

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

In the Matter of PETER R. FULMER,)	
)	Complaint #15-034
Respondent.)	

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

ON THE 4th day of October, 2017 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 7th day of June, 2017. The Board was represented by a Disciplinary Hearing Panel composed of three (3) appraiser members, William F. Stephens, of Pauls Valley, Oklahoma, John M. Travers of Tulsa, Oklahoma, and Craig L. Wittmer of Ponca City, Oklahoma, each of whom is a current Member of the Board's Standards and Disciplinary Procedures Committee. Craig L. Wittmer 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 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, Peter R. Fulmer, of Nichols Hills, Oklahoma (the "Respondent"), having been mailed a copy of the Notice of Disciplinary Proceedings and Appointment of Hearing Panel (the "Notice") by first class U.S. certified mail with return receipt requested to the office of his Attorney, Patricia A. Podolec, Foshee & Yaffe Law Firm, Oklahoma City, Oklahoma, on January 26, 2017, 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 having been mailed a Notice of Continued Disciplinary Hearing and Appointment of Alternate Hearing Panel Officers by first class

U.S. certified mail with return receipt requested to the office of his Attorney, Patricia A. Podolec, on June 6, 2017, the Respondent appeared in person and was represented by his Attorney, Patricia A. Podolec. The Respondent elected to have this matter recorded by electronic device and to rely on the electronic recording.

As the Board's Prosecutor, Mr. McCaleb presented his opening statement on behalf of the Board and the Respondent reserved his opening statement through his Attorney at the beginning of the Hearing for presentation later when he was to put on his defense.

PRELIMINARY MATTERS

The Board's Prosecutor initially moved for the admission of two (2) exhibits for the Board (Exhibits 1 and 2, respectively) to which there was no objection and both such Board exhibits, which were Bates-stamped, were admitted into evidence.

Exhibit 1 was the single page Grievance by PrimeLending, 18111 Preston Road, Dallas, Texas 75248 (the "Grievant"), on 5708 Oliver Court, Oklahoma City, Oklahoma, 73142 (the "subject property"), reported by the Respondent to be legally described as Lot 9, Block 29, in Gaillardia Residential Community Section X, an addition to the City of Oklahoma City, Oklahoma County, Oklahoma, together with a copy of the Respondent's appraisal report on 5708 Oliver Court, Oklahoma City, Oklahoma, 73142, signed on July 1, 2015, consisting of a total of 34 pages; and, Exhibit 2 was the Respondent's four-page grievance response (Exhibit 2, pages 1 to 4) together with a copy of the Respondent's work file on the subject property (Exhibit 2, pages 5 to 106), consisting of a total of 106 pages.

Subsequently, the Board's Prosecutor moved for the admission of three (3) additional exhibits for the Board (Exhibits 3, 4, and 5, respectively), none of which were Bates-stamped. Exhibit 3 was an excerpt from the Fannie Mae guidelines dated January 27, 2015, entitled "B4-1.3-

10, Cost and Income Approach to Value (04/15/2014)” consisting of a single page provided by a Board witness. Exhibit 4 was a copy of a color photograph of the subject property from Google Earth copyright 2016 provided by a Board witness. As there was no objection to the admission of the Board’s Exhibit 3 or Exhibit 4, both Exhibits 3 and 4 were admitted into evidence. Exhibit 5 was purported to be a copy of a photograph of the subject property from Google Earth without a listed date, to which an objection was raised as to its admission for lack of a proper foundation. The objection was sustained and Exhibit 5 was not admitted into evidence.

Through the course of the proceedings, the Respondent submitted two (2) exhibits for admission as evidence in this matter (Respondent’s Exhibits R-4, and R-5, respectively). Exhibit R-4 is an email exchange between the Respondent and the Grievant. Exhibit R-5 purportedly was an Affidavit from homeowner Nicholas Hughes as provided by the Respondent which was not authenticated by Nicholas Hughes who was not present for the hearing and which exhibit, upon objection by the Board’s Prosecutor as Hearsay, was not admitted into evidence.

