

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

In the Matter of)	
MICHAEL D. FLESHER)	
)	Complaints #15-017 and 018
Respondent.)	

CONSENT ORDER FOR RESPONDENT MICHAEL D. FLESHER

COMES NOW the Oklahoma Real Estate Appraiser Board (“OREAB”), by and through the Prosecuting Attorney, Stephen McCaleb, and the Respondent MICHAEL D. FLESHER, and enter into this Consent Order pursuant to Oklahoma Statutes Title 59 O.S. §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 FOR COMPLAINT 15-017

1. In early February 2015, Respondent was hired to complete an appraisal (the “appraisal”) for a property located at 3986 Southridge Lane NE, Piedmont, Oklahoma (the “subject”). Respondent completed and transmitted the appraisal to Wells Fargo Bank (the “client”) with an effective date of February 12, 2015. The appraisal’s intended use was for “Purchase Transaction.”

2. 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 10-21.

3. The original list price was for \$255,000. The contract price was \$268,842. The report failed to reconcile the difference between the list price and the sales price.

4. The current list price, at the time of his report, of \$258,692 per MLS was not reported or explained.

5. The report does not adequately discuss the contract.
6. The neighborhood description in the report appears to be overly broad.
7. The wrong zoning is reported in the report.
8. The report describes the site as "irregular" when it is rectangular.
9. The report describes the subject site as un-platted and therefore reports no site dimensions. This is incorrect as it is platted and the site dimensions are on the filed plat.
10. The report does not reference the 20 foot utility easement on the subject property.
11. The report fails to summarize and support the property's highest and best use.
12. The report describes the quality of construction as Q3 on the Sales Comparison Approach grid, but in the cost approach the quality of construction is reported as Q4.
13. The report failed to analyze the previous transfer of the subject property and did not mention the previous quit claim deed.
14. The respondent did not develop the site value by appropriate method or technique and did not provide support for the site value.
15. Size adjustments of the first three comparables are inadequate at approximately \$25 per square foot when the subject sold for \$113.78 per square foot and comparable one sold for \$113.19 per square foot; comparable two sold for \$114.01 per square foot; and comparable three sold for \$110.39 per square foot.
16. The report also contained numerous canned comments which effect the credibility of the report.

AGREED FINDINGS OF FACT FOR COMPLAINT 15-018

17. Upon information and belief, in October of 2014, Respondent was hired to complete an appraisal (the "appraisal" or "report") for a property located at 3305 East Sorghum Hill Road, Edmond, Oklahoma (the "subject"). Respondent completed and transmitted the appraisal to Morgan Stanley Private Bank NA (the "client") with an effective date of October 15, 2014. The appraisal's intended use was for "Refinance Transaction."

18. 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 10-36.

19. The reports Neighborhood boundaries are overly broad. The boundaries are more accurately reflected as E. Waterloo Road to the North, E. Covell Road to the South, I-35 to the East; and N. Bryant to the West.

20. The Reports Neighborhood description refers to an attached computer generated neighborhood profile, which failed to note the subject's proximity within approximately two miles of golf courses, within one mile South and West of major thoroughfares, Waterloo Road and N. Sooner Road, respectively, within four miles of the University of Central Oklahoma, and approximately one mile West of I-35.

21. The Reports One-Unit Land Use percentage was exaggerated. The One-Unit use is 50%, the Commercial use is 15%, and the Other use is 35%, with the Other land use being vacant and agricultural use.

22. The report indicates Wood as a heating source for the subject, yet the report contains photographs of what appears to be electrical powered furnaces.

23. The subject's close proximity to high traffic thoroughfares should have been discussed within the site section.

24. The reported site dimensions were abbreviated and incorrect.

25. The County Assessor's legal description provided site dimensions which did not agree with the dimensions provided in the report. The overall site size was 4.82 acres according to the County record; however, the report shows 4.71 acres with no explanatory commentary.

26. The Effective Age appears to be understated. The report indicates the subject's Effective Age as 10 years, however, the improvements were 38 years old and the report indicates no updates in the prior 15 years.

27. The report's gross living area ("GLA") is 490 square feet larger than the County record GLA, however, no explanatory commentary was included regarding the GLA discrepancy.

28. There was no indication that the subject was of O3 quality of construction. The report's detail regarding quality of construction, additional amenities, and type of construction materials observed regarding the subject and comparable sales is insufficient.

29. The report's commentary overall was found to be insufficient.

30. The report's opinion of site value is not supported and appears to be inflated.

32. The report contains commentary regarding the comparable search area which appears to indicate value as a search parameter. Value as a search parameter is unacceptable and should never be a basis for determining the most similar comparables.

33. The report's GLA adjustment of \$25 per square foot appears to be insufficient, as the comparable sales averaged \$122 per square foot and the subject was appraised at \$121.17 per square foot.

34. No bath count adjustments were made. While total room count and bedroom count are typically accounted for in the GLA adjustments within the subject's market, per the reports commentary, the report failed to explain the lack of adjustment for bath count.

35. The report's guest dwelling adjustments appear to be excessive. The Respondent notes that the subject's accessory unit was once used in a veterinary practice, that the bedrooms were separated only by stand-up dividers and that it was basically one big room. Similarly, the report's adjustments for outbuilding appears to be excessive.

