

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

In the Matter of WILLIAM T. McGARRY)	
and WILLIAM S. McGARRY,)	
Respondents.)	Complaint #14-038

**BOARD'S DECISION AS TO
DISCIPLINARY HEARING PANEL RECOMMENDATION**

ON THE 2nd day of March, 2016 the above numbered and entitled cause came on for hearing before a the Oklahoma Real Estate Appraiser Board (the "Board" or "OREAB") following a disciplinary hearing held on December 30, 2015. The Board was represented by a Disciplinary Hearing Panel composed of three (3) members, who are each Oklahoma licensed real estate appraisers, Robb E. Glendening of Muskogee, Oklahoma, Jerry L. Jones of Shawnee, Oklahoma, and Donald L. Henderson of Broken Arrow, Oklahoma. Robb E. Glendening was elected and served as Hearing Panel Chairman at the hearing. Said panel was represented by the Board's Attorney and Hearing Counsel, Assistant Attorney General Bryan Neal.

The case was prosecuted by the Board's Prosecutor, Stephen L. McCaleb. The Respondent William T. McGarry appeared at the hearing in person and was represented by an Attorney, Rachel Lawrence Mor, of Oklahoma City, Oklahoma. The Respondent William S. McGarry, in the words of his Attorney, "was present via telephone from Pagosa Springs, Colorado", even though there was no actual telephone connection with him at that time in the hearing, would testify later in the hearing via telephone. The Respondent William S. McGarry, who did not appear in person at the hearing, was represented at the hearing by the same Attorney, Rachel Lawrence Mor, of Oklahoma City, Oklahoma.

Ms. Mor stated that in order to facilitate these proceedings, that she would refer to her client William T. McGarry as "Taylor" (hereinafter called "Taylor"), and that she would refer to her client

William S. McGarry as “Scott” (hereinafter called “Scott”). Ms. Mor also represented that her client Scott has now retired from the practice of appraising real estate even though his license does not actually expire until January 30, 2016.

On behalf of the Board, Mr. McCaleb elected to have this matter recorded by electronic device and to rely on the electronic recording. The Respondents William T. McGarry and William S. McGarry through their Attorney both elected to have this matter recorded by electronic device and to rely on the electronic recording.

PRELIMINARY MATTERS

The Board’s Prosecutor initially moved for the admission of eleven (11) exhibits for the Board (Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, respectively) contained in a trial notebook noting that all eleven such Board exhibits were each Bates-stamped with page numbers provided within each such exhibit in numerical order.

Board Exhibit 1 is the March 28, 2014, Application for Real Estate Appraisal Credential of William Taylor McGarry.

Board Exhibit 2 is the August 28, 2014, Application for Real Estate Appraisal Credential of William Taylor McGarry.

Board Exhibit 3 is a October 22, 2014, Letter from the OREAB to William Taylor McGarry.

Board Exhibit 4 is a October 28, 2014, Letter from William Taylor McGarry to the OREAB.

Board Exhibit 5 is the October 22, 2014, Submission of 2536 S.W. 86th Street, Oklahoma City, Oklahoma, for Bank of Oklahoma (BOKF) - “SAMPLE APPRAISAL”.

Board Exhibit 6 is the October 22, 2014, Submission of 2536 S.W. 86th Street, Oklahoma City, Oklahoma, for BOKF – Submitted to BOKF.

Board Exhibit 7 is the November 4, 2014, Submission of 2536 S.W. 86th Street, Oklahoma

City, Oklahoma, for BOKF – Received from BOKF.

Board Exhibit 8 is the October 22, 2014, Submission of 2459 La Belle Rue, Edmond, Oklahoma, for BancFirst – “SAMPLE APPRAISAL”.

Board Exhibit 9 is the October 28, 2014, Submission of 2459 La Belle Rue, Edmond, Oklahoma, for BancFirst – Submitted to BancFirst.

Board Exhibit 10 is the November 10, 2014, Submission of 2459 La Belle Rue, Edmond, Oklahoma, rejected from BancFirst – Received from BancFirst.

Board Exhibit 11 is the February 6, 2015, Response to Grievance from William Taylor McGarry and William Scott McGarry.

Immediately thereafter, the Board’s Prosecutor moved for the admission of two additional exhibits, numbered respectively as Board’s Exhibits 12 and 13.

Board Exhibit 12 is the Respondents’ 2536 S.W. 86th Street, Oklahoma City, Oklahoma, Work File.

Board Exhibit 13 is the Respondents’ 2459 La Belle Rue, Edmond, Oklahoma, Work File.

There being no objection, all thirteen (13) Board exhibits were admitted into evidence.

The Respondents indicated that they intended to present three (3) exhibits as the Respondents’ Exhibits 1, 2, and 3, respectively, at some point during the hearing but would wait until later in the hearing to actually make such presentation. The Board’s Prosecutor having been provided a copy of all three (3) of the Respondents’ Exhibits said that he had no objection to any of the Respondents’ Exhibits.

The Board’s Prosecutor presented his Opening Statement as did the Attorney for the Respondents. Immediately thereafter, the Board’s Attorney noted for the record that the telephone on the table in front of the Hearing Panel was not turned on and asked the Respondents’ Attorney if

her client Scott who was to be “present by telephone from Pagosa Springs, Colorado”, was actually present through a telephone that was not activated. The Respondents’ Attorney responded that her client Scott was fine in not being present by telephone until such time as he was to testify.

Neither party to these proceedings requested that a court reporter record this matter. No proposed findings of fact were submitted to the Board by either party to these proceedings.

WITNESSES AND EVIDENCE PRESENTED

The Board’s Prosecutor presented one (1) witness in support of the case against the Respondents: Christine McEntire, the Board’s Director.

