

**BEFORE THE REAL ESTATE APPRAISER BOARD
STATE OF OKLAHOMA**

In the Matter of PHILLIP W. JAMES)
) Complaint #14-004
Respondent.)

CONSENT ORDER FOR RESPONDENT PHILLIP W. JAMES

COMES NOW the Oklahoma Real Estate Appraiser Board (“OREAB” or “Board”), by and through the Prosecuting Attorney, Stephen McCaleb, and the Respondent PHILLIP W. JAMES, and enter into this Consent Order pursuant to Oklahoma Statutes Title 59 §858-700, et seq. and Oklahoma Administrative Code 600:10-1-1, et seq. All sections of this order are incorporated together.

AGREED FINDINGS OF FACT

1. Upon information and belief, in October of 2007, Respondent was hired to complete an appraisal (the “appraisal”) for a property located at 1845 Anderson Lane, Sand Springs, Oklahoma (the “subject”). The Borrower/Client was reported as Steve and Donna Conn; the Lender was reported as Mortgage Options Financial.

2. Respondent completed the appraisal and transmitted the appraisal to the client, with an effective date of October 11, 2007. The appraisal was for a refinance transaction.

3. Respondent committed a series of errors in the report which led to a misleading and non-credible report. These errors include, but are not limited to, the following in paragraphs 11-24.

Neighborhood Section

4. Respondent reports that the neighborhood is 25% to 75% built up. However, Respondent also reports that the present land use is 95% one-unit housing, which is inconsistent

with the neighborhood being 25% to 75% built up. The neighborhood is 10-20% built up with single family housing.

Site Section

12. The plat of the subject shows the site size to be 1.023 acres rather than the 1.25 as reported by Respondent.

13. Respondent reported that the zoning is "RS" when in fact the zoning is "rural Residential" with no zoning.

Comparables

14. Respondent ignored more comparable sales that sold within one year of the effective date of the report, and were located within the subject neighborhood. The sales chosen by Respondent were higher sale priced properties than what was available from the subject neighborhood.

Comparable One

15. Respondent reports that comparable one has a three car garage when it actually has a two car garage.

16. Respondent's adjustment of \$60 per square foot is not supported nor supported by Respondent's analysis.

Comparable Two

17. Respondent's comparable two is not truly comparable to the subject property and is not in the subject neighborhood.

18. Comparable two's site size is about 70% larger than the subject property

19. Respondent's adjustment of \$60 per square foot is not supported nor supported by Respondent's analysis.

Comparable Three

20. Comparable three is not truly comparable as it two 1 acre lots and a 700 square foot guest house. Regardless of whether it is truly comparable, Respondent failed to adjust for either of these differences.

21. Respondent improperly included the square footage of the guest house into the total gross living area of the subject property.

22. Respondent's adjustment of \$60 per square foot is not supported nor supported by Respondent's analysis.

Cost Approach

23. Respondent reports that the Cost Approach is based on "Builder's Cost Estimate and the Appraiser's knowledge of construction costs." No further information is provided which does not allow for a lender/client to replicate cost figures and calculations.

24. For the site value, Respondent reports that it "is estimated by the allocation method..." No further information is provided on site sales, which does not allow for a lender/client to replicate cost figures and calculations.

Other Deficiencies

25. Respondent incorrectly reported that the subject was located in Tulsa County (the subject is in Osage county).

26. Respondent incorrectly switched the photos for comparables one and two.

AGREED CONCLUSIONS OF LAW

1. That Respondent has violated 59 O.S. § 858-723(C)(6) through 59 O.S. §858-726, in that Respondent violated:

A) The Competency Rule of the Uniform Standards of Professional Appraisal Practice;

B) Standard 1, Standards Rules 1-1, 1-2, 1-4, and 1-6; Standard 2, Standards Rules 2-1, and 2-2 of the Uniform Standards of Professional Appraisal Practice. These include the sub sections of the referenced rules.

2. That Respondent has violated 59 O.S. § 858-723(C)(7): "Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal."

3. That Respondent has violated 59 O.S. § 858-723(C)(8): "Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal."

4. That Respondent has violated 59 O.S. § 858-723(C)(13) in that Respondent violated 59 O.S. § 858-732(A)(1): "An appraiser must perform ethically and competently and not engage in conduct that is unlawful, unethical or improper. An appraiser who could reasonably be perceived to act as a disinterested third party in rendering an unbiased real property valuation must perform assignments with impartiality, objectivity and independence and without accommodation of personal interests."

