

his address in OAC 600: 10-1-9, she transmitted another copy of the Notice to the Respondent by regular U.S. Mail under cover of a letter dated April 4, 2012, which letter expressly noted the scheduled hearing date of April 30, 2012 at 9:30 a.m., together with an attached copy of a USPS Track and Confirm Receipt showing that the original Notice was delivered to the Respondent's P.O. Box on March 22, 2012 (Board's Exhibit 4), which Exhibit 4 was admitted into evidence. The Board's Director further testified that she left a voicemail with the Respondent by phone when the Respondent called her about the Notice he received confirming that the Respondent was actually informed of this proceeding via the Notice (and their telephone discussion) and that she received an e-mail from the Respondent on Friday April 13, 2012, at 3:56 p.m. regarding the Notice to which she responded the following Monday April 16, 2012, by e-mail (due to the Board's office being closed early on April 13, 2012, at 3:30 p.m. due to some severe weather occurring in the area that day) noting an earlier phone call message from the Respondent during the week of April 9, 2012, that she returned the same day without success, a copy of which e-mail exchange was admitted into evidence as the Board's Exhibit 5. Still further and while under oath, the Board's Director testified that as of the date and time of the scheduled hearing, she had not heard from the Respondent by telephone or otherwise as to whether the Respondent would or would not appear for hearing and no Motion for a Continuance had been filed in this matter.

Neither party to these proceedings requested that a court reporter record this matter. No proposed findings of fact were submitted to the Board by either party to these proceedings.

The Board's Prosecutor indicated that as of the date and time of the scheduled hearing, he had received no word from the Respondent as to whether the Respondent would or would not appear for hearing.

The Hearing Panel was informed by the Board's prosecutor that he could proceed with this matter either as a Default due to the absence of the Respondent or proceed with presenting his full case in chief against the Respondent by presenting witnesses and evidence. The Board's prosecutor chose to present his case in chief against the Respondent. The Board was satisfied that the Respondent had received the Notice based upon the information it received and proceeded with the hearing.

The Board's prosecutor presented two witnesses in support of the case against the Respondent: Grievant and field review appraiser Betty Jo Cagle, a certified residential appraiser licensed as 10179CRA, of Oologah, Oklahoma, who filed this matter in her own capacity as an independent contractor and not on behalf of her client in this matter and Donald Justice, a certified general appraiser licensed as 10188CGA, of Watonga, Oklahoma. In addition to the two (2) exhibits admitted earlier in this proceeding referred to previously (Board's Exhibits 4 and 5), the Board's prosecutor moved for the admission of three (3) exhibits for the Board (Board's Exhibits 1, 2 and 3, respectively) to which there was no objection and all three such Board exhibits were admitted into evidence.

Being duly sworn, Ms. Cagle testified that she has some thirty (30) years of experience as an appraiser, that she is a Uniform Standards of Professional Appraisal Practice ("USPAP") Instructor and that she prepared and filed the written grievance (including her written appraisal review report for her client attached thereto as well as the Respondent's appraisal report on the subject property) with the Board in this matter in her personal capacity and not on behalf of her client Adfitech, an appraisal management company (Board's Exhibit 2). A copy of the grievance was admitted into evidence as Board's Exhibit 2. The Board's Exhibit 1 was identified as the Respondent's appraisal report by Ms. Cagle, a copy of which appraisal report was attached to her written grievance, and the Board's Exhibit 3 was identified by Ms. Cagle as the Respondent's work file for his appraisal report. Ms. Cagle further testified that as she lives in Oologah, Oklahoma, she does appraise real property in the Tulsa area as well as other parts of northeastern Oklahoma, as an appraiser and a review appraiser. Ms. Cagle testified that she performed a review appraisal for her client, completed her review appraisal and then on her own determined to file a grievance herein.

Donald Justice, being duly sworn, testified that as he lives in Watonga, he does not appraise real property in the Tulsa area and that he is not an economic competitor of the Respondent. Further Mr. Justice testified that, he was a member of the Probable Cause Committee in this matter and in such capacity having read the Respondent's appraisal report on the subject property, he concluded that said appraisal report was misleading and had an inflated value.

No Request for Oral Argument was filed by Respondent, Russell McIntosh, nor did Mr. McIntosh appear at the Board meeting at which the Board voted to make its recommendation.

The Board, being fully advised, makes the following Order adopting in full the Recommendation of the Hearing Panel:

JURISDICTION

1. The Oklahoma Real Estate Appraiser Board has jurisdiction of this cause, pursuant to the provisions of the Oklahoma Certified Real Estate Appraisers Act as set forth at Title 59 of the Oklahoma Statutes, §§858-700, *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 proceedings herein were conducted in accordance with the provisions of the Oklahoma Certified Real Estate Appraisers Act, 59 O.S. § 858-700 *et seq.*, the Oklahoma Administrative Procedures Act, 75 O.S. §§ 301-323, and as set forth at the Oklahoma Administrative Code, §§600:15-1-1 thru 600:15-1-22.

