

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

In the Matter of WESLEY B. CABANISS) Complaint #16-021
Respondent.)

**CONSENT ORDER FOR RESPONDENT WESLEY B.
CABANISS**

COMES NOW the Oklahoma Real Estate Appraiser Board (“OREAB”), by and through the Prosecuting Attorney, Stephen McCaleb, and the Respondent WESLEY B. CABANISS (“Respondent”), represented by Rachel Smith, 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.

IT IS HEREBY ALLEGED by the OREAB that:

1. Respondent completed an appraisal of a tract of land in Dewey County, Oklahoma, with an effective date of June 22, 2009. The retrospective appraisal was dated and transmitted on January 17, 2012, reflecting the effective date of June 22, 2009. The appraisal was completed according to USPAP, as stated in the letter of transmittal and the certification included with the report. The appraisal was of an easement taken by OG&E on land owned by The White Family Partnership.
2. In the letter of transmittal with the retrospective appraisal dated January 17, 2012, it is the Respondent’s opinion that the estimated market value of the proposed easement and any damages to the remainder, as of June 22, 2009, was \$8,625.
3. Prior to that, a Commissioners’ Report on the same property indicates a

value for the same subject easement taking of \$45,000. The Respondent, whose later retrospective appraisal estimated the value some 80% lower, was one of the three Commissioners. The Commissioner's Report is dated May 5, 2009. While the time between the preparation of the Commissioners' Report and the later retrospective appraisal by the Respondent is approximately two years and six months, the time between the two effective dates equates to about forty-eight (48) days or just about a month and a half .

4. The Respondent did not disclose in his subsequent (2012) appraisal report certification that he had performed, approximately two and a half years earlier, services as a Commissioner in a condemnation action concerning the same property.

5. In a deposition, Respondent attested to these two values. He also indicated in the deposition that there were no changes in the market between the two dates.

6. During the deposition, Respondent testified that there were other situations where Respondent acted as commissioner and then subsequently reappraised properties for less.

7. The alleged conduct described in Paragraphs 1 through 6 above may constitute, if proven, a violation of the OREAB Act and USPAP.

8. The Respondent asserts that justifications exist for the difference in values contained in the Commissioners' Report and the subsequent retrospective appraisal report, including but not limited to the different standards applicable to the Commissioners' Report and the subsequent retrospective appraisal and the fact that the condemning party had remedied damages to the property between the time of the Commissioners' Report and the conduct of the subsequent retrospective appraisal.

Further, the client for the subsequent appraisal was well aware of the Respondent's service as a Commissioner and of the contents of the Commissioners' Report, and Respondent has provided an affidavit to that effect.

9. The undersigned Respondent expressly waives notice of hearing, a hearing, the making of findings of fact and conclusions of law, and all further proceedings before the Board to which the Respondent may be entitled by law.

10. The undersigned Respondent waives all right to seek judicial review or otherwise challenge the validity of this CONSENT ORDER.

11. This CONSENT ORDER contains the entire agreement between the undersigned, there being no agreement of any kind, verbal or otherwise, which varies, alters, or adds to this CONSENT ORDER. The undersigned Respondent agrees that presentation of this CONSENT ORDER to the Board without the undersigned Respondent being present shall not constitute an improper ex parte communication between the Board and its counsel. This CONSENT ORDER shall be effective only after approval by the Board and any sort of review by the Oklahoma Attorney General's office.

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; the right to a reasonable notice of said hearing;

- b. the right to be represented by counsel;
 - c. the right to compel the testimony of witnesses;
 - d. the right to cross-examine witnesses against him; and
 - e. 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 waives his right to appeal this matter to the District Court.

4. 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.

5. Although this Order acknowledges possible regulatory violations, Respondent's license is in good standing as long as he complies with the terms of this Consent Order.

6. Respondent understands the Board must approve this Order and then the Attorney General's Office must approve this Order before it is approved.

7. All other original allegations in this matter are dismissed.

ORDER

WHEREFORE, it is ordered that Respondent WESLEY B. CABANISS:

1. Shall complete the following courses, which can be taken on-line. Said corrective education shall be completed within Sixty (60) days after the approval of this Order:

- a) Course #931: Online Eminent Domain & Condemnation: 1810 (a 7 hour class);
- b) Course #978 – Online Subdivision Valuation: 1706 (a 7 hour class); and
- c) Course #987: Online Thinking Outside The Form: 1804 (a 4 hour class);

AND

2. Respondent shall, when performing services as an appraiser for property covered by a Commissioners' Report in a case in which he served as a Commissioner, include in the subsequent appraisal report a disclosure of his role as a Commissioner and provide an explanation of any significant differences in value between the Commissioners' Report and the subsequent appraisal ; AND

3. Respondent shall pay a \$500.00 Administrative fine to be paid within thirty (30) days after the approval of this Order in accordance with the Board's rules.


