

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

In the Matter of **MICHAEL C. CLEVANGER,**)
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Respondent.)

Complaint #10-019

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

ON THE 4th day of March, 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, Dana L. Norton, Donna L. Pollock, and Michael C. Prochaska that held a hearing on January 26, 2011. Donna L. Pollock 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. Michael C. Clevenger (the “Respondent”) 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.

No request for oral argument was made by the Respondent

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

JURISDICTION

1. That the Oklahoma Real Estate Appraiser Board has jurisdiction of this cause, pursuant to the provisions of the Oklahoma Certified Real Estate Appraiser Act, 59 O.S. § 858-700 *et seq.*

2. That the proceedings were conducted in accordance with the Oklahoma Certified 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 MICHAEL C. CLEVINGER (hereinafter "Respondent") is a certified residential appraiser in the State of Oklahoma, holding credential number 12740CRA and was first licensed with the Oklahoma Real Estate Appraiser Board on July 13, 2007.

FINDINGS OF FACT

The Board adopts in full the finding of the hearing panel that the following facts were proved by clear and convincing evidence:

1. In July of 2007, Centerra Mortgage (the "client") hired Respondent to complete an appraisal on the subject property (the "appraisal") which is located at 1408 Morning Star, Edmond, Oklahoma (the "subject property"). Respondent admitted that his brother is a principal owner of Centerra Mortgage and the Appraisal Report of the Respondent did not disclose that relationship.

2. The appraisal's date of appraised value was reported as July 24, 2007. Respondent reported a final estimate of value as Four Hundred Thirty Five Thousand Dollars and 00/100 (\$435,000.00). The report was submitted to the client. The assignment type was for a refinance transaction with the current owner being Anthony Todd Catania.

3. Errors were committed in the report, which inflated the value of the appraisal. These errors include but are not limited to the following contained in paragraphs 4-25.

4. The taxes reported for the subject are incorrect and were found to be \$4,204.49 according to the Oklahoma County Treasurer. The map reference number is incomplete and incorrect and should read OC4284.

5. Sales dates and transfer history for the subject were reported, however, the amount reported is inconsistently communicated. The grid below the sales comparison section on

page two (2) of the URAR indicated a sale price of \$265,000.00 while his Appraisal Report at page 22 states a sales price of \$365.000.

6. The neighborhood has not been adequately identified and the boundaries provide inadequate information regarding the subject neighborhood delineation. The neighborhood description provided for the subject addition appears to be a canned comment and could be used to describe nearly any residential addition in the United States. Little or no specific comments relating to the subjects neighborhood are present. Marketing conditions are at best minimal and again appear to be canned comments with little or no meaningful information.

7. Predominate values and the reported value range represented in the One-Unit Housing section appear to be over stated and the predominate value is far higher than noted.

8. The site dimensions are incomplete and incorrect. The Respondent does report what is indicated on PV Plus. This however is not an official source and was found to be incorrect. The subject site is 92.95 x 189.23 x 120.46 x 205.29. The site dimensions were available and should have been correctly reported. The site area based on actual dimensions is approximately 21,048 sf +/-.

9. The Respondent, in the site section, fails to identify and report the subject's proximity to an electrical substation. From the subject's backyard a portion of the substation is visible.

10. The additional features and condition of the improvements sections in the report are minimal in detail. Significant additional features of the subject property have been overlooked or ignored. The sketch of the subject has notable errors in measurements, shape of the floor plan, layout, and room placement.

11. The subject property was found to have a number of additional features which would typically be mentioned. Some of the features include an in-ground pool, central vacuum cleaning system, a sprinkler system, elevated ceiling heights, crown molding, a covered wood

deck, a covered patio, a covered porch, a wet bar, a study off of the master bedroom with oak paneled walls, custom built ins, stained concrete floors on the first floor, walk-in pantry, whole house intercom system, etc. The current owner indicated that the kitchen, when acquired, had granite counter tops on the kitchen island as well.

12. Based on the absence of detail in the appraisal, it is difficult to say what the true condition of the subject was as of the effective date.

13. Some of the descriptions for the subject features are incorrect or make little sense. The subject is listed as good quality on the sales grid. Quality of construction is never mentioned on page 1 of the URAR and in the cost approach the rating for the subject is identified as C which is considered to be average quality. The subject has thermal windows and not storm windows. No wood flooring was noted. The reference to trim finish as "soft" lacks explanation.

