

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

In the Matter of MATTHEW T. MCCORMICK)
)
) Complaint #17-030
Respondent.)

CONSENT ORDER

COMES NOW the Oklahoma Real Estate Appraiser Board ("OREAB"), by and through the Prosecuting Attorney, Stephen McCaleb, and the Respondent MATTHEW T. MCCORMICK thru his attorneys of record, Weston Watts, 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.

PREVIOUS MATTERS

Respondent was disciplined in 2016 under Board Order #16-022 (resolving two complaints, and approved at the Board's December 2016 meeting). McCormick paid a fine and \$1,500 towards prosecutorial costs and was ordered to take corrective education. Between March and August of 2017, McCormick completed the following:

| | |
|--|----------|
| Basic Appraisal Principals | 15 Hours |
| Basic Appraisal Procedures | 30 Hours |
| Residential Market Analysis & HBU | 15 Hours |
| Residential Site Valuation and Cost Approach | 15 Hours |

FINDINGS OF FACT

1. In December of 2016, Respondent was hired to complete an appraisal (the "appraisal") for a property located at 6537 West 23rd Street N, Muskogee, Oklahoma (the "subject"). Respondent listed Wells Fargo Bank as the lender/client. The report was transmitted to the client, with an effective date of December 9, 2016. The appraisal's intended use was for a

refinance transaction.

2. Respondent committed a series of errors which led to a misleading appraisal report.

These communications include, the following in paragraphs 10-18.

SALES COMPARISON APPROACH

3. Respondent did not adequately explain the adjustments in his report.

4. The Gross Living Adjustments (GLA) applied in Respondent's report are \$125 per square foot for comparable one; \$101 per square foot for comparable two; \$100 per square foot for comparable three; \$150 per square foot for comparable four; \$150 per square foot for comparable five; \$40 per square foot for comparable six. However, Respondent provided no explanation in the report justifying the varying GLA adjustments.

5. Respondent's report lacked comparative market analysis comparisons or other means of documented support for the location adjustments. His report did include a list of the most proximate City median values, however, it was implied in the report that the list is inappropriate for homes of the subject's magnitude.

6. Respondent's report failed to disclose if any of the utilized Comparables were similarly over-improved for their immediate markets. Although Respondent's report indicated comparable one was given the most weight in part because it is located moderately outside the Tulsa Business District, an aerial image of comparable 1 suggests it is not an over-improvement for the neighborhood.

7. Respondent reported that he utilized county records (Tulsa County Assessor) as a data verification source. Despite this, GLA discrepancies in the report were not explained. The subject property was reported as having 7,149 square feet, but the county had it reported as 6,000; comparable one was reported as having 6,946 square feet, but the county had it reported

as 7,364 square feet; comparable two was reported as having 8,539 square feet, but the county had it reported as 7,958 square feet; comparable three was reported as having 5,904 square feet, but the county had it reported as 6,615 above ground and 7,609 square feet for the gross building area; respondent reported listing five as having 7,311 square feet, but the county had it reported as 7,891; listing six was reported as having 7,311 square feet, but the county had it reported as 5,624 square feet.

8. County records indicate comparable one sold on 10/12/2016 for \$1,520,000, Book: 2584 Page: 371, rather than \$1,765,000 reported in Respondent's report.

IMPROVEMENTS

9. Respondent did not report relevant conditions or depreciation (physical, functional or external) factors that effect the improvements.

10. Respondent could have included in his report that the functional obsolescence may also exist in the subject property as a result of it being the most over-improved or otherwise superior home in Muskogee, per his report, considering that functional obsolescence is most often associated with market reaction to property characteristics within a subject property, where as external obsolescence is most often associated with characteristics or forces outside of the subject property which impact marketability. Although the OA reported the subject's over-improved characteristics, the OA did not adequately analyze the affect on market reaction, as it did not appear that any of the Sales utilized in the OA were similarly over-improved for their particular markets. Respondent reported that the subject property is superior to all homes in the Muskogee market, it is an over improvement for the area, and external obsolescence results.

COST APPROACH

11. The report does not show how the site value was developed. The Cost Approach was not developed. Since the subject property was 5 years old, is of high quality, and the Respondent reported it is an over-improvement, then the Cost Approach could have been deemed required in order to produce credible results.

