

## SUPPLEMENTS

7c. Complaint #10-070, 10-228 & 13-113 (Richard Allen Taylor, TX-1326295-R) is **the order for agenda item 7c**

7g. Complaint #12-308 (Thuan Ngoc Phan, TX-1329163-L) is **the order for agenda item 7g**

7h. Complaint #13-031 (Alberto Castillo, TX-1334674-R) is **the order for agenda item 7h**

7k. Complaint #13-127 (Roger Lane, TX-1334329-R) is **the order for agenda item 7k**

7l. Complaint #12-070 (Wendell Paul Young, TX-1321410-G) is **the order for agenda item 7l**

7n. Complaint #12-203 (James Brian Banks, TX-1323923-R) is **the order for agenda item 7n**

7c

Complaint #10-070, 10-228 & 13-113  
(Richard Allen Taylor, TX-1326295-R)

TEXAS APPRAISER LICENSING  
AND CERTIFICATION BOARD

vs.

RICHARD ALLEN TAYLOR  
TX-1326295-R

§  
§  
§  
§  
§  
§  
§  
§

DOCKETED COMPLAINT NO.  
10-070, 10-228 & 13-113

### AGREED FINAL ORDER

On the \_\_\_\_\_ day of \_\_\_\_\_, 2013, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the certification of Richard Allen Taylor (the "Respondent").

In order to conclude this matter, Richard Allen Taylor 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 certified residential real estate appraiser who holds certification number, TX-1326295-R, and was certified by the Board during all times material to the above-noted complaints.
2. Respondent appraised real property (collectively, "the properties") located at:
  - a. Lot 17, Block 10, Section 4, Benders Landing, Spring, Texas 77386 (the "Lot 17 property"), on or about April 19, 2007;
  - b. Lot 2, Block 6, Section 7, Grand Lake Estates, Montgomery, Texas 77316 (the "Lot 2 property"), on or about July 6, 2006;
  - c. Lot 6, Block 3, Section 7, Grand Lake Estates, Montgomery, Texas 77316 (the "Lot 6 property"), on or about June 20, 2006;
  - d. Lot 5, Block 1, Section 9, Grand Lake Estates, Montgomery, Texas 77316 (the "Lot 5 property"), on or about December 13, 2006; and
  - e. Lot 2, Block 5, Section 7, Grand Lake Estates, Montgomery, Texas 77316 (the "Block 5 property"), on or about March 23, 2006.
3. Thereafter, Board staff, based on referrals from the Texas Department of Insurance or other investigation, initiated 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"). The Board has no other appraisals performed by Respondent currently under investigation and is aware of no other appraisals that any complainant or Board staff member contends do not comport with applicable standards.

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.

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)(3)<sup>1</sup> 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. The following flaws are alleged to have been found in one or more of the Reports:

- a) USPAP Ethics Rule -- Respondent violated the Ethics Rule because he communicated assignment results in a negligent manner;
- b) USPAP Standards 1-2(e)(i) and 2-2(b)(iii) -- Respondent failed to identify and report the site description adequately or negligently misstated the lot size;
- c) USPAP Standards 1-4(f) and 2-2(b)(viii) -- Respondent inaccurately reported public and private improvements on the site;
- d) USPAP Standards 1-2(e)(iv) and 2-2(b)(viii) -- Respondent failed to identify and report the specific zoning classification;
- e) USPAP Standards 1-3(a) and 2-2(b)(viii); 1-1(b) -- Respondent failed to identify and analyze factors affecting marketability (such as economic supply and demand, and market area trends), negligently analyzed the one-unit housing price range, and failed to provide supporting documentation and a summary of his reasoning in support of these required analyses, conclusions and determinations which are necessary to reach a credible and reliable market value determination;
- f) USPAP Standards 1-3(b) and 2-2(b)(ix) -- Respondent failed to properly develop his opinion of highest and best use;
- g) USPAP Standards 1-4(a) and 2-2(b)(viii); 1-1(a) and 1-4(a) -- Respondent has failed to collect, verify, analyze and reconcile comparable sales data adequately and has not employed recognized methods and techniques in his sales comparison approach. Respondent did not provide appropriate supporting documentation nor his reasoning and a summary of his analysis of the sales comparison approach. Respondent also failed to make appropriate adjustments or made inappropriate adjustments to the sales he did use, and did not disclose his analysis and reasoning behind the adjustments he made or elected not to make;
- h) USPAP Standards 1-5(a) and 2-2(b)(viii); 1-1(b); 1-6(a), 1-6(b) and 2-2(b)(viii) -- Respondent failed to disclose, analyze and reconcile significant and material information regarding the properties' listing history, failed to disclose and analyze

---

<sup>1</sup> Effective December 27th, 2010, this rule was renumbered without substantive changes.

the contracts of sale and reconcile that information and data and failed to provide a summary of his supporting reasoning and analysis of all of this information and reconciliation;

- i) 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 negligently omitted material facts concerning a prior sale of certain properties and failed to disclose, analyze and reconcile this significant and material information (including summarizing any reasoning supporting any analyses, opinions and conclusions he may have made and failing to provide work file documentation in support of any analyses, opinions and conclusions he may have made) within the 3 years prior to the effect date of each of the appraisal reports Respondent prepared for the properties; and
- j) USPAP Standards 1-1(a), 1-1(b), 1-1(c), 2-1(a) and 2-1(b) – For the reasons detailed above, Respondent produced appraisal reports for the properties that contained several substantial errors of omission or commission by not employing correct methods and techniques.

6. Respondent made negligent misrepresentations and omissions of material fact with respect to his appraisal 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)<sup>2</sup>.

3. Respondent violated 22 TEX. ADMIN. CODE § 153.20(9)<sup>3</sup> by making negligent 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** that Respondent's Texas state certification (TX-1326295-R) is hereby suspended for twenty-four (24) months, beginning on Friday, August 16<sup>th</sup>, 2013, with this suspension being fully probated under the following terms and conditions:

---

<sup>2</sup> Effective December 27th, 2010, this rule was renumbered without substantive changes.

<sup>3</sup> Effective December 27th, 2010, this rule was renumbered without substantive changes.

