

**BEFORE THE MISSISSIPPI REAL ESTATE APPRAISER
LICENSING AND CERTIFICATION BOARD**

**IN THE MATTER OF:
DUSTIN MICHAEL CAIN
(LICENSE NO. RA-941)**

NO. 23-2011

CONSENT ORDER

This matter came before the Mississippi Real Estate Appraiser Licensing and Certification Board for entry of a Consent Order regarding DUSTIN MICHAEL CAIN (“Cain” or “Respondent”) who has been issued the Mississippi Certified Residential Real Estate Appraiser License No. RA-941 by the Board. This action is before the Board regarding Respondent Cain’s appraisal of real property located at 3834 Hwy. 471, Brandon, Mississippi. By entering into this Consent Order, Respondent Cain waives his right to an administrative hearing before the Board with full due process and the right to appeal any adverse decision that may have resulted from that hearing. Having reached an agreement by consent in this matter, the Board issues its Findings of Fact, Conclusions of Law and Order as follows:

FINDINGS OF FACT

I.

The Mississippi Real Estate Appraiser Licensing and Certification Board (sometimes hereinafter “Board”) is charged by Mississippi law with the regulation of the practice of real estate appraisal in Mississippi including matters relating to real estate appraiser standards, qualifications and licensing, and disciplinary functions pursuant to Miss. Code Ann. §§73-34-1, *et seq.*, as amended. The Board, pursuant to this authority, has full, complete, and proper jurisdiction over the parties and of the subject matter herein.

II.

Respondent, Dustin Michael Cain (sometimes hereinafter “Respondent” or “Cain”) is an adult resident of Mississippi whose last address of record with the Board is 2455 Southwood Road, Jackson, Mississippi 39211. Respondent is the holder of a real estate appraiser’s license, No. RA-941, issued by the Board pursuant to Miss. Code Ann. §§73-34-1, *et seq.*, as amended, and, as such, he is subject to all of the provisions, rules, regulations, and statutes governing the appraisal of real property and licensing of real estate appraisers under Mississippi law.

III.

On or about November 9, 2020, Respondent submitted an appraisal report for a real property appraisal assignment performed by Respondent of property located at 38 4 Hwy 471, Brandon, Mississippi 39047, with an effective date of October 7, 2020 (sometimes hereinafter “Appraisal Report” or “Report”).

IV.

On or about November 17, 2020, the Board received written notice of complaint from Misty Gibson (“Complainant” or “Gibson”), purchaser of the subject property, regarding an appraisal report prepared by Respondent Cain. Upon receipt of Gibson’s complaint, the Board initiated its own investigation of the subject appraisal performed by Respondent. Documents including a copy of the Appraisal Report and response to Gibson’s allegations were requested and obtained from Respondent Cain for review.

V.

Respondent maintained a limited work file that was not properly or sufficiently verified, and which failed to evidence adequate or sufficient support for the analyses and conclusions reflected in the Appraisal Report prepared and submitted by Respondent. Respondent did not

sufficiently read or properly consider the 12-page order request submitted by the client for the appraisal assignment. The client requested several statements about the subject property that were not found within the report. Respondent did not properly analyze or disclose the purchase agreement for the sale of the subject. No analysis of the subject's days on the market (DOM) or previous listings were reflected in the Report. The report was to be prepared for an FHA transaction, with specific statements required in the assignment including a report certifying that all attic spaces (if present) were observed, all as required by HUD handbook 4000.1. The Respondent stated the subject property did not meet FHA minimum requirements but failed to provide any explanation for the conclusion the subject property did not meet those standards. Respondent failed to include a list of necessary repairs as required in the assignment. While the subject property did not have an attic (because of a flat roof), the statement of "no attic" should have been included for disclosure to the client. Respondent has admitted other statements required for the assignment, including the Appraiser Independence Certification, Lead-Based Paint Statement, and statement concerning property habitability, were not found within the Appraisal Report prepared and submitted by Respondent. Respondent failed to adhere to the specific client instructions regarding photographs to be submitted with the Report.

VI.