36. The report utilized the MLS reported GLA instead of the County Assessor information in several instances, resulting in substantial discrepancies between the report and the County Record, without explanation.

37. For the report's comparable number seven, the report utilizes the MLS, rather than the County record GLA. The MLS GLA, as noted in the MLS commentary, included the comparable's guest quarter square footage. The report also adjusts for the guest quarters within the grid, which resulted in the square footage of the comparable's guest quarters being accounted for both within the GLA, and within the guest quarter adjustment, resulting in an over-statement of the comparable's value.

38. Sales one and two are be superior to the subject in architecture and materials, requiring downward quality adjustments to account for these differences.

39. No age adjustments were made, which might be appropriate if the difference was accounted for within the condition adjustment. OA comparable number one was 27 years newer in age and superior in condition with granite, etc., and only received a five-percent downward adjustment to account for all condition differences. 30. Comparable number two and four were also much newer and superior in updating, with an insufficient condition adjustment.

40. Sale number three was also superior in updating and the OA condition adjustment appeared to be insufficient. The swimming pool adjustment for comparable number three appears to be insufficient, as MLS photographs of the swimming pool depict a very small pool, versus the subject's larger pool.

41. The report contained no adjustments for differences in amenities between the subject and the report's comparable sales. Typical adjustments for storm shelters, sprinkler systems, central vacuum systems, and safe rooms were not made.

42. The report's comparable sales were not found to be the best or most similar sales available and were not found to be relevant and appropriate value indicators for the subject.

43. Other observations regarding the comparables chosen are:

- a. #1, 2 are located in a superior location with HOA dues. These properties are also superior in quality.
- b. #3 has a garage apt. and appears to be included in GLA and was also adjusted upward for subject's guest house.
- c. #4 is superior in age, condition which have insufficient adjustments, pool adjustment is excessive. Typically in this market RA has found contributory value for in-ground pool to bring @ 10,000.
- d. #5 is superior in condition, it has been completely remodeled. It was report as C4.
- e. OA #6 is superior in condition, also remodeled, it was reported as C4.
- f. #7 GLA is reported wrong, also superior in condition, remodeled, also has extensive landscaping.
- g. #8 superior in condition, remodeled. Reported as C4.

- h. #9 is not comparable to subject at all, has a walk out basement and adjustments appear excessive.
- 44. All comparables reported are inaccurate and gives an inflated estimate of value.
- 45. The report ignores new construction available for comparables including a property across the street from the subject.

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 Ethics Rule and the Conduct Section of the Uniform Standards of Professional Appraisal Practice Ethics Rule;
- B) The Competency Rule of the Uniform Standards of Professional Appraisal Practice;
- C) The Scope of Work Rule of the Uniform Standards of Professional Appraisal Practice;
- D) Standard 1, Standards Rules 1-1, 1-2, 1-3, 1-4, 1-5, 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 him; 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 her for purposes of defending any other action initiated by the Board regardless of the date of the appraisal.

6. Respondent acknowledges that this Order must be approved by the OREAB. If it is not, Respondent understands that the matter will be reset for further hearing and that the OREAB will vote on any further recommendations or other proposals.

7. Respondent acknowledges that, pursuant to Executive Order 2015-33, this order shall not become effective until the Oklahoma Attorney General reviews and approves this order.

8. 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 is placed on probation for a period of six (6) months from the date Respondent completes the courses outlined in paragraph three (3) of the Order section. During the period of probation, Respondent shall provide an appraisal log on REA Form 3 to the administrative office of the Board no later than the fifth working day of each month detailing his appraisal activity during the preceding month. The Board may select and require samples of work product from these appraisal logs be sent for review.

2. Respondent shall pay an administrative fine of \$1,000 within thirty (30) days of receipt of the fully executed Order, in accordance with 59 O.S. §858-723(B)(2).

3. Respondent agrees to complete the following courses within six (6) months after this Order is approved by the Board:

- a) 602 Basic Appraisal Procedures: 1803 - 30 hours
- b) 612 Residential Site Valuation & Cost Approach: 1804 - 15 hours
- c) 635 Residential Sales Comparison & Income Approach: 1807 - 30 hours

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 ordered to show cause for her failure to comply which could result in additional penalties.

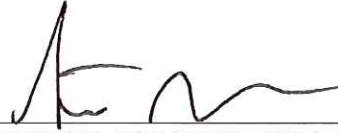
RESPONDENT:


MICHAEL D. FLESHER


DATE

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

3-1-16

DATE

IT IS SO ORDERED on this 2nd day of March, 2016.



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
313 NE 21st Street
Oklahoma City, Oklahoma 73105

CERTIFICATE OF MAILING

I, Sherry Ainsworth, hereby certify that on the 22nd day of March, 2016 a true and correct copy of the above and foregoing Order was placed in the U.S. Mail, with postage pre-paid, by certified mail, return receipt requested to:

Michael D. Flesher
3712 Millers Creek Lane
Mustang, Oklahoma 73064

7015 1520 0003 4174 3045

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


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Sherry Ainsworth