CHRISTINE McENTIRE TESTIMONY (Summary)

Upon being duly sworn, Ms. McEntire testified that she is an employee of the Oklahoma Insurance Department, that she has worked for the Board for about eight and one-half years, that she is currently the Director of the Board, that she has served as the Board’s Director since 2011, that in that capacity she oversees licensing, enforcement and financial activities including contracting matters, and that there are four (4) levels of licensure of appraisers in Oklahoma; those being (1) trainee appraisers (TRA), (2) state licensed appraisers (SLA), (3) certified residential appraisers (CRA), and (4) certified general appraisers (CGA).

Continuing, Ms. McEntire testified that there is an application process to upgrade from state licensed appraiser to certified residential appraiser that complies with the requirements of the Appraiser Qualifications Board (AQB) for college education and degree, appraiser education, and work product experience through 2500 hours of such experience in no fewer than twenty-four months, that Respondent Taylor had filed an Application for upgrade from state licensed appraiser to certified residential appraiser, she identified that the Board’s Exhibit 1, previously admitted, was his March 28, 2014, Application for upgrade from state licensed appraiser to certified residential

appraiser that was Bates-stamped as page 1 to page 53, that there was an unexplained gap in time of about 11 months in the experience work log form he provided between page 52 and page 53, that the appraisal for the real property on La Belle Rue, Edmond, Oklahoma, was not listed, that the appraisal for the real property on 2536 S.W. 86th Street, Oklahoma City, Oklahoma, was not listed, that Respondent Taylor did not pass through administrative review under his first application to do so, and that Respondent Taylor later reapplied for upgrade.

Ms. McEntire identified the previously admitted Board's Exhibit 2 as Respondent Taylor's August 28, 2014, Application for upgrade from state licensed appraiser to certified residential appraiser that was Bates-stamped as page 1 to page 77, that Respondent Taylor's work log contains additional properties that were not previously provided and that it includes the 11 month time-frame that was previously excluded, that on page 76, the ninth property listed is that of 2536 S.W. 86th Street, Oklahoma City, Oklahoma, that on page 77, the fourth property listed is that of 2522 La Belle Rue, Edmond, Oklahoma, that neither 2536 S.W. 86th Street, Oklahoma City, Oklahoma, nor 2522 La Belle Rue, Edmond, Oklahoma, were listed in Respondent Taylor's initial Application for upgrade, and that the Respondent Taylor's work log did not list any sample appraisals.

Ms. McEntire identified the Board's Exhibit 5, previously admitted, as an appraisal report for 2536 S.W. 86th Street, Oklahoma City, Oklahoma, labeled on page 1 thereof as a "Sample Appraisal", that was not listed as a "sample" in any of Respondent Taylor's work logs, that in the "Additional Comments" section on Bates-stamped page 7 of the Board's Exhibit 5 "Sample Appraisal", that Respondent Taylor's assistance was not disclosed, that Respondent Taylor did not sign the appraisal report and that there was no disclosure of any contribution of significant assistance in the preparation of that appraisal as having been provided by Respondent Taylor in the appraisal report, that she had sent a Letter dated October 22, 2014, to Respondent Taylor which she

identified as the Board's Exhibit 3, previously admitted, outlining the issues with the second Application for upgrade including this appraisal report issue, that the Board's Exhibit 6, previously admitted, an appraisal report for 2536 S.W. 86th Street, Oklahoma City, Oklahoma, appears to be the same appraisal report as that of the Board's Exhibit 5 by Respondent Scott that discloses the contribution of significant assistance in the preparation of that appraisal by Respondent Taylor in the "Additional Comments" section on Bates-stamped page 8 of the Board's Exhibit 6 (near the top of the page).

Board Exhibit 4 was identified by Ms. McEntire as an undated Letter from Respondent Taylor received by the Board on October 28, 2014, in which Respondent Taylor said he wanted to reconcile the discrepancies noted in his second Application for licensure upgrade, that the next to last paragraph Ms. McEntire read into the record as follows: "I have resubmitted the appraisals to you just as they were sent to the client originally to reconcile this. It also should be noted that these were not sample appraisals but appraisals performed for a client.", that Board Exhibit 6, Bates-stamped page 8 has Respondent Taylor's name inserted in the "Additional Comments" section (near the top of the page) as contributing significant assistance in the preparation of that appraisal. Ms. McEntire identified Board Exhibit 7, previously admitted, as a group of documents subpoenaed from the Bank of Oklahoma including an Appraisal report on 2536 S.W. 86th Street, Oklahoma City, Oklahoma, by Respondent Scott that on Bates-stamped page 14 thereof in the "Additional Comments" section (near the top of the page) does not disclose any contribution of significant assistance in the preparation of that appraisal by Respondent Taylor, and that such Appraisal reports are actually different.

At the request of the Board's Prosecutor, Ms. McEntire read into the record the Comment to Standards Rule 2-2 (*vii*) from the applicable Uniform Standards of Professional Appraisal Practice

(2014-2015), which at page U-23 thereof reads as follows:

“Because intended users’ reliance on an appraisal may be affected by the scope of work, the report must enable them to be properly informed and not mislead. Sufficient information includes disclosure of research and analyses performed and might also include disclosure of research and analyses not performed. When any portion of the work involves significant real property appraisal assistance, the appraiser must summarize the extent of that assistance. The name(s) of those providing the significant real property assistance must be stated in the certification, in accordance with Standards Rule 2-3.”

