

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

In the Matters of ALAN D. HERRMAN)	
)	Complaint #17-050
Respondent.)	

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

NOW ON THIS 3rd day of October, 2018 the above-numbered and entitled cause came on for hearing before the Oklahoma Real Estate Appraiser Board (the “Board” or “OREAB”) following a disciplinary hearing held on the 15th day of August, 2018. The Board was represented by a Disciplinary Hearing Panel composed of three (3) appraiser members, Jay “Pat” McGlamery, of Muskogee, Oklahoma, Michael Miller of Noble, Oklahoma, and Robert Kerbo of Glenpool, Oklahoma, each of whom is a current Member of the Board’s Standards and Disciplinary Procedures Committee. Jay “Pat” McGlamery was elected and served as Hearing Panel Chairman at the hearing. Said panel was represented by the Board’s attorney, Assistant Attorney General Bryan Neal. The case was prosecuted by the Board’s Prosecutor, Stephen L. McCaleb. On behalf of the Board, Mr. McCaleb elected to have this matter recorded by electronic device and to rely on the electronic recording.

The Respondent, Alan D. Herrman, of Oklahoma City, Oklahoma (“Respondent”), having been mailed a copy of the Notice of Disciplinary Proceedings and Appointment of Hearing Panel in Complaint No. 17-050 (the “Notice”) by first class U.S. certified mail with return receipt requested to his last-known business and/or residence address on July 12, 2018, pursuant to the Oklahoma Certified Real Estate Appraisers Act, 59 O.S. § 858-724, and the Administrative Procedures Act, 75 O.S. §§250-323, and on August 15, 2018, appeared in person in the hearing pro se, and was not represented by an Attorney.

The Respondent elected to have this matter recorded by electronic device and to rely on the electronic recording.

PRELIMINARY MATTERS

The Board's Prosecutor, Mr. McCaleb, announced that he had an Exhibit Book with three (3) exhibits that he identified and marked as (1) Exhibit 1, the Respondent's Appraisal Report; (2) Exhibit 2, County data prepared by a witness he intended to call named Rod Bien; and (3) the Respondent's work file. Mr. McCaleb noted that each of the three exhibits was Bates-stamped, that Exhibit 1 had 25 pages, Exhibit 2 had 20 pages, and that Exhibit 3 had 63 pages.

The Board's Prosecutor moved for the admission of the three (3) exhibits for the Board marked as Exhibits 1, 2, and 3, respectively, to which there was no objection by the Respondent.

Exhibit 1 was a document Mr. McCaleb identified to be the Respondent's written appraisal report on the subject real property signed and submitted by the Respondent to his client named therein.

Exhibit 2 was a document identified by Mr. McCaleb to be County data for the subject real property and sales prepared by his witness Rodney Bien.

Exhibit 3 were documents collectively constituting the Respondent's work file.

Neither the Respondent nor the Board as parties to these proceedings requested that a court reporter record this matter and neither the Respondent nor the Board as parties to these proceedings submitted any proposed findings of fact or proposed conclusions of law to the Disciplinary Hearing Panel for their consideration.

The Board's Prosecutor presented an Opening Statement while the Respondent reserved the right to present an Opening Statement at the time he was to offer his defense.

As part of his Opening Statement, the Board's Prosecutor stated that at the time the

Respondent's appraisal report was prepared, the Respondent was from Winfield, Kansas (Exhibit 1, page 8), and that the Respondent's appraisal report was for a real property located in Perry, Oklahoma. Continuing, the Board's Prosecutor stated that the Respondent sent an email Response to the grievance to the Board on November 20, 2017, a copy of which was filed by the Board on November 20, 2017, and a copy of which is in the Respondent's work file (Exhibit 3, page 2). In his email Response the Respondent stated, among other things, that he was in receipt of the grievance from his client/lender Valuation Partners, Colonial Savings, F.A. (the "client"), that the grievance is the first he had heard of any complaint from his client amc, and that he did not have any contact from his client amc regarding his appraisal report.