1. **EDUCATION.** On or before August 16, 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 classroom course in USPAP, a minimum of fifteen (15) class hours, on or before August 16, 2014.
  - b. A classroom course on the sales comparison approach, a minimum of fifteen (15) class hours, on or before August 16, 2014.
2. **MENTORSHIP.** On or before August 16, 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. Eight (8) hours of mentorship concerning the above noted violations in the findings of fact, on or before August 16, 2014.
3. **EXPERIENCE LOG.** On or before February 16, 2015. Respondent shall submit to the Board an appraisal experience log on a form prescribed by the Board for the period of six (6) months starting after the due dates for the education and mentorship (from August 16, 2014 to February 16, 2015). The log shall detail *all* real estate appraisal activities Respondent has conducted during that six (6) month period. This log shall be signed by Respondent and contain a notarized affidavit attesting the log is true, complete and accurate. Upon request from the Board, Respondent shall provide copies of his appraisal reports and work files for any appraisal assignments Respondent performs during the course of this six (6) month period within twenty (20) days of receiving any such request.
4. **ADMINISTRATIVE PENALTY.** On or before September 5, 2013. Respondent shall pay to the Board an administrative penalty of five thousand dollars (\$5,000.00), by certified funds, within twenty (20) days of the effective date of this order (i.e. on or before September 5, 2013).

5. Respondent shall fully and timely comply with all of the provisions of this Agreed Final Order; and
6. 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.

**IF RESPONDENT FAILS TO TIMELY COMPLY WITH ANY TERM 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 FOR THE FULL REMAINING TERM OF THE PROBATION.**

**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](mailto: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. 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**

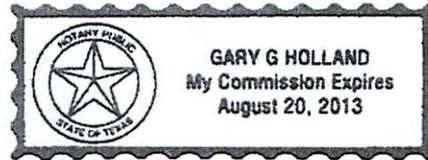
AGREED FINAL ORDER, INCLUDING FOR ANY SUBSEQUENT ACTION RESULTING FROM MY FAILURE TO TIMELY COMPLY WITH AN ADMINISTRATIVE REQUIREMENT OF THIS AGREED FINAL ORDER, SUCH AS PAYMENT OF A FEE, COMPLETION OF COURSEWORK OR FAILURE TO PROVIDE LOGS.

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 13 day of August, 2013.

Richard Allen Taylor  
RICHARD ALLEN TAYLOR



David Brown  
DAVID BROWN, ATTORNEY FOR  
RICHARD ALLEN TAYLOR

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this 13<sup>th</sup> day of AUGUST, 2013, by RICHARD ALLEN TAYLOR, to certify which, witness my hand and official seal

Gary Holland  
Notary Public Signature

GARY HOLLAND  
Notary Public's Printed Name

Signed by the Standards and Enforcement Services Division this 12th day of August, 2013.

Mark J. Mrnak  
Mark J. Mrnak, TALCB Director of Enforcement

Signed by the Commissioner this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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

Approved by the Board and Signed this \_\_\_\_ day of \_\_\_\_\_, 2013.

---

Walker Beard, Chairperson  
Texas Appraiser Licensing and Certification Board

**7g**

Complaint #12-308

(Thuan Ngoc Phan, TX-1329163-L)

TEXAS APPRAISER LICENSING  
AND CERTIFICATION BOARD

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

vs.

DOCKETED COMPLAINT NO.  
12-308

THUAN N. PHAN  
TX-1329163-L

**AGREED FINAL ORDER**

On the \_\_\_\_\_ day of \_\_\_\_\_, 2013, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the license of Thuan N. Phan (the "Respondent").

In order to conclude this matter, Thuan N. Phan 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.

**FINDINGS OF FACT**

1. Respondent is a Texas state licensed real estate appraiser who holds license number TX-1329163-L, and was licensed by the Board during all times material to the above-noted complaint.
2. Respondent appraised real property located at 4404 Copper Mountain Lane, Richardson, Texas (the "property") on or about July 3<sup>rd</sup>, 2012.
3. Thereafter a complaint was filed with the Board by Christopher Barrett. The complaint alleges that the Respondent produced an appraisal report for the property that did not conform to 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. Thereafter the Board notified Respondent of the nature of the accusations involved for the complaint and Respondent was afforded the 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)(6) 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 property:
  - a) USPAP Record Keeping Rule – Respondent violated the Record Keeping Rule because he failed to maintain a work file containing all data, information and

documentation necessary to support his opinions, analyses and conclusions as required by the record keeping provisions;

- b) USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent failed to identify and report the improvements and site description adequately;
  - c) USPAP Standards 1-1(b)(i) & 1-4(b)(ii) & 2-2(b)(viii); 1-1(a) & 1-4(b) – Respondent failed to provide support for his determination of the site value and cost new of improvements in his work file and did not summarize his supporting rationale for his determinations;
  - d) USPAP Standards 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a); 1-8(a) & (b) & 2-2(b)(viii) – Respondent misrepresented that the sales he selected were comparable to the property. He has failed to collect, verify, analyze and reconcile comparable sales data adequately and has not employed recognized methods and techniques in his sales comparison approach. Generally, Respondent used inappropriate properties as comparable sales even though appropriate, more similar sales (in terms of salient market characteristics) were readily available in the immediate area and should have been used. Respondent misrepresented that the properties he selected as comparables were similar in salient market characteristics. Market data was not analyzed by Respondent, which needed to be and would have significantly impacted his assignment results; and,
  - e) USPAP Standards 1-1(a), 1-1(b), 1-1(c) and 2-1(a) – For the reasons detailed above, Respondent produced an appraisal report for the property that contained misrepresentations and several substantial errors of omission or commission by not employing correct methods and techniques. This resulted in an appraisal report that was not credible or reliable and impacted his assignment results.
6. Respondent omitted material facts and made material misrepresentations in his appraisal of the property as described in more detail above.
7. The parties enter into this consent order ("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)(6).
3. Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(12) by making material misrepresentations omitting material facts.

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** that Respondent's Texas appraiser certification be suspended for a period of 12 months, effective 5:00 p.m. (CST) on August 16<sup>th</sup>, 2013.