Neither party to these proceedings requested that a court reporter record this matter and neither party to these proceedings submitted any proposed findings of fact or proposed conclusions of law to the Disciplinary Hearing Panel for their consideration.

WITNESSES AND EVIDENCE PRESENTED

The Board’s Prosecutor presented two (2) witnesses in support of the case against the Respondent: Nena W. Henderson, a certified residential appraiser licensed as 11138CRA, of Oklahoma City, Oklahoma, a current Member of the Board’s Standards and Disciplinary Procedures Committee, a National Instructor for the National Association of Independent Fee Appraisers (NAIFA), and formerly President of the NAIFA (2015); Ronnie L. Flowers, a certified residential appraiser licensed as 12103CRA, of Moore, Oklahoma, and a member of the National Association

of Independent Fee Appraisers (NAIFA).

The Respondent presented one (1) witness in defense of the Respondent: Peter R. Fulmer, the Respondent himself.

The Respondent invoked the Board's Witness Exclusion Rule in OAC 600:15-1-8 entitled "Public hearings" after which invocation, the Board's Hearing Counsel asked that one of the Board's expected witnesses leave the room, to which request the Board's Prosecutor stated that he had the right to have an expert witness remain while he presented his case in chief, and that he identified Nena W. Henderson to be the expert witness he wished to remain in the hearing room for such purpose. Accordingly, Mr. Flowers, as a second Board witness, was asked to step out of the hearing room, at which request, Mr. Flowers left the hearing room.

Prior to beginning the presentation of testimony by anyone, the Respondent questioned whether any of the three hearing panel members knew her client, to which question each Hearing Panel Member stated that he did not know the Respondent.

Nena W. Henderson Testimony (Summary)

Upon being duly sworn, Ms. Henderson testified that she is from Edmond, Oklahoma County, Oklahoma, that he had been a licensed real estate appraiser in Oklahoma since 1984, that she is licensed as a Certified Residential Appraiser, that she is a current Member of the Board's Standards and Disciplinary Procedures Committee, that in the capacity of a Member of the Board's Standards and Disciplinary Committee she was asked by the Board's Prosecutor to testify, that she was given a copy of the Grievance filed in this matter (Exhibit 1) and the Response of the Respondent to the Grievance (Exhibit 2) to read, that she received no other direction from the Board's Prosecutor, and that she was aware of the allegations against the Respondent.

Continuing, Ms. Henderson stated that there are three approaches to determining value: (1)

Sales Comparison Approach; (2) Income Approach; and (3) Cost Approach when new construction is involved, such as that of the subject property. According to Ms. Henderson, the Respondent did use the Sales Comparison Approach in his appraisal but in his appraisal report the Respondent provided no explanation as to the reason he deemed the Cost Approach to not be relevant in this appraisal of new construction of the subject property.

At the request of the Board's Prosecutor, Ms. Henderson read into the record the following language from the Uniform Standards of Professional Appraisal Practice (USPAP) 2014-2015 Edition from Standards Rule 2-2 (b)(viii), page U-25 lines 790 to 792, as follows:

“state the appraisal methods and techniques employed, state the value opinion(s) and conclusion(s) reached, and reference the work file; exclusion of the sales comparison approach, cost approach, or income approach must be explained”.

Also at the request of the Board's Prosecutor, Ms. Henderson read into the record the following language from the Uniform Standards of Professional Appraisal Practice (USPAP) 2014-2015 Edition from the USPAP Frequently Asked Questions No. 271 entitled “REPORTING WORK NOT DONE IN AN ASSIGNMENT”, page F-128, in pertinent part, as follows:

Question: Does the report need to explain what wasn't done in an assignment?

Answer: Possibly; in addition to the disclosure of research and analyses performed, disclosure of research and analyses not performed might be needed to allow users of the report to understand your scope of work. The report must explain why the cost approach, sales comparison approach or income approach was not developed.”

With regard to development of the cost approach in a particular case, Ms. Henderson said that the cost approach is appropriate where new construction is involved because there may be actual cost data available, but over time, depreciation varies per item thus on an older home, the cost approach

is less relevant.

