

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

In the Matter of **JERRY L. GILL and**

JULIAN L. HARRIS,

Disciplinary Hearing,

Respondents.

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Complaint No. 05-037

**BOARD'S DECISION ON DISCIPLINARY
HEARING PANEL RECOMMENDATION
WITH RESPECT TO RESPONDENT GILL**

ON THE 3rd day of November, 2006, the above numbered and entitled cause came on for hearing before the Oklahoma Real Estate Appraiser Board (the "Board"). The Disciplinary Hearing Panel (the "Panel") making the recommendation on September 18, 2006 consisted of three members, Michael C. Prochaska, Frank E. Priegel Jr., and Dan M. Robertson. Dan M. Robertson failed to appear at the hearing, which was conducted in accordance with Board Rule OAC 600:15-1-13 by the two remaining panel members constituting a quorum. Michael C. Prochaska was elected and served as Hearing Panel Chairman. Said panel was represented by the Board's counsel, Assistant Attorney General Joann Stevenson. The case was prosecuted by the Board's prosecutor, Stephen L. McCaleb. Respondent Gill appeared not after having been mailed a copy of the Recommendation of the Hearing Panel by certified mail with return receipt requested pursuant to the Oklahoma Real Estate Appraiser Act, 59 O.S. § 858-718, and the Oklahoma Administrative Procedures Act, 75 O.S. §§250-323.

The Board; with Commissioner Holland and Mr. Caesar absent; Mr Snyder, Mr. Hoyt and Mr. Wheeler recusing; and Board members pro-tempore Jimmie R. Burton and Jerry L. Jones having been appointed by the Governor and properly qualified; being fully advised in the matter, makes the following Order adopting in part and modifying in part 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 Real Estate Appraiser Act, 59 O.S. § 858-700 *et seq.*
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 the Respondent, Jerry L. Gill, is a State Certified Residential Real Estate Appraiser in the State of Oklahoma holding credential number 10306CRA.

FINDINGS OF FACT

The Board adopts in full the Panel's finding that the following facts were demonstrated by clear and convincing evidence, as follows:

1. On or about August 6, 2002, Respondents Julian Harris and Jerry Gill ("Respondents") performed an appraisal of a property located at 14001 Apache Drive, Edmond, Oklahoma 73013, prepared a report of that appraisal (the "report"), and submitted the report to Big Red Mortgage Corporation, 5900 Mosteller Drive, Suite 440, Oklahoma City, Oklahoma 73112.
2. That Nena W. Henderson, a certified residential appraiser ("CRA") who has been in the appraisal industry since 1983, and been a CRA since approximately 1992 performed a field review appraisal on the subject property on or about May 9, 2005.
3. Ms. Henderson testified credibly to and showed in Board's Exhibit A, which included her review appraisal report, Respondents' August 6, 2002 appraisal report, multiple listing service ("MLS") data gathered by Ms. Henderson that was available to Respondents at the time that they completed their appraisal report, and other county records that the report had numerous errors, omissions, inaccuracies and misrepresentations, which in the aggregate led to a misleading and fraudulent report and artificially inflated the value of the property.
 - a. The testimony and evidence showed that Respondents listed the condition of the subject property as good with an effective age of ten years. However, the property is nineteen (19)

years old and Respondents' report does not detail that any particular finishes , structures, or amenities had been updated to account for Respondents' report of the condition or effective age.

b. The subject property was in the Redlands addition, yet Respondents traveled outside of the subject property's subdivision when there were eighteen (18) properties sold within the subdivision from August 1, 2001 through August 7, 2002. Respondents selected comparables from the Brasswood and Glen Eagles Estates additions. Respondents offered no explanation in their report for leaving the subject neighborhood.

c. Respondents listed the price range of the subject neighborhood as one-hundred ninety thousand dollars and no cents (\$190,000.00) to two-hundred fifty thousand dollars and no cents (\$250,000.00). However, the accurate price range for the subject property's neighborhood was one hundred thousand dollars and no cents (\$100,000.00) to one hundred sixty thousand dollars and no cents (\$160,000.00).

d. The comparable properties utilized by Respondents were superior in quality of construction, design and appeal. Nena Henderson conducted historical comparable market analyses ("CMAs") of the subject neighborhood and the neighborhoods from which Respondents selected comparables (Exhibits B and C.) which would have been contemporaneous to Respondents' inspection and resultant report. Nena Henderson showed that the average values, list and sold prices and price(s) per square foot in Respondents' comparables' neighborhoods were much higher than those from the subject neighborhood because of homeowners' associations amenities, including a pool, clubhouse, play area, and other superior amenities.