IT IS FURTHER ORDERED that beginning at 5:00 p.m. (CST) on August 16<sup>th</sup>, 2013, the suspension is to be fully probated for 12 months, ending at 5:00 p.m. (CST) on August 16<sup>th</sup>, 2014, subject to the following terms and conditions:

1. **EDUCATION.** On or before February 16<sup>th</sup>, 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 and have an exam. Respondent must receive a passing grade on the exam given in each class. None of the required classes will count toward Respondent's continuing education requirements for certification. 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-hour course in USPAP;
  - B. A minimum (7) classroom-hour course in market data analysis and highest and best use; and
    - I. No examination shall be required for this course;
2. Fully and timely comply with all of the provisions of this Agreed Final Order; and,
3. Comply with all provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

**RESPONDENT'S FAILURE TO TIMELY COMPLY WITH ANY TERM IN THIS AGREED FINAL ORDER, WHICH HAS A SPECIFIC, STATED DUE DATE SHALL RESULT IN THE AUTOMATIC REVOCATION OF PROBATION AND THE SUSPENSION IMPOSED IN THIS AGREED FINAL ORDER SHALL BE EFFECTIVE COMMENCING ON THE EFFECTIVE DATE OF THE REVOCATION OF PROBATION. 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 web site.

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) 938-3966, 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. 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, SUCH AS PAYMENT OF A FEE, COMPLETION OF COURSEWORK 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 8<sup>th</sup> day of August, 2013.

[Signature]  
THUAN N. PHAN

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 8<sup>th</sup> day of August, 2013, by THUAN N. PHAN, to certify which, witness my hand and official seal.

[Signature]  
Notary Public Signature  
VIVIAN T. LE  
Notary Public's Printed Name



Signed by the Standards and Enforcement Services Division this 8<sup>th</sup> day of AUGUST, 2013.

[Signature]  
Troy Beaulieu  
TALCB Staff Attorney

Signed by the Commissioner this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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

Approved by the Board and Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Walker Beard, Chairperson  
Texas Appraiser Licensing and Certification Board

**7h**

Complaint #13-031

(Alberto Castillo, TX-1334674-R)

TEXAS APPRAISER LICENSING  
AND CERTIFICATION BOARD

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

vs.

DOCKETED COMPLAINT NO.  
13-031

ALBERTO CASTILLO  
TX-1334674-R

**AGREED FINAL ORDER**

On the \_\_\_\_\_ day of \_\_\_\_\_, 2013, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the certification of Alberto Castillo (the "Respondent").

In order to conclude this matter, Alberto Castillo 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.

**FINDINGS OF FACT**

1. Respondent is a Texas state certified residential real estate appraiser who holds certification number TX-1334674-R, and was certified by the Board during all times material to the above-noted complaint.
2. Respondent appraised real properties located at 112 Sandstone Drive A & B, Jarrell, Texas (the "duplex property") on or about June 11<sup>th</sup>, 2012 and 209 Wind Stone, Jarrell, Texas ("the single family property") on or about July 20<sup>th</sup>, 2011.
3. Thereafter a complaint was filed with the Board by Rex Kothmann, an employee of the National Banks of Central Texas. The complaint alleges 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 (the "Act") and 22 TEX. ADMIN. CODE CHPT. 153 and 155 (the "Rules").
4. Thereafter the Board notified Respondent of the nature of the accusations involved in the complaint and Respondent was afforded the 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)(6) 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(s). With respect to the duplex property these include:

- a) USPAP Record Keeping Rule -- Respondent violated the Record Keeping Rule because he failed to maintain a work file containing all data, information and documentation necessary to support his opinions, analyses and conclusions as required by the record keeping provisions;
- b) USPAP Competency Rule – Respondent was not competent to perform the assignment, nor did he take those steps necessary to become competent;
- c) USPAP Scope of Work Rule; 1-2(h) & 2-2(b)(vii) – Respondent failed to satisfy the Scope of Work Rule and related USPAP provisions because his scope of work did not facilitate the development of credible assignment results. Respondent failed to support his work with the relevant evidence and logic required to obtain credible assignment results;
- d) USPAP Standards 1-2(a) & 2-2(b)(i) – Respondent identify the client and intended users of the appraisal correctly;
- e) USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent failed to identify and report the improvements description adequately and misrepresented the site description;
- f) USPAP Standards 1-2(e)(iv) & 2-2(b)(viii) – Respondent failed to consider and report easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances or items of a similar nature;
- g) USPAP Standards 1-3(a) & 2-2(b)(viii) – Respondent misrepresented factors affecting marketability (such as economic supply and demand and market area trends), including the neighborhood's market area trends and the high rate of distressed home sales in the immediate area even though a high rate of the total sales similar to the property were bank owned. Respondent also failed to summarize his rationale for the market area trends and economic supply and demand determinations he made in his report. He also did not provide supporting documentation in his work file for the opinions and conclusions he reached concerning these topics;
- h) USPAP Standards 1-3(b) & 2-2(b)(ix) – Respondent failed to provide a summary of his supporting rationale for his determination of the property's highest and best use;
- i) USPAP Standards 1-4(b)(i) & 2-2(b)(viii) – Respondent failed to use an appropriate method or technique to develop his site value determination and did not provide a brief summary of supporting reasoning for his determination;
- j) USPAP Standards 1-4(b)(ii) & 2-2(b)(viii); 1-1(a) & 1-4(b) – Respondent failed to provide support for his determination of the cost new of improvements in his work file and did not summarize his supporting rationale for his determinations. Respondent also did not properly collect, verify, analyze and reconcile this data,

which revealed a different price per square foot than Respondent used in his report;

