

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

In the Matter of DONALD W. RILEY and)	
SHERI L. LOVIN,)	
)	Complaint #11-019
Respondents.)	

**BOARD'S DECISION AS TO
DISCIPLINARY HEARING PANEL RECOMMENDATION**

ON THE 6th day of July, 2012, the above numbered and entitled cause came on for hearing before the Oklahoma Real Estate Appraiser Board (the "Board"), after having been tabled from the June 1, 2012 Board meeting due to a lack of quorum. The Board was represented by a duly appointed Disciplinary Hearing Panel (the "Hearing Panel"), consisting of two members, William M. Kilpatrick and Robert M. Liebel. William M. Kilpatrick served as Chairman at the hearing held on April 11, 2012. 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. On behalf of the Board, Mr. McCaleb elected to have this matter recorded by electronic device and to rely on the electronic recording.

The Respondent, Donald W. Riley, of Chickasha, Oklahoma, appeared in person and was represented by his attorney Daniel J. Gamino, Daniel J. Gamino & Associates, P.C., Oklahoma City, Oklahoma, who, on April 11, 2012, filed an appearance in writing immediately prior to the scheduled starting time of the hearing, after Respondent Riley 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 Appraisers Act, 59 O.S. § 858-724, and the Oklahoma Administrative Procedures Act, 75 O.S. §§250-323. On behalf of the Respondent, Donald W. Riley, Mr. Gamino elected to have this matter recorded by electronic device and to rely on the electronic recording. Neither party to these proceedings requested that a court reporter record this matter.

On the morning of the hearing on April 11, 2012, immediately prior to its scheduled starting time, Daniel J. Gamino, verbally claiming a right to file an answer in this matter without citing any authority in
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support, filed a written Answer to Notice of Disciplinary Proceedings with the Board on behalf of Respondent Riley (the "Answer") in which Respondent Riley specifically denied any unprofessional conduct in regard to his work on the subject property, prayed that this matter be dismissed and that the Disciplinary Panel not recommend any disciplinary action against him. In his Answer, the Respondent Riley claimed that the evidence would show that he did in fact inspect the interior of the property along with the trainee Respondent Lovin, that he also measured the exterior and interior of the second level of the house located on the subject property, that while he did not take photographs, he assisted the trainee Respondent Lovin in checking a portion of the electrical and plumbing outlets (Respondent Riley Exhibit 1). Respondent Riley claims in his Answer that the home on the subject property was 100% finished out at the time of his inspection of the subject property and that his work on the property was all done in 2007 as per the appraisal. Further, Respondent Riley claims in his Answer (Paragraph No. 6) that in 2007 it was his practice:

"...to transmit all completed [sic] to the Vault located in Oklahoma City of the software provider 'Alamode'. When Mr. Riley contacted the service provider they were not able to provide him with a copy of this appraisal, or with approximately five other appraisal copies which he had forwarded. The service provided by that company had never been a problem until this incident."

Respondent Riley submitted a written response to the grievance (Board's Exhibit 1) dated July 8, 2011 (Respondent Riley's Exhibit 1) in which he admits that his office failed to copy the appraisal report for his files.

The Respondent, Sheri L. Lovin, did not appear for hearing after having been mailed a copy of the Notice of Disciplinary Proceedings and Appointment of Hearing Panel by certified mail with return receipt requested to her last known address pursuant to the Oklahoma Certified Real Estate Appraisers Act, 59 O.S. § 858-724, and the Oklahoma Administrative Procedures Act, 75 O.S. §§250-323, as the

Board was unable to secure good service on the Respondent Sheri L. Lovin.

Prior to receiving or hearing any evidence or testimony in this matter, the Respondent, Donald W. Riley and his attorney Daniel J. Gamino, and the Board through its Prosecutor Stephen McCaleb, were all notified by the Board through its attorney Assistant Attorney General Bryan Neal at the April 11, 2012, hearing that due to circumstances beyond the control of the Board, that the Disciplinary Hearing Panel constituted to hear the matter that day would consist of only two members, William M. Kilpatrick and Robert M. Liebel, rather than three members as originally planned and of which notice was previously provided to the Respondent Donald W. Riley. Both the Respondent Riley through his attorney and the Board through its prosecutor, waived the attendance and presence of a third member on the Disciplinary Hearing Panel constituted to hear the matter that day and asserted no other objection to the membership on and/or composition of the Disciplinary Hearing Panel at the hearing. No proposed findings of fact were submitted to the Board by either party to these proceedings.

