

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

In the Matter of FLOYD SMITH,) Complaint #17-042
Respondent.)

CONSENT ORDER

COMES NOW the Oklahoma Real Estate Appraiser Board (“OREAB”), by and through the Prosecuting Attorney, Stephen McCaleb, and the Respondent FLOYD 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.

AGREED FINDINGS OF FACT

1. That Respondent FLOYD SMITH is a state licensed appraiser in the State of Oklahoma, holding certificate number 11581SLA and was first licensed with the Oklahoma Real Estate Appraiser Board on June 4, 1996. This is his first complaint..

2. In August of 2017, Respondent was hired to complete an appraisal (the “appraisal”) for a property located at RR 1 Box 37-B, Hanna, Oklahoma (the “subject”). Respondent completed the appraisal with an effective date of July 26, 2017. The report was for a foreclosed property.

3. Respondent committed a series of errors in the report which led to a misleading and non-credible report.

4. Respondent failed to list that the actual owner of the property was Rodney Josie, Guardian for Kielan Josie

5. The client's name should be on the appraisal form rather than "N/A— No lender". There may not be a lender, but there is a client.

6. The neighborhood price range is too broad - \$1 to \$300 with an average of \$75.

7. Page 15 of the report, Appraisal and Report Identification, is no longer applicable and is misleading to be included in the report. There has not been a limited or complete report for several years.

8. The subject property has transferred in the past three years. There is no mention of the transfer from Muscogee Creek Nation to Rodney Josie dated 8/31/2015 and filed 9/13/2015.

9. The scope of work includes counties that most appraisers would not include in the scope of work for the subject property.

10. Respondent uses the assessor drawing and dimensions and does not state this in his report.

11. The report contains no interior pictures, and no rooms listed on the floor plan drawing. It would appear that the Respondent did not measure the dwelling nor go inside the dwelling, which would lead to a non-credible report on the condition of the interior. There are windows showing in the exterior picture and a camera could be inserted into the open window to get at least one interior picture.

12. It is misleading to not put in the report that the interior was not viewed or inspected. The assessor card states there are 1.5 baths, but the appraiser has 2 baths.

13. There are two sales in the Hanna area that could have been used in the appraisal instead of going to Eufaula or Checotah. They are 105 N. Huls Street, Hanna (1220-00-024-009-0-001-00) and 1120-00-022-009-0-000-0. Both of these properties sold within twelve months of the appraisal. One sold in June and one sold in July.

14. In a case where the dwelling has little or no value, the appraiser should research site sales so as to determine the value of the site and the value of the improvements.

15. There needs to be a specific data source listed in the report, not just the name -

county records. County records could be assessor, treasurer or clerk. The Respondent should be specific. "Drive-by" is not a data source. The appraiser should have confirmed the sales with buyer, seller, listing agent, selling agent, etc.

16. Sale No. 1 is more than one year old, but this is not mentioned in the report.

17. There does not appear to be a "local MLS", but "local MLS" is mentioned in the summary of the sales comparison approach.

18. There are no adjustments on the grid. If the value is only in the land, then a land appraisal should have been done.

19. The Respondent should have used a secondary data source.

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) The Record Keeping Rule of the Uniform Standards of Professional Appraisal Practice;
- E) 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)(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

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

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

12. This Consent Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understanding, discussions, negotiations, and commitments (written or oral). This Consent Order may not be altered, amended, modified, supplemented or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. 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.

14. 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.

15. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Consent Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

16. The parties acknowledge that they understand the provisions of this Consent Order.

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 60 days from the date the Consent Order is approved by the Oklahoma Attorney General. The courses to be taken are:

- a) Course #602: Basic Appraisal Procedures 30 hours; and
- b) Course #614: Residential Report Writing and Case Studies 15 Hours.