Ms. McEntire identified Board Exhibit 8, previously admitted, as an Appraisal report from Respondent Scott for the property located at 2459 La Belle Rue, Edmond, Oklahoma, provided as a “Sample Appraisal” by Respondent Taylor, that Respondent Taylor is listed on Bates-stamped page 7 as contributing significant assistance in the preparation of that appraisal, and that at the request of the Board’s Prosecutor, Ms. McEntire read into the record from Board Exhibit 9 at Bates-stamped page 6 the following:

“Analysis of prior sale or transfer history of the subject property and comparable sales” “THE SUBJECT ALSO REPORTED A NON-SALE TRANSFER ON 03/15/21013. ALL OF THE COMPARABLES REPORTED PREVIOUS LOT SALES EXCEPT FOR COMPARABLE #2 WHICH IS A RELOCATION SALE AS LISTED IN THE GRID. COMPARABLE 31 ALSO REPORTED A PREVIOUS NON-SALE TRANSFER ON 05/09/2013. COMPARABLE #2 ALSO REPORTED A NON-SALE TRANSFER ON 07/26/2012. COMPARABLE #5 ALSO REPORTED A MULTIPLE LOT SALE ON 03/14/2013 FOR \$814,000 AND A NON-SALE TRANSFER ON 03/15/2013. THE SUBJECT IS NOT LISTED FOR SALE IN THE OKC MLS SYSTEM AT THIS TIME.”

Ms. McEntire identified Board Exhibit 9, previously admitted, as an Appraisal report from Respondent Scott for the property located at 2459 La Belle Rue, Edmond, Oklahoma, with Respondent Taylor listed on Bates-stamped page 8 as contributing significant assistance in the preparation of that appraisal.

Ms. McEntire identified Board Exhibit 10, previously admitted, as the November 10, 2014, submission of 2459 La Belle Rue, Edmond, Oklahoma, rejected from BancFirst – received from BancFirst as a subpoenaed record of an Appraisal report of Respondent Scott, testifying that the language contained in the “Sales Comparison Approach” section on Bates-stamped page 4 as “Analysis of prior sale or transfer history of the subject property and comparable sales” as the SUBJECT ALSO REPORTED A NON-SALE TRANSFER ON 03/15/2013. ALL OF THE COMPARABLES REPORTED PREVIOUS LOT SALES EXCEPT FOR COMPARABLE #2 WHICH IS A RESALE. SUBJECT IS NOT LISTED FOR SALE IN THE OKC MLS SYSTEM AT THIS TIME, differs from the language submitted by Respondent Taylor in the Board’s Exhibit 9, previously admitted, on Bates-stamped page 6 as following the “Analysis of prior sale or transfer history of the subject property and comparable sales”, the following language:

“THE SUBJECT ALSO REPORTED A NON-SALE TRANSFER ON 03/15/21013. ALL OF THE COMPARABLES REPORTED PREVIOUS LOT SALES EXCEPT FOR COMPARABLE #2 WHICH IS A RELOCATION SALE AS LISTED IN THE GRID. COMPARABLE 31ALSO REPORTED A PREVIOUS NON-SALE TRANSFERON 05/09/2013. COMPARABLE #2 ALSO REPORTED A NON-SALE TRANSFER ON 07/26/2012. COMPARABLE #5 ALSO REPORTED A MULTIPLE LOT SALE ON 03/14/2013FOR \$814,000AND A NON-SALE TRANSFER ON 03/15/2013. THE SUBJECT IS NOT LISTED FOR SALE IN THE OKC MLS SYSTEM AT THIS

TIME.”

Ms. McEntire identified Board Exhibit 12 (Respondents’ 2536 S.W. 86th Street, Oklahoma City, Oklahoma, Work File), previously admitted, testifying that the Respondent Taylor’s work file contains no other versions of the appraisal report.

Ms. McEntire identified Board Exhibit 13 (Respondents’ 2459 La Belle Rue, Edmond, Oklahoma, Work File), previously admitted, testifying that the Respondent Taylor’s work file contains no other versions of the appraisal report.

On cross-examination, Ms. McEntire testified that while no one from the Board Staff telephoned Respondent Taylor about the problems with his two applications for upgrade, that she did send him letters explaining the problems, that the two applications for upgrade he filed were independent of the other application and that he paid his \$150 application for upgrade twice.

When questioned about Respondent Taylor’s work experience logs that he submitted with his first Application for licensure upgrade (Board Exhibit 1), Ms. McEntire testified that on Bates-stamped page 52 the date of the last entry on that page was April 25, 2013 and on Bates-stamped page 53 the date of the last entry on that page was March 19, 2014, a gap in time of some 11 months, that as to this gap in time she placed no telephone call to Respondent Taylor; that no one from the Board Staff had a personal meeting with Respondent Taylor to address this problem, and that Respondent Taylor’s first Application for licensure upgrade (Board Exhibit 1) was not approved at the administrative level which level she testified meant at the Board Staff level and not at the first reviewer’s or next level of work product review.

When questioned about Respondent Taylor’s work experience logs that he submitted

with his second Application for licensure upgrade (Board Exhibit 2), Ms. McEntire testified that Respondent Taylor's second Application for licensure was a new application for which he submitted over 3,000 hours of work experience logs, that on Bates-stamped page 54 that the date of the last entry on that page was April 25, 2013, that on Bates-stamped page 55, the date of the first entry was April 26, 2013, that the last page of the experience work logs submitted was Bates-stamped page number 77, that the date of the last entry on that page was March 14, 2014, that compared to the Respondent Taylor's first Application for licensure upgrade (Board Exhibit 1) that the experience work logs submitted by Respondent Taylor with his second Application for upgrade (Board Exhibit 2) had additional properties listed on Bates-stamped pages 54 to 77, that on Bates-stamped page 77 the property at 2522 La Belle Rue, Edmond, Oklahoma, listed that Respondent Taylor had inspected that property on February 20, 2014, that on Bates-stamped page 76 (the ninth property down), listed that Respondent Taylor had inspected the property at 2536 S.W. 86th Street, Oklahoma City, Oklahoma, on January 31, 2014, that Respondent Taylor's second Application was administratively approved by Board Staff to ensure that Respondent, as the applicant for upgrade, met the criteria to go to the next step of work product review.