Ms. Henderson noted that the form of the Uniform Residential Appraisal Report (URAR) selected for use by the Respondent in his appraisal report in Exhibit 1, page 8, is a Fannie Mae (FNMA) form to be used in a “federally-related transaction”, that with regard to the section of the appraisal report entitled “Cost Approach to Value” (Exhibit 1, page 8), the appraisal report states “The Cost Approach is not deemed appropriate and is not developed”, and that the rest of cost approach section in the appraisal report is left blank. When asked if the transaction in this appraisal is a “federally-related transaction”, Ms. Henderson noted that such an assessment depended upon the identity of the client in a particular case. As the appraisal report identifies the Lender/Client to be PrimeLending 2300 S. Broadway, #109, Edmond, Oklahoma 73013, this transaction as reported by the Respondent, is to be a Refinance Transaction (Exhibit 1, page 6), that is a “federally-related transaction” as to the named Lender/Client PrimeLending, but it is not a “federally-related transaction” as to the homeowners Nicholas and Ashley Hughes were they identified to be the “client” in the appraisal report.

Ms. Henderson noted that in the Respondent’s Supplemental Addendum (Exhibit 1, page 13) under “URAR”, there is no indication given in the appraisal report that the Cost Approach was not used by the Respondent. The Gaillardia Addition was described by Ms. Henderson to be an upscale addition with golf courses, that through her research she found about twelve comparable sales plus or minus, and that site value sales are available in the Gaillardia Addition.

It was noted by Ms. Henderson that the appraisal report of the Respondent identifies “PrimeLending 2300 S. Broadway, #109, Edmond, Oklahoma 73013, to be the Lender/Client (Exhibit 1, pages 3-6), that the appraisal report is identified by the Respondent to be a “Limited Appraisal” citing Standards Rule 2-2(b) (Exhibit 1, page 4), that USPAP Standards Rule 2-2(b)

provides for only two (2) options for an appraisal report which is either to be an “Appraisal Report” or a “Restricted Appraisal Report”, and that there is no such thing as a “limited appraisal” or a “limited appraisal report” under USPAP 2014-2015 Edition.

Continuing, Ms. Henderson noted that the actual age of the subject property with improvements is reported in the appraisal report to be “zero” (Exhibit 1, page 7), that the subject property with the improvements was built in year 2015 (Exhibit 1, page 6), that she found no engagement letter in the Respondent’s work file (Exhibit 2, pages 5 to 106), that the Respondent’s Grievance Response (Exhibit 2, page 2) states that Ms. Ashley Hughes paid him for the appraisal by check, that the Respondent’s Invoice (Exhibit 2, page 99) names PrimeLending as the client, that she found nothing in the Respondent’s work file (Exhibit 2, pages 5 to 106) that made Nicholas and Ashley Hughes a client, and that the Respondent certified that he performed the appraisal in compliance with USPAP (Exhibit 1, page 10).

Ms. Henderson stated that USPAP defines the word “client” in its section entitled “Definitions” that she read into the record from page U-2, line 49, to be “...the party or parties who engage, by employment or contract, an appraiser in a specific assignment.” Continuing as to USPAP, Ms. Henderson read into the record that USPAP Advisory Opinion 25 (AO-25), page A-88, lines 37 to 42 states as follows:

“Before an appraiser accepts an assignment knowing the intended use of the appraisal is, or may be, for a federally related transaction by a federally regulated financial institution, it is the that appraiser’s responsibility to disclose to the prospective client that the lender or its agent is required to directly engage the appraiser. The appraiser should also disclose to the prospective client that it is unethical for the appraiser to later ‘readdress’ or otherwise change the report to indicate a federally regulated financial institution was the client when

the appraisal was performed for another party...”

According to Ms. Henderson, the take away here is that if PrimeLending is the client then it’s a federally related transaction, but if the homeowners Nicholas and Ashley are the client, then it’s not a federally related transaction.

