

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

In the Matter of AARON B. KELCY)
) Complaint #16-012
Respondent.)

CONSENT ORDER FOR RESPONDENT AARON B. KELCY

COMES NOW the Oklahoma Real Estate Appraiser Board (“OREAB”), by and through the Prosecuting Attorney, Stephen McCaleb, and the Respondent AARON B. KELCY, represented by Daniel J. Gamino, 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. In February of 2016, Respondent was hired to complete an appraisal (the “appraisal”) for a property located at 3515 NW 52nd Street, Oklahoma City, Oklahoma (the “subject”). Respondent listed NVS as the lender/client. The report was transmitted the appraisal to the client, with an effective date of February 3, 2016. The appraisal’s intended use was for a 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 3-11.
3. Respondent failed to adequately analyze the contract.
4. Respondent reported the address of comparable 3 incorrectly.
5. Respondent incorrectly reports that there are \$1,000 in repairs rather than a \$1,000 repair allowance.

6. Respondent provides no support for his site value.
7. Respondent's income approach conflicts with the rent analysis and the numbers utilized.
8. Respondent utilized active/asking rents instead of closed/actual rents.
9. Respondent provides no support for his gross rent multiplier on the operating income statement and it appears he used annual rent numbers where monthly rent was to be used.
10. Respondent used numerous canned comments in the report which offer nothing specific or unique to the property.
11. Respondent, in his report, improperly required that an "appropriate" CO2 detector be installed.

AGREED VIOLATIONS 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, 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)(9): "Willfully disregarding or violating any of the provisions of the Oklahoma Certified Real Estate Appraisers Act."

5. 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."

6. That Respondent has violated 59 O.S. § 858-723(C)(5): "An act or omission involving dishonesty, fraud, or misrepresentation with the intent to substantially benefit the certificate holder or another person or with the intent to substantially injure another person."

7. 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."

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, 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."

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7. 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,
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 him 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. The Respondent shall complete the following courses, which can be taken in person or on-line, said education shall be completed within ninety (90) days after the approval of this Order:

A) Course #613 or 60F: Residential Sales Comparison & Income Approach: 1910, which must be tested and respondent will receive course credit;

C) Course #614 or 60G: Residential Site Valuation and Cost Approach, which must be tested and respondent will receive course credit;

2. A \$500 Administrative fine; and

3. Once the education in paragraphs 1 A, and B, have been completed, Respondent will be on probation for sixty days. During the period of this probation, Respondent shall provide an appraisal log on REA Form 3 to the administrative office of the OREAB no later than the fifth working day of each month detailing his appraisal activity during the preceding month. The OREAB may select and require samples of work product from these appraisal logs be sent for review.

Respondent shall provide the OREAB office proof of completion of the courses within ninety (90) days of this Order's effective date (which will begin upon receipt of the Order's approval from the Oklahoma Attorney General's Office).

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 his failure to comply which could result in additional penalties.

RESPONDENT:


AARON KELCY

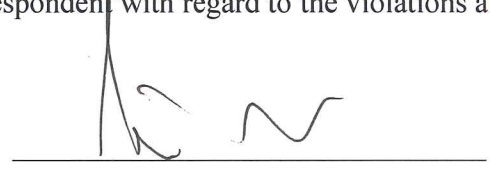
1-25-17
DATE


DANIEL J. GAMINO, COUNSEL FOR KELCY

1-25-2017
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 Prosecutor
3625 NW 56th Street, Suite 100
Oklahoma City, Oklahoma 73112

2-27-17
DATE

IT IS SO ORDERED on this 1st day of March, 2017.



Eric M. Schoen

ERIC SCHOEN, Board Secretary
Oklahoma Real Estate Appraiser Board

**OKLAHOMA REAL ESTATE
APPRAISER BOARD**

By: Bryan Neal
BRYAN NEAL, OBA #6590
Assistant Attorney General
Attorney for the Board
313 NE 21st Street
Oklahoma City, Oklahoma
73105

CERTIFICATE OF SERVICE

I, Christine McEntire, hereby certify that on the 28th day of March, 2017 a true and correct copy of the above and foregoing Consent Order for Respondent Aaron B. Kelcy mailed to the following attorney for record by Certified Mail Return Receipt Request:

Daniel Gamino

7016 3010 0000 2706 6704

Daniel J. Gamino & Associates, P.C.
James Town Office Park, North Building
3035 NW 63rd Street, Suite 214
Oklahoma City, OK 73116