Continuing, Ms. McEntire testified that sample appraisals can be submitted as work experience, that Board Staff is available to assist those seeking to upgrade but that no formal classes are offered in how to fill out the upgrade application forms, that the Board subpoenaed additional documents from the bank on the La Belle Rue, Edmond, Oklahoma, property appraisal, the address of which changed over time from when the development of the appraisal started, that Respondent Taylor ultimately was given the licensure upgrade on the second application, that Respondent Taylor was denied the upgrade the first time, that

Respondent Taylor's application for upgrade was sent to the second reviewer, that ultimately six appraisal reports were reviewed, that after work product review is completed comes the test card.

At this point, the Board Prosecutor moved to admit two additional exhibits that he marked as Board Exhibit 14 and 16, respectively.

Board Exhibit 14 is an e-mail from the Board's Administrative Officer Eric Schoen dated September 10, 2014, on behalf of the peer reviewer, requesting reports and work files on 2522 La Belle Rue, Edmond, Oklahoma, and 1100 Ascot, Edmond, Oklahoma, addressed to Respondent Taylor.

Board Exhibit 16 is a copy of a Subpoena Duces Tecum addressed to BankFirst (BancFirst) seeking copies of any and all documentation relating to an appraisal prepared for BankFirst (BancFirst) on February 20, 2014, for a property located at 2459 La Belle Rue, Edmond, Oklahoma.

Whereupon the Board rested its case.

RESPONDENTS' ORAL MOTION TO DISMISS

Immediately upon the Board having rested its case, the Respondents' made an oral Motion to Dismiss (or Motion for Directed Verdict) asserting that the Board had not met its burden of proof in this matter by clear and convincing evidence.

The Board's Prosecutor argued against the Respondents' Motion to Dismiss asserting that the Board had indeed met its burden of proof in this matter.

The Hearing Panel cleared the room for its deliberation on the Respondents' Motion to Dismiss. At the conclusion of its deliberations, the Hearing Panel announced that it would take the Respondents' Motion to Dismiss under advisement and would proceed with the hearing.

RESPONDENTS' WITNESSES (Summary)

The Respondent Taylor and the Respondent Scott testified for themselves and presented no other witnesses in the hearing.

RESPONDENT WILLIAM TAYLOR McGARRY TESTIMONY (Summary)

Upon being duly sworn, Respondent Taylor testified that he holds a MIS (Management Information Systems) degree from college, that he had tried getting a job using his MIS degree but that he liked the appraisal profession and the more laid-back lifestyle his father had enjoyed as an appraiser, that he previously was licensed by the Board as a Trainee Appraiser (TRA), that after having obtained his trainee appraiser license he upgraded to be was licensed by the Board as a State Licensed Appraiser (SLA) for about one year, and that now he is licensed by the Board as a Certified Residential Appraiser (CRA) and has been so licensed for two years and then he changed his answer to having been licensed as a Certified Residential Appraiser for about one year. Continuing, Respondent Taylor testified that his father, William Scott McGarry, was his supervisor, that the company named Mortgage Appraisal Service is his father's company, that he lives in Edmond with his wife and two small children near Covell and Santa Fe, and that he is active in his church, Sunday school and in the Boy Scouts.

Respondent Taylor identified the Board's Exhibit 1 to be his first Application for upgrade from State Licensed Appraiser (SLA) to Certified Residential Appraiser (CRA), that he admitted that he made some mistakes in his filling out his application form properly, and admitting that he had problems in his experience logs.

Respondent Taylor identified the Board's Exhibit 2, previously admitted, as his second Application for upgrade, that he testified that he supplemented the information he had previously

provided to the Board in his first application, and that he worked the eleven months that were not mentioned in his first application for upgrade.

Respondent Taylor identified the Respondent's Exhibit 1, previously admitted without objection, as his undated letter written in response to the Board's additional requirements for his August Application for licensure upgrade (second Application, Board's Exhibit 2), in which he admitted that he redacted certain sensitive information as far as the lender and his client names which he testified he thought was done by him in compliance with the Ethics Rule.

Respondent Taylor identified the Board's Exhibit 4, previously admitted, as his undated letter to the Board in which he testified he sought to reconcile the discrepancies noted in Christine McEntire's letter addressed to him dated October 22, 2014, that his first comment therein was as to his participation in the "samples" despite his name and license number not having been listed in such "samples", and that he intended to resubmit the appraisal reports with the redacted sensitive information inserted back in.

Respondent Taylor identified the Respondent's Exhibit 2, previously admitted without objection, the first page of which was an e-mail from his father, Respondent Scott, addressed to him dated January 31, 2014, to keep him updated to the job status of the appraisal of 2536 S.W. 86th Street, Oklahoma City, Oklahoma, to which e-mail he testified was attached documents evidencing his participation in developing this appraisal through the presence of his handwriting on various pages, evidence that he measured the property (un-numbered page 5) and his drawing in the middle of the document.

Respondent Taylor identified the Board's Exhibit 12 (Respondents' 2536 S.W. 86th Street, Oklahoma City, Oklahoma, Work File), previously admitted, testifying that the Board's Exhibit 12 also contained evidence of his handwriting as well, that Board's Exhibit 12 contained

his hand-drawn sketch and drawing (third to last page), that it likewise contained his handwritten measurements and his drawing.

Respondent Taylor referred to the Board's Exhibit 5 (2536 S.W. 86th Street, Oklahoma City, Oklahoma, - "SAMPLE APPRAISAL") and the Board's Exhibit 6 (2536 S.W. 86th Street, Oklahoma City, Oklahoma, for BOKF – Submitted to BOKF), testifying that he was not listed in the Board's Exhibit 5 "sample" appraisal report for 2536 S.W. 86th Street, Oklahoma City, Oklahoma, as contributing to the development of that "sample" appraisal report and that the Board's Exhibit 6 was the "resubmitted" appraisal report for 2536 S.W. 86th Street, Oklahoma City, Oklahoma, for BOKF – Submitted to BOKF, resubmitted to the Board just as it was sent to the client except he inserted his name in there thinking he had not listed his name in his first Application for upgrade (Board's Exhibit 1), that he thought that he was listed as a contributor in the appraisal report sent to the client when he was not so listed, that he was not intending to lie to the Board, that no, it was an error, that he fully intended to submit the client copy to the Board as the client had received it, that his August 2014 Application (Board's Exhibit 2) included approximately 600 properties with work experience of approximately 3600 hours, and that the original appraisal report submitted to Bank of Oklahoma (Board's Exhibit 7), should have included his name as a contributor but did not and that it was an error in the original appraisal report that he was not so listed as a contributor.