2. Respondent shall pay costs of One Thousand Dollars (\$1,000), to be paid within thirty (30) days of the Final Order.

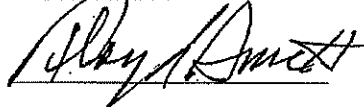
3. Failure to comply the preceding paragraphs in a timely manner will result in an instant suspension of Respondent's license. For good cause, an extension may be granted by the Board. An application for an Extension of Time should be filed at least five business days in advance of the Board meeting to be placed on a Board meeting agenda in advance of the deadline to comply with this Consent Order.

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:

FLOYD SMITH



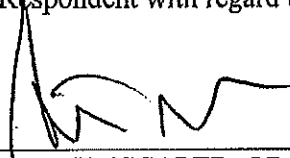
DATE

7-17-2018

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.

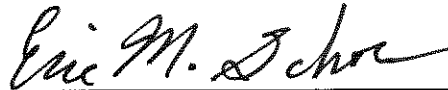


STEPHEN MCCALED, OBA #15649
Board Prosecutor
3625 NW 56th Street, Suite 100
Oklahoma City, Oklahoma 73112

7-30-18

DATE

IT IS SO ORDERED on this 9th day of August, 2018.



ERIC SCHOEN, Board Secretary
Oklahoma Real Estate Appraiser Board



**OKLAHOMA REAL ESTATE
APPRAISER BOARD**

By:

A handwritten signature in black 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, Kayla Dekat, hereby certify that a true and correct copy of the above and foregoing Subpoena Duces Tecum was mailed postage prepaid by certified mail with return receipt requested on this 5th day of September, 2018 to:

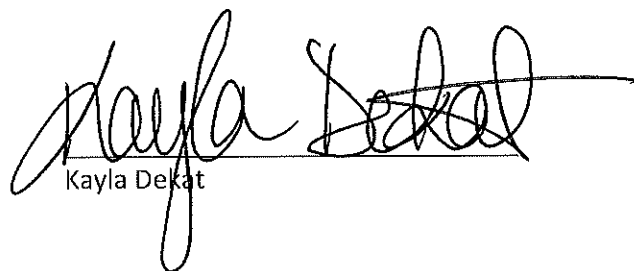
Floyd Smith
700 Selmon Rd.
Eufaula, OK 74432-1403

9214 8902 0982 7500 0125 06

and that a copy was mailed to:

Stephen L. McCaleb
Derryberry & Naifeh, LLP
4800 N. Lincoln Boulevard
Oklahoma City, Oklahoma 73105

Bryan Neal, Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
313 N.E. 21st Street
Oklahoma City, Oklahoma 73105



Kayla Dekat



RECEIVED
OKLAHOMA INSURANCE DEPT.

AUG 31 2018

OFFICE OF ATTORNEY GENERAL Real Estate Appraiser Board
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2018-342A

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

August 23, 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 with respect to licensee 11581SLA. The licensee performed an appraisal that failed to meet the required standards. The Board proposes to require the licensee to pay a \$1,000 fine and complete two corrective education courses.

The Oklahoma Certified Real Estate Appraisers Act authorizes the Board “[t]o censure, suspend and revoke certificates pursuant to the disciplinary proceedings provided in [the Act,]” *see* 59 O.S.Supp.2017, § 858-706(7), and to require payment of fines and costs and the completion of educational programs. *Id.* § 858-723(A)(7)-(9). The Board may discipline licensees who “[v]iolat[e] any of the provisions in the code of ethics set forth in [the] Act.” *Id.* § 858-723(C)(13). The Act requires adherence to the USPAP, which contains professional requirements pertaining to ethics, competency, and scope of work. 59 O.S.2011, § 858-726. The Board may reasonably believe that the proposed 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’s policy to uphold standards of competency and professionalism among real estate appraisers.

A handwritten signature in black ink that reads "Mike Hunter".

MIKE HUNTER
ATTORNEY GENERAL OF OKLAHOMA

A handwritten signature in black ink that reads "Amanda Otis".

AMANDA OTIS
ASSISTANT ATTORNEY GENERAL