The Board's Prosecutor next referred to an email in the Respondent's work file from his client dated July 18, 2017, addressed to the Respondent (Exhibit 3, page 6), in which the client thanked the Respondent for the appraisal, which email evidenced the fact that the Respondent's client did contact the Respondent contrary to the Respondent's written representations in his email grievance Response that he did not have any contact with his client (Exhibit 3, page 2).

It was also noted by the Board's Prosecutor that the Respondent misidentified his client in the first paragraph of his grievance Response (Exhibit 3, page 2) to actually be the borrower who asked the Respondent "...if he [Respondent] could raise the amount of the appraisal as he was moving to Edmond and was purchasing a house that was more expensive than the home he was selling in Perry."

The Respondent continued his client misidentification in the second paragraph of his grievance Response (Exhibit 3, page 2) as actually being the borrower when he stated "...I might add I had a very pleasant evening with the client in his home in Perry. I had my wife with me and the four of us visited on his porch."

In reference to the third paragraph of the Respondent's grievance Response (Exhibit 3, page 2), the Board's Prosecutor noted that the Respondent attempted to reconcile the appraisal report's issues due to it being a busy time of year, that the Respondent signed the appraisal report but admitted that the appraisal report was sent too early because he had not finished his review of his already signed appraisal report, and that his appraisal report was mistakenly sent in by his assistant.

WITNESSES AND EVIDENCE PRESENTED

The Board's Prosecutor presented two witnesses in support of the case against the Respondent: (1) Rodney Bien, 10013CRA, a Certified Residential Appraiser, of Oklahoma City, Oklahoma; and, (2) the Respondent, Alan D. Herrman.

The Respondent Alan D. Herrman, testified on his own behalf in his defense.

Rodney Bien Testimony (Summary)

Upon being duly sworn in, Rodney Bien, testified that he is licensed as a Certified Residential Appraiser (CRA) in Oklahoma, that he had been an appraiser for 34 years, that he is employed by the Board as an Appraiser Examiner, and that he is provided assignments by the Board in that capacity. Mr. Bien stated that one of such assignments was that of the Respondent's appraisal report (Exhibit 1, page 1) for a real property located at 610 N. 14th Street, Perry, Oklahoma 73077 (the "Subject Property"), reported by the Respondent.

Mr. Bien stated that he examined the Respondent's appraisal report as an appraiser, that the appraisal report received a low score throughout the appraisal report by other peer appraiser reviewers, and that the appraisal report actually received a failing score.

In reference to the allegation of fact #11 of the Notice, Mr. Bien noted that the appraisal report stated that the Subject Property was on the market for 221 days (DOM) without an explanation (Exhibit 1, page 3), and that an explanation of the listing history prices up and down as

revised was required under the Uniform Standards of Professional Appraisal Practice (USPAP).

In reference to the Respondent's determination of the "neighborhood" (Exhibit 1, page 3), Mr. Bien said that he checked Google Maps and found that the neighborhood as determined by the Respondent to include a large amount of rural or agricultural real property while the Respondent reported the neighborhood characteristics as to location, to be mostly Suburban, built up 25% to 75%, 85% to be 1 unit, 5% to be 2-4 unit, 5% to be multi-family, and 5% to be commercial, and that the neighborhood boundaries as determined by the Respondent to be "West-15th Street, East 140 Road, North-Knob Hill, and South-US 64 hwy." Mr. Bien said that his findings were different, that the neighborhood's boundaries have been expanded based on comparable sales 1 and 2 (Exhibit 1, page 4), that as to the built up area, that the Subject Property was located in an urban area while the Respondent's comparable sales 1, 2, and 3, were located in a rural area as depicted in an aerial photograph (Exhibit 2, page 1) and the Respondent's additional comparable sales 4, 5, and 6 were mostly agricultural and not built up.

As to the size of the Subject Property as reported in the appraisal report in the Site Section (Exhibit 1, page 3), Mr. Bien noted that the appraisal report provided that lot size of the Subject Property was 208 ft x 208 ft and that it was square in shape. Mr. Bien stated that he telephoned the City of Perry as to the lot sizes of 6 lots, that the City of Perry returned his call with the requested site dimensions of the lots in question, that the City of Perry told him that the lots were 52 ft x 162.5 ft, and that accordingly the total site area and property lot length differed from that reported by the Respondent in the appraisal report (Exhibit 3, page 3).