Respondent did not properly analyze the comparables contained within the Sales Comparison Approach section of the Report. Respondent failed to analyze or disclose pertinent information such as the rationale or basis for the adjustments stated in the Sales Comparison Approach section of the Report. Comparables were not verified, and inconsistencies were noted. Adjustments were not explained sufficiently for client/intended user understanding. No analysis or disclosure for the adjustments in reference to the age difference in comparison with the subject

and all three comparables was contained in the Report, nor any analysis or disclosure regarding the subject's basement finished area. There were no comparables found with a basement and a straight-line adjustment conclusion was not properly explained. Comparable #3 has an apartment or mother-in-law suite as well as an outdoor kitchen and shower that were not disclosed or properly analyzed in comparison to the subject. There is a significant difference between the GLA of the subject and Comparable #3 which could include the GLA of the apartment or mother-in-law suite.

VII.

Respondent did not provide proper or sufficient analysis or disclosure of the Cost Approach considered. Site valuation was concluded within the report but was found not to be properly analyzed, leading to conclusion for the site amount of \$118,800. Rankin County Tax Assessor records reflected assessment of the site value at \$39,600. Respondent stated within the report that the site value is extracted through the local market with the use of Jackson MLS and the Rankin County Tax Assessor. There is insufficient analysis or verification of exactly how the site value was concluded by the MLS sheets in the work file.

CONCLUSIONS OF LAW

VIII.

The above and foregoing described acts and omissions of Respondent DUSTIN MICHAEL CAIN constitute violations of Miss. Code Ann. §73-34-35 and §73-34-37 and the Years 2020-2021 Uniform Standards of Professional Appraisal Practice (USPAP) Record Keeping Rule, Scope of Work Rule (*Problem Identification, Scope of Work Acceptability and Disclosure Obligations*), and Standards Rules 1-2, 1-4, and 2-2 which provide, in relevant parts:

§73-34-35(1): ...[T]he rights of any licensed appraiser or licensed certified real estate appraiser may be revoked or suspended, or the holder of the license may be otherwise disciplined, in accordance with the

provisions of this chapter for any of the following acts or omissions:

(I) Any act or conduct, whether the same or of a different character than specified above, which constitutes or demonstrates ...incompetency ...or any other violation of the provisions of this chapter and of rules and regulations established by the board.

§73-34-37: Each real estate appraiser licensed under this chapter must comply with generally accepted standards of professional appraisal practice... Generally accepted standards of professional appraisal practice are currently evidenced by the uniform standards of professional appraisal practice as directed by the Appraisal Subcommittee of the Federal Financial Institutions Examinations Council...

2020-2021 USPAP

RECORD KEEPING RULE

An appraiser must prepare a workfile for each appraisal or appraisal review assignment. A workfile must be in existence prior to the issuance of any report or other communication of assignment results. A written summary of an oral report must be added to the workfile within a reasonable time after the issuance of the oral report.

The workfile must include:

- the name of the client and the identity, by name or type, of any other intended users;
- true copies of all written reports, documented on any type of media. (A true copy is a replica of the report transmitted to the client. A photocopy or an electronic copy of the entire report transmitted to the client satisfies the requirement of a true copy.);
- summaries of all oral reports or testimony, or a transcript of testimony, including the appraiser's signed and dated certification; and
- all other data, information, and documentation necessary to support the appraiser's opinions and conclusions and to show compliance with USPAP, or references to the location(s) of such other data, information, and documentation.

SCOPE OF WORK RULE

For each appraisal and appraisal review assignment, an appraiser must:

1. identify the problem to be solved;

2. determine and perform the scope of work necessary to develop credible assignment results; and
3. disclose the scope of work in the report

An appraiser must properly identify the problem to be solved in order to determine the appropriate scope of work. The appraiser must be prepared to demonstrate that the scope of work is sufficient to produce credible assignment results.

Comment: Scope of work includes, but is not limited to:

- the extent to which the property is identified;
- the extent to which tangible property is inspected;
- the type and extent of data researched; and
- the type and extent of analyses applied to arrive at opinions or conclusions.