The Board's prosecutor initially presented two witnesses in support of the case against Respondent Riley: Associate General Counsel Mathew Bagley of Security National Financial Corporation, Salt Lake City, Utah (which is an affiliate of the mortgage lender in this matter, Security National Mortgage Company (hereinafter sometimes called "SNMC")) and Respondent Riley. The Board's prosecutor moved for the admission of six (6) exhibits for the Board to which the Respondent Riley stated no objection and all such Board exhibits were admitted. Mr. Bagley attended the hearing as a witness via telephone to provide sworn testimony on behalf of the Board, to be cross-examined by Respondent Riley and to answer all questions while under oath. Respondent Riley offered no objection to the said witness attending and testifying under oath via telephone and not in person.

Mr. Bagley testified that he prepared and filed the sworn written grievance (including the written statement attached thereto) with the Board in this matter (Board's Exhibit 1), that was notarized, a copy of which grievance was admitted into evidence without objection by Respondent Riley. In his written

statement attached to the grievance, Mr. Bagley stated that SNMC funded a loan on October 27, 2007, in part in reliance on Respondent Riley's representations, that SNMC subsequently sold the said loan to an institutional investor in the secondary market for residential loans, and that in mid- 2010, the said institutional investor demanded that SNMC repurchase the said loan on the basis that construction of the house on the subject property had not actually been completed and was not habitable as it was missing such things as plumbing, HVAC, fixtures and carpeting. The attachment to the grievance by Mr. Bagley states in the fourth sentence of its second paragraph, that SNMC contacted Respondent Riley in writing "...to request access to the original [appraisal] report and appraiser work file showing that the interior of the residence was finished prior to loan closing." According to the sixth sentence of the second paragraph of the attachment to the grievance, Respondent Riley responded to SNMC:

"...that he no longer had the appraisal report or the related work file, and that his trainee appraiser, Sheri Lovin, had taken it with her to Houston, Texas. Mr. Riley said he had talked to Ms. Lovin, who thought she had the appraisal report and workfile, and would work with her on getting those materials for SNMC."

The first sentence of the third paragraph of the attachment to the grievance states that:

"...[a]fter two months of no response, SNMC finally contacted Mr. Riley by telephone on October 19, 2010. At that time he represented that: (1) the subject appraisal was the only one he did not put in his vault for safekeeping; (2) that it was destroyed in a flood at Ms. Lovin's Houston located [sic]; but that (3) he had personally viewed the subject residence, was certain that it was finished, and that the residence had been occupied for at least a year subsequent to loan closing. Mr. Riley did provide Ms. Lovin's contact information to SNMC upon request."

Subsequent to Respondent Riley's testimony solicited by and offered to the Board's prosecutor as part of the Board's case, the Board's prosecutor called for testimony of the Board's Director Christine

McEntire as a rebuttal witness to certain testimony by Respondent Riley due to a recent phone conversation she had with Respondent Riley in which he gave conflicting information.

At the conclusion of the presentation of the Board's case by the Board's prosecutor, Respondent Riley through his attorney moved for a Directed Verdict in his favor on the basis that the Board's prosecutor did not prove the case against Respondent Riley. At that time Mr. Gamino stated that he did not want to argue his motion for a Directed Verdict but wanted it in the record and that the Disciplinary Hearing Panel could take his motion under advisement. The Disciplinary Hearing Panel took no action on the motion and proceeded to the presentation of Respondent Riley's case by his attorney.

In addition to testifying on his own behalf, Respondent Riley presented two appraisers as witnesses to testify: Tina A. Mindemann, 12905 CRA, of Apache, Oklahoma, and Lloyd C. "Lud" Lentz, III, 11348 SLA, of Guthrie, Oklahoma. While Ms. Mindemann was a recent trainee under the supervision of Respondent Riley subsequent to the issuance of the appraisal report on the subject property in 2007, neither witness possessed personal knowledge of any of the actual facts of this case. Ms. Mindemann basically testified as to her experience as a recent trainee under the supervision of Respondent Riley and to, in her opinion, his good character. Mr. Lentz basically testified that in an office fire occurring approximately ten years ago, he lost a large number of his appraisal workfiles that he had compiled and kept as an appraiser, that he had known Respondent Riley for a number of years and to, in his opinion, his good character. Respondent Riley moved to admit two (2) exhibits to which no objection was made by the Board's prosecutor and Respondent Riley's exhibits were admitted. Respondent Riley's testimony basically denied the charges against him, blamed his staff of "college girls" for improper filing of his files, blamed his software provider Alamode and its "vault" for not saving his appraisal report electronically, blamed a "flood" in Houston where his trainee Respondent Lovin had his workfile that was destroyed and without personal knowledge blamed the builder of the subject property for "cannibalizing" the subject property to remove fixtures, HVAC, plumbing and , carpeting on some unknown date(s) after