Respondent Taylor identified the Respondent's Exhibit 3, previously admitted without objection, as a Commitment Letter dated February 14, 2014, for Respondent Scott as the Appraiser for property located at 2522 La Belle Rue, Edmond, Oklahoma, testifying that 2522 La Belle Rue was not actually the property's address, rather the property's actual address is 2459 La Belle Rue, that he did not know why the property address had changed, that he did work on this appraisal, that he took photographs of the vacant lot and that he conducted courthouse research.

Respondent Taylor identified the Board's Exhibit 13 (Respondents' 2459 La Belle Rue, Edmond, Oklahoma, Work File), previously admitted, as the property appraisal on 2459 La Belle Rue that he testified is the same as Respondent's Exhibit 3, previously admitted without objection, and that he contributed to this appraisal.

Respondent Taylor identified the Board's Exhibit 8, previously admitted, as the "sample" appraisal that he testified that he gave to his clients as a "redacted" copy and he testified that the Board's Exhibit 9 (October 28, 2014, Submission of 2459 La Belle Rue, Edmond, Oklahoma, for BancFirst – Submitted to BancFirst), previously admitted and now identified by Respondent Taylor, was the "un-redacted" copy, as he called it, testifying that he resubmitted this appraisal report to the Board on the 28th, that the Board's Exhibit 9 provides on its page 6 that he contributed to the development of this appraisal.

Respondent Taylor identified the Board's Exhibit 10 (November 10, 2014, Submission of 2459 La Belle Rue, Edmond, Oklahoma, rejected from BancFirst – Received from BancFirst), previously admitted, testifying that this appraisal report contains additional information that is not in the other appraisal report (Board's Exhibit 9), that he does not know why this appraisal report contains such additional information, that there is less description here than in the appraisal report he had previously provided to the Board, that he agreed that we are not talking about two different properties (on La Belle Rue) and that he thinks the Board's subpoena hurt his relationship with the bank.

On cross-examination, Respondent Taylor testified that the "sample" appraisal report on the property at 2536 S.W. 86th Street, Oklahoma City, Oklahoma, received by the Board on October 22, 2014 (Board Exhibit 5), did not list his name in there by mistake, that a representation he made in his October 28, 2014, Letter to the Board (Board Exhibit 4) in the second paragraph, unbeknownst

to him, was not true, that another statement in his October 28, 2014, Letter to the Board (Board Exhibit 4) was also not correct, that he submitted four (4) appraisal reports to the Board as “samples”, and that he does not know if any of these four (4) “sample” appraisals were submitted to anyone other than the Board.

In response to a question as to what items were to be included in a work file, Respondent testified that all information related to the development of the appraisal was to be included in a work file, that he stores his appraisal reports digitally and keeps a digital work file, and that he submitted all copies of his appraisal reports and his work files to the Board.

When questioned about the appraisal report for the property at 2536 S.W. 86th Street, Oklahoma City, Oklahoma (Board Exhibit 7) subpoenaed from the Bank of Oklahoma, that was not included in his work file (Board Exhibit 12, the Respondents’ 2536 S.W. 86th Street, Oklahoma City, Oklahoma, Work File), Respondent Taylor admitted that he did not submit this appraisal report to the Board.

When questioned about the appraisal report for the property at 2459 La Belle Rue, Edmond, Oklahoma (Board Exhibit 8) subpoenaed from BancFirst, that was not included in his work file Board Exhibit 13, the Respondents’ 2459 La Belle Rue, Edmond, Oklahoma, Work File), Respondent Taylor testified that he did submit a copy of this appraisal report to the Board but that he did not know why no copy was included in his work file, that he keeps everything digitally now, that he did use faxes as copies at one time, that his fax machine has been inoperable for about one year now, that he can’t think of any reason why the information differs from the appraisal report sent to the client on the 2459 La Belle Rue, Edmond, Oklahoma, property, that some of his work files are kept separately from those work files of his father, Respondent Scott but that ultimately he and his father have one work file on a property appraisal, and that he stores non-digital work files in

a big Tupperware container in an outdoor shed.

When questioned about his Respondent's Exhibit 3 as to why his (Respondent's Exhibit 3) engagement letter was not included in his work file (Board Exhibit 13, Respondents' 2459 La Belle Rue, Edmond, Oklahoma. Work File), Respondent Taylor testified that that engagement letter was not in that Board Exhibit 13 work file because of it having a different street address on La Belle Rue, Edmond, Oklahoma, that being 2522 La Belle Rue, Edmond, Oklahoma, that he did not submit his Respondent's Exhibit 3 to the Board with his work file (Board Exhibit 13, Respondents' 2459 La Belle Rue, Edmond, Oklahoma. Work File), because he wanted to be clear the property had a different property address.

When questioned about a discrepancy in the legal descriptions for the property at 2459 La Belle Rue, Edmond, Oklahoma, from Lot 9, Block 0, Provence to Edmond, in the appraisal report (Board Exhibit 9, Bates-stamped page 5) to Lot 14, Block 1, Provence to Edmond, in the MLS Data Sheet at page 1 in the Board's Exhibit 13 (Respondents' 2459 La Belle Rue, Edmond, Oklahoma. Work File) as well as in the MLS Data Sheet in the Respondent's Exhibit 3 at un-numbered page 5, Respondent Taylor had no explanation.