- k) USPAP Standards 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a); 1-6(a) & (b) & 2-2(b)(viii) – Respondent misrepresented that the sales he selected were comparable to the property and misrepresented that comparable sales in the immediate area in Jarrell were unavailable. He has failed to collect, verify, analyze and reconcile comparable sales data adequately and has not employed recognized methods and techniques in his sales comparison approach. Generally, Respondent used inappropriate properties as comparable sales even though appropriate, more similar sales (in terms of salient market characteristics) were readily available in the immediate area and should have been used. Respondent misrepresented that the properties he selected as comparables were similar in salient market characteristics. Market data was not analyzed by Respondent, which needed to be and would have significantly impacted his assignment results;
- l) USPAP Standard 1-4(c)(i) & 2-2(b)(viii); 1-1(a) & 1-4(c) – Respondent failed to collect, verify, analyze and reconcile comparable rental data for the property and/or the potential earnings capacity of the property to estimate the gross income potential of the property. Respondent also failed to employ recognized methods and techniques correctly;
- m) USPAP Standard 1-4(c)(iii) & 2-2(b)(viii) ; 1-1(a) & 1-4(c) – Respondent failed to collect, verify, analyze and reconcile comparable data to estimate capitalization and/or discount rates. Respondent also failed to employ recognized methods and techniques correctly;
- n) USPAP Standard 1-4(c)(iv) & 2-2(b)(viii); 1-1(a) & 1-4(c) – Respondent provided no supporting rationale or analysis for his conclusion in the income approach and did not employ recognized methods and techniques in reaching his conclusions; and,
- o) USPAP Standards 1-1(a), 1-1(b), 1-1(c) and 2-1(a) – For the reasons detailed above, Respondent produced a misleading appraisal report for the property that contained misrepresentations and several substantial errors of omission or commission by not employing correct methods and techniques. This resulted in a misleading appraisal report that was not credible or reliable and significantly impacted his assignment results.

6. With respect to the single family property these violations include:

- a) USPAP Record Keeping Rule – Respondent violated the Record Keeping Rule because he failed to maintain a work file containing all data, information and documentation necessary to support his opinions, analyses and conclusions as required by the record keeping provisions;
- b) USPAP Competency Rule – Respondent was not competent to perform the assignment, nor did he take those steps necessary to become competent;

- c) USPAP Scope of Work Rule; 1-2(h) & 2-2(b)(vii) – Respondent failed to satisfy the Scope of Work Rule and related USPAP provisions because his scope of work did not facilitate the development of credible assignment results. Respondent failed to support his work with the relevant evidence and logic required to obtain credible assignment results;
- d) USPAP Standards 1-2(a) & 2-2(b)(i) – Respondent identify the client and intended users of the appraisal correctly;
- e) USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent failed to identify and report the improvements description adequately;
- f) USPAP Standards 1-3(a) & 2-2(b)(viii) – Respondent misrepresented factors affecting marketability such as economic supply and demand and market area trends. Respondent also failed to summarize his rationale for the market area trends and economic supply and demand determinations he made in his report. He also did not provide supporting documentation in his work file for the opinions and conclusions he reached concerning these topics;
- g) USPAP Standards 1-4(b)(i) & 2-2(b)(viii) – Respondent failed to use an appropriate method or technique to develop his site value determination and did not provide a brief summary of supporting reasoning for his determination;
- h) USPAP Standards 1-4(b)(ii) & 2-2(b)(viii); 1-1(a) & 1-4(b) – Respondent failed to provide support for his determination of the cost new of improvements in his work file and did not summarize his supporting rationale for his determinations. Respondent also did not properly collect, verify, analyze and reconcile this data, which revealed a different price per square foot than Respondent used in his report;
- i) USPAP Standards 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a); 1-6(a) & (b) & 2-2(b)(viii) – Respondent misrepresented that the sales he selected were comparable to the property and misrepresented that comparable sales in the immediate area in Jarrell were unavailable. He has failed to collect, verify, analyze and reconcile comparable sales data adequately and has not employed recognized methods and techniques in his sales comparison approach. Generally, Respondent used inappropriate properties as comparable sales even though appropriate, more similar sales (in terms of salient market characteristics) were readily available in the immediate area and should have been used. Respondent misrepresented that the properties he selected as comparables were similar in salient market characteristics. Respondent also failed to discuss his analysis and reasoning behind his reconciliation of the adjusted sales prices of the sales he did select as comparables. Market data was not analyzed by Respondent, which needed to be and would have significantly impacted his assignment results;
- j) USPAP Standard 2-2(b)(viii) – Respondent failed to explain and support his exclusion of the income approach;

- k) USPAP Standards 1-5(a) & 2-2(b)(viii) – Respondent failed to analyze the contract of sale for the single family property and his work file only contained the first page of the contract;
  - l) USPAP Standards 1-5(b) & 2-2(b)(viii) – Respondent failed to analyze a prior sale of the single family property which occurred within 3 years prior to the effect date of his appraisal; and,
  - m) USPAP Standards 1-1(a), 1-1(b), 1-1(c) and 2-1(a) – For the reasons detailed above, Respondent produced a misleading appraisal report for the single family property that contained misrepresentations and several substantial errors of omission or commission by not employing correct methods and techniques. This resulted in a misleading appraisal report that was not credible or reliable and significantly impacted his assignment results.
7. Respondent omitted material facts and made material misrepresentations in his appraisal of the property as described in more detail above.
8. The parties enter into this consent order (“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)(6).
3. Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(12) by making material misrepresentations omitting material facts.
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 that Respondent’s Texas appraiser certification be suspended for a period of 15 months, effective 5:00 p.m. (CST) on August 16<sup>th</sup>, 2013.