When asked if there is a multi-list service (MLS) for the City of Perry, Mr. Bien stated that the City of Perry is included or covered in the Stillwater MLS. Mr. Bien further stated that the Respondent reported using Zillow.com and Realtor.com as his data sources (Exhibit 1, page 4) and

that upon his examination of the Respondent's work file (Exhibit 3), that there are no MLS datasheets in the Respondent's work file which would include data from County Records as claimed to have been used by the Respondent in his appraisal report (Exhibit 1, page 4).

In response to a question as whether the Highest and Best Use of the Subject Property was adequately explained, Mr. Bien said that no it was not.

As to the Cost Approach (Exhibit 1, page 5), Mr. Bien noted that the appraisal report contains no lot sales and that the information that was provided is not sufficient to allow for its replication as is required, that the reported \$40,000.00 figure listed as the "As Is" Value of Site Improvements (Exhibit 1, page 5) is high for a property reported by the Respondent to be a Q3 quality of construction [Exhibit 1, page 11 explains quality ratings], that Mr. Bien believes the property to be more of a Q4 quality rather than a Q3 quality, and that the \$40,000.00 figure is high because it lacks sufficient improvements.

In response to a question as to whether he had seen the Respondent's appraisal report, Mr. Bien stated that he had seen the appraisal report presented as Exhibit 1, but he was not sure he had seen the whole appraisal report with all revisions because of the bank client comments in its email to the Respondent dated July 17, 2017 (Exhibit 3, page 6), requesting Respondent consider two properties as comparable sales (addresses: 1004 North Brockwood Dr. Perry, OK and 623 Kaw Street, Perry, OK), but that no copy of any appraisal report or revised appraisal reports was included in the Respondent's work file (Exhibit 3) as it should have been as its required by the Uniform Standards of Professional Appraisal Practice (USPAP).

When questioned about the reported estimated remaining economic life of the Subject Property of 45 years of a total 50 year economic life (exhibit 1, page 5), Mr. Bien stated that a Q3 quality of construction is a little better than the Respondent's reported 50 year total economic life.

When questioned about the Respondent's choices of comparable sales (Exhibit 1, page 4), Mr. Bien noted that the Subject Property is reported in the appraisal report to be a 1 story (or level) [Design DT1 means detached 1 story], while the Respondent used as comparable sales 1, 2 and 3 with houses he reported as each being 1 story (or level), were actually, according to County Records, as to Comp 1 (Exhibit 2, page 7) to be 1.5 stories (or levels), as to Comp 2 (Exhibit 2, page 9) to be 2 stories (or levels), and as to Comp 3 (Exhibit 2, page 12) to be 2 stories (or levels), which are accordingly not like or comparable to the Subject Property, that Comp 1 is 2 miles from the Subject Property, that Comp 2 is 4.2 miles from the Subject Property (Exhibit 1, pages 4 and 23), that the appraisal report should clarify the Respondent's adjustments, that in order to be comparable there should not be such a wide spread in values of comparable sales as reported by the Respondent (Exhibit 1, page 4), and that the reasons that the Respondent's choice of comparable sales are the most comparable to the Subject Property should be reconciled in the Respondent's appraisal report. As to the Respondent's choice of his comparable sale 3 (Exhibit 1, page 3), Mr. Bien stated that it falls between the low and the high values, that the Respondent gave no explanation for its use in the appraisal report but there should be an explanation.

Mr. Bien identified Exhibit 2, page 2 to be a confirmation from the Stillwater Board of Realtors that the City of Perry is within their jurisdiction and the Stillwater MLS covers the City of Perry.

In response to a question as to the use of data sources used by a majority of peer appraisers, Mr. Bien stated that Zillow.com and Realtor.com are not data sources used by a majority of peer appraisers, that in order to use the better data source MLS that you are supposed to be a paid subscriber to such MLS service or associate with a realtor or appraiser that is such an MLS subscriber.