When questioned about Board's Exhibit 10 (November 10, 2014, Submission of 2459 La Belle Rue, Edmond, Oklahoma, rejected from BancFirst – Received from BancFirst) in which the subject property (2459 La Belle Rue, Edmond, Oklahoma) has the same address as does Comparable Sale No. 1 (2459 La Belle Rue, Edmond, Oklahoma), Respondent Taylor offered no explanation.

When questioned about what software he uses for his appraisal work, Respondent Taylor testified that he uses Appraiseit Software and that he did not know that his Appraiseit Software could provide all five copies of an appraisal report as was mentioned to him by one of the members

of the Hearing Panel who likewise used the same Appraiseit Software in his appraisal work.

RESPONDENT WILLIAM SCOTT McGARRY TESTIMONY (Summary)

Upon being duly sworn, Respondent Scott testified that with regard to the Allegation of Fact No. 17 on page 4 of the Notice of Disciplinary Proceedings and Appointment of Hearing Panel as alleged by the Board, that his son Respondent Taylor being left-handed was prone to hit the wrong key on the computer keyboard and that everything that Respondent Taylor logged as his work was work that Respondent actually did, that he knew that to be the case as he was only paid for the work that he actually logged as such.

Respondent Scott testified that on the La Belle Rue property appraisal, that his son Respondent Taylor was listed as contributing to the development of that appraisal.

Respondent Scott testified that he was not aware of any eleven month gap in time on Respondent Taylor's first Application for upgrade Work Logs and that he and his son Respondent Taylor kept only one joint work file per each appraisal.

Whereupon, the Respondents rested their case.

A request for oral argument was not filed by the Respondents and neither the Respondents or their attorney were present and no oral argument was provided.

JURISDICTION

1. The OREAB has the duty to carry out the provisions of the Oklahoma Certified Real Estate Appraisers Act as set forth at Title 59 of the Oklahoma Statutes, §§858-700, *et seq.* and to establish administrative procedures for disciplinary proceedings conducted pursuant to the provisions of the Oklahoma Certified Real Estate Appraisers Act.

2. The OREAB has promulgated rules and regulations to implement the provisions of the Oklahoma Certified Real Estate Appraisers Act in regard to disciplinary proceedings as set

forth at the Oklahoma Administrative Code, §§600:15-1-1 through 600:15-1-22, including administrative hearings.

3. Respondent WILLIAM S. McGARRY is a state certified residential appraiser in the State of Oklahoma, holding certificate number 10364CRA and was first licensed with the Oklahoma Real Estate Appraiser Board on January 6, 1992. Respondent WILLIAM T. McGARRY is a state certified residential appraiser in the State of Oklahoma, holding certificate number 13038CRA and was first licensed with the Oklahoma Real Estate Appraiser Board on February 3, 2012.

FINDINGS OF FACT

The Board adopts in full the Findings of Fact of the Hearing Panel and that the following Facts were proven by clear and convincing evidence:

1. Respondent WILLIAM S. McGARRY is a state certified residential appraiser in the State of Oklahoma, holding certificate number 10364CRA and was first licensed with the Oklahoma Real Estate Appraiser Board on January 6, 1992. Respondent WILLIAM T. McGARRY is a state certified residential appraiser in the State of Oklahoma, holding certificate number 13038CRA and was first licensed with the Oklahoma Real Estate Appraiser Board on February 3, 2012.

2. On August 28, 2014, an Application for Upgrade (from State Licensed to Certified Residential) was filed with the Oklahoma Real Estate Appraiser Board ("OREAB") by William T. McGarry, 13038SLA ("the Applicant" or "Respondent Taylor"). Upon completion of the Administrative Review, the Application was assigned to a Work Product Reviewer from the Board's Education, Experience & Testing Committee ("EET"). On September 10, 2014, the

Appraisal Reports for properties located at 1100 Ascot, Edmond, Oklahoma, and 2459 La Belle Rue, Edmond, Oklahoma, were requested from the Applicant and were received the same day.

3. The Applicant was not identified in the two reports and it appeared the reports were the work product of William S. McGarry, 10364CRA (“McGarry” or “Respondent Scott”). Two additional Appraisal Reports were requested from the Applicant on October 14, 2014. These two reports are for properties located at 26 W. Hurd Street, Edmond, Oklahoma, and 2536 S.W. 86th Street, Oklahoma City, Oklahoma. These Appraisal Reports were received from the Applicant on October 22, 2014.

4. Upon review of all four Appraisal Reports by Board Staff, and upon consultation with one of the Chairs of the Board’s EET Committee, Board Staff sent correspondence to the Applicant requesting clarification as to his involvement in the preparation of these four appraisals and as to the appearance that the Appraisal Reports submitted for review were the sample work product of McGarry, who is already a Certified Residential Appraiser. Concurrently, the Board issued document subpoenas to Bank of Oklahoma, BancFirst, and Sooner State Bank in order to determine what was actually received by the bank versus what was provided to the Board for upgrade purposes.

5. On October 28, 2014, the Applicant responded to Board Staff’s October 22, 2014, correspondence, and resubmitted the Appraisal Reports for 26 W. Hurd Street and 2536 S.W. 86th Street, which this version no longer identified the Appraisal Reports as “samples.” Upon receipt of the Applicant’s written response, two of the four listed Appraisal Reports were assigned for review as to USPAP compliance by a member of the EET: 26 W. Hurd Street and 1100 Ascot.

6. Concurrently, subpoenaed records were received and administratively reviewed along with the revised Appraisal Reports submitted by the Applicant on October 28, 2014.

7. A review of the 2536 S.W. 86th Street, Oklahoma City, Oklahoma, Appraisal report submitted by the Applicant on October 28, 2014 (Board Exhibit 6), reveals that it had been modified at page 3 where the Applicant is now identified as contributing to the development of this Appraisal.