the date of the appraisal report so as to make the subject property appear or be not complete after the fact (Respondent Riley's Exhibit 2 contains deed from Isbell Enterprises, Inc. to Jesse Isbell dated October 25, 2007 and the filing in 2006-2007 of various material man's and mechanic's liens).

A Request for Oral Argument was filed by Respondent and oral argument was given by both counsel for the Respondent, Daniel Gamino, Respondent, Donald W. Riley, and the Board's prosecutor, Stephen McCaleb.

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

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 DONALD W. RILEY is a state certified residential appraiser in the State of Oklahoma, holding credential number 10156CRA and was first licensed with the Oklahoma Real Estate Appraiser Board on October 16, 1991.

4. Respondent SHERI L. LOVIN is a trainee appraiser in the State of Oklahoma, holding credential number 90364TRA and was first licensed with the Oklahoma Real Estate Appraiser Board on May 9, 2003. She is currently suspended and has been so since May 31, 2008.

FINDINGS OF FACT

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

1. Respondent DONALD W. RILEY is a state certified residential appraiser in the State of Oklahoma, holding credential number 10156CRA and was first licensed with the Oklahoma Real Estate Appraiser Board on October 16, 1991.

2. Respondent SHERI L. LOVIN is a trainee appraiser in the State of Oklahoma, holding credential number 90364TRA and was first licensed with the Oklahoma Real Estate Appraiser Board on May 9, 2003. She is currently suspended and has been so since May 31, 2008.

3. In September of 2007, Nielsen Lending Group, (the “client”) hired Respondent Sheri L. Lovin to complete an appraisal (the “appraisal”) for a property located at 3521 NW 174th Street, Edmond, Oklahoma (the “subject property”).

4. Jesse Isbell was the ultimate purchaser of the subject property. The loan was ultimately funded by Security National Mortgage Company (“SNMC”). In support of Mr. Isbell’s mortgage application directed to SNMC, Respondent Lovin was retained by Nielsen Lending, the loan broker, to perform an appraisal of the property. Respondent Lovin, a trainee appraiser, conducted the appraisal, and Respondent Riley signed the appraisal report as the supervisory appraiser.

5. In the appraisal report, Respondents Lovin and Riley represented that both of them inspected both the interior and exterior of the subject residence, and further represented that construction was complete and that the interior was in excellent condition. Despite Respondent Riley’s testimony that he personally inspected the subject property and that he personally drew a portion of the sketch of the subject property being the second floor (and only the second floor), his testimony was not credible due to the presence of a photocopy of the actual sketch provided (Board’s Exhibit 5, last page) which by a visual examination appears to have been drawn by the same hand of only one person as to both floors. When asked about the location of the Rose Creek Addition, Mr. Riley said he could not answer without looking

at a map which indicates that he did not visit or inspect the subject property. Furthermore, Mr. Riley identified the subdivision as being in the "Edmond area" rather than in Oklahoma City. Mr. Riley was not aware of any commercial land uses within the defined neighborhood and that the street upon which it was located was a private street and not a public street. When questioned about the existence of sod or grass on the subject property, Mr. Riley first stated that he was not certain but finally admitted that no sod or grass was there despite his appraisal report's representations that the subject property was complete. The appraisal report purports the presence of storm windows on the subject property despite the photographic evidence to the contrary from the Oklahoma County Assessor's office (Board's Exhibit 4). Collectively, as the above stated facts indicate that Mr. Riley did not inspect the subject property, that he was unfamiliar with its location and that he could not identify the subject property, it leads to the conclusion that Mr. Riley's testimony was not credible and that he did not inspect the subject property.