14. Proximate and recent alternate sales of similar quality houses were available as of the effective date of the appraisal. Comparable sales used in the appraisal in most if not all cases are larger than reported. A significant number of alternate sales which were more similar in size were available and overlooked. The appraisal incorrectly reports the size of nearly every comparable sale.

15. A search of the subject addition revealed a total of twenty-eight (28) closed sales within the twelve (12) months preceding the effective date of the appraisal. Of the twenty-eight (28) closed sales, thirteen (13) were reported to be between 3,600 square feet and 4,400 square feet. Of these thirteen (13) closed sales, eight (8) were reported to have pools. Of these thirteen (13) closed sales, five (5) were between 3,700 square feet and 3,948 square feet. Of these five (5) closed sales, four (4) were reported to have pools. More than an adequate number of alternates were available for use which appears to have been overlooked. Comparables one (1), two (2), and three (3) were the three highest sales in the subject addition in the past twelve (12) month period.

16. Comparable sale one (1), according to the Respondent, was verified with Oklahoma County Courthouse, PV Plus and MLS. Respondent admitted he was not a member of Oklahoma City MLS and did not subscribe to Market Data Center. The OAR reports this sale to have a site area of 17,250 square feet with nine (9) rooms, five (5) bedrooms, and three (3) baths. The square footage of this sale is reported to be 4,047square feet. Based on the reported data it appears that no consideration was given to any source other than PV Plus. MLS indicated this comparable was 4400sf per appraisal records and had 4.5 baths. Typically when such variances are noted in size and room count additional the appropriate level of due diligence would require further investigation to determine the accuracy of the available sources. MDC appraisal records from around the time of the OAR indicated this comparable was 11 rooms, 5 bedrooms, 4.5 baths with 4,406 square feet. MDC SEQ#45662451 indicated the site from the site dimensions was approximately 17,655 +/- . The differences in size and bath count based on the Respondent's reported measurements would have resulted in a lower adjusted value for comparable sale one (1) by over \$19,000.

17. Comparable sale two (2) according to the Respondent was verified with Oklahoma County Courthouse, PV Plus and MLS. The Respondent reports this sale to have ten (10) rooms, four (4) bedrooms and three and a half (3.5) baths. The square footage of this sale is reported to be 3,630 square feet. Based on the reported data it appears that no consideration was given to any source other than PV Plus. MLS indicated this comparable was 3910sf per appraisal records and had been extensively remodeled. Review of the PV Plus records shows the probable noted differences in size which were overlooked. PV Plus indicated on the sketch an additional finished area of 231 square feet. This comparable sale has a two (2) car attached garage and a two (2) car porte cochere which has not been mentioned. MLS and MLS photos also indicate this sale had a hot tub which overflows into the pool which was not mentioned or accounted for.

19. Comparable sale #4 according to the Respondent was verified with Oklahoma County Courthouse, PV Plus and MLS. The Respondent reports this sale to have nine (9) rooms, four (4) bedrooms and four and a half (4.5) baths. The square footage of this sale is reported to be 4,063 square feet. Based on the reported data it appears that no consideration was given to any source other than PV Plus. MLS indicated this sale as 4,480 square feet with eleven (11) rooms, five (5) bedrooms and four and a half (4.5) baths. The Respondent reported this sale had a pool as of the effective date, however, according to MLS, MDC appraisal records and aerial photos of this comparable from 2005, 2006 & 2007, no pool was present. (This property does now have a pool circa 07/2009). The Respondent reported this sale had an age of six (6) years when it should have read sixteen (16). Comparable sale four (4) is indicated on the sales grid to be a two (2) CAG; however, it is a three (3) CAG. MDC appraisal records from the sale indicate