When offered the opportunity to cross-examine the Board's witness, Rodney Bien, the Respondent said that he had no questions.

In response to a question from a Hearing Panel member about the reported 221 days on the market (DOM) (Exhibit 1, page 3), Mr. Bien noted usual marketing times under three months, that there was not an adequate explanation why DOM exceeded marketing times under three months, that the DOM should have been explained through analysis.

In response to a question from a Hearing Panel member about the Respondent's reported boundaries of the neighborhood that the Respondent determined and reported (Exhibit 1, page 3), Mr. Bien noted that Comp 1 was located south of the south boundary of the appraisal report-described neighborhood and that there was no explanation given as to the reason why Comp 1 was located outside the neighborhood determined and reported by the Respondent.

When questioned by a Hearing Panel member about Comps 6 and 7, Mr. Bien noted that each exceeded one year, that nothing in the appraisal report indicated that it had been revised even though the appraisal report (Exhibit 1) included both of the properties requested as comparable sales 6 and 7 (Exhibit 1, pages 9-10), identified by the client's review appraiser James Palmire (addresses: 1004 North Brockwood Dr. Perry, OK and 623 Kaw Street, Perry, OK), in the bank client email dated July 17, 2017 (Exhibit 3, page 6).

In response to a question from a Hearing Panel member about anything being in the Respondent's work file (Exhibit 3) on current sales, Mr. Bien said that there was nothing in the work file.

Alan D. Herrman Testimony (Summary)

The Respondent, Alan D. Herrman, upon being duly sworn, testified that he had appraising real property since 1985, that he is licensed as a Certified Residential Appraiser in Oklahoma, that

he owns a house in Edmond, that he does work in Ponca City, that he is a member of the Ponca City MLS, that the Ponca City MLS does not include the City of Perry, but that its close but not Perry, and that he was in Kansas the last five years due to the deteriorating health of his mother who is now deceased.

In response to a question, the Respondent stated that he admitted his mistakes in his email of November 20, 2017 (Exhibit 3, page 2), that he has a Kansas-licensed Trainee Appraiser assist him who is not licensed as a trainee appraiser in Oklahoma, a woman he never identified by name, that he drafted the appraisal report, that he gave it to her via email for her to look at his comparable sales, that he signed the appraisal report (Exhibit 1), sent it to his Trainee Appraiser already signed, and that he never finally looked at the appraisal report as his Trainee sent it in to his client. Continuing, the Respondent stated that he always lists his Kansas-licensed Trainee in his appraisal reports as she's involved as contributing, that he signed the appraisal report before it was completed to his satisfaction, that he usually lists his Kansas-licensed Trainee Appraiser in the addendum but admitted that he does not see that he did so in the appraisal report (Exhibit 1), that he always puts her in these appraisal reports but not in this appraisal report Exhibit 1), that he is responsible and that his Kansas-licensed Trainee Appraiser is not responsible for his (not her) mistaken transmittal of the signed but unfinished appraisal report to the client by his Kansas-licensed Trainee Appraiser. The Respondent admitted that he should not have signed his appraisal report in advance of its review and completion.

In response to a question as to his advising his client of his transmittal of the Respondent-signed but unfinished appraisal report to the client, the Respondent stated that he did not advise his client of his mistake, that he never got paid for his appraisal report by his client, and that even though his client bank filed this complaint [grievance], the client bank still sends him appraisal

assignments even though he no longer accepts such assignments.

When asked if he disputes the allegations against him in this matter, the Respondent admitted that he does not dispute the allegations against him in this matter, but that he has explanations, and that he would have done the Cost Approach (Exhibit 1, page 5) because it's easy to do so but that his appraisal report had not been finalized despite displaying his signature (Exhibit 1, page 8).

