

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

In the Matter of ALAN D. HERRMAN,     )  
Respondent.                                     )     Complaint #18-009

**CONSENT ORDER**

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

**INTRODUCTION**

1. On October 3, 2018, the Board issued Board Order #18-018 in resolution of Complaint #17-050 as to Alan D. Herrman, 12561CRA (“Herrman”). As part of that Order, Herrman was to complete three specific corrective education courses selected from the Core Curriculum of the Appraiser Qualification Criteria. Once the corrective education was completed, Herrmann was subject to a one year probation period. During that probation, Herrman was required to submit monthly work logs for all appraisal assignments completed during the month prior.

2. Herrman never completed the Corrective Education. Accordingly, his license was suspended for non-compliance effective January 13, 2019. His license is currently suspended. Respondent agrees his license will remain suspended until

he complies with this Order in addition to the requirements in Order 18-018.

### **AGREED FINDINGS OF FACT**

1. In November of 2017, Respondent was hired to complete an appraisal (the "appraisal") for a property located at 8100 Gatlin Drive, Guthrie, Oklahoma 73005 (the "subject"). Respondent completed the appraisal with an effective date of November 21, 2017.

2. The reporting option was not clearly indicated in the appraisal.

3. The intended use of the appraisal was not stated appropriately. Although the Appraiser reported the Intended Use on page 4 of 7 of the 1004C to be for Mortgage Finance Transaction, he reported the Assignment Type on page 1 of 7 of the Subject Section to be Construction Loan.

4. The analysis of agreements of sale, options, or listings of subject property current as of the effective date of appraisal, and sales that occurred within three years prior were not adequately summarized. For example, Respondent reported the Subject property was listed for sale within the prior 12 months from 10/21/2014 to 01/14/2015 (85 days), and that the listing price was unknown. However, OKCMARMLS reflects the subject's prior listing #569024 expired on 04/21/2015 (182 days on market), rather than 01/14/2015 (85 days), as reported in the appraisal.

5. The scope of work was not sufficiently summarized to disclose to the clients the level of work used to develop the appraisal.

6. It appears that Respondent was not geographically competent to complete the appraisal. His office is located nearly 200 miles from the subject property.

7. Although the Respondent reported that a head and shoulders inspection of the crawlspace was made, he failed to explain why a complete four corners inspection was not conducted, as required by FHA/HUD.

#### **NEIGHBORHOOD SECTION**

8. Factors that affect marketability were not adequately and reasonably described. Respondent failed to disclose that the Subject's parcel is not located within the city limits of Guthrie, OK, and that it is considered unincorporated Logan County, with a Guthrie mailing address only.

9. The neighborhood boundaries were not adequately and reasonably defined. Respondent reported the Subject neighborhood is bound on the North by Highway 33, on the East by Highway 99, on the South by Interstate 44, and on the West by Interstate 35. However, Highway 99, also known as Highway 377, runs north/south through Stroud, OK, a town located approximately 77 miles away.

### SITE/HIGHEST AND BEST USE

10. As described further, the site was not adequately identified or defined; the zoning was not adequately and accurately reported; and an opinion to the highest and best use was not provided.

11. A Property Condition Disclosure Statement, found in the Subject's Expired MLS Listing, indicated the Subject's driveway is shared by North and South parcel owners. However, no such disclosure was made in the appraisal, nor was any reporting found which specifies if there is a recorded shared driveway easement and/or what entity is responsible for maintenance.

12. The Subject's site dimensions, as reported in the appraisal were 900ft x 968ft (20 acres). However, the metes and bounds description found in Realist County Records clearly shows the dimensions are 660.85ft x 1331.78ft x 660.58ft x 1332.09ft, containing 20.202 acres. No explanation was made for this discrepancy.

13. The Subject zoning as reported in the appraisal was RR Rural Residential. However the Logan County website provided a letter from the County Commissioners Office which states there are no planning, zoning, permitting or inspection requirements in the unincorporated area of Logan County. Builders, property owners, and business operators are responsible to adhere to any federal, state or municipal requirements that may exist.

14. Although the appraisal included an opinion of Highest and Best Use, it lacked further explanation. For example, the inclusion of the following or similar comment would have been good practice: "The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible and that results in the highest value."

### **DESCRIPTION OF IMPROVEMENTS**

15. As described further, relevant characteristics of improvements, and any effect they have on value, were not adequately described; additionally, relevant conditions or depreciation factors that affect the improvements were not reported and analyzed.

16. The appraisal sketch of the Subject shows two detached garages and an unlabeled building, therefore it would appear there is a large barn, another building, and a 2 car detached garage. These were not reported in the improvements section.

17. The Subject property appears to be a double wide manufactured home, therefore likely contains two Manufacturers Serial Numbers, however the appraisal only provided one.

18. The Subject property contains a room addition. However, the sketch did not include interior walls from which the reader of the report could determine the functional utility (ingress/egress) of the addition.