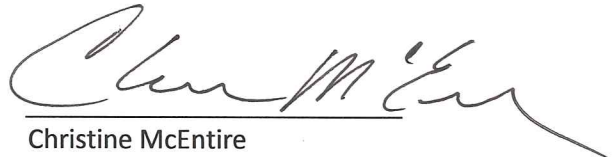
By US First class Mail

DERRYBERRY & NAIFEH, LLP

Attn: Stephen McCaleb
4800 North Lincoln Blvd.
Oklahoma City, Oklahoma 73105

Bryan Neal, Assistant Attorney General

OFFICE OF THE ATTORNEY GENERAL
313 N.E. 21st Street
Oklahoma City, OK 73105



Christine McEntire

MAR 27 2017

Real Estate Appraiser Board

OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMAATTORNEY GENERAL OPINION
2017-208A

Christine McEntire, Director
Oklahoma Real Estate Appraiser Board
3625 N.W. 56th St., Ste. 100
Oklahoma City, OK 73112

March 27, 2017

Dear Director McEntire:

This office has received your request for a written Attorney General Opinion regarding agency action that the Oklahoma Real Estate Appraiser Board intends to take pursuant to a consent agreement with respect to licensee 12574CRA. The proposed action is to impose a \$500 fine and require the licensee to complete courses in residential sales comparison and income approach, and in residential site valuation and cost approach. In addition, the license will be placed on probation for sixty days, during which time the licensee must provide the Board with monthly appraisal logs and submit such work product for review as requested.

The licensee produced an appraisal report as part of a purchase transaction, which led to a misleading and non-credible report. The homeowner filed a complaint stating the appraiser was unprofessional and negligent in his responsibilities, which caused the loan closing to be delayed. Upon review, the Board found the appraiser failed to adequately analyze the contract and there were due diligence issues with the appraisal. Specifically, the report included an incorrect address for the comparable properties, stated there were \$1,000 in repairs instead of a \$1,000 repair allowance, provided no support for site value, and reflected problems with the income approach used.

The Oklahoma Certified Real Estate Appraisers Act, 59 O.S.2011 & Supp.2016, §§ 858-700–858-732, authorizes the Oklahoma Real Estate Appraiser Board to discipline licensees based on “[a]n act or omission involving dishonesty, fraud, or misrepresentation with the intent to substantially benefit the certificate holder or another person or with the intent to substantially injure another person,” “[v]iolation of any of the standards for the development or communication of real estate appraisals,” “[f]ailure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal,” “[n]egligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal,” “[w]illfully disregarding or violating any of the provisions of the...Act or the regulations of the Board for the administration and enforcement of the provisions of the...Act,” or “[v]iolati[on] of any of the provisions in the code of ethics set forth in [the Act],” 59 O.S.Supp.2016, § 858-723(C)(5)-(9), (13). The Act requires adherence to the “current edition of”

the Uniform Standards of Professional Appraisal Practice (“USPAP”), 59 O.S.2011, § 858-726, which is the 2016-2017 edition.

The USPAP contains professional requirements pertaining to ethics, record keeping, competency, and scope of work. See ETHICS RULE, USPAP-8 (requiring compliance with USPAP standards); COMPETENCY RULE, USPAP-12 (requiring appraisers to be competent to perform assignment or acquire necessary competency); and SCOPE OF WORK RULE, USPAP-14 (requiring appraiser to perform scope of work necessary to develop credible results and disclose such information in the appraisal report). USPAP also contains standards such as Standard 1, which requires the appraiser to “complete research and analyses necessary to produce a credible appraisal.” USPAP-17. Components of Standard 1 clarify that this means the appraiser must employ proper valuation techniques, identify relevant characteristics of the property, avoid making unsupported assumptions when developing a market value opinion, analyze relevant factors, and reconcile data and approaches used to arrive at a value conclusion. USPAP-17, 18, 19, 20, 21. Further, Standard 2 requires that appraisal reports communicate all analyses, opinions, and conclusions clearly and accurately and to summarize the information sufficient to identify the real estate involved in the appraisal. USPAP-22.

The action seeks to enforce requirements of professionalism embodied in the Act and in the USPAP. The Board may reasonably believe that the disciplinary action is necessary to prevent future violations.

It is, therefore, the official opinion of the Attorney General that the Oklahoma Real Estate Appraiser Board has adequate support for the conclusion that this action advances the State of Oklahoma’s policy to uphold standards of competency and professionalism among real estate appraisers.



MIKE HUNTER
ATTORNEY GENERAL OF OKLAHOMA



SHELLY PERKINS
ASSISTANT ATTORNEY GENERAL