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TEXAS REAL ESTATE COMMISSION
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CASHIER'S SECTION
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TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD	§	
	§	
	§	
vs.	§	DOCKETED COMPLAINT NO. 04-027
	§	
ROBERT C. WHITAKER	§	
TX-1325050-R	§	

AGREED FINAL ORDER

On this the 20th day of October, 2006, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the license of Robert C. Whitaker, (Respondent). The Board makes the following findings of fact and conclusions of law and enters this Order:

FINDINGS OF FACT

1. Respondent Robert C. Whitaker, a state certified residential real estate appraiser, holds certification number TX-1325050-R, and has been licensed since April 8th, 1993.

2. Respondent is subject to the jurisdiction of the Board, the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103 et. seq. (the Act), the Rules of the Board, 22 TEX. ADMIN. CODE §§153, 155, 157 (the Rules), and the Uniform Standards of Professional Appraisal Practice (USPAP) in effect at the time of the appraisal.

3. On or about November 13th, 2002, Respondent appraised the subject property located at 2712 Pebble Creek Drive, Pearland, Brazoria County, Texas ("the property") for the client, National Residential Mortgage.

4. On November 19th, 2003, TALCB received a complaint against Respondent from Joe Etheredge, the president of CASA Mortgage, in accordance with TEX. OCC. CODE § 1103.451. The complaint alleged that Respondent's appraisal report on the subject property was intentionally inflated, inappropriate comparable sales were used and that unverifiable data was relied upon by Respondent in his appraisal report.

5. On or about December 15th, 2003, the Board, in accordance with the mandate of the Administrative Procedure Act (the APA), TEX. GOV'T CODE ANN. § 2001 et. seq., notified Respondent of the nature and accusations involved and Respondent was afforded an opportunity to respond to the accusations alleged by the Complainant. Respondent's response was received.

6. The Enforcement Division concluded that the Respondent's appraisal report violated the Act, the Rules of the Board, and USPAP by the following acts or omissions:

a) USPAP Ethics Rule – Respondent failed to adhere to record keeping requirements due to an incomplete and inadequate work file that lacked

supporting data for comparable sales, contained no MLS datasheets and did not contain supporting cost data;

b) USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent failed to adequately identify and report the site and improvement(s) description. His report claims there are no curb/gutter, sidewalk or street lights, yet the photographs in the report show these features. The report is self-contradictory, stating at one point the lot size is 6,000 square feet and at another point, reporting that this feature is not known. Moreover the floor plan sketch and list indicates a covered patio, but none exists in the photos;

c) USPAP Standards 1-3(b) & 2-2(b)(x) – Respondent failed to provide a summary of his rationale and support for his determination of the property's highest and best use;

d) USPAP Standards 1-4 (b)(i) & 2-2(b)(ix) – Respondent did not use an appropriate method or technique to develop an opinion of site value because he fails to state how his $25,000.00 site value was derived and has no sales data in his work file to support his conclusions;

e) USPAP Standards 1-4(b)(ii) & 2-2(b)(ix) – Respondent did not properly collect, verify, analyze and reconcile the cost new of improvements. His reference to Marshall & Swift data is inaccurate as it does not support his cost figures. The cost approach appears to be inflated, did not provide cost estimates for porches and patios and included an additional 143 square foot calculation that was not described or explained;

f) USPAP Standards 1-1 (a) & 1-4 (b) – For the reasons noted above, Respondent failed to correctly employ recognized methods and techniques in his cost approach which made the cost approach inflated and not credible;

g) USPAP Standards 1-4 (a) & 2-2(b)(ix) – Respondent has failed to adequately collect, verify, analyze and reconcile comparable sales data. Although his report indicates HUD-1 statements were relied upon, there were no copies of this documentation in Respondent's work file. Additionally, this data was provided by parties with a financial interest in the sale and no verification from a disinterested source was provided. MLS data and research of comparable sales pointed to a much lower market value and this data should have been used, but was not;

h) USPAP Standards 1-1 (a) & 1-4 (a) – As noted above, Respondent failed to correctly employ recognized methods and techniques. The photograph for comparable sale #3 is not a photograph of the correct property;

i) USPAP Standards 1-5 (a) & 2-2(b)(ix) – Respondent failed to analyze the current agreement of sale for the property being appraised;

j) USPAP Standard 1-1 (a) – Respondent's use of unconfirmed sales with no supporting documentation resulted in an appraisal report that was not credible;

k) USPAP Standard 2-1(a) – The appraisal report was misleading to readers because of problems with Respondent's description of the property, his cost approach and his sales comparison approach.

