

Exhibit A), which Exhibit A was admitted into evidence. The second exhibit, marked as Exhibit B, was identified as a copy of: (1) the U.S. certified mail receipt received by the Board evidencing that the Notice was mailed to the Respondent by first class U.S. certified mail with return receipt requested to his last known address, P.O. Box 27821, Tulsa, Oklahoma 74149, on May 18, 2012; and (2) a USPS Domestic Return Receipt bearing the hand-written signature of "Russell McIntosh", the Respondent, with a stamped U.S. Mail postmark dated May 24, 2012, which evidences the fact that the Respondent did receive the Notice on May 24, 2012, which Notice listed the scheduled hearing date of June 22, 2012 at 9:30 a.m., together with an attached copy of a USPS Track and Confirm Receipt showing that the original Notice was left in the Respondent's P.O. Box 27821, Tulsa, Oklahoma 74149, on May 19, 2012, and actually delivered to the Respondent who signed the aforesaid receipt on May 24, 2012, as evidenced by a stamped U.S. Mail postmark dated May 24, 2012 (Board's Exhibit B), which Exhibit B was admitted into evidence. The third exhibit, marked as Exhibit C, was identified as a copy of: (1) the U.S. certified mail receipt received by the Board evidencing that the Notice of Replacement of Hearing Panel Members (the "Notice of Replacement") was mailed to the Respondent by first class U.S. certified mail with return receipt requested to his last known address, P.O. Box 27821, Tulsa, Oklahoma 74149, on May 29, 2012; and (2) a USPS Domestic Return Receipt bearing the signature of "Russell McIntosh", the Respondent, with a stamped U.S. Mail postmark dated June 5, 2012, which evidences the fact that the Respondent did receive the Notice of Replacement on June 5, 2012, together with an attached copy of a USPS Track and Confirm Receipt showing that the Notice of Replacement was left in the Respondent's P.O. Box 27821, Tulsa, Oklahoma 74149, on May 30, 2012, and actually delivered to "Russell McIntosh", the Respondent, who signed the aforesaid receipt on June 5, 2012, as evidenced by a stamped U.S. Mail postmark dated June 5, 2012 (Board's Exhibit C), which Exhibit C was admitted into evidence.

Still further as of the date and time of the scheduled hearing, Rebecca Keese, the Board's Legal Secretary, when asked by the Board's Hearing Panel Counsel, indicated that she had not heard from the Respondent by telephone or otherwise as to whether the Respondent or an attorney on his behalf would or

would not appear for the hearing. Neither the Board's prosecutor nor the Board's Legal Secretary indicated that any Motion for a Continuance had been filed in this matter.

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 or an attorney on his behalf would or would not appear for the hearing.

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 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 the full case in chief against the Respondent by presenting witnesses and evidence. The Board's prosecutor stated his preference would be to present the case in chief against the Respondent. The Board's attorney explained the two options to the Hearing Panel members and advised the Panel that the best course of action would be to hear the case in chief as presented by the Board's prosecutor. The Board was satisfied that the Respondent had received the Notice based upon the information it received as referred to above and proceeded with the hearing.

The Board's prosecutor presented one (1) witness in support of the case against the Respondent: Stephen Meyer, a certified general appraiser licensed as 10194CGA, of Oklahoma City, Oklahoma. In addition to the three (3) exhibits admitted earlier in this proceeding referred to previously (Board's Exhibits A, B and C), the Board's prosecutor moved for the admission of eight (8) exhibits for the Board (Board's Exhibits 1, 2, 3,4,5,6,7, and 8, respectively) to which there was no objection and all eight (8) such Board exhibits were admitted into evidence.

Stephen Meyer, being duly sworn, testified that as he lives in Oklahoma City, he does not appraise real property in the Tulsa area. Mr. Meyer testified that he evaluates a lot of appraisals of others, that he has been licensed as an appraiser in Oklahoma since 1991, that he gave no opinion of value of the real property involved in this matter and that as he is not from the Tulsa area, Betty Jo Cagle, a certified residential

appraiser licensed as 10179CRA, of Oologah, Oklahoma, who is from the Tulsa area, provided information to him relevant to this matter. Further Mr. Meyer testified that, having read the Respondent's appraisal report on the subject property, he concluded that said appraisal report was misleading and had an inflated value.

The Board's Exhibit 1 was identified as the Respondent's appraisal report by Mr. Meyer, and the Board's Exhibit 2 was identified by Mr. Meyer as the Respondent's work file for his appraisal report. Mr. Meyer identified the Board's Exhibits 3 and 4, which he indicated included real property data from Northeast Oklahoma MLS that was supplied by Ms. Cagle. Board's Exhibit 5 was identified by Mr. Meyer as the Douglas Place Addition to the City of Tulsa Plat Map and the Board's Exhibit 6 is the Douglas Place Addition to the City of Tulsa Zoning Map as identified by Stephen Meyer. The Board's Exhibit 7, according to Mr. Meyer's identification, is single family residential property information from Market Data Center ("MDC") that was supplied by Ms. Cagle. The Board's Exhibit 8 was identified by Mr. Meyer as including additional real property data from Northeast Oklahoma MLS that was supplied by Ms. Cagle.