Exhibit 3, previously admitted, was identified by Ms. Henderson to be an excerpt from the Fannie Mae guidelines dated January 27, 2015, entitled “B4-1.3-10, Cost and Income Approach to Value (04/15/2014)” consisting of a single page that was in effect at the time the appraisal report was written, that notes that USPAP requires the appraiser to develop and report the result of any approach to value that is necessary for credible assignment results. Ms. Henderson stated that she believes that the development of the cost approach is necessary in this case.

Ms. Henderson noted that there is no site sale information in the appraisal report or in the Respondent’s work file (Exhibit 2, pages 5 to 106), that Exhibit 4, previously admitted, is her Google Earth full color photograph that was taken in 2016 that shows that the improvements on the subject property were built in the center of both Lots 8 and 9, when compared with the recorded Plat of the subject property, which comparison she made.

On cross examination, Ms. Henderson said that she does know the Respondent, that to her knowledge she does not compete with the Respondent, that she spoke with the Respondent about three years ago, and that the Respondent had been a student of hers.

Ms. Henderson noted that the legal description of the subject property in the appraisal report (Exhibit 1, pages 5 and 6) consists of only one lot and not two lots as disclosed in Exhibit 1, page 7.

The Board’s Prosecutor indicated that he intended to call Ronnie L. Flowers to testify and the Respondent objected to the presentation of testimony from Ronnie L. Flowers as being duplicative and unnecessary. The Board’s Prosecutor responded that while the testimony could be

duplicative, that he wanted to put on the testimony of Mr. Flowers as an additional witness. The Respondent's objection to the testimony of Ronnie L. Flowers was overruled and Mr. Flowers was allowed to testify.

Ronnie L. Flowers Testimony (Summary)

Upon being duly sworn, Mr. Flowers testified that he resides in Moore, Oklahoma, that he is a real estate appraiser, that he has been licensed since 1999, that he is currently a Certified Residential Appraiser, and that he is an Independent Fee Appraiser and a member of the National Association of Independent Fee Appraisers (NAIFA).

Mr. Flowers stated that in connection with this case, he looked at the Probable Cause Committee statement, the Grievance, and the Grievance Response together with the Respondent's attached work file, all as provided to him by the Board's Prosecutor. Continuing, Mr. Flowers noted that the Cost Approach was not reported in the appraisal report, that USPAP requires that the Cost Approach be used in determining the value of new construction, that the appraisal report contained no explanation of the reason why no Cost Approach was developed by the Respondent for the new construction in this case, that he and, he believes, a majority of his peers, would develop the Cost Approach in connection with the appraisal of new construction, and that development of the Cost Approach is typical in connection with the appraisal of new construction.

In support, Mr. Flowers noted the language of USPAP as to the Scope of Work Acceptability from the Scope of Work Rule at USPAP page U-14, at line 428 through line 434, that he read into the record as follows:

“The scope of work must include the research and analyses that are necessary to develop credible assignment results.

Comment: The scope of work is acceptable when it meets or exceeds:

- the expectations of parties who are regularly intended users for similar assignments; and
- what an appraiser's peers' actions would be in performing the same or a similar assignment.”

Continuing with reference to USPAP, Mr. Flowers also noted USPAP Standards Rule 2-2(b)(viii) requires that exclusion of the Cost Approach must be explained.

When asked if it's important for an appraiser to identify the client in an appraisal report, Mr. Flowers said that it is an essential part of an appraisal report to identify the client, that in his research on the subject property, he found that two lots were involved, that he looked at the Plat Map for the subject property and an aerial photograph of the subject property he found on Google Earth , and that he determined that the improvements on the subject property [Lot 9] encroached on the other lot [Lot 8].

Mr. Flowers testified that he does not know the Respondent, that he has done no work for Nicholas and Ashley Hughes, that he does do work for PrimeLending for VA assignments, that no “limited appraisal” exists as stated by the Respondent in his appraisal report (Exhibit 1, page 4), that USPAP does not recognize “limited appraisals”, that the appraisal report was done on the Fannie Mae form, that there is nothing in the Respondent's work file to indicate that a Fannie Mae loan was involved in this case, and that the appraisal report identifies PrimeLending as the client.

