

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

In the Matter of DARRYL L. ROSS,) Complaint #17-048
Respondent.)

CONSENT ORDER

COMES NOW the Oklahoma Real Estate Appraiser Board (“OREAB”), by and through the Prosecuting Attorney, Stephen McCaleb, and the Respondent DARRYL L. ROSS, by and through his attorney Richard Morrissette, and enter into this Consent Order pursuant to Oklahoma Statutes Title 59 §858-700, et seq. and Oklahoma Administrative Code 600:10-1-1, et seq. All sections of this order are incorporated together.

AGREED FINDINGS OF FACT

1. In October of 2017, Respondent was hired to complete an appraisal (the “appraisal”) for a property located at 12509 Lexington Drive, Oklahoma City, OK 73173 (the “subject”). Respondent completed the appraisal with an effective date of 10/06/2017.

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

3. The Intended Use reported in the Appraisal was for a mortgage finance transaction; however the front page of the Appraisal indicates the use as "Other

(describe) PMI deletion.” Although the “PMI Deletion” may involve a revised mortgage finance transaction, it would have been good appraisal practice to clearly specify "PMI Deletion" as the Intended Use.

4. MARKETABILITY FACTORS NOT ADEQUATELY DESCRIBED:

The report indicates 100-percent One Unit Land Use within the described neighborhood boundaries, while the Oklahoma City Zoning Map shows the West half of the neighborhood boundary is comprised of AA Agricultural, with AE-2 Airport Environs Zone 2 zoning overlay. Approximately 75-percent of the East half (the Subject's mile section) is zoned I-2 Moderate Industrial with AE-2 Airport Environs Zone 2 zoning overlay.

5. NEIGHBORHOOD VALUES NOT ADEQUATELY DESCRIBED:

The predominant neighborhood value reported in the report was \$187,000, however a 12 month Comparative Market Analysis (“CMA”) was completed for the described neighborhood boundaries which revealed a median neighborhood value of \$209,795 and an average of \$233,203.

6. The report only checked the "Yes" box for Highest and Best Use, however, the Appraisal failed to provide commentary.

7. RELEVANT CHARACTERISTICS NOT ADEQUATELY DESCRIBED: The Respondent reported that the Subject's attic space was finished out to living area since original construction, however Respondent failed to verify a

building permit, and did not clearly disclose or analyze the second kitchen on the upper level. Additionally, the sketch in the report failed to show the upper level bathroom. Considering that a typical reader of this report might possibly conclude that the upper level of the Subject property could be utilized as a separate living unit (such as an In-Law Suite, rental unit, etc.), it would have been good practice to have included a more thorough description.

8. Respondent failed to comment on why the Subject's Gross Living Area ("GLA") is the same as that reported by the County Assessor. Was the house actually measured by Respondent, or taken from a County Assessor diagram? The Grievance provided a Restricted Appraisal by an OK Cert Residential Appraiser, which revealed a GLA of 3,992sf, and slightly different footprint and measurements.

9. Although the Subject property was built in 2011, over 5 years of age, the recent substantial size second level finished attic addition should have prompted Respondent to complete the Cost Approach, as the addition may have affected the overall effective age, and/or created conditions which had an effect on marketability.

10. The Subject's second kitchen could be considered functionally obsolete or otherwise a super-adequate or atypical attribute for the market, however no such commentary or analysis was provided in the Appraisal, nor did any of the utilized Sales appear to have two kitchens.

11. The Site Value in the Cost Approach was reported to have been estimated by recent sales in the area, and the extraction method, however no comparable sales were provided, nor was the "Extraction Method" explained.

12. The Sale Verification source reported in the Appraisal's page 2 of 6 for the utilized Sales was "County Assessor", however this is not considered an acceptable Verification source. The inclusion of "Book/Page" numbers may have been better appraisal practice.