In response to a question about his Kansas-licensed Trainee Appraiser, the Respondent stated that her father's health had been in decline, that as a result that he and she communicate by email, that sometimes to save time he signs incomplete appraisal reports, that his Kansas-licensed Trainee Appraiser is not licensed in Oklahoma, and claiming that the Kansas Appraiser Board said that she can do such work anyway.

In response to a question from a Hearing Panel member, the Respondent stated that he was first licensed as an appraiser in Oklahoma, then in Kansas, that he was in the first group of appraisers that was licensed in Oklahoma in 1991, and that he got his appraiser license in Kansas by reciprocity.

In response to a question from another Hearing Panel member about the quantity or number of appraisal reports and revisions he had done in connection with this real property appraisal, the Respondent stated that the appraisal report presented herein as Exhibit 1 was the one and only draft of his appraisal report and that there were no revised drafts sent.

In response to a question about statements in his email dated November 27, 2017, addressed to the Board that he was not satisfied with his comps, the Respondent said that he never is satisfied with his comparables in small towns, that he quit looking for comparable sales when the appraisal report was mistakenly sent in prior to its finalization by him, and that he stopped work on his

appraisal when the bank [client] complaint [grievance] was filed against him in this matter.

At this point, the State through the Board rested.

The Respondent, who had reserved the right to present his opening statement after the State presented its case against him, sought to offer a written statement as his opening statement. The Board's Hearing Counsel asked if the Board's Prosecutor had been given a copy of the Respondent's written statement, the Respondent stated that he had not yet provided a copy of his written statement and he was asked to so provide a copy to the Board's Prosecutor as it is a document prior to its consideration.

Once the Board's Prosecutor reviewed the Respondent's written statement, he voiced his objection due to the Board's Rules [OAC 600:15-1-12] which contain a provision that a Respondent may submit a written statement only in lieu of personally appearing in a hearing, that as the Respondent had personally appeared in the Hearing that such submission was not permitted under the Board's Rules [OAC 600:15-1-12(3)], that the written statement was not filed in the Board's administrative office seven days prior to the hearing date as required [OAC 600:15-1-12(3)(A), and, that the Respondent's written statement was not notarized as required [OAC 600:15-1-12(3)(B)]. In light of the prohibition in the Board's Rules OAC 600:15-1-12 to the admission of a written statement not properly submitted in lieu of any personal appearance by a Respondent, a written statement not properly notarized, and a written statement not properly or timely submitted or filed seven days prior to the hearing date, the Board's Hearing Counsel overruled the Respondent's attempted submission of his written statement and the Respondent's written statement was not admitted into evidence.

At this point, the Respondent, previously sworn, offered an oral opening statement in his defense.

The Respondent stated that the Subject Property was sold by the owner to another person so there was no listing to report in the appraisal report, that he had County records, and that he got several different responses as to lot sizes. The Respondent stated that he went into the house at the Subject Property, that he visited with the homeowners for an hour, that he could have stated a 60 year estimated life of the Subject Property, but that he did not think so, that his value estimate of the Subject Property was \$2,500.00 above the homeowners' asking price, and that he did had no intent to help the homeowners.

As to the Cost Approach (Exhibit 1, page 5), the Respondent testified that he would have done the cost approach as it was easy to do so and that he had the numbers he needed to do so.

As to his Sales Comparable (Exhibit 1, page 4), t Respondent testified that he tries to get three comparable sales within a town, that he did not gerrymander the neighborhood map to get sales, that he did a pretty extensive search for sales, that the Subject Property had excess land, and that as to the appraisal assistance provided by his Kansas-licensed Trainee Appraiser with this appraisal, that he was guilty of not supervising her properly.

On cross-examination, the Respondent was asked about his email Response to the grievance dated November 20, 2017 (Exhibit 3, page 2), which email stated that the Respondent claimed that the client's written grievance was the first time he had heard of any complaint from his client, to which the Respondent stated that he thinks that he talked with his client by phone prior to his receipt of the client's grievance. The Board's Prosecutor noted that the Respondent's work file (Exhibit3, page 3) contains an email from the Respondent's client addressed to the Respondent with various needed corrections dated July 26, 2017.