18. Comparable sale three (3) according to the Respondent was verified with Oklahoma County Courthouse, PV Plus and MLS. The Respondent reports this sale to have twelve (12) rooms, four (4) bedrooms, and four (4) baths. The square footage of this sale is reported to be 4,219 square feet. Based on the reported data it appears that no consideration was given to any source other than PV Plus and even that information has been reported incorrectly. The square footage reported by PV Plus is 5,116 square feet. MLS for this comparable indicated this comparable to have 5,136 square feet with four (4) bedrooms and three point three (3.3) baths. MLS indicated a cabana, granite counter tops, a heated pool, etc. MDC appraisal records, SEQ#45748819, for this comparable indicated this sale 5685 sf with 13 rooms, 4 bedrooms and 4 baths. Based on the details in MDC this sale was not only far greater in size than the subject but also had features which have not been disclosed and adjusted for. MDC also indicated this sale had granite counter tops, a limestone flooring which was superior to the subject. The MLS square footage would have resulted in a far less value than indicated by the Respondent.

a square footage of 4,520 square feet with eleven (11) rooms, five (5) bedrooms, and four and a half (4.5) baths. MLS and MDC, as well as the MLS photos which were available, indicate a superior level of updating than noted for the subject. Had the MLS square footage been used the estimate of value would have been far less than indicated by the Respondent.

20. The cost approach was not done correctly and was not completed correctly. The cost data as of the effective date of the report was indicated as class C which is considered by the Respondent to be Average based upon his now admitted and previously undisclosed use of Residential Express. The price per foot noted in the OAR Cost Approach in no close manner represents the price per foot reported by Marshall & Swift for an Average quality home.

21. The depreciation noted in the OAR, the effective age reported and remaining economic life reported display a lack of understanding of the economic age life method and appropriate use of the Marshall & Swift Residential Cost Data.

22. The reported remaining economic life is most closely associated with the total life of Excellent Quality rated homes.

CONCLUSIONS OF LAW

The Board adopts in full the Conclusions of Law recommended by the Hearing Panel:

1. That Respondent has violated 59 O.S. § 858-723(C)(2) through 59 O.S. §858-729, in that Respondent did not retain records and provide them to the OREAB upon request.

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)(6) through 59 O.S. §858-726, in that Respondent violated:

A) The Conduct and Management Sections 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) Standards Rules 1, 1-1, 1-2, 1-4, 1-5, 1-6, 2, 2-1 and 2-2 of the Uniform Standards of Professional Appraisal Practice. These include the sub-sections of the referenced rules.

4. 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."

5. 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."

6. 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."

7. That Respondent has violated 59 O.S. § 858-723(C)(10): "Accepting an appraisal assignment when the employment itself is contingent upon the appraiser reporting a predetermined estimate, analysis or opinion, or where the fee to be paid is contingent upon the opinion, conclusion or valuation reached, or upon the consequences resulting from the appraisal assignment."

8. 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 the Findings of Fact and Conclusions of Law as set forth above, sets forth the following Final Order adopting in fully the recommendation of the Hearing Panel:

1. Respondent's appraisal credential be placed on **PROBATION** for a period of not less than **ONE (1) YEAR** from the date any order of the Board adopting this recommendation. Said probation shall be under the following conditions. Respondent shall submit a log of all appraisal assignments completed each month to the administrative office of the Board by not later than the fifth (5th) day of the following month. The Board's Director may select appraisals from said log to be forwarded to the Board's administrative office for review.

2. Respondent shall pay an administrative fine in the amount of one thousand dollars (\$1,000). Respondent shall also pay the costs of these proceedings. A summary of such costs will be provided to the Respondent with the Final Order. Payment of the fine and costs outlined above shall be remitted to the Board in accordance with the manner contemplated by 59 O.S. Section 858-723 (B)(2) and (4).

3. Failure to comply with any of the terms and conditions set forth above shall result in Respondent's credential being suspended instanter without further Board action until such terms and conditions have been met.

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 4th day of March, 2011



A handwritten signature in blue ink, reading "Shannon N. Gabbert", written over a horizontal line.

SHANNON N. GABBERT, Secretary
Real Estate Appraiser Board

A handwritten signature in blue ink, reading "Bryan D. Neal", written over a horizontal line.

BRYAN D. NEAL, Assistant Attorney General
Counsel to the Board

CERTIFICATE OF MAILING

I, Christine McEntire, hereby certify that on the 15 day of March, 2011 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:

Michael C. Clevenger
801 Front Street
Catoosa, Oklahoma 74015

7009 2820 0001 5683 9646

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

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