On cross examination, Mr. Flowers stated that he works in the Oklahoma City/Edmond area, that he does not know the Respondent's prime working area, that the appraisal report acknowledges the multiple parcel transaction as a prior sale or transfer [May 15, 2013] in Exhibit 1, page 7, that he is somewhat familiar with the Gaillardia Addition, that the Respondent's work file indicated that only one lot was involved, that his measurements indicated a possible encroachment onto another lot, and that based on the totality of the information he found, that the homeowners Nicholas and

Ashley Hughes were the client despite the fact that the appraisal report stated that PrimeLending was the client.

At this point, the State rested.

The Respondent's Attorney, Patricia Podolec, presented an opening statement, and called the Respondent to testify.

Peter R. Fulmer Testimony (Summary)

The Respondent, Peter R. Fulmer, upon being duly sworn, testified that he resides in Nichols Hills, Oklahoma, that he has been an a real estate appraiser since 2006 or 2007, that he has been working since 2003, that his level of licensure is Certified Residential Appraiser (CRA), that he had a complaint filed against him that was thrown out by the Board's Probable Cause Committee, that he worked for PrimeLending before, that he's never had a problem with PrimeLending before, that he got his cost data from his client homeowners Nicholas and Ashley Hughes (Exhibit 1, pages 23-24), which cost data was developed by the builder, that the cost data was the actual cost sheet of the builder, and that he was told that the costs in the cost data he provided (Exhibit 1, pages 23-24), were the actual construction costs.

Continuing, the Respondent stated that he chose to use the Sales Comparison Approach, that the Sales Comparison Approach is normally the best to determine market value, that construction of the subject property was just completed at the time of his appraisal, that the homeowners Nicholas and Ashley Hughes had a previous appraisal performed on the subject property that Nicholas Hughes thought was not accurate, that he did not know the homeowners Nicholas and Ashley Hughes, that he had no interest of any kind in the subject property, that the homeowners as the client Nicholas and Ashley Hughes called him to perform an additional appraisal on the subject property, that the homeowners Nicholas and Ashley Hughes said that the lender, PrimeLending, wanted a

copy of the appraisal report, that he told his client Nicholas and Ashley Hughes that their request to identify PrimeLending as his client was highly irregular, that the Hughes' wanted him to write it like that, that the Hughes' paid for his appraisal, that the homeowners Nicholas and Ashley Hughes said to address the appraisal report to PrimeLending, and that he personally delivered the appraisal report identifying PrimeLending as this client, to his real client the homeowners Nicholas and Ashley Hughes.

The Respondent was handed a two page document marked as Respondent's Exhibit R-4, that he identified to be an email addressed to him dated July 2, 2015, that he received from the homeowners Nicholas and Ashley Hughes after he personally delivered the appraisal report to his client homeowners Nicholas and Ashley Hughes, and that he said was a document already in his work file (Exhibit 2, pages 101-102). Upon its identification by the Respondent, the Exhibit R-4 was admitted into evidence without objection, and a portion of the email document written by Beau Weiss, Production Manager for the Dallas Office of PrimeLending, was read into the record by the Respondent as follows:

“Just tried calling..

So I talked to my Chief Appraiser and she confirms she finally found him on our approved list and she WILL NOT turn him in.

Now I just need to find out if we can use it.”

The Respondent noted that he received a phone call from the Chief Appraiser for the Dallas Office of PrimeLending, whom he identified as Jane Price, the same Jane Price who signed the Grievance (Exhibit 1, page 1), in which he said she berated him over his appraisal report for 5-6 minutes while he stood in line at a restaurant.