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 Findings of Fact and Conclusions of Law and modifying the Disciplinary 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 the Disciplinary Hearing Panel:

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. In October of 2006, Cityscape Home Mortgage (the “client”), hired Respondent to complete an appraisal report (the “appraisal”) for a property located at 407 East Latimer Court, Tulsa, Oklahoma (the “subject property”).

3. The Respondent derived an opinion of value of \$93,900.00 on the subject property (Board’s Exhibit 1, page 5).

4. Respondent’s appraisal contained numerous errors and omissions, which resulted in an inflated and misleading report. There errors include but are not limited to the following paragraphs 5-11.

5. The information in the neighborhood section is not complete and accurate in that the low, high and predominant sales prices are incorrect based on sales within the defined market area for the 12 months prior to the effective date of the appraisal. More accurate sales estimates would be \$22,000 for the low; \$199,000 for the high; and \$55,000 to \$60,000 for the predominant.

6. The information in the site section is not complete and accurate in that the site dimensions of 90 X 130 were not supplied, and the lot is rectangular rather than irregular. The specific zoning classification is RS3 rather than Residential Med Density.

7. Respondent's appraisal states that the subject has 1,784 square feet of gross living area ("GLA"). A local appraisal database has four different inspection reports on the subject with living area estimates ranging from 1,631 to 1,666 square feet of GLA. The sketch on Respondent's appraisal shows an office in the garage which is not contiguous with the rest of the homes living area. This space was incorrectly included in the living area estimate for the subject.

8. The comparable sales selected are not locationally, physically, and functionally the most similar to the subject property. All of Respondent's comparable sales are located outside of his defined neighborhood. No comment was supplied in the appraisal regarding why the selected comparable sales are located outside of his defined neighborhood.

9. The data and analysis (including the individual adjustments) presented in the sales comparison approach is not complete and accurate. The address for comparable sale one is assumed to be 1419 N. 24th W Place rather than avenue as no 24th Ave exists at the 1400 block. The sales date and sales price for comparable sale one are incorrect according to MLS and County records. Comparable sale two has 2.5 baths according to MLS and a local appraisal database (MDC) rather than 2 baths which was reported on the Respondent's appraisal.

10. The data and analysis presented in the income and cost approaches are not complete and accurate. Residential lot sales within the neighborhood have ranged in value from \$5,000 to \$8,000. In addition, the County estimates the site value for the subject at \$9,300. Therefore, Respondent's site value of \$18,000 in the cost approach is overstated. His appraisal notes that the income approach to value was not developed; however, there is a number of \$97,000 that was supplied in the income approach box. The report contains to support for the \$97,000 indicated value by income approach.

11. The Respondent's 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.

12. The Respondent engaged in an act(s) or omission(s) involving misrepresentation when he went outside his defined neighborhood to secure his comparable sales. The Respondent produced a misleading appraisal with unreliable data.

13. 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 Conduct Section of the Ethics Rule 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 and 2-2 of the Uniform Standards of Professional Appraisal Practice. These include the sub sections of the referenced rules.

1. 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. 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. 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. 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. 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

WHEREFORE, the Board, having adopted in full the Findings of Fact and Conclusions of Law as set forth above, sets out the Final Order modifying the Recommendation of the Hearing Panel based upon previously-imposed sanctions against the Respondent, Russell S. McIntosh, in Complaint #11-041 and memorialized in Board Order 12-013 as follows:

1. Respondent, Russell S. McIntosh, shall successfully complete *Course #614: Residential Report Writing and Case Studies*.

The course must be completed with a copy of the certificate of course completion transmitted to the administrative office of the Board within **ONE (1) YEAR** from the date of the Board Order. The course must be tested and must be taken live, attended in person by the Respondent (not distance and/or correspondence and/or on-line courses). The course may be counted toward continuing education credit by the Respondent.

2. Respondent, Russell S. McIntosh, shall pay all of the costs expended by the Board for legal fees and travel costs incurred in this matter. 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).

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 7th day of September, 2012.



By: *Christen Watson*
CHRISTEN WATSON, Board Secretary

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

CERTIFICATE OF MAILING

I, Rebecca Keesee, hereby certify that on the 19th day of September, 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 2871

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

Brett M. Brown, Hearing Panel Member

1601 W. English Way

Mustang, OK 73064

Scott C. Goforth, Hearing Panel Member

3705 W. Memorial Rd., Ste. 306

Oklahoma City, OK 73134

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