



TO: Tarrant Appraisal District c/o Chief Appraiser Jeff Law
FROM: Todd A. Clark
RE: Summary of Review of Complaints to TDLR Regarding Tax Consultant
DATE: August 11, 2022

I. BACKGROUND SUMMARY

In November 2021, a tax consultant and realtor contacted the Chief Appraiser to ask if Tarrant Appraisal District (TAD) had filed a complaint against him with the Texas Department of Licensing and Regulation (TDLR). Shortly thereafter, the Chief Appraiser asked staff about the consultant's question. The Director of Residential Property Appraisal indicated that he had filed such a complaint. The Chief Appraiser left the conversation thinking this was something the Director had done on his own initiative and time. By virtue of working to respond to a Public Information Act request sent to TAD on May 13, 2022, the Chief Appraiser learned of four complaints filed with TDLR by the Director of Residential Property Appraisal against the property tax consultant. The release of the records led to substantial media attention and outcry from the consultant, his supporters, and his attorney suggesting the Director inappropriately used his position to retaliate against the consultant for his advocacy efforts. The Chief Appraiser requested a formal review and legal analysis to assist in evaluating the circumstances and possible next steps.

II. FOCUS OF REVIEW

Unlike the TDLR complaint investigative process that resulted in issuance of a determination today not to pursue any action against the license for the consultant, this legal review focused on the facial validity of the complaints, the related history and community context, the potential legal ramifications for TAD, and prudent steps for the Chief Appraiser and TAD moving forward. The purpose was not to determine the merit of, or need for further action on, the TDLR complaints, which is the sole purview of TDLR. The attached Appendix contains the sources of information considered in preparing the review and this summary. Should that information change, the opinions and conclusions below are subject to change. This summary provides factual assessments of information gathered, and a set of legal conclusions based on those assessments.

III. FACTUAL CONCLUSIONS

The following conclusions represent a distillation of information gathered related to each issue. Insofar as possible, every effort was made to take information from necessarily subjective viewpoints and create objective conclusions regarding what the totality of information gathered

would support. Discernment of objective truth on each issue is elusive, but the characterizations below are designed to suggest the quality and quantity of evidence in support of each conclusion.

1. The complaints at issue were filed in a context fraught with considerable political and personal history.
2. Despite the contentious context, the information gathered tends to support the conclusion that the Director filed the complaints based upon a genuine belief that many of the tax consultant's representations associated with matters before the Tarrant Appraisal Review Board (TARB) were false and would tend to harm the process.
3. The information gathered tends to support the conclusion that the Director genuinely believed that false statements regarding valuation noncompliance by TAD, if left unchecked, would continue to result in unwarranted value reductions, create equity issues and inconsistent market values for Tarrant County taxpayers, and generally discredit tax consultants, TDLR, and the property tax system.
4. The information gathered tends to support the conclusion that the tax consultant's repeated allegations against TAD's valuation methods in TARB proceedings went to the primary purpose of the Director's position – adherence to the Texas Property Tax Code and the Uniform Standards of Professional Appraisal Practice.
5. The information gathered tends to support the conclusion that the TDLR complaints were made in good faith and not for illegitimate, retaliatory, or personal reasons.
6. The information gathered tends to support the conclusion that the Director held a genuine belief that making the reports fell within the purview of his job responsibilities.
7. Absent the Director's professional role and his responsibility to his staff, and to the integrity of the process, he would not have had information nor the opportunity to make the complaints.
8. The information gathered tends to support the conclusion that TAD resources were used in the filing of the complaints.
9. The information gathered tends to support the conclusion that use of TAD resources was appropriate given the totality of the circumstances and the overall duties of the Director.
10. The information gathered confirms that the Director did not consult with the Chief Appraiser or other TAD leadership before filing the complaints.
11. The information gathered tends to support the conclusion that the Director could have expected his complaints to bring public controversy to TAD.
12. The information gathered tends to support the conclusion that the Director's job description, certain professional guidelines, and historical practices at TAD warranted

prudence from the Director, including consultation with the Chief Appraiser and possibly legal counsel before filing the complaints.