Appraisers have broad flexibility and significant responsibility in determining the appropriate scope of work for an appraisal for appraisal review assignment.

Credible assignment results require support by relevant evidence and logic. The credibility of assignment results is always measured in the context of the intended use.

PROBLEM IDENTIFICATION

An appraiser must gather and analyze information about those assignment elements that are necessary to properly identify the appraisal or appraisal review problem to be solved.

This information provides the appraiser with the basis for determining the type and extent of research and analyses to include in the development of an appraisal. Similar information is necessary for problem identification in appraisal review assignments.

Communication with the client is required to establish most of the information necessary for problem identification. However, the identification of relevant characteristics is a judgment made by the appraiser that requires competency in that type of assignment.

Assignment conditions include assumptions, extraordinary assumptions, hypothetical conditions, laws and regulations, jurisdictional exceptions, and other conditions that affect the scope of work. Laws include constitutions, legislative and court-made law, administrative rules, and ordinances. Regulations include rules or orders, having legal force, issued by an administrative agency.

SCOPE OF WORK ACCEPTABILITY

The scope of work must include the research and analyses that are necessary to develop credible assignment results.

Comment: The scope of work is acceptable when it meets or exceeds:

- the expectations of parties who are regularly intended users for similar assignments; and

- what an appraiser's peers' actions would be in performing the same or a similar assignment

Determining the scope of work is an ongoing process in an assignment. Information or conditions discovered during the course of an assignment might cause the appraiser to reconsider the scope of work.

An appraiser must be prepared to support the decision to exclude any investigation, information, method, or technique that would appear relevant to the client, another intended user, or the appraiser's peers.

An appraiser must not allow assignment conditions to limit the scope of work to such a degree that the assignment results are not credible in the context of the intended use.

Comment: If relevant information is not available because of assignment conditions that limit research opportunities (such as conditions that place limitations on inspection or information gathering), an appraiser must withdraw from the assignment unless the appraiser can:

- modify the assignment conditions to expand the scope of work to include gathering the information; or
- use an extraordinary assumption about such information, if credible assignment results can still be developed.

An appraiser must not allow the intended use of an assignment or a client's objectives to cause the assignment results to be biased.

DISCLOSURE OBLIGATIONS

The report must contain sufficient information to allow the client and other intended users to understand the scope of work performed. The information disclosed must be appropriate for the intended use of the assignment results.

Comment: Proper disclosure is required because clients and other intended users rely on the assignment results. Sufficient information includes disclosure of research and analyses performed and might also include disclosure of research and analyses not performed.

The appraiser has broad flexibility and significant responsibility in the level of detail and manner of disclosing the scope of work in the appraisal report or appraisal review report. The appraiser may, but is not required to, consolidate the disclosure in a specific section or sections of the report, or use a particular label, heading or subheading. An appraiser may choose to disclose the scope of work as necessary throughout the report.

STANDARD 1: REAL PROPERTY APPRAISAL, DEVELOPMENT

In developing a real property appraisal, an appraiser must identify the problem to be solved, determine the scope of work necessary to solve the problem, and correctly complete research and analyses necessary to produce a credible appraisal.

STANDARDS RULE 1-2, PROBLEM IDENTIFICATION

In developing a real property appraisal, an appraiser must:

- (e) identify, from sources the appraiser reasonably believes to be reliable, the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal, including:
 - (i) its location and physical, legal, and economic characteristics;

- (g) identify any hypothetical conditions necessary in the assignment. A hypothetical condition may be used in an assignment only if:
 - (i) use of the hypothetical condition is clearly required for legal purposes, for purposes of reasonable analysis, or for purposes of comparison; and
 - (ii) use of the hypothetical condition results in a creditable analysis; and

STANDARDS RULE 1-4, APPROACHES TO VALUE

In developing a real property appraisal, an appraiser must collect, verify, and analyze all information necessary for credible assignment results.

- (a) When a sales comparison approach is necessary for credible assignment results, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.
- (b) When a cost approach is necessary for credible assignment results, an appraiser must:
 - (i) develop an opinion of site value by an appropriate appraisal method or technique;
 - (ii) analyze such comparable cost data as are available to estimate the cost new of the improvements (if any); and
 - (iii) analyze such comparable data as are available to estimate the difference between the cost new and the present worth of the improvements (depreciation).