7. The Enforcement Division concluded that the Respondent violated 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by failing to conform to USPAP in effect at the time of the appraisal report.

8. The Enforcement Division concluded that the Respondent violated TEX. OCC. CODE § 1103.404 by failing to retain all business records relating to his appraisal of the property until at least the fifth anniversary of the date of the appraisal.

9. The Enforcement Division concluded that the Respondent violated 22 TEX. ADMIN. CODE §§ 153.20(a)(9) by making material misrepresentations and omissions of material facts in the 2712 Pebble Creek Drive appraisal report. These material misrepresentations and omissions of material fact include: using inappropriate comparable sales when more appropriate comparable sales that should have been used were readily available in the same area, using inappropriate cost figures in the cost approach and misrepresenting the description of the property site and improvements.

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 §§ 1103.451–1103.5535 (Vernon 2005).

2. Respondent violated the following USPAP provisions as prohibited by 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a): USPAP Ethics Rule; USPAP Standards Rules: 1-2(e)(i) & 2-2(b)(iii); 1-3(b) & 2-2(b)(x); 1-4 (b)(i) & 2-2(b)(ix); 1-4(b)(ii) & 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); and, 2-1(a).

3. Respondent violated 22 TEX. ADMIN. CODE §§ 153.20(a)(9) by making material misrepresentations and omissions of material facts in his appraisal report.

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

1. Pay to the Board an Administrative Penalty of $2,500.00;

2. Attend and complete a minimum, 15 classroom-hour course in USPAP;

3. Attend and complete a minimum, 15 classroom-hour course in the sales comparison approach or market data analysis or residential case studies;

4. Have his certification suspended for 1 year, with that suspension being probated under the condition that he shall not sponsor any appraiser trainees during this 1 year period of probated suspension 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.

Payment of the **ADMINISTRATIVE PENALTY** must be by certified funds, and must be completed within **TWENTY DAYS** of the date of this Agreed Final Order. Failure to pay the administrative penalty within the time allotted shall result in **IMMEDIATE SUSPENSION** of Respondent's license pursuant to notice to Respondent from the Board indicating that Respondent has not paid the administrative penalty.

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. 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 licensure.

Failure to complete the education required by this Agreed Final Order within the time allotted shall result in **IMMEDIATE SUSPENSION** of the Respondent's license pursuant to notice to the Respondent from the Board indicating that the Respondent has not fulfilled the educational requirements of this Agreed Final Order.

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 shall be notified of any such suspension or lifting of probation by certified mail, return receipt requested, to the last known address as provided to the Board. If Respondent's license is suspended on such a basis, the suspension shall remain in effect until such time as Respondent pays the Administrative Penalty or takes and passes the required educational courses and provides adequate documentation of same to the Board.

Respondent, by signing this Agreed Final Order, neither admits nor denies that the findings of fact and conclusions of law herein set forth are correct; however, Respondent consents to the entry of this Agreed Order to avoid the expense of litigation and to reach an

expeditious resolution of this matter. Respondent also agrees to satisfactorily comply with the mandates of this Agreed Final Order in a timely manner.

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 30th day of August, 2006.

ROBERT C. WHITAKER

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 30 day of August, 2006, by ROBERT C. WHITAKER, to certify which, witness my hand and official seal.

Cindy Allison
Notary Public Signature

Cindy Allison
Notary Public's Printed Name

CINDY ALLISON
Notary Public, State of Texas
My Commission Expires
August 25, 2009

Signed by the Commissioner this 20th day of October, 2006.

Wayne Thorburn, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 20th day of October, 2006.

Shirley Ward, Chairperson
Texas Appraiser Licensing and Certification Board