IT IS FURTHER ORDERED that beginning at 5:00 p.m. (CST) November 16<sup>th</sup>, 2013, the suspension is to be probated for remaining 12 months, ending at 5:00 p.m. (CST) on November 16<sup>th</sup>, 2014, subject to the following terms and conditions:

1. **EDUCATION.** On or before November 16<sup>th</sup>, 2013. 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 and have an exam. Respondent must receive a passing grade on the exam given in each class. None of the required classes will count toward Respondent's continuing education requirements for certification. **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-hour course in USPAP;
2. **ADMINISTRATIVE PENALTY.** Respondent shall pay to the Board an administrative penalty of two thousand five dollars (\$2,500.00), which shall be paid in ten (10) monthly installments of \$250.00 by the dates indicated below:
  - a. \$250.00 due on or before September 5<sup>th</sup>, 2013
  - b. \$250.00 due on or before October 5<sup>th</sup>, 2013
  - c. \$250.00 due on or before November 5<sup>th</sup>, 2013
  - d. \$250.00 due on or before December 5<sup>th</sup>, 2013
  - e. \$250.00 due on or before January 5<sup>th</sup>, 2014
  - f. \$250.00 due on or before February 5<sup>th</sup>, 2014
  - g. \$250.00 due on or before March 5<sup>th</sup>, 2014
  - h. \$250.00 due on or before April 5<sup>th</sup>, 2014
  - i. \$250.00 due on or before May 5<sup>th</sup>, 2014
  - j. \$250.00 due on or before June 5<sup>th</sup>, 2014
3. **EXAMINATION.** On or before February 16<sup>th</sup>, 2014, Respondent shall submit to a reexamination for his residential certification, receive a passing grade on such reexamination and submit satisfactory evidence of successfully passing the reexamination.
4. Fully and timely comply with all of the provisions of this Agreed Final Order; 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.

RESPONDENT'S FAILURE TO TIMELY COMPLY WITH ANY TERM IN THIS AGREED FINAL ORDER, WHICH HAS A SPECIFIC, STATED DUE DATE SHALL RESULT IN THE AUTOMATIC REVOCATION OF PROBATION AND THE SUSPENSION IMPOSED IN THIS AGREED FINAL ORDER SHALL BE EFFECTIVE COMMENCING ON THE EFFECTIVE DATE OF THE REVOCATION OF PROBATION. 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 web site.

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. 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, SUCH AS PAYMENT OF A FEE, COMPLETION OF COURSEWORK 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 \_\_\_\_ day of \_\_\_\_\_, 2013.

Alberto Castillo  
ALBERTO CASTILLO Ted Whitmer

TED WHITMER, ATTORNEY FOR  
RESPONDENT

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 29 day of July, 2013, by ALBERTO CASTILLO, to certify which, witness my hand and official seal.

Sandy Monterde  
Notary Public Signature

Sandy Monterde  
Notary Public's Printed Name



Signed by the Standards and Enforcement Services Division this 8 day of August, 2013.

Troy Beaulieu  
Troy Beaulieu  
TALCB Staff Attorney

Signed by the Commissioner this \_\_\_\_ day of \_\_\_\_\_, 2013.

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

Approved by the Board and Signed this \_\_\_\_ day of \_\_\_\_\_, 2013.

Walker Beard, Chairperson  
Texas Appraiser Licensing and Certification Board

7k

Complaint #13-127

(Roger Lane, TX-1334329-R)

TEXAS APPRAISER LICENSING  
AND CERTIFICATION BOARD

vs.

ROGER LANE  
TX-1334329-R

§  
§  
§  
§  
§  
§  
§  
§

DOCKETED COMPLAINT NO.  
13-127

**AGREED FINAL ORDER**

On the \_\_\_\_\_ day of \_\_\_\_\_, 2013, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the certification of Roger Lane (the "Respondent").

In order to conclude this matter, Roger Lane 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.

**FINDINGS OF FACT**

1. Respondent is a Texas state certified residential real estate appraiser who holds certification number TX-1334329-R, and was certified by the Board during all times material to the above-noted complaint.
2. Respondent appraised real property located at 202 North Washington Blvd., Port O'Connor, Texas 77982 (the "property") on or about September 20<sup>th</sup> and November 13<sup>th</sup>, 2012, 2012.
3. Thereafter a complaint was filed with the Board by Debra Nikodym. The complaint alleges that the Respondent produced an appraisal report for the property that did not conform to 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. Thereafter the Board notified Respondent of the nature of the accusations involved for the complaint and Respondent was afforded the 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)(6) 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 property:
  - a) USPAP Record Keeping Rule -- Respondent violated the Record Keeping Rule because he failed to maintain a work file containing all data, information and

documentation necessary to support his opinions, analyses and conclusions as required by the record keeping provisions;

- b) USPAP Scope of Work Rule; 1-2(h) & 2-2(b)(vii) – Respondent failed to satisfy the Scope of Work Rule and related USPAP provisions because his scope of work did not facilitate the development of credible assignment results. Respondent failed to support his work with the relevant evidence and logic required to obtain credible assignment results;
- c) USPAP Standards 1-2(f) or (g); 2-1(c) & 2-2(b)(x) – Respondent failed to disclose extraordinary assumptions that affected his analysis, opinions and conclusions;
- d) USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent failed to identify and report the improvements description adequately;
- e) USPAP Standards 1-2(e)(iv) & 2-2(b)(viii) – Respondent failed to consider and report easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances or other terms related to the property;
- f) USPAP Standards 1-3(a) & 2-2(b)(viii) – Respondent misrepresented factors affecting marketability specific to the property’s lengthy exposure time (approximately 295 days);
- g) USPAP Standards 1-1(b)(i) & 1-4(b)(ii) & 2-2(b)(viii); 1-1(a) & 1-4(b) – Respondent failed to provide support for his determination of the site value and cost new of improvements in his work file and did not summarize his supporting rationale for his determinations. Respondent failed to employ recognized methods and techniques;
- h) USPAP Standards 1-4(b)(ii) & 2-2(b)(viii); 1-1(a) & 1-4(b) – Respondent failed to provide support for his determination of the cost new of improvements in his work file and did not summarize his supporting rationale for his determinations. Respondent also did not properly collect, verify, analyze and reconcile this data, and did not employ recognized methods and techniques;
- i) USPAP Standards 1-4(b)(iii) & 2-2(b)(viii); 1-1(a) & 1-4(b) – Respondent failed to collect, verify, analyze and reconcile accrued depreciations and did not provide documentation in his work file to support his analyses, opinions and conclusion, nor did he provide a summary of his supporting rationale, which explained the reasoning behind those opinions and conclusions;
- j) USPAP Standards 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a); 1-6(a) & (b) & 2-2(b)(viii) – Respondent failed to collect, verify, analyze and reconcile comparable sales data adequately and has not employed recognized methods and techniques in his sales comparison approach. Respondent also failed to make appropriate adjustments or made inappropriate adjustments to the sales he used, and did not discuss his analysis and reasoning behind the adjustments he made or

elected not to make. Respondent also did not report, analyze and discuss his reasoning for his conclusions made in the sales comparison approach;