DISCLOSURE

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

FUTURE VIOLATIONS

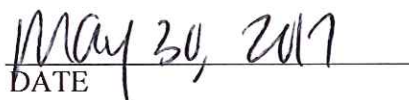
In the event the Respondent fails to comply with any of the terms and conditions of this Consent Order, Respondent will be suspended until proof of compliance is filed with the Board.

RESPONDENT:


WESLEY B. CABANISS


DATE


RACHEL SMITH, OBA #32121
COUNSEL FOR RESPONDENT


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

5-30-17

DATE

IT IS SO ORDERED on this 7th day of JUNE, 2017.



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



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

FILED

JUL 14 2017

Real Estate Appraiser Board
State of Oklahoma

ATTORNEY GENERAL OPINION
2017-523A

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

July 13, 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 licensee 10160CGA regarding Board Complaint 16-021. The proposed action is to require completion of eighteen hours of corrective education courses to be completed within sixty days; acknowledge previous appraisal assignments when property was appraised in capacity as a Commissioner; and pay a \$500 fine. A Commissioner's Report was issued with an effective date of May 5, 2009, valuing a proposed easement and any damages to the remainder at \$45,000 as part of a condemnation action; the licensee served as a Commissioner in the condemnation action. On January 17, 2012, the licensee transmitted a letter with a retrospective appraisal with an effective date of June 22, 2009, for the same property estimating the market value at \$8,625. The estimated value in the retrospective appraisal was approximately 80% lower, and the time between the effective dates of the two appraisals is only forty-eight days. The licensee did not disclose serving as a Commissioner in a condemnation action concerning the same property in the 2012 appraisal report. Further, in a civil matter, the licensee attested to the two values, indicated there were no changes in the market between the two dates, and testified there were other situations where the licensee acted as a Commissioner and then subsequently reappraised properties for less.

The Oklahoma Certified Real Estate Appraisers Act, 59 O.S.2011 & Supp.2016, §§ 858-700-858-732, authorizes the Board to discipline licensees based on "[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)(13). The Act requires adherence to the "current edition of" the Uniform Standards of Professional Appraisal Practice ("USPAP"), which is the 2016-2017 edition. 59 O.S.2011, § 858-726. The USPAP contains professional requirements pertaining to ethics and competency. *See* ETHICS RULE, USPAP-8 (requiring compliance with USPAP standards) and COMPETENCY RULE, USPAP-12 (requiring appraisers to be competent to perform assignment or acquire necessary competency). Further, the Ethics Rule of the USPAP requires an appraiser to "promote and preserve the public trust inherent in appraisal practice by observing the highest standards of professional ethics;" "comply with USPAP when obligated by law or regulation;" "perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests;" and "[i]f known prior to accepting an assignment, and/or if discovered at any time during the assignment, ... disclose to

the client, and in each subsequent report certification” both “any current or prospective interest in the subject property or parties involved and any services regarding the subject property performed by the appraiser within the three year period immediately preceding acceptance of the assignment, as an appraiser or in any other capacity.” USPAP-8, 9. 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 not commit a substantial error of omission or commission that significantly affects an appraisal” and “[must] not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.” USPAP-17. 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



ETHAN SHANER
DEPUTY GENERAL COUNSEL

CERTIFICATE OF MAILING

I, Sherry Ainsworth, hereby certify that a true and correct copy of the above and foregoing was mailed postage prepaid by certified mail with return receipt requested on this 28th day of July, 2017, to:

Rachel Smith, OBA #32121
BASS LAW
201 Robert S. Kerr, Suite 700
Oklahoma City, Oklahoma 73102
Attorney for Wesley B. Cabaniss

9214 8902 0982 7500 0005 41

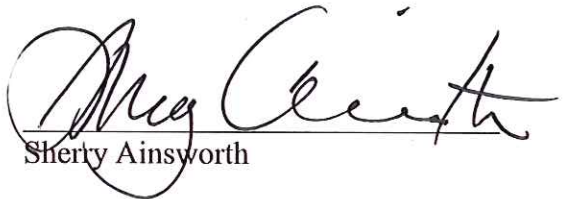
and that copies were mailed to:

OFFICE OF THE ATTORNEY GENERAL

Attn: Bryan Neal
313 N.E. 21st Street
Oklahoma City, OK 73105

DERRYBERRY & NAIFEH, LLP

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


Sherry Ainsworth