CONCLUSIONS OF LAW

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

- A) The Ethics, and Conduct Sections 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, 1-4, and 1-6; Standard 2, Standards Rules 2-1, 2-2, and 2-3 of the Uniform Standards of Professional Appraisal Practice. These include the sub sections of the referenced rules; and

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)(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 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.

7. Respondent acknowledges this will be placed on the Board's agenda for its next monthly meeting after receipt of the executed Order from Respondent, and notice for the Order's placement on that agenda is accepted.¹

8. All parties to this Consent Order have been represented by counsel.

9. This Consent Order may be executed in one or more counterparts, but all of such counterparts, taken together, shall constitute only one Consent Order. When delivered to the other party, facsimile and visual digital reproductions of original signatures shall be effective the same as if they were the originals.

10. This Consent Order shall be governed by the internal laws of the State of Oklahoma without regard to the conflict of law principles.

11. This Consent Order contains the entire agreement between the parties hereto and all provisions of this Consent Order are contractual and not a mere recital. The Parties acknowledge that no presentation or promise not expressly set forth in this Consent Order has been made by any of the Parties hereto or any of their agents, employees, representatives, or attorneys. No modification of, or amendment to, this Consent Order shall be valid unless it is in writing and signed by the Parties. In the event any portion of this Consent Order shall be

¹ Currently the 2018 Board meetings are scheduled for 9:30 a.m. for: June 6, July 11, August 1, September 5, October 3, November 7, December 5.

declared illegal or unenforceable as a matter of law, the remainder of the Consent Order shall remain in full force and effect.

12. The undersigned Respondent agrees that presentation of this Consent Order to the OREAB without the undersigned Respondent being present shall not constitute an improper *ex parte* communication between the OREAB and its counsel.

13. The Parties represent and warrant to one another that each party has authority to enter into this binding Consent Order. The OREAB represents and warrants that the undersigned have full authority to execute this Consent Order on behalf of the OREAB and bind the OREAB to the terms set forth herein.

CONSENT ORDER TO BE ACCEPTED OR REJECTED BY THE BOARD

The Oklahoma Real Estate Appraiser Board will not submit this Consent Order for the Board's consideration until its agreement and execution by the Respondent(s). It is hereby agreed between the parties that this Consent Order shall be presented to the Board with recommendation for approval of the Board at the next scheduled meeting of the Board. The Respondent understands that the Board is free to accept or reject this Consent Order and, if rejected by the Board, a formal hearing on the complaint may be held. If the Board does not accept the Consent Order, it shall be regarded as null and void. Admissions by Respondent in the rejected Consent Order will not be regarded as evidence against him/her at the subsequent disciplinary hearing. Respondent will be free to defend himself and no inferences will be made from his willingness to have entered this agreement. It is agreed that neither the presentation of the Consent Order nor the Board's consideration of the Consent Order will be deemed to have unfairly or illegally prejudiced the Board or its individual members and therefore will not be grounds for precluding the Board or any individual Board member from further participation in

proceedings related to the matters set forth in the Consent Order.

- **THIS CONSENT ORDER IS NOT EFFECTIVE UNTIL ITS APPROVAL BY A MAJORITY OF THE BOARD AND THE APPROVED ORDER RECEIVES A SUBSEQUENT ENDORSEMENT ("SIGNATURE") BY A REPRESENTATIVE OF THE BOARD. THE EXECUTED ORDER IS THEN SUBJECT TO A WRITTEN ANALYSIS BY THE OKLAHOMA ATTORNEY GENERAL'S OFFICE.**

ORDER

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

1. Respondent agrees that he will successfully complete, pass the test, and provide proof of completion and passing of the tests to the Board's office for the following corrective education courses within 90 days from the date the Consent Order is approved by the Oklahoma Attorney General. The courses to be taken are:

- a) The fifteen (15) hour National USPAP course (no credit will be given for this continuing education hours);
- b) The thirty (30) hour Residential Sales Comparison and Income Approach;
- c) Both courses to be taken live, tested, and successfully completed;
- d) Respondent has ninety (90) days to complete both classes after the Final Order is issued.

2. Respondent shall pay costs of Two Thousand Five Hundred Dollars (\$2,500), to be paid within thirty (30) days of the Final Order.