19. According to the MLS printout and photos within the Subject's expired listing, the Subject property includes a free standing range/oven (personal property), however Respondent failed to discuss this issue.

20. The appraisal is an FHA appraisal, which requires areas such as porches and patios to be included in the sketch and labeled as covered or open, as well as location of the septic system and its proximity to the improvements be shown on the sketch. However, no such diagrams or disclosures were made.

### **COST APPROACH**

21. As described further, the site value was not developed by an appropriate appraisal method or technique; cost estimates were not analyzed and supported; Respondent did not identify and correctly analyze depreciation items; and the Respondent did not correctly employ recognized methods and techniques.

22. The Respondent failed to explain how the site value of \$40,000 was determined.

23. Respondent developed a "Reproduction Cost New" for the Subject, while "Replacement Cost New" is a more common method. This was not explained.

24. The indicated value by Cost Approach is \$152,593, however the Subject property appraised value was \$170,000, the variance of which was not explained.

25. Respondent reported the cost per foot new for the Subject was \$94.19, which seems high for a manufactured home.

26. Factors of depreciation were not correctly analyzed. For example, the Subject property contains a room addition, however the sketch did not include interior walls from which the reader of the report could determine the functional utility (ingress/egress) of the addition.

27. The Subject property contains a barn and storage building, per the appraisal, however no such improvements were included in the Cost Approach, nor was an explanation provided in support of their exclusion.

#### **SALES COMPARISON APPROACH**

28. The three sales and two listings range in distance from 3.47 to 27.55 miles, with the three sales being located 7.82, 3.56 and 3.47 miles respectively from the Subject parcel. The appraisal lacks explanation for the use of Listing 5, located 27.55 miles away, nor was there a comparative market analysis ("CMA") provided for Listing 5.

29. Sale three exceeds 12 months, and was not explained.

30. The data source for Comparables 1-4 is Zillow, while Listing 5 is MLS. However, no explanation was provided with regard to why Zillow was utilized rather than MLS for all of the comparables. Zillow does not provide "Terms or type of Sale" as does MLS. Zillow is not a commonly recognized and utilized data source

for Appraisers in Logan County since MLS is available.

31. The Gross Living Area adjustment of \$6.00 per foot seems inconsistent with \$94.19 per foot cited in the Cost Approach. This was not explained.

32. Respondent failed to clearly explain or support the Site, Age and GLA adjustments, and lack of adjustments for garage amenity.

33. Respondent failed to report days on market and cumulative days on market for the comparables. For example, this information was available in MLS, showing sales 1, 2 and 3 with 349, 0 and 16 days on market respectively.

34. Respondent failed to report Seller Concessions for the utilized sales. For example, MLS reported sale 1 had seller concessions of \$4,180, Sale 2 had \$5,500, and sale 3 had \$4,000.

35. Respondent failed to explain GLA discrepancies. For Sale 2, the MLS and County records show 1,800 square feet while Respondent reported 1,849 square feet. For the Subject property, County Records show 1,742 square feet while Respondent reported 2,072 square feet.

36. County records for Sale 1 reported site area of 2.49 acres, however the appraiser reported 2.59 acres. This was not explained.

37. Respondent failed to explain why no sales with same or greater site area were utilized. Additionally, it does not appear that the appraised value could have been reached without the application of unsupported, upward site adjustments.



38. The following alternate sales were found in OKCMARMLS, and contain from 30 to 70 acres. Despite being located 20 to 22 miles from the Subject, they are the most proximate large acreage Manufactured Home sales found in MLS. These sales are included only to show that there were site bracketing sales available, perhaps from which to provide one means of support for site adjustments:

A). 335884 E 950, Wellston, OK MLS 743970, Manufactured, 2624sf GLA, Built 2002, 30 acres, sold 04/27/2017, \$195,000.

B). 10960 N Macarthur, Crescent, OK MLS 755516, Manufactured, 1980sf GLA, Built 2010, 30.770 acres, sold 04/05/2017, \$230,000.

C). 10630 N Triple X Rd, Jones, OK MLS 732759, Manufactured, 1792sf GLA, Built: 2004, 70.00 acres, sold 12/01/2016, \$247,000.

39. The photographs for Respondent's Comparables 1-4 are from MLS. However, Respondent failed to disclose why live photos were not obtained when Respondent apparently physically inspected them from the street.

40. Respondent's appraised value was not reconciled. For example, Sales 1, 2 and 3 were adjusted at \$171,472, \$159,238 and \$127,568 respectively. However, the report lacked support for the final value conclusion of \$170,000.

#### **INCOME APPROACH**

41. The report did not have any comment which explained why the Income Approach to Value was excluded.

## FINAL RECONCILIATION

42. Quality and quantity of data was not adequately reconciled. For example, the Appraiser utilized Zillow as the Sales data source, and failed to explain why the most commonly utilized data source (MLS) was excluded. The Respondent failed to report days on market and seller concessions for the Sales, while this information was available in MLS. GLA discrepancies were not explained in the appraisal.

