

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

In the Matter of LEWIS C. SIMMS,)	
)	
Respondent.)	Complaint #10-060

**BOARD'S DECISION ON
DISCIPLINARY HEARING PANEL RECOMMENDATION**

ON THE 8th day of July, 2011, the above numbered and entitled cause came on for hearing before the Oklahoma Real Estate Appraiser Board (the "Board"). The Board was represented by a Disciplinary Hearing Panel consisting of three members, J. Pat McGlamery, Michael C. Prochaska and Frank E. Priegel, Jr., that held a hearing on May 17, 2011. J. Pat McGlamery was elected and served as Hearing Panel Chairman. 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. The Respondent, Lewis C. Simms appeared pro se after having been mailed a copy of the Notice of Disciplinary Proceedings and Appointment of Hearing Panel by certified mail with return receipt requested pursuant to the Oklahoma Certified Real Estate Appraiser Act, 59 O.S. § 858-718, and the Oklahoma Administrative Procedures Act, 75 O.S. §§250-323.

A Request for Oral Argument was not filed by the Respondent, Lewis Simms, and no oral argument was given.

The Board, being fully advised in the matter, makes the following Order adopting the Panel's Recommendation.

JURISDICTION

1. That 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. That the proceedings were conducted in accordance with the Oklahoma Real Estate Appraiser Act, 59 O.S. § 858-700 *et seq.*, and the Oklahoma Administrative Procedures Act, 75 O.S., § 301-323.

3. That Respondent, LEWIS C. SIMMS, is a Certified Residential Real Estate Appraiser in the State of Oklahoma, holding license number 12259CRA and was first credentialed with the Oklahoma Real Estate Appraiser Board on April 13, 2000.

FINDINGS OF FACT

The Board adopts in full the findings of the Hearing Panel that the following facts were proved by clear and convincing evidence.

1. That Respondent, LEWIS C. SIMMS, is a Certified Residential Real Estate Appraiser in the State of Oklahoma, holding license number 12259CRA and was first credentialed with the Oklahoma Real Estate Appraiser Board on April 13, 2000.

2. On or about June 28, 2007, American Home Loans (the "client") engaged Respondent to complete an appraisal on the subject property (the "appraisal"), located at Route 1 Box 97, Comanche, Oklahoma (the "subject property"). The subject property is an A-Frame house.

3. The appraisal report states, in the Appraiser's Certification, that the appraisal was developed and the report prepared in conformity with the Uniform Standards of Professional Appraisal Practice.

4. The date of appraised value was reported as July 10, 2007. Respondent reported a final estimate of value as One Hundred Forty Two Thousand Dollars and 00/100 (\$142,000.00). The property assignment was for a purchase transaction. The report was submitted to the client.

5. Errors were committed in the report; these errors include but are not limited to the following paragraphs.

6. Respondent reported that he utilized MLS as a data source, but he failed to include information in his report contained within MLS. Respondent failed to report that comparable 1 had an in-ground pool and a cottage or mother-in-law quarters, which said quarters, upon information and belief, is used as a rental unit. Respondent failed to adjust for either of these amenities. Comparable 1 does not appear to be truly comparable to the subject property due to the presence of the above-mentioned amenities. Respondent admitted that he missed the in-ground pool.

7. Respondent made a positive site adjustment of \$4,700 for comparable two despite the higher land values in comparable two's area (6.8 miles away from the subject). Thus, any sort of adjustment should have been a negative adjustment. Respondent admitted that this should have been a negative adjustment.

8. Respondent's comparable four has 11.85 acres as verified by the assessor's data sheet but Respondent reported it as having 5 acres.

9. Respondent's opinion of site value was reported as \$10,000 and provided no analysis or support for the value.

10. Respondent failed to adjust for an attached "Florida Room" under the Sales Comparison Approach. Respondent also failed to adjust for a detached second shop building.

11. Respondent incorrectly reports that the specific zoning classification is rural/agricultural and that the zoning compliance is legal. Respondent admitted that the subject property is in an area that is not zoned.