The Respondent testified that spoke to one of his instructors named Mike Foreman about

this situation and based on that conversation, it was his understanding that he added an additional intended user to his appraisal report by naming PrimeLending as the client in the appraisal report. The Respondent cited USPAP Standards Rule 2-2 in support at page U-21 of his naming PrimeLending as the client in his appraisal report as well as the comment section following USPAP Standards Rule 2-2 (a)(i) in support at page U-22 that states that a where "...the client wishes to remain anonymous, an appraiser must still document the identity of the client in the work file but may omit the client's identity in the report". Continuing, the Respondent said that the client homeowners Nicholas and Ashley Hughes specifically asked him to not list them as the client in the appraisal report, that he believes he was compliant with this requirement [USPAP Standards Rule 2-2 (a)(i)] by naming PrimeLending as the client in the appraisal report, and that he documented the identity of his client homeowners Nicholas and Ashley Hughes in his work file.

When asked why he developed no cost approach, the Respondent said that his client homeowners Nicholas and Ashley Hughes said they already knew the cost to build the subject property because they had already paid for it, that he thought the actual cost data he received from his client homeowners Nicholas and Ashley Hughes was best, that the homeowners Nicholas and Ashley Hughes told him that the house on the subject property was actually built on Lot 9 and no portion of the house was built on Lot 8 that they also owned, that there was nothing on the County Assessor's website at the time to tell him differently, that the cost approach provides higher value than the sales comparison approach, that he looked at Google Earth at the time in 2015, and that Google Earth showed no improvements to have been built at that time. In reference to the two Board witnesses at the hearing, the Respondent identified both of them to be experts.

In response to a question as to the reason he identified his appraisal to be a "Limited Appraisal" (Exhibit 1, page 4) contrary to USPAP Standards Rule 2-2(b) that provides for only two

(2) options for an appraisal report which is either to be an “Appraisal Report” or a “Restricted Appraisal Report”, the Respondent said that the appraisal report was for a private party and that he just meant that it was a restricted scope, that it was not used to obtain a loan from PrimeLending, that the Hughes’ got a loan somewhere else, and that he was not purposefully negligent, dishonest or unethical.

The Respondent was handed an Exhibit marked as Respondent’s Exhibit R-5 that was identified to purportedly be an Affidavit for homeowner Nicholas Hughes as to what he said happened. The Board’s Prosecutor objected to the admission of the Exhibit R-5 as being Hearsay, as the purported author Nicholas Hughes was not present in the hearing to authenticate it and was unavailable for cross-examination, to which Respondent claimed through his Attorney that the Respondent was a witness to the signing of the purported Hughes Affidavit. When asked by the Board’s Hearing Counsel, if the Affidavit was part of the Respondent’s work file (Exhibit 2), the response was that such purported document was not a part of the Respondent’s work file. At that point, the objection of the Board’s Prosecutor was sustained and Exhibit R-5 was not admitted into evidence over the protestations of the Respondent. Continuing, the Respondent’ Attorney noted that virtually the same information as that included in the purported Hughes Affidavit was provided by Nicholas Hughes in a different document that was in the Respondent’s work file (Exhibit 2, pages 104-105), that Ms. Hughes paid him for the appraisal when he delivered the appraisal report to her, that he is not a surveyor, and that he relied on the representations of the client homeowners Nicholas and Ashley Hughes that the building on the subject property was built on only one lot.

The Respondent said that the Cost Approach box on the Fannie Mae form URAR (Exhibit 1, page 8) was not required by USPAP, that he did not fill it out as his client did not want him to use the cost approach, that he does residential appraisals for all kinds of clients, that he thinks he has

done nothing to be punished for, and that he cooperated with the Board in its investigation of him.

On cross examination, the Respondent was handed Exhibit 5 for him to identify, which document the Respondent said appears to be the subject property, at which time his Attorney objected to its admission as a copy of a photograph due to its not having a date listed or other information so as to not have a proper foundation. Exhibit 5 was purported to be a copy of a photograph of the subject property from Google Earth. The objection was sustained and Exhibit 5 was not admitted into evidence.