As to the appraisal report and the existence of any revisions to the appraisal report, the Respondent stated that the appraisal report presented herein as Exhibit 1 is the only appraisal report

and that there were no revisions to the appraisal report that he sent to the client. The Board's Prosecutor asked if the appraisal report presented as Exhibit 1 is the only appraisal report, why does the appraisal report presented as Exhibit 1 include two properties (addresses: 1004 North Brockwood Dr. Perry, OK and 623 Kaw Street, Perry, OK), the client wanted as comparable sales included (Exhibit 3, page 6), to which the Respondent stated that he used those two client-requested properties (addresses: 1004 North Brockwood Dr. Perry, OK and 623 Kaw Street, Perry, OK), as his comparable sales 6 and 7 (Exhibit 1, pages 9-10) as he never takes out any comparable sale that he has used. In response to a question as to why there are no appraisal reports at all included in his work file (Exhibit 3), the Respondent stated that the appraisal report presented as Exhibit 1 is his appraisal report.

In response to the Board's Prosecutor that the Respondent had committed violations of the Oklahoma Certified Real Estate Appraisers Act, the Respondent admitted that the Board's Prosecutor was correct that there are violations of the Oklahoma Certified Real Estate Appraisers Act.

As to the issue of discrepancies in lot sizes, the Respondent claimed that he got new lot size information the day before the Hearing in this matter, that the Board's witness, Rodney Bien, was wrong on his statements on lot sizes and that we don't know what the lot sizes really are.

At this point, the Respondent rested in his defense of this case.

The Respondent, Alan D. Herrman, did not file a Request for Oral Argument and did not appear at the scheduled Board Meeting to address the Board.

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, §§858-701, *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 thru 600:15-1-22, including administrative hearings.

3. The Respondent, ALAN D. HERRMAN, is a certified residential appraiser in the State of Oklahoma, holding certificate number 12561CRA and was first licensed with the Oklahoma Real Estate Appraiser Board on November 10, 2003.

FINDINGS OF FACT

The Board hereby adopts in full the Findings of Fact of the Disciplinary Hearing Panel as follows:

1. The Respondent, ALAN D. HERRMAN, is a certified residential appraiser in the State of Oklahoma, holding certificate number 12561CRA and was first licensed with the Oklahoma Real Estate Appraiser Board on November 10, 2003.

2. In July of 2017, the Respondent was hired by his client to complete an appraisal (the “appraisal”) for a property located at 610 N. 14th Street, Perry, Oklahoma 73077 (the “Subject Property”). The Respondent completed the appraisal with an effective date of the appraisal report of July 7, 2017.

3. The Respondent committed a series of errors in the appraisal report which led to a misleading and non-credible appraisal report. These errors include, but are not limited to, the following in paragraphs 3-20.

4. The Subject Property’s current listing history is incomplete (Exhibit 1, page 3).

For example, no explanation regarding the original list price and/or if price

revisions were applied over the 221 days on market (DOM). There is no reporting of whether the Subject Property was sold by the Owner, or listed in a Multiple Listing Service (MLS).

NEIGHBORHOOD SECTION

5. The neighborhood East boundary reported in the appraisal report is East 140 Rd. (Exhibit 1, page 3), however it is approximately 3.5 miles away (Exhibit 1, page 23), with mostly rural land between the Subject Property's mile section and this Eastern boundary road. The neighborhood boundaries reported in the appraisal report (Exhibit 1, page 3) appear to have been expanded in order to include particular sale comparables rather than to delineate the Subject Property's immediate market. Furthermore, an aerial photograph of the described neighborhood boundaries (Exhibit 1, page 23) revealed mainly undeveloped or AG (agricultural) land use, however the appraisal report indicated 85-percent single family residential land use (Exhibit 1, page 3).

DESCRIPTION OF IMPROVEMENTS

6. The square footage reported by the Respondent in the appraisal report as his dimensions (Exhibit 1, page 21) are all rounded to the nearest whole foot with no explanation of the standards the Respondent used in connection with the Respondent's sketch of the Subject Property (Exhibit 1, page 21), which Respondent methodologies differ from what a majority of the Respondent's peers would do.