- k) USPAP Standard 2-2(b)(viii); Scope of Work Rule; 1-2(h) & 2-2(b)(vii) – Respondent failed to explain and support his exclusion of the income approach when roughly 50% of the market area contained residential rental properties. An income approach should have been performed, but was not;
  - l) USPAP Standards 1-5(a) & 2-2(b)(viii); Scope of Work Rule; 1-2(h) & 2-2(b)(vii) – Respondent failed to analyze and report the listing history of the property current as of the effective date of his reports; and,
  - m) USPAP Standards 1-1(a), 1-1(b), 1-1(c) and 2-1(a) – For the reasons detailed above, Respondent produced an appraisal report for the property that contained misrepresentations and several substantial errors of omission or commission by not employing correct methods and techniques. This resulted in an appraisal report that was not credible or reliable.
6. Respondent omitted material facts and made material misrepresentations in his appraisal of the property as described in more detail above.
7. The parties enter into this consent order (“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)(6).
3. Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(12) by making material misrepresentations omitting material facts.
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 that:

1. **EDUCATION.** On or before December 16<sup>th</sup>, 2013. 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 and have an exam. Respondent must receive a passing grade on

the exam given in each class. None of the required classes will count toward Respondent's continuing education requirements for certification. **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-hour course in USPAP;
  - B. A minimum (7) classroom-hour course in the sales comparison approach; and,
    - i. No examination shall be required for this course;
2. **MENTORSHIP.** On or before November 16, 2013, Respondent shall complete eight (8) hours of in-person mentorship based on the below-noted schedule, conducted by a certified USPAP instructor approved by the Board. Respondent shall submit a certification of completion signed by the approved certified USPAP instructor on or before the due date listed for each mentorship requirement. Respondent shall also submit a signed copy of the Guidelines for Texas Appraiser Licensing and Certification Board Mentors and Mentees form on or before the due date listed for the 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. 4 hours of mentorship in the sales comparison approach;
  - b. 2 hours of mentorship in the income approach; and,
  - c. 2 hours of mentorship in the cost approach.
3. Fully and timely comply with all of the provisions of this Agreed Final Order; and,
4. Comply with all provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

**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 AND ADMINISTRATIVE PENALTY 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 web site.

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](mailto: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. I AM AWARE OF MY RIGHT TO A HEARING AND TO BE REPRESENTED BY AN ATTORNEY OF MY OWN CHOOSING, AND HEREBY WAIVE BOTH 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, SUCH AS PAYMENT OF A PENALTY, COMPLETION OF COURSEWORK 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.

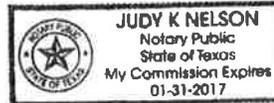
Signed this 7th day of August, 2013.

Roger Lane

ROGER LANE

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 7th day of August, 2013, by ROGER LANE, to certify which, witness my hand and official seal.

Judy K. Nelson  
Notary Public Signature



Judy K. Nelson  
Notary Public's Printed Name

Signed by the Standards and Enforcement Services Division this 8th day of August, 2013.

Troy Beaulieu

Troy Beaulieu  
TALCB Staff Attorney

Signed by the Commissioner this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Douglas E. Oldmixon, Commissioner  
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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

71

Complaint #12-070

(Wendell Paul Young, TX-1321410-G)

TEXAS APPRAISER LICENSING  
AND CERTIFICATION BOARD

vs.

DOCKETED COMPLAINT NO.  
12-070

WENDELL PAUL YOUNG  
TX-1321410-G

§  
§  
§  
§  
§  
§  
§  
§  
§

**AGREED FINAL ORDER**

On the 7<sup>th</sup> day of August, 2013, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the certification of W. Paul Young (the "Respondent").

In order to conclude this matter, W. Paul Young 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.

**FINDINGS OF FACT**

1. Respondent is a Texas state certified real estate appraiser who holds certification number TX-1321410-G, and was certified by the Board during all times material to the above-noted complaint.
2. Respondent appraised real property located at 239 Royal Vista Drive, Cedar Hill, Texas (the "property") on or about April 13<sup>th</sup>, 2009.
3. Thereafter a complaint was filed with the Board by Hollie Bush, an employee of Chase Home Lending. The complaint alleges that the Respondent produced an appraisal report for the property that did not conform to 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. Thereafter the Board notified Respondent of the nature of the accusations involved for the complaint and Respondent was afforded the 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) 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 property:
  - a) USPAP Ethics Rule (record keeping) -- Respondent violated the Ethics Rule because he failed to maintain a work file containing all data, information and

- documentation necessary to support his opinions, analyses and conclusions as required by the record keeping provisions;
- b) USPAP Scope of Work Rule; 1-2(h) & 2-2(b)(vii) – Respondent failed to satisfy the Scope of Work Rule and related USPAP provisions because his scope of work did not facilitate the development of credible assignment results. Respondent failed to support his work with the relevant evidence and logic required to obtain credible assignment results;
  - c) USPAP Standards 1-2(f) or 1-2(g) & 2-1(c)(x) – Respondent did not disclose extraordinary assumptions, hypothetical conditions, extraordinary assumptions or limiting conditions that directly affected his analysis, opinions and conclusions;
  - d) USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent failed to identify and report the improvements and site description adequately;
  - e) USPAP Standards 1-2(e)(iv) & 2-2(b)(viii) – Respondent failed to consider and report easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances or other items of a similar nature;
  - f) USPAP Standards 1-3(a) & 2-2(b)(viii) – Respondent misrepresented factors affecting marketability (such as economic supply and demand and market area trends), including the neighborhood's market area trends and the high rate of REO sales in the immediate area even though a significant percentage of the total sales similar to the property were bank owned;
  - g) USPAP Standards 1-3(b) & 2-2(b)(ix) – Respondent failed to provide a brief summary of his supporting rationale for his determination of the property's highest and best use;
  - h) USPAP Standards 1-4(b)(i) & 2-2(b)(viii) – Respondent failed to provide support for his determination of the property's site value;
  - i) USPAP Standards 1-4(b)(ii) & 2-2(b)(viii) – Respondent failed to provide support for his determination of the cost new of improvements in his work file and did not summarize his supporting rationale for his determinations;
  - j) USPAP Standards 1-4(b)(iii) & 2-2(b)(viii) – Respondent failed to collect, verify, analyze and reconcile accrued depreciations;
  - k) USPAP Standards 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a); 1-6(a) & (b) & 2-2(b)(viii) – Respondent misrepresented that the sales he selected were comparable to the property. He has failed to collect, verify, analyze and reconcile comparable sales data adequately and has not employed recognized methods and techniques in his sales comparison approach. Respondent misrepresented that the properties he selected as comparables were similar in salient market characteristics;
  - l) 1-5(a) & 2-2(b)(vii) & 1-1(b) – Respondent failed to disclose, analyze and reconcile the contract of sale for the property; and,

