

APR 11 2014

**BEFORE THE REAL ESTATE APPRAISERS BOARD
FOR THE STATE OF NEW MEXICO**

IN THE MATTER OF:)
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)
MICHAEL W. PORTER) **Case No. 47, 11-12-27**
LICENSE NO. 03255-G [valid thru 04/30/14])
FORMER LICENSE NO. 03158-G)
Respondent.)

SETTLEMENT AGREEMENT

WHEREAS, the State of New Mexico Real Estate Appraisers Board (“Board”) received a complaint on December 27, 2011, stating that an appraisal dated November 21, 2011 completed by Michael Porter (“Respondent”) was misleading and contained unreliable data in violation of the New Mexico Real Estate Appraisers Act (“Act”) and the Uniform Standards of Professional Appraisal Practice (“USPAP”); and

WHEREAS, on September 21, 2012, the Board found sufficient reason to unanimously vote to issue a Notice of Contemplated Action (“NCA”), against licensee, Respondent; and

WHEREAS, on December 24, 2013, the NCA was signed by a Board member, issued and mailed to the Respondent at his last known address as shown by the records of the Board; and received by the Respondent on December 26, 2013; and

WHEREAS, Respondent denies having committed the alleged violations and disputes the accuracy of the appraisal review dated December 20, 2013 by Mr. Gareth Burman, but is

nonetheless willing to resolve this matter in an amicable fashion and without the need for a formal hearing as required pursuant to the Uniform Licensing Act (“ULA”); and

WHEREAS, the Board believes this Settlement Agreement (“Agreement”) is appropriate and in the best interests of the Board and the Respondent.

THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

1. **Jurisdiction.** The Respondent is licensed under the Real Estate Appraisers Act, NMSA 1978, § 61-30-1 through § 61-30- 24 (2011) and is subject to the jurisdiction of the Board. The Board has jurisdiction over the Respondent and the subject matter.

2. **Alleged Violations.** The Respondent acknowledges that this disciplinary action is based on allegations of violations of NMSA 1978, § 61-30-15 (B) (1), (2) and (3), NMSA 1978, § 61-30-16, and the following USPAP Rules - the Preamble Rule, the Scope of Work Rule, the Recordkeeping Rule, the Competency Rule, Standard Rule 1-1 (a) and (b); Standard Rule 1-4 (a); Standard Rule 2-1 (b) and Standard Rule 2-2 (viii). Respondent denies having committed such violations.

3. **Discipline.** This Agreement constitutes disciplinary action by the Board against the Respondent. The Respondent is accepting this discipline as a compromised resolution of alleged violations. The complaint and this Agreement shall be reported to the Appraisers Subcommittee (“ASC”) National Registry as discipline against Respondent’s licensee.

4. The Board shall take no further action against Respondent with respect to the matters alleged in the NCA, provided that Respondent complies fully with the following:

A. Respondent shall successfully complete the fifteen (15) hours classroom USPAP course, including passing all testing requirements. The USPAP

course has to be a national AQB USPAP course taught by a AQB approved instructor who is a state certified appraiser

- B. Respondent shall successfully complete a Board approved seven (7) hour Subdivision Analysis, either in-class or on-line class, offered by the Appraisal Institute, including passing any testing requirements within one (1) year of Respondent's receipt of the Order signed by the Board Chairperson indicating the Board's approval of this Agreement.
- C. Respondent shall successfully complete a Board approved seven (7) hour Marketability Studies – Six Step Process and Basic Applications and Applications, in class or on-line, including passing any testing requirements within one (1) year of Respondent's receipt of the Order signed by the Board Chairperson indicating the Board's approval of this Agreement.
- D. Within thirty (30) days of Respondent's receipt from the Board of the reviewer's bill for review of the appraisal. Respondent shall pay the bill to the reviewer, Mr. Gareth Burman, in the amount of \$1123.50, and provide proof to the Board that payment has been made in full.
- E. Respondent shall provide documentary proof of successful completion of all required courses listed above, provided by the instructor or course provider of each course, to the Board within one (1) year of the Board's approval of this Agreement and Respondent's receipt of this Agreement and the signed Order. If Respondent elects to take the Subdivision Analysis and/or the Marketability Studies in an on-line venue and such are

approved to fulfill any continuing education requirements, Respondent shall also submit to the Board from the course's provider evidence of successfully passing the post test in order to receive credit for such on-line course(s).

F. The courses listed above cannot be used toward New Mexico's continuing education credit for renewal of license.

5. **Waivers.** Respondent acknowledges, agrees and stipulates that by signing this agreement he is waiving the following rights as they pertain to the alleged misconduct described herein:

A. Respondent enters into this Agreement voluntarily and waives his right to have these matters heard in the manner described in the ULA, NMSA 1978, §61-1-1 through §61-1-33 (2003), including the right to a full evidentiary hearing on the charges made in the complaint against him, the right to confront and cross-examine witnesses, and the right to appeal any decision of the Board following such a hearing.