3. Respondent RUSELL S. McINTOSH is a state certified residential appraiser in the State of Oklahoma, holding credential number 10420CRA and was first licensed with the Oklahoma Real Estate Appraiser Board on January 13, 1992.

FINDINGS OF FACT

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

1. Respondent RUSELL S. McINTOSH is a state certified residential appraiser in the State of Oklahoma, holding credential number 10420CRA and was first licensed with the Oklahoma Real Estate Appraiser Board on January 13, 1992.

2. On or about February 8, 2011, BOKF, NA dba Bank of Oklahoma, (the “client”) hired Respondent to complete an appraisal report (the “appraisal”) for a property located at 20512 East 32nd Street South, Broken Arrow, Oklahoma (the “subject property”).

3. The Respondent derived an opinion of value of \$226,000.00 on the subject property. He reports that his data source was Multi Listing Service (“MLS”) and court house records. The Respondent represented that he performed an interior and exterior viewing of the subject property.

4. Respondent’s neighborhood comments are “canned” and not unique to the subject neighborhood. Nowhere in the appraisal is it mentioned about the subject property is located in a planned unit development (“PUD”) and the PUD amenities.

5. In the site section of the appraisal, zoning was incorrectly stated as medium residential density rather than A-1 Agricultural zoning as provided by Reviewer and Grievant Betty Cagle on page 64 of Board’s Exhibit 2 (Zoning Map of the subject property).

6. In the improvements section of Respondent’s appraisal, there is no information reported advising the reader of the subject property’s additional features, if any (Board’s Exhibit 2, page 5). MLS states some of the new homes in the area have granite counter tops and marble backsplashes. There are no additional features mentioned in the appraisal therefore there is no frame of reference for the reader. This makes it difficult to make adjustments for quality.

7. Respondent did not use any sales from the immediate area or from the other subdivisions located within one mile of the subject, or properties from the Respondent’s comparative market analysis (“Respondent’s CMA”) from the Respondent’s work file which was not analyzed or utilized. Further, Respondent failed to make appropriate location adjustments for Comparables 1 and 2. Comparables were available from the same square mile as the subject, but Respondent failed to use them as evidenced by Board’s Exhibit 2, page 65. The subject is new construction. None of the comparable sales are from the subject’s immediate area. There are several sales in MLS located in the subject’s immediate area; therefore it was not necessary to go outside the market area for sales. Respondent’s Comparables 1 and 2 are both located in an area with higher values, per MLS. Per MLS, the range of values in the Highlands of Forest Ridge range from \$140,000 to \$288,500 with an average of \$199,375. This is \$17,870 or ten percent (10%) more than in the subject’s area. Comparable 3 is located in the Catoosa School District

rather than the Broken Arrow District as is the subject property. This comparable sale contains 4.6 acres compared to the subject site of 7200 square feet (sf) which appeals to a different market segment. Typically one would not use a sale on acreage on an appraisal with a dwelling on a small lot, unless there is a shortage of sales. There were other sales to use from nearby competing areas with similar size lots.

8. Comparable No. 1: According to the comparative market analysis from MLS, the sales in this area sell for \$17,870 more than the subject's immediate area. Respondent failed to make a location adjustment. Per MLS and the mortgage (recorded in Book 1984, Page 674 of the records of the county clerk), the property sold via FHA and was not a conventional sale as indicated in the appraisal, was dated June 1, 2010, and the deed was filed with the county on June 7, 2010. Respondent incorrectly reports the date of sale on his appraisal as August 4, 2010. The site dimensions are 75 x 121.19 x 75.83 x 132.29 for a total site area of approximately 9,559 square feet, and not 8,300 square feet as written on Respondent's appraisal. Per MLS, the dwelling has only two baths; there is no half bath as Reported by Respondent. The dwelling was completed in 2009, is a new home built by Terry Davis and was never occupied.

9. Comparable No. 2: Respondent's comparable 2 is located in the same area as comparable 1. The accurate sale date is July 22, 2010, and the deed was filed with the county on July 22, 2010. Respondent incorrectly reports that the sale date was July 28, 2010. MLS shows the site area to be 10,500 square feet. The site is one of the larger ones in the subdivision. The site dimensions are 51.09 x 153.91 x 74.02 + 40.12 x 100.52 + 96.91 (corner lot). Respondent incorrectly reports that the property has 8,700 ± sf. According to MLS, the dwelling is four years old (built in 2006), not two years old as reported by Respondent. Further, according to MLS, the dwelling does not have a half-bath, as reported on the appraisal.