13. The Director has over forty years of service to TAD without prior adverse personnel action.

IV. LEGAL CONCLUSIONS

As with the factual conclusions, there is no way to forecast a certain legal outcome. These conclusions are premised on considerable study and practice concerning public entity, constitutional, and personnel law. On any legal issue, reasonable minds and jurists could reach different conclusions.

1. The Director was neither obliged to, nor prohibited from, making the complaints by law, professional licensure requirements, nor TAD policy.
2. The complaints describe genuine issues implicating potential violations of license requirements by the tax consultant that TDLR has chosen not to pursue.¹
3. False or misleading representations in TARB proceedings resulting in inappropriate value determinations carry the potential to adversely affect TAD in the Comptroller's review process.
4. The information gathered tends to support the conclusion that the complaints were filed in good faith and not based on retaliatory motives.
5. The information gathered tends to support the conclusion that the tax consultant's speech is not protected insofar as it pertains to commercial speech including misrepresentations.
6. The Director's actions were taken independently, albeit apparently within the course and scope of his employment.
7. TAD policy did not cause the complaints to be filed, and TAD leadership did not direct their filing.
8. TDLR has taken the position that the complaints belong to the Director and cannot be unilaterally dismissed by TAD.
9. The Director is an "at-will" employee of the TAD whose employment may be terminated for any reason, or no reason, but not for an illegal reason.

¹ Tax consultants are prohibited from engaging in any activity that constitutes dishonesty, fraud, or gross incompetence while performing property tax consulting services and from furnishing inaccurate, deceitful, or misleading information to a client or employer, a prospective client or employer, or a public agency or representative of a public agency. 16 T.A.C. § 66.100.

10. The information gathered supports the legal conclusion that the Director's complaints are not protected speech insofar as they were made in the Director's role as an employee of TAD and not as a private citizen.
11. Any personnel action concerning the Director should focus on any perceived lapse in judgment surrounding the filing of complaints without having consulted the Chief Appraiser, considering the reasonably anticipatable consequences.
12. TAD personnel policies suggest serious consideration should be given to the use progressive discipline in lieu of any ultimate employment action, although ultimate action would not suggest a retaliatory motive related to the content of the complaints.

APPENDIX A

Materials reviewed include:

The articles and websites noted above and related links.
Additional online articles regarding TAD, the tax consultant, Bennett, Empower Texans, Texas Scorecard, and property tax legislation.
Robert Montoya Public Information Act request regarding TDLR complaints.
The material portions of all four complaints filed by Armstrong with TDLR.
The tax consultant's online response to TDLR Complaints.
Portions of the Real Estate Licensing Act.
Basis for Suspension of License code sections.
TDLR Complaint Processing code sections.
Real Estate Appraiser Practices (Occupations Code).
Code of Ethics for tax consultants.
Ethics course materials for licensed property appraisers.
TAD online contact form.
Relevant Portions of the TAD Board of Directors Policy Manual.
Relevant Portions of the TAD Personnel Policies.
Documentation of prior complaint consideration by TAD.

Interviews conducted (or offered):

Jeff Law, Chief Appraiser
Randy Armstrong, Director of Residential Appraisal
Debra Cabello, Director of Commercial Appraisal
Jeff Craig, Director of Administration
Shirley Jacobsen, Taxpayer Liaison Officer
Offer extended to Frank Hill for the tax consultant to participate in interview. After a reasonable time, following discussion and provision of detailed email, no response provided. (Note: Hill was told that this review would include no adverse inference based on any decision for the tax consultant not to participate in an interview).

Additional resources:

Relevant portions of audio from June 10, 2022 TAD Board of Directors meeting.
Relevant portions of video available online of June 10, 2022 TAD Board of Directors meeting.
Attendance for first two hours of TAD Board of Directors meeting on June 30, 2022, including portion of public comment.
Limited review of media reports concerning June 30, 2022 Board of Directors meeting.