5. That Respondent has violated 59 O.S. § 858-723(C)(6): "Violation of any of the standards for the development or communication of real estate appraisals as provided in the Oklahoma Certified Real Estate Appraisers Act."

CONSENT AGREEMENT

The Respondent, by affixing his signature hereto, acknowledges:

1. That Respondent has been advised to seek the advice of counsel prior to signing this document, and
2. That Respondent possesses the following rights among others:
 - a. the right to a formal fact finding hearing before a disciplinary panel of the Board;
 - b. the right to a reasonable notice of said hearing;
 - c. the right to be represented by counsel;
 - d. the right to compel the testimony of witnesses;
 - e. the right to cross-examine witnesses against her; and
 - f. the right to obtain judicial review of the final decision of the Board.
3. The Respondent stipulates to the facts as set forth above and specifically waives his right to contest these findings in any subsequent proceedings before the Board and to appeal this matter to the District Court.
4. The Respondent consents to the entry of this Order affecting his professional practice of real estate appraising in the State of Oklahoma.
5. The Respondent agrees and consents that this Consent Order shall not be used by him for purposes of defending any other action initiated by the Board regardless of the date of the appraisal.
6. All other original allegations in this matter are dismissed.

ORDER

WHEREFORE, on the basis of the foregoing Agreed Findings of Fact and Agreed Conclusions of Law, it is ordered and that:

1. Respondent successfully completes corrective education as follows:

FIFTEEN (15) HOURS – 600: NATIONAL USPAP COURSE

Respondent shall have one hundred eighty (180) days from the date of this order is adopted by the Board to file with the Board a certificate of completion;

2. Respondent pay an administrative fine in the amount of One Thousand Dollars (\$1,000). Said fine is pursuant to 59 O.S. §858-723; and
4. Respondent acknowledges that he understands that any modifications to the deadlines in paragraphs one and two of this section must be requested to the Board, in accordance with the Oklahoma Open Meetings Act, at a regularly scheduled Board meeting, and the Board's staff does not have the discretion to modify these terms.

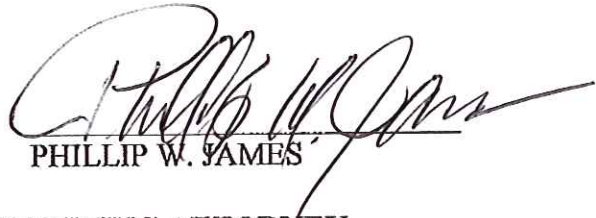
DISCLOSURE

Pursuant to the Oklahoma Open Records Act, 51 O.S. §§24-A.1 – 24A.21, the signed original of this Consent Order shall remain in the custody of the Board as a public record and shall be made available for public inspection and copying upon request.

FUTURE VIOLATIONS

In the event the Respondent fails to comply with any of the terms and conditions of this Consent Order, Respondent will be suspended immediately until said terms and conditions are met.

RESPONDENT:


PHILLIP W. JAMES

CERTIFICATE OF BOARD PROSECUTING ATTORNEY

I believe this Consent Order to be in the best interests of the Oklahoma Real Estate Appraiser Board, the State of Oklahoma and the Respondent with regard to the violations alleged in the formal Complaint.



STEPHEN MCCALED, OBA #15649
Board Prosectuor
3625 NW 56th Street, Suite 100
Oklahoma City, Oklahoma 73112

12-17-14

DATE


IT IS SO ORDERED on this 7th day of January, 2015.



ERIC SCHOEN, Board Secretary
Oklahoma Real Estate Appraiser Board



**OKLAHOMA REAL ESTATE
APPRAISER BOARD**

By: 
BRYAN NEAL, OBA #6590
Assistant Attorney General
Attorney for the Board

CERTIFICATE OF MAILING

I, Ashley Snider, hereby certify that on the 9th day of January, 2015 a true and correct copy of the above and foregoing Consent Order For Respondent Phillip W. James was placed in the U.S. Mail, with postage pre-paid, by certified mail, return receipt requested to:

Phillip W. James
P.O. Box 432
Sand Springs, OK 74063

7012 2210 0000 8959 8187

and that copies were forwarded by first class mail to the following:

Bryan Neal, Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
313 N.E. 21st Street
Oklahoma City, OK 73105

Stephen L. McCaleb
DERRYBERRY & NAIFEH
4800 N. Lincoln Boulevard
Oklahoma City, OK 73105



ASHLEY SNIDER