10. Comparable No. 3: The closing date listed in MLS is August 12, 2010, and the deed was filed with the county on August 19, 2010. Respondent incorrectly reports that the sale occurred on September 1, 2010. Per MLS, the comparable sale was four (4) years of age, built in 2006, was 2204 sf, had a two-tiered deck, complete outdoor kitchen and is located in the Catoosa School District. The

Respondent reported that the property was one (1) year old, was 2250 sf and had a covered patio. The Respondent did not disclose the two-tiered deck, the outdoor kitchen or that it was located in a different school district. Respondent reports that the dwelling has a shop. MLS states the dwelling has a three car garage, but says nothing about a shop.

11. Listing No. 1: MLS shows this property as pending as of September 8, 2010, but the property actually closed on October 7, 2010, and the deed was filed with the county on October 25, 2010, as documented by the Respondent's CMA (Board's Exhibit 3, page 43). Accordingly, this property was not a listing at the time of Respondent's report and should not have been reported as such. The site is 70 x 120 for a total site area of 8,400 square feet, not the 7,300 square feet as reported on the appraisal. The listed property has a fence, security system and sprinkler system. Respondent did not disclose or adjust for these amenities on his grid. The dwelling is seven years old (built in 2003) with two (2) baths, not 3 years old with two and one-half (2 1/2) baths as reported in the appraisal.

12. Listing No. 2: The Respondent incorrectly reports that the property has a two (2) car garage and 2200 sf when MLS reports 2230 sf and the appraisal photo shows a three (3) car garage. The appraisal shows the site to have 7,300 square feet while MLS shows 7,200 square feet.

13. The Respondent stated court house records as a data source; however no court house records of the sales or listings were included in the Respondent's work file for verification.

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

21. The Respondent produced a misleading appraisal with unreliable data in a grossly negligent manner. The information could not be verified through his work files; therefore the resulting appraisal was not credible.

22. All other evidence presented in this proceeding is hereby determined to either not be persuasive and/or credible.

CONCLUSIONS OF LAW

The Board hereby adopts in full the Conclusions of Law of the Disciplinary Hearing Panel that:

1. 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 its 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, 1-1, 1-4, and 1-6; Standard 2, Standards Rule 2-1, of the Uniform Standards of Professional Appraisal Practice. These include the sub sections of the referenced rules.

2. 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. 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. Respondent has violated 59 O.S. § 858-723(C)(13), in that Respondent violated 59 O.S. § 858-732(A)(1) as he did not perform ethically and competently and did engage in conduct that is unlawful, unethical or improper.

FINAL ORDER

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

1. Respondent Russell S. McIntosh shall be **SUSPENDED** for a period of **SIX (6) MONTHS** from the date that any final order is entered in this matter.

2. Respondent Russell S. McIntosh, during the period of suspension, shall Successfully complete corrective education as follows:

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

The course(s) must all be completed with copies of certificates of course completion transmitted to the administrative office of the Board within **SIX (6) MONTHS** from the date of the Board Order. The course(s) must be tested and must be live courses, attended in person by the Respondent (not distance and/or correspondence and/or on-line courses). The course(s) may be counted toward continuing education credit by the Respondent.

3. Respondent Russell S. McIntosh shall be placed on **PROBATION** for a period of **SIX (6) MONTHS** from the date that his period of suspension terminates as provided hereinabove. During the period of probation, Respondent Russell S. McIntosh 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.

4. Respondent Russell S. McIntosh shall pay the costs expended by the Board for legal fees and travel costs incurred in this matter not to exceed three thousand dollars (\$3,000.00). The Board staff will provide a statement of the costs incurred to Respondent with the final order. Costs shall be paid in accordance with 59 O.S. § 858-723(B).

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

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 3rd day of August, 2012.



By: 
CHRISTEN WATSON, Board Secretary

By: 
BRIAN NEAL, Assistant Attorney General
Counsel to the Board

CERTIFICATE OF MAILING

I, Rebecca Keesee, hereby certify that on the 14th day of August, 2012 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 by certified mail, return receipt requested to:

Russell S. McIntosh
P.O. Box 27821
Tulsa, OK 74149

7006 2760 0005 6607 2611

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

Nena W. Henderson, Hearing Panel Officer
1408 Sims Avenue
Edmond, OK 73013

Tony Kohl, Hearing Panel Officer
P.O. Box 675
Watonga, OK 73772

Patricia Mathis-Fogle, Hearing Panel Officer
2545 McGee Drive
Norman, OK 73072

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

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



REBECCA KEESEE