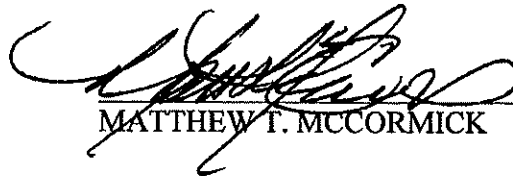
3. Failure to comply the preceding paragraphs in a timely manner will result in an instant suspension of Respondent's license. For good cause, an extension may be granted by

the Board. An application for an Extension of Time should be filed in sufficient time to be placed on a Board meeting agenda in advance of the deadline.

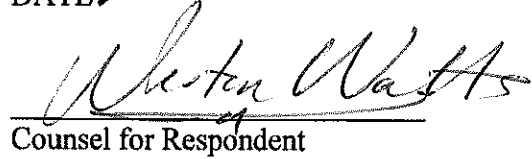
DISCLOSURE

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.

RESPONDENT:


MATTHEW T. MCCORMICK

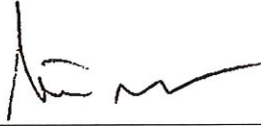
5/14/2018
DATE


Counsel for Respondent

5/14/18
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

6-4-18

DATE

IT IS SO ORDERED on this 6 day of June, 2018.



ERIC SCHOEN, Board Secretary
Oklahoma Real Estate Appraiser Board



OKLAHOMA REAL ESTATE
APPRAISER BOARD

By:

A handwritten signature in blue ink, appearing to read "Bryan Neal", written over a horizontal line.

BRYAN NEAL, OBA #6590

Assistant Attorney General

Attorney for the Board

313 NE 21st Street

Oklahoma City, Oklahoma 73105

CERTIFICATE OF MAILING

I, Christine McEntire, hereby certify that a true and correct copy of the above and foregoing instrument was mailed postage prepaid by certified mail with return receipt requested on this 3 day of July, 2018 to:

Shawn D. Fulkerson

9214 8902 0982 7500 0103 42

Weston O. Watts

FULKERSON & FULKERSON
10444 Greenbriar Place, Suite A
Oklahoma City, OK 73159
Counsel for Respondent

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

Stephen L. McCaleb

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

Bryan Neal, Assistant Attorney General

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


Christine McEntire



RECEIVED
OKLAHOMA INSURANCE DEPT.

JUN 27 2018

Real Estate Appraiser Board

OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2018-238A

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

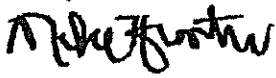
June 27, 2018

Dear Director McEntire:

This office has received your request for a written Attorney General Opinion regarding action that the Oklahoma Real Estate Appraiser Board intends to take (i) pursuant to a consent order with licensee 12780CRA in Board complaint 17-030, and (ii) against licensee 10779CRA with respect to Board complaint 17-026. Both complaints alleged that the licensees prepared misleading appraisal reports. With respect to complaint 17-030, the Board proposes to require licensee 12780CRA to complete corrective education courses and pay \$2,500 in prosecution costs. With respect to complaint 17-026, the Board proposes to require licensee 10779CRA to pay a \$500 fine and all prosecutorial costs, and to complete a corrective education course.

The Oklahoma Certified Real Estate Appraisers Act authorizes the Board to require a licensee to complete educational programs, to pay administrative fines and to pay prosecutorial costs if he/she violates any provision of the Act or Board Rules. *See* 59 O.S.Supp.2017, § 858-723(A)(7)-(9). The Board may discipline licensees who “violat[e]...any of the standards for the development or communication of real estate appraisals as provided in the [Act],” “[f]ail[]...to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal,” act “negligent[ly] or incompetent[ly] in developing an appraisal, in preparing an appraisal report or in communicating an appraisal,” “[w]illfully disregard[] or violat[e] any provision of the [Act],” and/or “[v]iolat[e] any of the provisions in the code of ethics set forth in th[e] [A]ct.” *Id.* § 858-723(C)(6)-(9), (13); *see also id.* § 858-732(A)(1). The Act also requires licensees to adhere to the Uniform Standards of Professional Appraisal Practice, which contain professional requirements pertaining to ethics, competency, and scope of work. 59 O.S.2011, § 858-726. The Board may reasonably believe that the proposed actions are 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 these actions advance the State's policy to uphold standards of competency and professionalism among real estate appraisers.



MIKE HUNTER



RYAN CHAFFIN
DEPUTY CHIEF – ASSISTANT ATTORNEY GENERAL