6. The appraisal report was dated September 30, 2007 (Board's Exhibit 1), and valued the property at \$625,000. Based on the express representations in the appraisal report, SNMC apparently approved and funded the Isbell loan in the amount that it did, and that the loan closed on or about October 29, 2007. SNMC's reliance on and intended use of the appraisal is acknowledged on pages 3 and 4 of the appraisal report.

7. SNMC later sold the Isbell loan to an institutional investor in the secondary market for such loans. Over two years later, after the subject property was foreclosed upon, the investor sent a demand to SNMC to repurchase the loan. Among the reasons the investor identified for the repurchase demand was its assertion that construction of the subject residence was incomplete.

8. SNMC contacted the Respondent Riley to obtain the photographs or other evidence in his work file to verify that construction was complete. Respondent Riley did not have his work files. The actual appraisal report's photos were not clear enough to indicate whether construction was complete nor were there a sufficient number of photographs of the interior of the house located on the subject property.

The Oklahoma County Assessor's photograph dated November 29, 2007 (Board Exhibit 4), taken after the date of the appraisal report (September 30, 2007), depicts the appearance of a house the construction of which is not complete.

9. Mr. Riley was required to have a workfile and to keep it for five years. By his own admission, Mr. Riley could not produce a work file. Respondent Riley submitted a written response to the grievance (Board's Exhibit 1) dated July 8, 2011 (Respondent Riley's Exhibit 1) in which he admits that his office failed to copy the appraisal report for his files. Mr. Riley did not have a workfile because he did not do the appraisal or inspect the subject property.

10. The Board produced an MLS Sheet for the subject property (Board's Exhibit 6) that indicates that the subject property is bank-owned property (Board's Exhibit 3 contains Oklahoma County District Court Case No. CJ-2008-8429 docket sheet on foreclosure case on subject property) selling in an as is condition and available for sale as of May 9, 2010, in a 75% completed condition and not in a 100% completed condition (which subject property sold in such unfinished condition on July 9, 2010, for \$344,001.00) as well as a Certificate of Occupancy from the City of Oklahoma City (Board's Exhibit 2) dated January 19, 2011, for the subject property that was not issued until January 2011 that evidences building completion occurred on a date after the date of the appraisal report issued by Respondent Riley in this matter.

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

CONCLUSIONS OF LAW

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

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

A) The Ethics Rule, and its Conduct and Record Keeping Sections of the Uniform

Standards of Professional Appraisal Practice Ethics Rule;

B) The Competency Rule of the Uniform Standards of Professional Appraisal Practice;

C) Standard 1, Standards Rules 1 and 1-1; 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 Riley 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 Riley 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 Respondents have 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 Riley 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 Riley has violated 59 O.S. § 858-723(C)(13), in that Respondent Riley 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.

7. Respondent Riley has violated 59 O.S. § 858-723(C)(6), in that Respondent Riley did not maintain his records in accordance with 59 O.S. §858-729.

FINAL ORDER

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

Panel:

1. Respondent Donald W. Riley shall be prohibited from being a supervisor for a period of **THREE (3) YEARS** from the date that any final order is entered in this matter.
2. Respondent Donald W. Riley shall be **SUSPENDED** for a period of six (6) months from the date that any final order is entered in this matter.
3. Respondent Donald W. Riley shall be placed on **PROBATION** for a period of **ONE (1) YEAR** from the date that his period of suspension terminates as provided hereinabove. During the period of probation, Respondent Donald W. Riley 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. A thirty (30) day stay from the date of the Order is granted before commencement of the above-ordered discipline.

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 6th day of July, 2012




CHRISTEN WATSON, Board Secretary


BRYAN NEAL, Assistant Attorney General
Counsel to the Board

CERTIFICATE OF MAILING

I, Rebecca Keesee, hereby certify that on the 16th day of July, 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:

Donald W. Riley
P.O. Box 1643
Chickasha, Oklahoma 73023

7010 3090 0000 3334 6403

Daniel J. Gamino
3035 NW 63rd Street, Suite 214
Oklahoma City, OK 73116

7010 3090 0000 3334 6410


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

William M. Kilpatrick, Hearing Panel Officer
6307 Waterford Boulevard, Suite 240
Oklahoma City, OK 73118

Robert M. Liebel, Hearing Panel Officer
1109 N. W. 50th
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Rebecca Keesee