- m) USPAP Standards 1-1(a), 1-1(b), 1-1(c) and 2-1(a) – For the reasons detailed above, Respondent produced a misleading appraisal report for the property that contained misrepresentations and several substantial errors of omission or commission by not employing correct methods and techniques. This resulted in a misleading appraisal report that was not credible or reliable and significantly impacted his assignment results.
6. Respondent omitted material facts and made material misrepresentations in his appraisal of the property as described in more detail above.
7. The parties enter into this consent order ("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).
3. Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(9) by making material misrepresentations omitting material facts.
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 that Respondent's Texas appraiser certification be suspended for a period of 18 months, effective 5:00 p.m. (CST) on August 16<sup>th</sup>, 2013.

IT IS FURTHER ORDERED that beginning at 5:00 p.m. (CST) on August 16<sup>th</sup>, 2013, the suspension is to be fully probated for 18 months ending 5:00 p.m. (CST) on February 16<sup>th</sup>, 2015, subject to the following terms and conditions:

1. **EDUCATION.** On or before November 16<sup>th</sup>, 2013, 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 and have an exam. Respondent must receive a passing grade on the exam given in each class. None of the required classes will count toward Respondent's continuing education requirements for certification. **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-hour course in USPAP;
  - B. A minimum (7) classroom-hour course in the sales comparison approach; and,
    - i. No examination shall be required for this course;
2. **MENTORSHIP.** On or before February 16, 2014, Respondent shall complete (8) eight hours of in-person mentorship conducted by a certified USPAP instructor approved by the Board and covering the below-noted schedule of topics. Respondent shall submit a certification of completion signed by the approved certified USPAP instructor on or before the due date listed for each mentorship requirement. Respondent shall also submit a signed copy of the Guidelines for Texas Appraiser Licensing and Certification Board Mentors and Mentees form on or before the due date listed for the 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. 4 hours of mentorship concerning the sales comparison approach; and,
  - b. 4 hours of mentorship concerning market data analysis and obsolescence.
3. **ADMINISTRATIVE PENALTY.** On or before June 5<sup>th</sup>, 2014, Respondent shall pay to the Board an administrative penalty of one thousand and five hundred (\$1,500.00).
4. Fully and timely comply with all of the provisions of this Agreed Final Order; 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.

RESPONDENT'S FAILURE TO TIMELY COMPLY WITH ANY TERM IN THIS AGREED FINAL ORDER, WHICH HAS A SPECIFIC, STATED DUE DATE SHALL RESULT IN THE AUTOMATIC REVOCATION OF PROBATION AND THE SUSPENSION IMPOSED IN THIS AGREED FINAL ORDER SHALL BE EFFECTIVE COMMENCING ON THE EFFECTIVE DATE OF THE REVOCATION OF PROBATION. 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 web site.

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) 938-3966, 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. 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, SUCH AS PAYMENT OF A FEE, COMPLETION OF COURSEWORK 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.

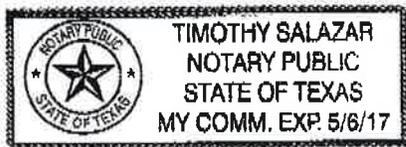
THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 8<sup>th</sup> day of August, 2013.

Wendell Paul Young  
WENDELL PAUL YOUNG

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 8<sup>th</sup> day of August, 2013, by WENDELL PAUL YOUNG, to certify which, witness my hand and official seal.

Timothy Salazar  
Notary Public Signature



Timothy Salazar  
Notary Public's Printed Name

Signed by the Standards and Enforcement Services Division this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Mark Mynak  
~~Troy Beaulieu~~ Mark Mynak, TALCB Director  
~~TALCB Staff Attorney~~

Signed by the Commissioner this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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

Approved by the Board and Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Walker Beard, Chairperson  
Texas Appraiser Licensing and Certification Board

7n

Complaint #12-203

(James Brian Banks, TX-1323923-R)

TEXAS APPRAISER LICENSING  
AND CERTIFICATION BOARD

vs.

JAMES BRIAN BANKS  
TX-1323923-R

§  
§  
§  
§  
§  
§  
§  
§

DOCKETED COMPLAINT NO.  
12-203

### **AGREED FINAL ORDER**

On the \_\_\_\_\_ day of \_\_\_\_\_, 2013, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the certification of James Brian Banks (the "Respondent").