13. The upward \$10,000 condition adjustment applied to Sale 3 was not adequately supported. The Addendum commentary only reported that the difference between C2 condition and C3 is \$10,000, however, no further explanation was given. The MLS interior photos for Sale 3 revealed similar conditions as the Subject.

14. The Subject may not necessarily be the largest home in the subdivision, however its larger size may have had a negative effect on marketability, as evidenced by Sale 3, the most similar to the Subject in size, however sold for so much less per foot (\$94.11 vs Sales 1 and 2 at \$115.16 and \$127.24 per foot respectively). Considering that County record indicates Sale 3 has 2,819 square feet ("sf") while MLS reports 4,112 sf per the appraisal, this property likely has a finished attic addition, like the Subject. The larger size of Sale 3 may have had an adverse effect on its marketability, especially since the median home size in the Subject's subdivision is approximately 1,700sf. Sale 3 was originally listed on 07/02/2016 for

\$469,000, revised downward four times until expired on 12/09/2016 at \$439,000 (149 days). The property was re listed on 02/08/17 for \$435,000, then revised downward 24 times before it contracted on 06/19/17 (128 days) while priced at \$399,985. This strongly suggests that there was likely to have been a condition associated with Sale 3 which caused market rejection to its higher prior list prices.

15. Two of the three Sales have substantially larger site area, not explained.

16. There were no MLS reported Sales which were more recent or proximate than those utilized in the Appraisal. Although the Subject has 5 bedrooms, it is likely there is no measurable market differentiation between bedroom count in the development. MLS commentary reports Sale two has 5 bedrooms rather than 4 reported in the Appraisal.

17. Note that Listing 4 sold for \$310,000, 12 days after the Appraisal's effective date, \$40,000 below its list price. Although this sale closed after the Subject's appraisal date, it suggests further evidence of Market Rejection to the larger homes in this subdivision, and perhaps indicates a site adjustment was lacking on Sales 1-3.

18. The exclusion of the income approach was not supported.

19. The appraisal results may not have been conveyed in an appropriate manner, with regard to the lack permit verification for the second story addition, lack of analysis of the second kitchen amenity, and the Appraisal's lack of description

about the ingress/egress of the second story addition which appears could be utilized as a separate living unit.

20. Respondent may not understand the Appraisal Process as it relates to functional obsolescence which may be present in the second kitchen, and the possible market rejection to or unwillingness to pay fair costs for a large home (3,763sf) located in an area of predominantly much smaller homes (1,700sf).

21. Considering the subject's floorplan being altered since original construction, and the possible presence of functional obsolescence, the Appraisal should have developed the Cost Approach.

22. The condition adjustment applied to Sale 3 was unsupported, as evidenced by its MLS interior photos which revealed similar condition as the subject. The fact that Sale 3 adjusted lower than Sales 1 and 2 suggests that it suffered market rejection to its large size (finished attic, like the subject), rather than inferior in condition.

23. Following appropriate condition and site adjustments, and giving most weight to Sale 3 due to the likelihood of having a similar finished attic addition (based on its GLA discrepancy), the Appraisal's final conclusion is not supported.

AGREED CONCLUSIONS OF LAW

1. That Respondent has violated 59 O.S. § 858-723(C)(6) through 59 O.S.

§858- 726, in that Respondent violated:

- A) The Ethics Rule and the Conduct Section of the Uniform Standards of Professional Appraisal Practice Ethics Rule;
- B) The Competency Rule of the Uniform Standards of Professional Appraisal Practice;
- C) The Scope of Work Rule of the Uniform Standards of Professional Appraisal Practice;
- D) The Record Keeping Rule of the Uniform Standards of Professional Appraisal Practice;
- E) Standard 1, Standards Rules 1-1, 1-2, 1-3, 1-4, and 1-6; Standard 2, Standards Rules 2-1, and 2-2 of the Uniform Standards of Professional Appraisal Practice. These include the sub sections of the referenced rules.