COST APPROACH

7. The site value provided in the Cost Approach (Exhibit 1, page 5) was reported in the appraisal report to have been based off of recent sales, however no such sales were provided in the appraisal report (Exhibit 1) or in the Respondent's work file (Exhibit 3).

8. The site improvements (driveway, landscaping, concrete flatwork, etc.) reported in the appraisal report (Exhibit 1, page 5) were \$40,000.00, which appears high, or otherwise inconsistent with homes of the Subject Property's quality. There is nothing in the appraisal report (Exhibit 1) or in the Respondent's work file (Exhibit 3) that supports the site improvements at an estimated \$40,000.00.
9. In the Cost Approach (Exhibit 1, page 5), the estimated Remaining Economic Life, the Total Economic Life, and Depreciation, do not correlate and are not consistent with the percentage of Depreciation the Respondent reported in his appraisal report (Exhibit 1, page 5).

SALES COMPARISON APPROACH

10. The appraisal report (Exhibit 1) contained excessive unadjusted sale price ranges not adequately discussed or analyzed in the appraisal report (Exhibit 1, page 4); the appraisal report indicated the adjustments were based using paired sales and relative comparison analysis, however no further details were provided regarding how the Respondent's adjustments were derived; and there was a lack of reconciliation of the Sales Comparison Approach when the adjusted value is substantial.

11. The Listings provided in the Respondent's appraisal report (Exhibit 1, page 3) do not support the Respondent's appraised value (Exhibit 1, page 8).

12. The appraisal report utilized Realtor.com and Zillow.com (Exhibit 1, page 4), however, these are not considered to be acceptable primary or sole Sales data sources, as the terms of the transaction cannot be analyzed. The Subject Property is located in Perry, Oklahoma, and the City of Perry, Oklahoma, is within the jurisdiction of the Stillwater (Oklahoma) Board of Realtors MLS and is a more acceptable data source to a majority of peer appraisers.

13. Regarding comparable one, the County reported 2,422 sq. ft. of Gross Living Area (GLA) while the Respondent's appraisal report reported 3,403 sq. ft.; County shows 1.5 story, while the appraisal report reported 1.0 story. No explanation was made in the Respondent's appraisal report.

14. Regarding comparable two, the County reported a 504 sq. ft. garage plus a 500 sq. ft. carport, while the appraisal report reported only a garage, County shows 1.5 story while OA reported 1.0 story. These discrepancies were not explained in the Respondent's appraisal report.

15. Regarding comparable three, the County plat shows 15,300 sq. ft. site, while the Respondent's appraisal report reported 7,000 sq. ft., County shows 1.5 story, while the Respondent's appraisal report reported 1.0 story. These discrepancies were not explained in the Respondent's appraisal report.

INCOME APPROACH

16. The Respondent's appraisal report did not have any comment which explained why the Income Approach to Value (Exhibit 1, page 5) was excluded.

OTHER

17. The Respondent admitted that he received real property appraisal assistance from his un-named, Kansas-licensed trainee, that he should have disclosed her assistance in his appraisal report, and that his un-named, Kansas-licensed trainee is not licensed as a trainee appraiser in Oklahoma. Through such admissions, the Respondent admitted he did so contrary to his representation in the Appraiser's Certification paragraph 19, page 7, of the Uniform Residential Appraisal Report (URAR) (Exhibit 1, page 7).

18. The Respondent used County Records as his verification sources in his appraisal

report in Exhibit 1, page 4, which said he used County Records, yet there are no copies of County Records in the Respondent's work file (Exhibit 3) that support such representations of county record usage.

19. The Respondent admitted that he had multiple versions or "drafts" of his appraisal report, yet neither a copy(ies) of the Respondent's appraisal report nor copies of any revision(s) of the Respondent's appraisal report were included in his work file (Exhibit 3) as required.

20. The Respondent's work file contains no field notes or sketches despite the Respondent's testimony that he had notes with correct information.