43. Availability and suitability of the value approaches were not adequately reconciled. For example, the Cost Approach To Value, developed in the OAR, did not include the Subject's outbuildings, and it lacked support for the site value.

44. The appraisal results were not conveyed in an appropriate manner. For example, the extent of the report deficiencies outlined above are such that the appraisal cannot be clearly understood by the reader.

45. Respondent does not appear to understand the Appraisal Process, as evidenced by the extent of the report deficiencies outlined above.

46. Due to the extent of report deficiencies, the clients and intended users cannot rely on it in order to understand the report properly.

47. Salient and actual data was not consistently reported and analyzed. For example, Subject site area was incorrectly reported in the appraisal, while the correct dimensions are within the legal description. Gross living areas were available in

County Records, however the GLA discrepancies found in the appraisal were not explained.

**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, 1-5, and 1-6; and 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)(13) in that Respondent violated 59 O.S. § 858-732(A)(1): "An appraiser must perform ethically and competently and not engage in conduct that is unlawful, unethical or improper. An appraiser who could reasonably be perceived to act as a disinterested third party in rendering an unbiased real property valuation must perform assignments with impartiality, objectivity and independence and without accommodation of personal interests."

6. That Respondent has violated 59 O.S. § 858-723(C)(5): "An act or omission involving dishonesty, fraud, or misrepresentation with the intent to substantially benefit the certificate holder or another person or with the intent to substantially injure another person."

7. 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.<sup>1</sup>

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

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

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

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

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<sup>1</sup> Currently the next Board meeting is scheduled for 9:30 a.m. on March 6.

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 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 sixty (60) days from the date the Consent Order is approved by the Oklahoma Attorney General. Should the courses not be offered within the first sixty days (60), the Respondent shall advise the Board and shall be granted an extension of time to complete the course work. The courses to be taken are:

- a) Course #611: Residential Market Analysis and Highest and Best Use (no CE credit given); and

b) Course #614: Residential Report Writing and Case Studies (no CE credit given).

2. Respondent shall pay costs of \$750, to be paid within thirty (30) days of the Final Order, pursuant to 59 O.S. §858-723.

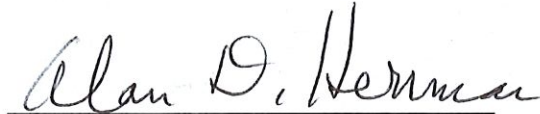
3. Respondent shall be placed on **PROBATION** for a period of an **additional** six months (for a total of eighteen (18) months beginning immediately upon the date he timely completes the two courses listed in paragraph one of this section and those required pursuant to Board Order 18-018. During the period of probation, Respondent shall provide an appraisal log on REA Form 3 to the administrative office of the Board no later than the fifth (5<sup>th</sup>) 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.

4. Respondent's license shall remain suspended until all requirements are completed successfully.

### **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:



ALAN D. HERRMAN

1-31-2019  
DATE

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**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 56<sup>th</sup> Street, Suite 100  
Oklahoma City, Oklahoma 73112

1-31-2019  
DATE


IT IS SO ORDERED on this 1<sup>st</sup> day of February, 2019.



ERIC SCHOEN, Board Secretary  
Oklahoma Real Estate Appraiser Board



**OKLAHOMA REAL ESTATE  
APPRAISER BOARD**

By:   
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**BRYAN NEAL**, OBA #6590  
Assistant Attorney General  
Attorney for the Board  
313 NE 21<sup>st</sup> Street  
Oklahoma City, Oklahoma 73105

**CERTIFICATE OF MAILING**

I, Kayla Dekat, hereby certify that on the 21 day of February, 2019 a true and correct copy of the above and foregoing Consent Order was placed in the U.S. Mail, with postage pre-paid, by certified mail, return receipt requested to:

**Alan Herrman**  
PO Box 30571  
Edmond, OK 73003

**9214 8902 0982 7500 0175 94**

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. 21<sup>st</sup> Street  
Oklahoma City, OK 73105

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

  
KAYLA DEKAT



RECEIVED  
OKLAHOMA INSURANCE DEPT.

FEB 21 2019

OFFICE OF ATTORNEY GENERAL  
STATE OF OKLAHOMA

Real Estate Appraiser Board

ATTORNEY GENERAL OPINION  
2019-64A

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

February 20, 2019

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 pursuant to a consent order with respect to licensee 12561CRA. The licensee performed an appraisal that failed to meet the required standards. Additionally, the licensee was previously disciplined by the Board (*See* A.G. Opin. 2018-410A); the licensee failed to comply with the requirements of that order. The Board proposes to suspend the license until the licensee completes the requirements of the previous order and require the licensee to complete 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.2018, § 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.

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