2. That Respondent has violated 59 O.S. § 858-723(C)(7): "Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal."

3. That Respondent has violated 59 O.S. § 858-723(C)(6): "Violation of any of the standards for the development or communication of real estate appraisals as provided in the Oklahoma Certified Real Estate Appraisers Act."

CONSENT AGREEMENT

The Respondent, by affixing his signature hereto, acknowledges:

1. That Respondent has been advised to seek the advice of counsel prior to signing this document.

2. That Respondent possesses the following rights among others:

- a. the right to a formal fact finding hearing before a disciplinary panel of the Board;
- b. the right to a reasonable notice of said hearing;
- c. the right to be represented by counsel;
- d. the right to compel the testimony of witnesses;
- e. the right to cross-examine witnesses against him; and
- f. the right to obtain judicial review of the final decision of the Board.

3. The Respondent stipulates to the facts as set forth above and specifically waives his right to contest these findings in any subsequent proceedings before the Board and to appeal this matter to the District Court.

4. The Respondent consents to the entry of this Order affecting his professional practice of real estate appraising in the State of Oklahoma.

5. The Respondent agrees and consents that this Consent Order shall not be used by him for purposes of defending any other action initiated by the Board regardless of the date of the appraisal.

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

7. Respondent acknowledges this will be placed on the Board's agenda for its next monthly meeting after receipt of the executed Order from Respondent, and notice for the Order's placement on that agenda is accepted.¹

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

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

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

11. This Consent Order contains the entire agreement between the parties hereto and all provisions of this Consent Order are contractual and not a mere recital. The Parties acknowledge that no presentation or promise not expressly set forth in this Consent Order has been made by any 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

¹ Currently the next 2019 Board meeting is scheduled for 9:30 a.m. on March 1.

a matter of law, the remainder of the Consent Order shall remain in full force and effect.

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

13. The undersigned Respondent agrees that presentation of this Consent Order to the OREAB without the undersigned Respondent being present shall not constitute an improper *ex parte* communication between the OREAB and its counsel.

14. The Parties represent and warrant to one another that each party has authority to enter into this binding Consent Order. The OREAB represents and warrants that the undersigned have full authority to execute this Consent Order on behalf of the OREAB and bind the OREAB to the terms set forth herein.

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

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

CONSENT ORDER TO BE ACCEPTED OR REJECTED BY THE BOARD

The Oklahoma Real Estate Appraiser Board will not submit this Consent Order for the Board's consideration until its agreement and execution by the Respondent(s). It is hereby agreed between the parties that this Consent Order shall be presented to the Board with recommendation for approval of the Board at the next scheduled meeting of the Board. The Respondent understands that the Board is free to accept or reject this Consent Order and, if rejected by the Board, a formal hearing on the complaint may be held. If the Board does not accept the Consent Order, it shall be regarded as null and void. Admissions by Respondent in the rejected Consent Order will not be regarded as evidence against him/her at the subsequent disciplinary hearing. Respondent will be free to defend himself and no inferences will be made from his willingness to have entered this agreement. It is agreed that neither the presentation of the Consent Order nor the Board's consideration of the Consent Order will be deemed to have unfairly or illegally prejudiced the Board or its individual members and therefore will not be grounds for precluding the Board or any individual Board member from further participation in proceedings related to the matters set forth in the Consent Order.