B. Respondent waives any and all time limitations set forth in the ULA, including all rights to have this matter heard within the time frame established by the ULA, in order for the Board to consider this Agreement.

C. Respondent waives his right to assert a claim of bias or move to excuse any Board member based upon the Board member's consideration of this Agreement.

D. Respondent's waiver of these rights contained herein is made knowingly, intentionally, and voluntarily.

6. Respondent acknowledges that the Board has the statutory, administrative and regulatory authority and thereby jurisdiction to investigate and adjudicate allegations of

professional misconduct committed by Appraisers. NMSA 1978, § 61-30-4, (1990 as amended through 2003) and NMSA 1978, § 61-30-7, (1990 as amended through 2003). Upon execution of this Agreement, Respondent releases the Board from any and all claims arising out of the Board's decision to investigate the complaint, refer the matter for issuance of a Notice of Contemplated Action, and take the actions described herein.

7. This Agreement is subject to approval by the Board. If the Board rejects this Agreement, the Board may proceed with a formal hearing. If the Board rejects this Agreement, the terms of this Agreement or statements made by the Respondent in support of this Agreement shall **not** be used against Respondent in this proceeding or a subsequent proceeding.

8. This Agreement is binding upon the Board and the Respondent when it is signed by the Respondent and the attending Order, validating the terms of the Agreement, is signed by the Board Chairperson.

9. Upon the Board Chairperson affixing his signature to the Order indicating the Board's approval of this Agreement, copies of both documents shall be mailed to Respondent's counsel by Certified Mail. Mailing shall fulfill the Board's obligation to notify Respondent of the Board's acceptance of the agreement. The time limitations for Respondent's compliance with the requirements of this agreement shall commence three days after said mailing by the Board as such date shall be deemed receipt by the Respondent of this Agreement and the signed Order.

10. Upon fulfillment of the above requirements, the Board will consider this matter closed and resolved and will contemplate no further action against Respondent's license for the conduct made the subject matter of this Agreement. However, the Board may consider this alleged misconduct as evidence of a pattern of conduct in the event that similar or other alleged misconduct is actually proven against Respondent in the future. Additionally, the Board may

consider the fact that discipline was imposed through this Agreement and the accompanying Order as a factor in determining appropriate discipline should any further misconduct be proven against Respondent in the future.

11. This Agreement is a settlement of Board case number 47, 11-12-27 and only for the specific allegations contained therein as well as any and all other allegations the Board could have included in its NCA pertaining to Respondent's November 21, 2011 appraisal for Foothill Manor Estate Subdivision, Bernalillo County.

12. The Board reserves the right to initiate proceedings for any other violations of the New Mexico Real Estate Appraisers Act, USPAP violations and/or the Rules and Regulations adopted by the Board pursuant to the act. Respondent understands and acknowledges that his action in entering this Agreement is a final act and not subject to reconsideration, judicial review or appeal.

13. Respondent understands, acknowledges and stipulates that any violation(s) by Respondent of this Agreement and/or failure to comply with the terms and conditions of this Agreement shall be a separate and independent ground for disciplinary action by the Board against Respondent and at the discretion of the Board shall constitute a violation of the Act. Such action will immediately result in the filing of an Order to Show Cause as to why the Board should not find the Respondent in violation of the Agreement and impose any and all lawful sanctions at its disposal including but not limited to revocation, suspension or denial of a license, restrictions on scope of practice, imposition of fees, penalties and costs and/or taken any other disciplinary action authorized pursuant to the Act and/or the ULA.

14. Respondent is represented by Ms. Samantha Adams, Modrall Sperling Law Firm, and acknowledges that he has had the opportunity to discuss with counsel his decision to enter into this Agreement.

15. The complaint and this Agreement are public records within the meaning of the Inspection of Public Records Act, NMSA 1978, § 14-2-6(E) (1993). Other data, communications, and information acquired by the Board relating to this matter shall be public as provided by the New Mexico Real Estate Appraisers Practice Act. This document may be posted on the Board's website.

16. Respondent affirmatively states that he has read this entire document and understands his responsibilities and duties in reference to settlement of this matter. Respondent knowingly, intentionally and voluntarily enters into and executes this Agreement and affirms that no promises or representations have been made to him other than the terms and conditions expressly stated herein.



Michael W. Porter
Respondent
611 Long Drive Ct. – Suite C
Alpine, Utah 84004
(801) 492-0101 Ext. 203

April 3, 2014
Date

Approved by:



Samantha Adams
Modrall Sperling Law Firm
Attorney for Respondent

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ORDER

This matter having come before the New Mexico Real Estate Appraisers Board on April
15, 2014 and with a quorum being present and a majority voting for the action designated
below, this Stipulated Agreement is:

Accepted

Rejected



Dean Zantow, Chairperson
New Mexico Real Estate Appraisers Board
P.O. Box 25101
Santa Fe, New Mexico 87505
(505) 476-4622

4/15/14

Date