In order to conclude this matter, James Brian Banks 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 certified residential real estate appraiser who holds certification number, TX-1323923-R, and was licensed by the Board during all times material to the above-noted complaints.
2. Respondent appraised real property located at: 1836 Woodvine Drive, Houston, Texas 770055 (the "property"), on or about September 20, 2007.
3. Thereafter, Board staff initiated the above-noted complaint. The complaint 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 (the "Act") 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.
5. Respondent violated TEX. OCC. CODE § 1103.405, 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 reports for the properties:
  - a) USPAP Ethics Rule -- Respondent violated the Ethics Rule because he failed to adequately communicate assignment results;

- b) USPAP Record Keeping Rule – Respondent violated the Record Keeping Rule because he failed to maintain the data, information, and documentation necessary to support opinions and conclusions in the report as required by USPAP;
- c) USPAP Scope of Work Rule; 1-2(h) – Respondent failed to support his work with the relevant evidence and logic required to obtain credible assignment results;
- d) USPAP Supplemental Standards Rule – Respondent failed to consider published supplemental standards applicable to the assignment;
- e) USPAP Standards 1-2(e)(i) and 2-2(b)(iii) – Respondent failed to adequately identify and report the site description and failed to adequately report the lot size and the view from the properties;
- f) USPAP Standards 1-3(a) and 2-2(b)(viii); 1-1(b) – Respondent failed to identify and analyze factors affecting marketability (such as economic supply and demand, and market area trends), failed to adequately report the one-unit housing price range, and failed to provide supporting documentation and a summary of his reasoning in support of these required analyses, conclusions and determinations which are necessary to reach a credible and reliable market value determination;
- g) USPAP Standards 1-3(b) and 2-2(b)(ix) – Respondent failed to develop his opinion of highest and best use;
- h) USPAP Standards 1-4(b)(i) and 2-2(b)(viii); 1-1(a) and 1-4(b) – Respondent failed to use an appropriate method or technique to develop an opinion of site value determination, and did not provide supporting documentation or data for his determination, and no summary of his analysis and supporting rationale, for the site value determination;
- i) USPAP Standards 1-4(b)(ii) and 2-2(b)(viii); 1-1(a) and 1-4(b) – Respondent failed to provide documentary support or the required analysis for his determination of the cost new of improvements, failed to employ recognized methods and techniques, and did not properly collect, verify, analyze and reconcile this data;
- j) USPAP Standards 1-4(b)(iii) and 2-2(b)(viii); 1-1(a) and 1-4(b) – Respondent did not collect, verify, analyze and reconcile accrued depreciations and failed to employ recognized methods and techniques because he failed to provide written analysis, documentary support for depreciation and did not calculate external obsolescence caused by the property adjoining properties;
- k) USPAP Standards 1-4(a) and 2-2(b)(viii); 1-1(a) and 1-4(a) – Respondent has failed to collect, verify, analyze and reconcile comparable sales data adequately and has not employed recognized methods and techniques in his sales comparison approach. Respondent has not provided supporting documentation nor his reasoning and a summary of his analysis of the sales comparison approach;

- l) USPAP Standards 2-2(b)(viii) – Respondent failed to explain and support the exclusion of the income approach;
- m) USPAP Standards 1-5(a) and 2-2(b)(viii); 1-1(b); 1-6(a), 1-6(b) and 2-2(b)(viii) – Respondent failed to disclose, analyze and reconcile significant and material information regarding the property’s listing history, failed to disclose and analyze the contracts of sale and reconcile that information and data and failed to provide a summary of his supporting reasoning and analysis of all of this information and reconciliation;
- n) 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 the sale of the property and failed to disclose, analyze and reconcile this significant and material information (including summarizing any reasoning supporting any analyses, opinions and conclusions he may have made and failing to provide work file documentation in support of any analyses, opinions and conclusions he may have made) within the 3 years prior to the effect date of the appraisal report Respondent prepared for the property; and
- o) USPAP Standards 1-1(a), 1-1(b), 1-1(c), 2-1(a) and 2-1(b) – For the reasons detailed above, Respondent produced an appraisal report for the property that contained several substantial errors of omission or commission by not employing correct methods and techniques. This resulted in inflated appraisal reports that were not credible or reliable.

6. Respondent made omissions of material fact with respect to his appraisal of the property 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).

3. Respondent violated 22 TEX. ADMIN. CODE § 153.20(9) by making 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 16, 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 classroom course in USPAP, a minimum of fifteen (15) class hours, on or before August 16, 2014.
  - b. A classroom course in residential market analysis, a minimum of fifteen (15) class hours, on or before August 16, 2014.
2. **ADMINISTRATIVE PENALTY.** On or before September 5, 2013. Pay to the Board an administrative penalty of one thousand five hundred dollars (\$1,500.00), by certified funds, within twenty (20) days of the effective date of this order (i.e. on or before September 5, 2013).
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.

**IF RESPONDENT FAILS TO TIMELY COMPLY WITH ANY TERM 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 THE 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](mailto: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.

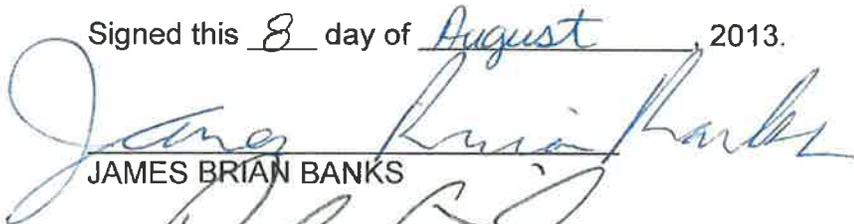
I HAVE READ AND REVIEWED THIS ENTIRE AGREED FINAL ORDER FULLY AND AM ENTERING INTO IT OF MY OWN FREE WILL TO AVOID THE EXPENSE OF LITIGATION AND TO REACH AN EXPEDITIOUS RESOLUTION OF THE MATTER. I NEITHER ADMIT NOR DENY THAT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW CONTAINED HEREIN ARE CORRECT. I 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. 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, SUCH AS PAYMENT OF A PENALTY, COMPLETION OF COURSEWORK OR FAILURE TO PROVIDE EXPERIENCE 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 8 day of August, 2013.

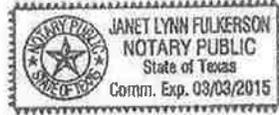
  
JAMES BRIAN BANKS

  
PAUL ARONOWITZ, ATTORNEY FOR

JAMES BRIAN BANKS

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 8 day of August, 2013, by JAMES BRIAN BANKS, to certify which, witness my hand and official seal.

Janet Lynn Fulkerson  
Notary Public Signature



Janet Lynn Fulkerson  
Notary Public's Printed Name

Signed by the Standards and Enforcement Services Division this 9 day of August, 2013.

Mark Mnolic  
Kyle Wolfe, TALCB Staff Attorney Mark Mnolic, TALCB Director

Signed by the Commissioner this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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

Approved by the Board and Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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