STANDARD 2: REAL PROPERTY APPRAISAL, REPORTING

In reporting the results of a real property appraisal, an appraiser must communicate each analysis, opinion, and conclusion in a manner that is not misleading.

Comment: STANDARD 2 addresses the content and level of information required in a report that communicates the results of a real property appraisal.

STANDARD 2 does not dictate the form, format, or style of real property appraisal reports. The substantive content of a report determines its compliance.

STANDARDS RULE 2-2, CONTENT OF A REAL PROPERTY APPRAISAL REPORT

The report content and level of information requirements in this Standards Rule are minimums for each type of report. An appraiser must supplement a report form, when necessary, to ensure that any intended user of the appraisal is not misled and that the report complies with the applicable content requirements.

- (a) The content of an Appraisal Report must be consistent appropriate for the intended use of the appraisal and, at a minimum:
 - (iv) contain information, documents, and/or exhibits sufficient to identify the real estate involved in the appraisal, including the physical, legal, and economic property characteristics relevant to the assignment;

- (viii) summarize the scope of work used to develop the appraisal;

Comment: Summarizing the scope of work includes disclosure of research and analyses performed and might also include disclosure of research and analyses not performed.

DISCIPLINARY ORDER

The Board, by Respondent Dustin Michael Cain's agreement and consent, issues its Disciplinary Order in this matter as follows:

1. Respondent shall complete a fifteen (15) hour 2020-2021 national USPAP course, and pass the accompanying examination, within one hundred eighty (180) days of the effective date of this Consent Order.
2. Respondent shall complete a seven (7) hour course in Supporting Adjustments, and pass the accompanying examination, within one hundred eighty (180) days of the effective date of this Consent Order.

3. Respondent shall complete a seven (7) hour Work File course, and pass the accompanying examination, within one hundred eighty (180) days of the effective date of this Consent Order.
4. Respondent shall complete a fifteen (15) hour Report Writing course, and pass the accompanying examination, within one hundred eighty (180) days of the effective date of this Consent Order.
5. The credit hours generated by the successful completion of the above mandated courses may not be used to satisfy the twenty-eight (28) hours of continuing education required for renewal of Respondent's license. The Board recommends Respondent complete the mandated courses in a classroom environment, if available. Respondent shall provide the Board with written evidence of the satisfactory completion of the above mandated courses.
6. Respondent expressly agrees that failure to comply with any of the terms of this Consent Order, within the time period ordered, shall constitute grounds for additional action by the Board. Respondent further agrees that failure to complete the above mandated courses, within the time period ordered, may result in the placement of Respondent's license in inactive status until such time as Respondent provides the Board with proof of satisfactory completion of said mandated courses and full compliance with all other terms of this Consent Order.
7. This action and Order of the Board shall be public record and shall be spread upon the Minutes of the Board as its official act and deed.
8. This action and Order of the Board shall be published on the Board's website and reported to and posted with appropriate authorities.

9. Respondent, by his signature, expressly waives any and all legal challenges he may have regarding or arising out of this matter, the entry of this Consent Order, or any of its terms. Respondent acknowledges and agrees that he waives any legal objections that may otherwise be available to him as to the Board taking up this matter preliminarily for the purpose of considering and voting on whether to approve entry of this Consent Order.
10. Should the Board decline entry of this Consent Order, Respondent understands and acknowledges that he remains entitled to a fair and impartial hearing of this matter before the Board.
11. This Order shall be effective upon the date it is approved for entry by the Board as evidenced by the authorized signature of the Chairperson of the Board.

SO ORDERED, this the 24 day of February, 2022.

MISSISSIPPI REAL ESTATE APPRAISER LICENSING
AND CERTIFICATION BOARD

By: 
NORMAN A. CANNADY, Chairperson
For and on Behalf of the Board

AGREED:


DUSTIN MICHAEL CAIN

1/28/2022
DATE