The Board's Exhibit 6, Bates-stamped page 8 provided by Respondent Taylor (October 22, 2014, Submission of 2536 S.W. 86th Street, Oklahoma City, Oklahoma, for BOKF – Submitted to BOKF) identifies the Applicant as contributing to the development of this Appraisal, which Board Exhibit 6 differs from the Board's Exhibit 5, Bates-stamped page 7 provided by Respondent Taylor (October 22, 2014, Submission of 2536 S.W. 86th Street, Oklahoma City, Oklahoma, for Bank of Oklahoma (BOKF) - "SAMPLE APPRAISAL") in which the Applicant is not listed as contributing to the development of this Appraisal, and which Board Exhibit 6 differs from the Board's Exhibit 7, Bates-stamped page 14 provided under subpoena by BOKF (November 4, 2014, Submission of 2536 S.W. 86th Street, Oklahoma City, Oklahoma, for BOKF – Received from BOKF) in which the Applicant is not listed as contributing to the development of this Appraisal.

8. On November 4, 2014, records from Bank of Oklahoma (Board Exhibit 7) were received by the Board which confirm that the Applicant was not a signor, nor listed as contributing significant assistance in the development of this Appraisal in the copy of the appraisal that the lender received. The version received by the Board from Bank of Oklahoma as Board's Exhibit 7 is identical to the original Appraisal identified as "Sample Appraisal" (Board's Exhibit 5) received by the Board on October 22, 2014.

9. 2536 S.W. 86th Street, Oklahoma City: The Applicant did not sign, nor is he listed in the Appraisal Report as contributing to the development of the Appraisal, as submitted

on October 22, 2014 (Board's Exhibit 5). In order to receive work product experience credit, USPAP requires that the Applicant sign, or be listed in the Report as contributing significant assistance in the development of the Appraisal. A review of the Applicant's work log reflects that he claimed 7 hours of experience credit hours for this Appraisal Report (which report the Applicant neither signed nor was he listed as contributing significant assistance in the development of this Appraisal).

10. 2459 La Belle Rue, Edmond: The "sample" Appraisal (Board's Exhibit 8) submitted by the Applicant on October 22, 2014, was submitted unsigned. In comparing both of the Appraisal Reports submitted by the Applicant for a work product review (Board's Exhibit 8, Bates-stamped page 5 and Board's Exhibit 9, Bates-stamped page 6), to the Appraisal Report produced under subpoena by BancFirst on November 10, 2014 (Board's Exhibit 10), the language under "Analysis of Prior Sales" has been significantly modified in the versions submitted to the Board for review.

11. The Applicant submitted the requested Appraisal Reports in which he modified one of them to include himself as a contributor (Board's Exhibit 6 - 2536 S.W. 86th Street, Oklahoma City, Oklahoma). The La Belle Rue Appraisal (Board's Exhibit 8 - 2459 La Belle Rue, Edmond, Oklahoma, for BancFirst - "SAMPLE APPRAISAL") was submitted to the Board unsigned. Further, the language was embellished from that of the original Appraisal submitted to their client (Board's Exhibit 10 - 2459 La Belle Rue, Edmond, Oklahoma, rejected from BancFirst - Received from BancFirst (under subpoena)), prior to submission to the OREAB for Work Product Review. Pursuant to the Uniform Standards of Professional Appraisal Practice (USPAP), work product is to be submitted to the Board in the same manner in which it was

provided to the client. Accordingly, there are material misrepresentations in the Appraisals submitted for review.

RECOMMENDED RULING ON RESPONDENTS' MOTION TO DISMISS

It is the recommendation of the Disciplinary Hearing Panel to the Board that as the Board's case against the Respondents' to the extent as provided herein, was proven by clear and convincing evidence, the Respondents' oral Motion to Dismiss (or Motion for Directed Verdict) should be DENIED by the Board and that the Board should determine the merits of the Board's case against the Respondents.

CONCLUSIONS OF LAW

The Board adopts in full the Conclusions of Law of the Hearing Panel and that the following Facts were proven by clear and convincing evidence:

1. The Respondents have violated 59 O.S. §858-723(C)(6) through 59 O.S. §858-726, in that the Respondents violated:

A) The Ethics Rule and the Conduct Section of the Uniform Standards of Professional Appraisal Practice Ethics Rule;

B) The Record Keeping Rule of the Uniform Standards of Professional Appraisal Practice;

D) Standard 1, Standards Rules 1-1, 1-2, and 1-4; 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. The Respondents have violated 59 O.S. § 858-723(C)(5) through commission of an act or an omission to act involving misrepresentation with the intent to substantially benefit the certificate holder or another person or with the intent to substantially injure another person.

4. The Respondents have violated 59 O.S. § 858-723(C)(13) in that Respondents 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."

FINAL ORDER

WHEREFORE, having adopted in full the Findings of Fact and Conclusions of Law entered by the Disciplinary Hearing Panel, the Board makes its Final Order, modifying the Recommendation as follows:

A. As to Respondent William T. McGarry:

1. Respondent William T. McGarry shall be placed on **PROBATION** for a period of **ONE (1) YEAR** beginning immediately upon the date of any final order of the Board plus a period of thirty (30) days after the Respondent William T. McGarry is notified of the final agency order either personally or by certified mail, return receipt requested. During the period of probation, Respondent William T. McGarry 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 all 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 William T. McGarry, within ninety (90) days from the date of any final order of the Board plus a period of thirty (30) days after the Respondent William T. McGarry is notified of the final agency order either personally or by certified mail, return receipt requested, shall successfully complete corrective education as follows:

- The **FIFTEEN (15) HOUR** Course Number 600: National USPAP Course. The course must be successfully completed with a copy of a certificate of course completion transmitted to the administrative office of the Board within **NINETY (90) DAYS** from the date of the final

Board Order plus a period of thirty (30) days after the Respondent William T. McGarry is notified of the final agency order either personally or by certified mail, return receipt requested. The course(s) may be live courses, attended in person by the Respondent William T. McGarry, or the course may be taken online. The course shall not be counted toward continuing education credit by the Respondent William T. McGarry.