e. Testimony and documentary evidence also showed that Respondents utilized comparables that were four bedroom houses when the subject property is a three bedroom house. Ten of the eighteen homes sold in the same subdivisions as the subject property within a year of the report were three bedroom homes.

f. Respondents determined that the sales comparison approach was the best indicator of

the subject property's value, and concluded that the market value of the property was \$229,000.00. This value is reliant upon the inappropriate comparables chosen by Respondents. Exhibit A. showed that a mortgage of \$208,000 was obtained by the owner shortly following Respondents' appraisal report.

g. Respondents' cost approach determinations are not accurate and Respondents did not perform the cost approach per Marshall & Swift techniques. Nena Henderson testified credibly and the documentary evidence showed that Respondents' cost approach figures were not explained or supported in their report and were higher than could be derived using Marshall & Swift techniques.

4. Ms. Henderson's review appraisal estimated that the market value of the subject property was one hundred thirty-three thousand dollars and no cents (\$133,000.00).

5. Ms. Henderson testified and Respondent Gill agreed that there was no other reasonable explanation for the Respondents' selection of such superior comparables by Respondents except to derive a value to meet and/or exceed a value communicated by a lender so that the owner could obtain financing.

6. Respondent Gill admitted that he is responsible for the report and that he signed the report having checked a box indicating that he inspected the subject property. Respondent Gill admitted that he and Respondent Harris had access to MLS data at the time of the report and that it was "critical" to their practice.

7. Evidence was also admitted evidencing that Respondent Harris was served a copy of the complaint in this matter by certified mail, return receipt requested, that Harris timely accepted service of the complaint, and accordingly received proper notice of the hearing in this matter.

CONCLUSIONS OF LAW

That the Board adopts in full the Panel's finding that such conduct by the Respondent is in violation of:

1. That Respondent Harris violated 59 O.S. § 858-723(A)(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."

2. That both Respondents have violated 59 O.S. § 858-723(A)(6) through 59 O.S. § 858-726, in that Respondents violated:

- a. The Conduct and Management Sections of the 2002 Edition of the Uniform Standards of Professional Appraisal Practice Ethics Rule;
- b. The Competency Rule number 2 in the 2002 Edition of the Uniform Standards of Professional Appraisal Practice;
- c. Standard 1 in the 2002 Edition of the Uniform Standards of Professional Appraisal Practice;
- d. Standards Rule 1-1(a) in the 2002 Edition of the Uniform Standards of Professional Appraisal Practice;
- e. Standards Rule 1-1(b) in the 2002 Edition of the Uniform Standards of Professional Appraisal Practice;
- f. Standards Rule 1-1(c) in the 2002 Edition of the Uniform Standards of Professional Appraisal Practice;
- g. Standards Rule 1-2(a) in the 2002 Edition of the Uniform Standards of Professional Appraisal Practice;
- h. Standards Rule 1-2(b) in the 2002 Edition of the Uniform Standards of Professional Appraisal Practice;
- i. Standards Rule 1- 2(e)(i) in the 2002 Edition of the Uniform Standards of Professional Appraisal Practice;
- j. Standards Rule 1-4(a) in the 2002 Edition of the Uniform Standards of Professional Appraisal Practice;
- k. Standards Rule 1-4(b)(i) in the 2002 Edition of the Uniform Standards of Professional Appraisal Practice;
- l. Standards Rule 1-4(b)(ii) in the 2002 Edition of the Uniform Standards of

Professional Appraisal Practice;

m. Standards Rule 1-4(b)(iii) in the 2002 Edition of the Uniform Standards of Professional Appraisal Practice;

n. Standard 2 in the 2002 Edition of the Uniform Standards of Professional Appraisal Practice;

o. Standards Rule 2-1(a) in the 2002 Edition of the Uniform Standards of Professional Appraisal Practice;

p. Standards Rule 2-1(b) in the 2002 Edition of the Uniform Standards of Professional Appraisal Practice;

q. Standards Rule 2-2(b)(i) in the 2002 Edition of the Uniform Standards of Professional Appraisal Practice;

r. Standards Rule 2-2(b)(ii) in the 2002 Edition of the Uniform Standards of Professional Appraisal Practice;

s. Standards Rule 2-2(b)(iii) in the 2002 Edition of the Uniform Standards of Professional Appraisal Practice; and

t. Standards Rule 2-2(b)(ix) in the 2002 Edition of the Uniform Standards of Professional Appraisal Practice.

3. That both Respondents have violated 59 O.S. § 858-723(A)(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 both Respondents have violated 59 O.S. § 858-723(A)(8): "Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal."