- **THIS CONSENT ORDER IS NOT EFFECTIVE UNTIL ITS APPROVAL BY A MAJORITY OF THE BOARD AND THE APPROVED ORDER RECEIVES A SUBSEQUENT ENDORSEMENT (“SIGNATURE”) BY A REPRESENTATIVE OF THE BOARD. THE EXECUTED ORDER IS THEN SUBJECT TO A WRITTEN ANALYSIS BY THE OKLAHOMA ATTORNEY GENERAL’S OFFICE.**

ORDER

WHEREFORE, on the basis of the foregoing Agreed Findings of Fact and Agreed Conclusions of Law, it is ordered and that:

1. Respondent agrees that he will successfully complete, pass the test, and provide proof of completion and passing of the tests to the Board’s office for the following corrective education courses within 90 days from the date the Consent Order is approved by the Oklahoma Attorney General. The courses to be taken are:

- a) Course #611: Residential Market Analysis & Highest and Best Use – 15 hours;
 - b) Course #612: Residential Site Valuation and Cost Approach - 15 hours; and
 - b) Course #613: Residential Sales Comparison & Income Approach – 30 hours (continuing education credit given for this course).
2. Respondent shall pay costs of Five Hundred Thousand Dollars (\$500),

to be paid within thirty (30) days of the Final Order, pursuant to 59 O.S. §858-723.

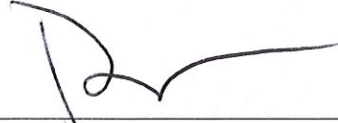
3. Respondent shall be placed on **PROBATION** for a period of **ONE HUNDRED EIGHTY (180) DAYS** beginning immediately upon the date he timely completes the three courses listed in paragraph one of this section. During the period of probation, Respondent shall provide an appraisal log on REA Form 3 to the administrative office of the Board no later than the fifth (5th) ~~working~~ *cm* 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. Failure to comply the preceding paragraphs in a timely manner will result in an instanter suspension of Respondent's license. For good cause, an extension may be granted by the Board. An application for an Extension of Time should be filed at least five business days in advance of the Board meeting to be placed on a Board meeting agenda in advance of the deadline to comply with this Consent Order.

DISCLOSURE

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

RESPONDENT:



DARRYL L. ROSS

2-4-19

DATE



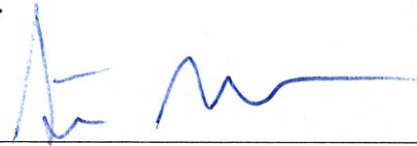
RICHARD MORRISSETTE
ATTORNEY FOR RESPONDENT

2-5-19

DATE

CERTIFICATE OF BOARD PROSECUTING ATTORNEY

I believe this Consent Order to be in the best interests of the Oklahoma Real Estate Appraiser Board, the State of Oklahoma and the Respondent with regard to the violations alleged in the formal Complaint.



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

3-1-19

DATE

IT IS SO ORDERED on this 1st day of March, 2019.



ERIC SCHOEN, Board Secretary
Oklahoma Real Estate Appraiser Board

**OKLAHOMA REAL ESTATE
APPRAISER BOARD**



By:

A handwritten signature in blue ink, appearing to read "Bryan Neal", written over a horizontal line.

BRYAN NEAL, OBA #6590

Assistant Attorney General

Attorney for the Board

313 NE 21st Street

Oklahoma City, Oklahoma 73105

CERTIFICATE OF MAILING

I, Kayla Dekat, hereby certify that on the 18th day of March, 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:

Darryl L. Ross
17325 Valley Crest
Edmond, OK 73012-6771

9214 8902 0982 7500 0186 45

Richard Morrissette
Morrissette Law Firm
7204 S. Pennsylvania Ave.
Oklahoma City, OK 73159

9214 8902 0982 7500 0186 52

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


KAYLA DEKAT



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

RECEIVED
OKLAHOMA INSURANCE DEPT.

MAR 14 2019

Real Estate Appraiser Board

ATTORNEY GENERAL OPINION
2019-146A

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

March 14, 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 12610SLA. The licensee performed an appraisal that failed to meet the required standards. The Board proposes to require the licensee to complete three corrective education courses and pay costs of \$500. Once the three courses are complete, the license will be placed on probation for six months.

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.

MIKE HUNTER
ATTORNEY GENERAL OF OKLAHOMA

AMANDA OTIS
ASSISTANT ATTORNEY GENERAL