CONCLUSIONS OF LAW

The Board hereby adopts in full the Conclusions of Law as determined by the Disciplinary Hearing Panel as follows:

1. The Respondent Alan D. Herrman has violated 59 O.S. §858-723(C)(6) through 59 O.S. §858-726, in that the Respondent violated:

A) The Ethics, and Conduct Sections of the Uniform Standards of Professional

Appraisal Practice Ethics Rule;

B) The Scope of Work Rule of the Uniform Standards of Professional Appraisal Practice;

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

D) Standard 1, Standards Rules 1-1, 1-4, 1-5, 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. The Respondent Alan D. Herrman 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”.

3. The Respondent Alan D. Herrman 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."

4. The Respondent Alan D. Herrman 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."

5. The Respondent Alan D. Herrman 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.”

FINAL ORDER

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

1. Respondent Alan D. Herrman, shall be placed on **PROBATION** for a period of **ONE (1) YEAR** beginning immediately upon completion of the ordered corrective education below. During the period of probation, Respondent Alan D. Herrman, 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, to include for review the appropriate work file of the Respondent Alan D. Herrman.

2. Respondent Alan D. Herrman, shall pay to the Board the sum of \$500.00 towards the costs expended by the Board for legal fees and travel costs incurred in the matter of Complaint #17-050. Costs shall be fully paid by Respondent Alan D. Herrman, within thirty (30) days from the date of any final order of the Board, plus a period of thirty (30) days after Respondent Alan D. Herrman, is notified of the final agency order either personally or by certified mail, return receipt requested.

3. Respondent, Alan D. Herrman shall successfully complete the following corrective education from the AQB Core Curriculum within ninety (90) days of the approval of this Order by the Attorney General's Office. Courses may be live or online, but must be tested and successfully completed with course completion certificates submitted to the Board's staff office by close of business on the 90th day.

- a. Course #600 – the 15 Hour National USPAP Course;
- b. Course #612 – Residential Site Valuation and Cost Approach; and
- c. Course #613 – Residential Sales Comparison and Income Approaches

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

THE BOARD WISHES TO ADVISE THE RESPONDENT THAT HE HAS 30 DAYS FROM THE DATE HE OR SHE IS FIRST 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 on this 3rd day of October, 2018

Eric M. Schoen

ERIC SCHOEN, Administrative Officer
Real Estate Appraiser Board

10-4-2018

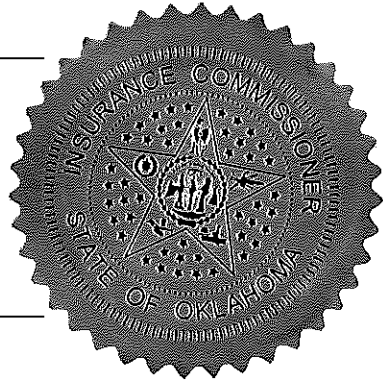
Date

Bryan Neal

BRYAN NEAL
Assistant Attorney General and
Attorney for the Board

10/4/18

Date



CERTIFICATE OF MAILING

I, Kayla Dekat, hereby certify that on the 16 day of October, 2018 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:

Alan D. Herrman
PO Box 20785
Oklahoma City, OK 73156

9214 8902 0982 7500 0135 65

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

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

Pat McGlamery, Hearing Panel Officer
PO Box 368
Muskogee, OK 74402

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

Michael Miller, Hearing Panel Officer
PO Box 2025
Noble, OK 73058

Robert Kerbo, Hearing Panel Officer
12325 S. Longhorn Circle
Glenpool, OK 74033


Kayla Dekat



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

RECEIVED
OKLAHOMA INSURANCE DEPT.

OCT 15 2018

Real Estate Appraiser Board

ATTORNEY GENERAL OPINION
2018-410A

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

October 15, 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 12561CRA. The licensee performed an appraisal that failed to meet the required standards. The Board proposes to require the licensee to pay \$500 in costs and complete three 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.

MIKE HUNTER
ATTORNEY GENERAL OF OKLAHOMA

AMANDA OTIS
ASSISTANT ATTORNEY GENERAL