5. That both Respondents have violated 59 O.S. § 858-723(A)(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 Harris has violated 59 O.S. § 858-723(A)(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."

7. That both Respondents have violated 59 O.S. § 858-723(A)(13), in that Respondents 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

The Board, having adopted in full the Panel's Findings of Fact and Conclusions of Law as set forth above, sets forth the following final order, adopting in part and modifying in part the Panel's disciplinary recommendation:

1. That Respondent Gill's appraiser credential be hereby **SUSPENDED** for a period of **SIXTY (60) DAYS**. Said suspension shall be in accordance with Board Rule OAC 600: 15-1-15.

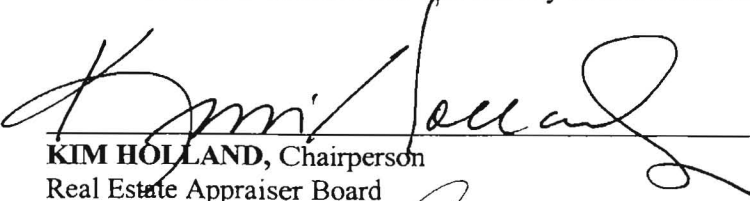
2. That Respondent Gill be **FOREVER BARRED** from entering into supervisor-trainee relationships pursuant to Board Rule OAC 600:10-1-16. Any current supervisor-trainee relationship(s) that Respondent Gill has with any trainee(s) shall terminate immediately upon entry of a Board order accepting this recommendation. Respondent Gill shall notify any trainee(s) with whom he has a supervisory relationship **IMMEDIATELY** upon receipt of this order that the relationships are thereby terminated and that no experience credit for hours earned under Respondent Gill's supervision will be given from the date of said Board order, and Respondent shall submit to the Board, within **fifteen (15) days** of receipt of this order, documentation attesting that he has so notified any and all such trainee(s).

3. That Respondent Gill successfully complete the fifteen (15) hour National USPAP Course,

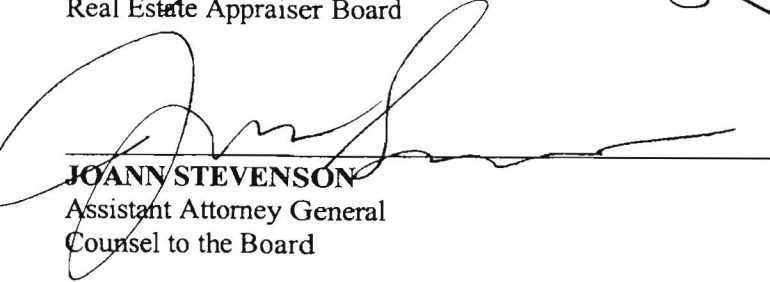
and transmit a copy of the certificate of course completion to the administrative office of the Board by no later than **SIXTY (60) DAYS** from the date of a Board order accepting this recommendation, and further that this course is to be considered corrective education and may not be used as continuing education.

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 November 2006.



KIM HOLLAND, Chairperson
Real Estate Appraiser Board



JOANN STEVENSON
Assistant Attorney General
Counsel to the Board

CERTIFICATE OF MAILING

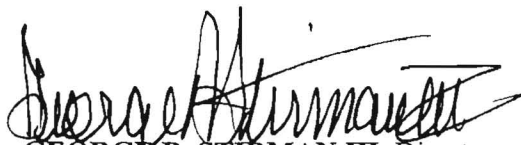
I, George R. Stirman III, hereby certify that a true and correct copy of the above and foregoing Board's Decision on Disciplinary Hearing Panel Recommendation with respect to Respondent Gill was mailed postage prepaid by certified mail with return receipt requested on this 7 th day of November, 2006, to:

Jerry L. Gill
3609 NW 43rd
Oklahoma City, OK 73112;

VIA CERTIFIED MAIL
7006 0810 0002 6164 4663

and that copies were mailed by first class mail to:

Frank E. Priegel Jr., Hearing Panel Member, PO Box 637, Okmulgee, OK 74447;
Michael C. Prochaska, Hearing Panel Member, 3857 State Hwy 92, Chickasha, OK 73018;
Dan M. Robertson, Hearing Panel Member, 2250 E 73rd St, Ste 120, Tulsa, OK 74136;
Charles W. Singleton, Alternate Panel Member, PO Box 1005, Lawton, OK 73502;
Stephen L. McCaleb, Board Prosecutor, 4800 N. Lincoln Blvd, Oklahoma City, OK 73105; and
Joann Stevenson, Board Counsel, 4545 N Lincoln Blvd, Ste 260, Oklahoma City, OK 73105.



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