The Respondent said that he thinks he understands the definition of client in USPAP, that his client homeowners Nicholas and Ashley Hughes were an intended user of the appraisal report, that with regard to confidentiality, he only gave the appraisal report to his client homeowners Nicholas and Ashley Hughes, that he looked at the recorded Plat with the subject property at the time, that the recorded Plat had no improvements, that he had no copy of the recorded Plat in his work file, that he planned to use a general purpose form as the appraisal report until his client homeowners Nicholas and Ashley Hughes wanted him to use the other form, that he used the appraisal report form his client homeowners Nicholas and Ashley Hughes told him to use, and that the property purchased by his client homeowners Nicholas and Ashley Hughes included two lots, Lots 8 and 9 [Block 29, in Gaillardia Residential Community Section X, an addition to the City of Oklahoma City, Oklahoma County, Oklahoma].

At this point in the hearing, the Respondent rested his defense. The Respondent presented no other witnesses in his defense.

COMES NOW the Oklahoma Real Estate Appraiser Board Disciplinary Hearing Panel being duly appointed in this matter as aforesaid hereinabove, after having received all evidence and being fully advised in the premises as to the above matter, and recommends that the Board find by

clear and convincing evidence as follows, and make the following disciplinary recommendations as set forth at OAC 600: 15-1-14, to wit:

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, PETER R. FULMER, is a certified residential appraiser in the State of Oklahoma, holding certificate number 12705CGA and was first licensed with the Oklahoma Real Estate Appraiser Board on January 10, 2007.

FINDINGS OF FACT

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

1. The Respondent, PETER R. FULMER, is a certified residential appraiser in the State of Oklahoma, holding certificate number 12705CGA and was first licensed with the Oklahoma Real Estate Appraiser Board on January 10, 2007.

2. In June of 2015, the Respondent admitted he was hired by homeowners Nicholas and Ashley Hughes (the “client”) to complete an appraisal (the “appraisal”) for a property located at 5708 Oliver Court, Oklahoma City, Oklahoma, 73142, reported by the Respondent to be legally described as Lot 9, Block 29, in Gaillardia Residential Community Section X, an

addition to the City of Oklahoma City, Oklahoma County, Oklahoma. The Respondent completed and transmitted the appraisal report to the homeowners Nicholas and Ashley Hughes that intentionally misidentified PrimeLending 2300 S. Broadway, #109, Edmond, Oklahoma 73013, as the named Lender/Client at the request of the homeowners Nicholas and Ashley Hughes, without the permission, approval, knowledge, or authorization of the Grievant, Prime Lending. The Response of the Respondent Peter R. Fulmer (Exhibit 2) included his work file for the appraisal of the subject property but did not include any engagement letter from the Grievant PrimeLending, which was intentionally misidentified as the Lender/Client in the appraisal report (Exhibit 1, pages 3 to 6, 11, 13, 14, 16 to 29, and 33).

3. Further, the subject property, which appraised by the Respondent for \$1,600,000.00, was new construction. Despite the subject property being new construction, the Respondent chose not to perform the cost approach, which he deemed to not be appropriate, and failed to explain or justify why he chose not to perform the cost approach or the reason he deemed the cost approach to not be appropriate.

4. The Respondent Peter R. Fulmer certified that he complied with the Uniform Standards of Professional Appraisal Practice (USPAP) in his performance of the appraisal (Exhibit 1, page 10, #3). Further, the Respondent Peter R. Fulmer, intentionally misidentified the Lender/Client in the appraisal report to be the Grievant PrimeLending contrary to his certification that he identified the Lender/Client in the appraisal report who is the individual, organization, or agent, for the organization that ordered and will receive the appraisal report by admitting that his client was the homeowners Nicholas and Ashley Hughes. Still further, the Respondent Peter R. Fulmer, admitted that the homeowners Nicholas and Ashley Hughes were not the agent of the Grievant PrimeLending.

5. The Respondent's analysis of the sale history of the subject property is deficient due to the failure to list multiple parcels (Exhibit 1, pages 5 and 6) of Lots 8 and 9, Block 29, in Gaillardia Residential Community Section X, an addition to the City of Oklahoma City, Oklahoma County, Oklahoma, which multiple parcels were purchased by the homeowners Nicholas and Ashley Hughes on May 15, 2013 (Exhibit 2, page 37; Special Warranty Deed, Book 12248, Page 1745, of the records of the Oklahoma County Clerk).

