for sale, a fact not mentioned in the appraisal report;

- v) that the errors committed by Kato Sherman, Jr., in performing the appraisal of the Stenzel Road property resulted in a report which was misleading and which did not contain sufficient information to enable its intended users to understand it.

CONCLUSIONS OF LAW

- a) that in his appraisal of real property located at 35826 Stenzel Road, Brookshire, Waller County, Texas, Kato Sherman, Jr., was guilty of a violation of the Ethics Rule of USPAP in effect at the time of the appraisal;
- b) that Kato Sherman, Jr., was also guilty of violations of USPAP Standards 1-1(a), 1-1(b), 1-1(c), 1-2(e)(i), 1-2(f), 1-3(b), 1-4(a), 1-4(b)(i), 1-5(a), 2-1(a), 2-1(b), 2-2(b)(iii), 2-2(b)(ix), 2-2(b)(x), 2-2(b)(xii), and 2-3 in effect at the time of the appraisal;
- c) that through the violations enumerated above, Kato Sherman, Jr., has failed to comply with the Uniform Standards of Professional Appraisal Practice in effect at the time of the appraisal of the property located at 35826 Stenzel Road, Brookshire, Texas, as required by 22 TAC §155.1(a), and that this violation of law is cause for the suspension or revocation of his appraiser certification pursuant to 22 TAC §153.20(a)(3) or for other disciplinary action authorized by 22 TAC §153.20 or by §1103.518 of the Texas Occupations Code.

II

FINDINGS OF FACT

- a) that on or about December 29, 1994, the TALCB issued to Kato Sherman, Jr., Certification No. TX-1324453-G, and he is currently a state certified general real estate appraiser;
- b) that the certification issued to Kato Sherman, Jr., is scheduled to expire on December 31, 2006;
- c) that on or about August 10, 2006, in Case No. A-04-CR-180(15)-LY in United States District Court for the Western District of Texas, styled *United States of America v. Kato Sherman, Jr.*, Kato Sherman, Jr., having previously pled guilty, was adjudged guilty of the misdemeanor offense of Conspiracy

to Make a False Statement to the Department of Housing and Urban Development (HUD) in violation of 18 U.S.C. §1012, 18 U.S.C. §371, and 18 U.S.C. §2;

- d) that the court placed Kato Sherman, Jr., on probation for a term of 4 years;
- e) that the court ordered Kato Sherman, Jr., to pay restitution in the total amount of \$884,335.85;
- f) that the offense was concluded on or about October 16, 2001;
- g) that in committing the offense, Kato Sherman, Jr., conspired and agreed with other persons to knowingly make a false statement in a summary residential appraisal report regarding the appraised value of residential real property located at 10443 Doc Holiday Trail, Austin, Texas, for the purpose of influencing HUD regarding any loan, advance of credit, substitution of security, or mortgage insurance on such residential property;
- h) that Kato Sherman, Jr., was born on July 20, 1946;
- i) that Kato Sherman, Jr., has maintained a consistent record of employment during his adult life, including service in the United States Army which involved combat deployment in Vietnam;
- j) that Kato Sherman, Jr., has always supported his legal dependents to the best of his ability.

CONCLUSIONS OF LAW

- a) that the offense committed by Kato Sherman, Jr., involves fraud or misrepresentation;
- b) that the offense also involves moral turpitude;
- c) that the offense is directly related to the occupation of licensed or certified appraiser for the reason that its commission indicates inability of the appraiser to conduct himself with honesty, trustworthiness, reliability, and integrity, as found by the Texas Appraiser Licensing and Certification Board in 22 TAC §153.19(c);

- d) that the continued possession of an appraiser certification issued by the Board would offer Kato Sherman, Jr., an opportunity to engage in further criminal conduct of the same type as that in which he was previously involved;
- e) that pursuant to §53.021(a) of the Texas Occupations Code and 22 TAC §153.19(b), the Board is authorized to suspend or revoke the appraisal certification of Kato Sherman, Jr.;
- f) that the nature and seriousness of the crime admitted by Kato Sherman, Jr., the amount of loss as reflected in the court's order of restitution, and the fact that the conspiracy directly involved his appraisal practice, mandate revocation of his certification.

III

FINDINGS OF FACT

- a) that on or about December 29, 1994, the TALCB issued to Kato Sherman, Jr., Certification No. TX-1324453-G, and he is currently a state certified general real estate appraiser;
- b) that the certification issued to Kato Sherman, Jr., is scheduled to expire on December 31, 2006;
- c) that in calendar year 2004, Robert Joe Henry filed a complaint with the TALCB related to an appraisal performed by Kato Sherman, Jr., of real property located at 35826 Stenzel Road, Brookshire, Texas;
- d) that in the course of investigating the complaint, authorized representatives of the TALCB made inquiries of Kato Sherman, Jr., and requested copies of his appraisal reports and work files for the following properties:
 - 1) 7200 Waterline Rd., Austin, Texas;
 - 2) 10434 Doc Holiday, Austin, Texas;
 - 3) 10442 Doc Holiday, Austin, Texas;
 - 4) 10443 Doc Holiday, Austin, Texas;
 - 5) 1105 Oaklands Drive, Round Rock, Texas;
- e) that written requests for the documents were made to Kato Sherman, Jr., at his address of record and to his attorney on or about January 21, 2005, March 8, 2006, and March 29, 2006;

- f) that as of September 25, 2006, Kato Sherman, Jr., had not provided the documents requested;
- g) that the originals of the requested documents are currently in the possession of the United States Attorney, who seized them as part of a criminal investigation;
- h) that beyond making informal requests to the U.S. Attorney, Kato Sherman, Jr., has not made efforts through legal action to assert his right of access to his files, by which he could have responded to the Board's requests for production of documents.

CONCLUSIONS OF LAW

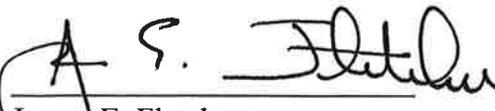
- a) that although the documents requested by the Board may not have been immediately available to Kato Sherman, Jr., he has not exercised due diligence in responding to the Board's requests;
- b) that Kato Sherman, Jr., is guilty of failing to answer all inquiries to him concerning matters under the jurisdiction of the TALCB within 20 days of notice to his address of record in violation of 22 TAC §153.22(a), and that pursuant to 22 TAC 153.22(b) this violation is cause for the suspension or revocation of the appraisal certification issued to him.

ORDER

Certification No. TX-1324453-G, issued to Kato Sherman, Jr., on December 29, 1994, is hereby revoked and in all things held for naught, effective 5:00 p.m., December 29, 2006. Any other relief not specifically granted is hereby denied.

IF ENFORCEMENT OF THIS ORDER is restrained or enjoined by an order of a court, this order shall then become effective upon a final determination by said court or appellate court in favor of the Texas Appraiser Licensing and Certification Board.

DATED: November 22, 2006


James E. Fletcher
Administrative Law Judge
TALCB