12. The subject property was listed for seventy (70) days at a price of \$124,000 and ultimately sold for \$118,000. Respondent did not analyze or explain why his opinion of market value was \$18,000 over the list price and \$24,000 over the sale price.

13. The Respondent admitted that he had assistance in preparing this appraisal report by a trainee appraiser named Hahn Ko. The Respondent admitted that Mr. Ko did not sign the appraisal report and that Mr. Ko's assistance was not disclosed. The Respondent

further admitted that he performed eighty percent (80%) of the appraisal and Mr. Ko performed twenty percent (20%) of the appraisal.

14. The Respondent testified that he was Mr. Ko's trainee supervisor and that the Board had approved of the Respondent serving as Mr. Ko's supervisor. However, records maintained by the Board do not support the Respondent's testimony.

15. Credible testimony was received from Ms. Barbara Beebe that the trainee appraiser Hahn Ko's wife was an employee of American Home Loans, the client who engaged Mr. Simms for the assignment.

CONCLUSIONS OF LAW

The Board adopts in full the conclusions of law entered by the Hearing Panel:

1. That Respondent has violated 59 O.S. § 858-723(C)(6) through 59 O.S. §858-726, in that Respondent violated:

A) 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, Section 2;

C) Standards Rules 1, 1-1, 1-4, 1-5, 2 and 2-1 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)(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."

3. 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."

4. 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."

5. 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 or the regulations of the Board for the administration and enforcement of the provisions of the Oklahoma Certified Real Estate Appraisers Act."

6. 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."

RECOMMENDED DISCIPLINE

WHEREFORE, the Board having adopted in full the Findings of Fact and Conclusions of Law as set forth above, sets for the following Final Order adopting the Recommendation of the Hearing Panel.

1. Respondent be placed on probation for a period of **ONE (1) YEAR** beginning on the effective date of the Board's final order in this matter during which period Respondent will submit a log of all of his appraisals to the administrative office of the Board not later than the fifth day of each month and will provide copies of any appraisal reports and work files upon request of the Board during the period of probation.

2. That Respondent shall pay costs in the amount expended by the Board for prosecution of this matter. The Board's Director shall furnish Respondent with an itemized statement of such costs as soon as possible following issuance of the final Board order in this matter. Costs shall be remitted to arrive in the Board's administrative office within thirty (30) days

following receipt of such itemized statement. Payment of such costs shall be made in the manner contemplated by 59 O.S. § 858-723 (B) (2) and (4).

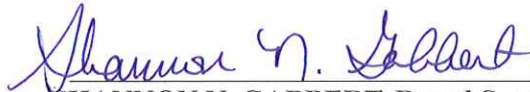
3. Respondent shall be prohibited from being a supervisor for a period of **ONE (1) YEAR** from the date that any final order in this matter is entered.

4. Should Respondent fail to comply with any of the terms and conditions set forth in the order, the Board's Director shall suspend Respondent's appraiser credential instantly; shall immediately notify the Respondent of said suspension by certified mail, return receipt requested; and shall immediately notify the National Registry of such suspension; and the credential shall remain suspended until such time as Respondent is in full compliance.

THE BOARD WISHES TO ADVISE THE RESPONDENT THAT HE HAS THIRTY (30) DAYS TO APPEAL THIS ORDER WITH THE APPROPRIATE DISTRICT COURT.

IT IS SO ORDERED THIS 8th day of July, 2011.




SHANNON N. GABBERT, Board Secretary


BRYAN NEAL, Assistant Attorney General
Counsel to the Board

CERTIFICATE OF MAILING

I, Christine McEntire, hereby certify that on the 13 day of July, a true and correct copy of the above and foregoing Disciplinary Hearing Panel Recommendation was placed in the U.S. Mail by certified mail, return receipt requested to:

Lewis C. Simms
P.O. Box 11843
Oklahoma City, Oklahoma 73136

7010 3090 0000 3334 5215

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

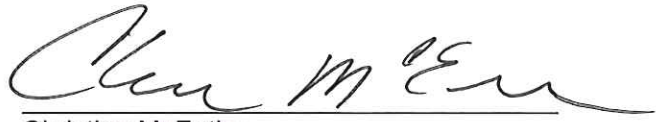
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