6. The intentional misidentification of the Grievant PrimeLending as the Lender/Client in the appraisal report results in a misleading appraisal report.

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 Peter R. Fulmer has violated 59 O.S. §858-723(C)(6) through 59 O.S. §858-726, in that the 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 1-2; Standard 2, Standards Rule 2-1 and 2-2 of the Uniform Standards of Professional Appraisal Practice. These include the subsections of the referenced rules.

2. The 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.”

3. The 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."

4. The 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."

5. The 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”.

6. The 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."

FINAL ORDER

Having adopted in full the Findings of Fact and the Conclusions of Law of the Disciplinary Hearing Panel, the Board modifies the recommendation of the panel and hereby Orders as follows:

1. The Respondent Peter R. Fulmer shall pay an administrative fine in the amount of **FIVE HUNDRED DOLLARS (\$500.00)** to the Board. Payment of the fine shall be remitted to the Board in accordance with the manner contemplated by 59 O.S. § 858-723(B).

2. The Respondent Peter R. Fulmer shall successfully complete corrective education as follows:

The **FIFTEEN (15) HOUR** Course Number 600: National USPAP Course.

The course must be completed with copies of certificates of course completion transmitted to the administrative office of the Board within **SIXTY (60) DAYS** from the date of the Board Order plus a period of thirty (30) days after the Respondent Peter R. Fulmer is notified of the final agency order either personally or by certified mail, return receipt requested. The course must be tested and must be a live course, attended in person by the Respondent (not distance and/or correspondence and/or on-line course). The course shall **not** be counted toward continuing education credit by the Respondent.

3. Respondent Peter R. Fulmer shall be placed on **PROBATION** for a period of **ONE (1) YEAR** beginning immediately upon the date that the period of **SIXTY (60) DAYS** in which corrective education is ordered hereinabove to be completed shall end plus a period of thirty (30) days after the Respondent is notified of the final agency order either personally or by certified mail, return receipt requested. During the period of probation, Respondent Peter R. Fulmer 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.

4. Respondent Peter R. Fulmer shall pay costs expended by the Board for legal fees and travel costs incurred in this matter, not to exceed \$5,000. Board staff will provide a statement of the costs incurred to Respondent with the final order. Costs shall be fully paid within thirty (30) days from the date of any final order of the Board.

5. Failure by Respondent to comply with any requirement of this order shall result in his appraisal credential being suspended instantly, with notification forwarded immediately to Respondent by Certified U. S. mail, return receipt requested or by personal service.

THE BOARD WISHES TO ADVISE THE RESPONDENT THAT HE HAS 30 DAYS FROM THE DATE HE 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 4th day of October, 2017

Eric M. Schoen

ERIC SCHOEN, Administrative Officer
Real Estate Appraiser Board

10-4-2017

Date

Bryan Neal

BRYAN NEAL
Assistant Attorney General and
Attorney for the Board

10/4/17

Date



CERTIFICATE OF MAILING

I, Sherry Ainsworth, hereby certify that on the 13th day of November, 2017 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:

PATRICIA A. PODOLEC, ESQ.
FOSHEE & YAFFE LAW FIRM
P.O. Box 890420
Oklahoma City, OK 73189
Attorney for Peter R. Fulmer

9214 8902 0982 7500 0023 16

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

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



SHERRY AINSWORTH



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Real Estate Appraiser Board

OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2017-781A

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

November 8, 2017

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 12705CRA in Board complaint 15-034, which alleged that the licensee engaged in multiple ethical violations. The Board proposes to impose one year of probation and require payment of a \$500 fine and up to \$5,000 in prosecutorial costs and completion of 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.2016, § 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 Uniform Standards of Professional Appraisal Practice, 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.

Handwritten signature of Mike Hunter in black ink.

MIKE HUNTER
ATTORNEY GENERAL OF OKLAHOMA

Handwritten signature of Amanda Otis in black ink.

AMANDA OTIS
ASSISTANT ATTORNEY GENERAL