3. Respondent William T. McGarry shall pay the costs expended by the Board for legal fees and travel costs incurred in this matter not to exceed the aggregate sum of \$1,500.00. The Board staff will provide a statement of the costs incurred to Respondent with the final order. Costs shall be paid in accordance with 59 O.S. § 858-723(B).

4. The Respondent William T. McGarry shall have no Trainees for a period of three (3) years from the date of the final Board Order plus a period of thirty (30) days after the Respondent William T. McGarry is notified of the final agency order either personally or by certified mail, return receipt requested.

5. Failure by Respondent William T. McGarry to comply with any requirement of this order shall result in his appraisal credential being suspended instanter, with notification forwarded immediately to Respondent William T. McGarry by Certified U. S. mail, return receipt requested.

B. As to Respondent William S. McGarry:

1. The Respondent William S. McGarry shall have no Trainees for a period of two (2) years from the date of the final Board Order plus a period of thirty (30) days after the Respondent William S. McGarry is notified of the final agency order either personally or by certified mail, return receipt requested.

2. The Respondent William S. McGarry shall pay an administrative fine in the amount of **FIVE HUNDRED DOLLARS (\$500.00)** to the Board. Payment of the fine shall be remitted to the Board in accordance with the manner contemplated by 59 O.S. § 858-723(B).

3. In the event that Respondent William S. McGarry renews his appraiser licensure

with the Board at any time after his current Oklahoma licensure expires on January 30, 2016, Respondent William S. McGarry, within One (1) Year from the date of any final order of the Board plus a period of thirty (30) days after the Respondent William S. McGarry is notified of the final agency order either personally or by certified mail, return receipt requested, shall successfully complete corrective education as follows:

- The SEVEN (7) HOUR Course Number 700: USPAP Update

The course(s) must all be completed with copies of certificates of course completion transmitted to the administrative office of the Board within ONE (1) YEAR from the date of the final Board Order plus a period of thirty (30) days after the Respondent William S. McGarry is notified of the final agency order either personally or by certified mail, return receipt requested. The course(s) must be live courses, attended in person by the Respondent William S. McGarry (not distance and/or correspondence and/or on-line courses). The course(s) shall not be counted toward continuing education credit by the Respondent William S. McGarry.


4. Failure by Respondent William S. McGarry to comply with any requirement of this order shall result in his appraisal credential being suspended instanter, with notification forwarded immediately to Respondent William S. McGarry by Certified U. S. mail, return receipt requested.

THE BOARD WISHES TO ADVISE THE RESPONDENTS THAT EACH RESPONDENT HAS THIRTY (30) DAYS FROM THE DATE EACH RESPECTIVE RESPONDENT IS NOTIFIED OF THIS ORDER, EITHER PERSONALLY OR BY CERTIFIED U.S. MAIL, RETURN RECEIPT REQUESTED, TO APPEAL THIS ORDER WITH THE APPROPRIATE DISTRICT COURT.

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



By: 
BRYAN NEAL, Assistant Attorney General,
Counsel to the Board

By: 
ERIC SCHOEN, Board Secretary

CERTIFICATE OF MAILING

I, Sherry Ainsworth, hereby certify that on the 23rd day of March, 2016 a true and correct copy of the above and foregoing Board's Decision as to Disciplinary Hearing Panel Recommendation was placed in the U.S. Mail, with postage pre-paid, by certified mail, return receipt requested to:

Rachel Lawrence Mor
3037 N.W. 63rd Street, Suite 205
Oklahoma City, OK 73116

7015 1520 0003 4174 3052

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

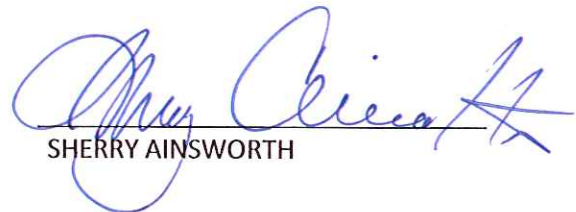
Robb E. Glendening, Hearing Panel Officer
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Donald L. Henderson, Hearing Panel Officer
2420 N. 12th Street
Broken Arrow, OK 74012

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Oklahoma City, OK 73105

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


SHERRY AINSWORTH

**RECAPITULATION OF MONTHLY BILLING
 MATTER OF WILLIAM S. AND WILLIAM T. MCGARRY
 COMPLAINT #14-038**

PERIOD		CURRENT BILLING	
DATE	COMPLAINT # AND RESPONDENTS	HOURS	AMOUNT
DERRYBERRY & NAIFEH LLP			
August, 2015	#14-038 MCGARRY	5.75	\$805.00
September, 2015	#14-038 MCGARRY	3.00	\$420.00
October, 2015	#14-038 MCGARRY	8.00	\$1,120.00
November, 2015	#14-038 MCGARRY	4.75	\$665.00
December, 2015	#14-038 MCGARRY	36.25	\$5,075.00
Disciplinary Hearing Panel Mileage:			
12/30/2015	<i>Jones, Jerry</i>		\$42.55
12/30/2015	<i>Glendening, Robb</i>		\$157.55
TOTAL BILLING		57.75	\$8,285.10

**"I CERTIFY THAT THIS IS A TRUE AND
 ACCURATE RECAP OF AMOUNTS
 INVOICED IN THE ABOVE-REFERENCED
 MATTER.**

Dated this 22nd day of March, 2016



**CHRISTINE MCENTIRE, DIRECTOR
 REAL ESTATE APPRAISER BOARD**

