

FILED

BEFORE THE OKLAHOMA REAL ESTATE APPRAISER BOARD JAN 26 2007
STATE OF OKLAHOMA

Real Estate Appraiser Board
State of Oklahoma

In the Matter of Robert J. Emery and)
David W. Dick,)
)
Respondents.)

Complaints #01-016 and 01-021

CONSENT ORDER

This Order is an agreement between Robert J. Emery and David W. Dick (hereinafter referred to as "Respondents") and the Oklahoma Real Estate Appraiser Board (hereinafter referred to as the "Board"). Respondents are represented by Glenn Devoll and the Board is represented by Stephen McCaleb, from the law firm of Derryberry & Naifeh, in his capacity as prosecutor for the Board. Respondents and the Board agree and consent as follows:

JURISDICTION

1. The Board has jurisdiction in this matter pursuant to the provisions of the Oklahoma Real Estate Appraisers Act, OKLA. STAT. TIT. 59, §§858-700 *et seq.*
2. The proceedings in this matter were conducted pursuant to the Oklahoma Real Estate Appraisers Act, OKLA. STAT. TIT. 59, §§858-700 *et seq.* and the Oklahoma Administrative Procedures Act, OKLA. STAT. TIT. 75, §§301 *et seq.*
3. Respondent Robert J. Emery is a State Certified General Appraiser in the State of Oklahoma, holding certificate number 10034CGA. Respondent David W. Dick is a State Licensed Appraiser in the State of Oklahoma, holding certificate number 11697SLA.
4. The Board and Respondents consent to the following Agreed Facts, Agreed Violations of Law and Agreed Settlement of this matter:

AGREED FACTS

1. On or about December 22, 1999, Respondents David Dick and Robert Emery conducted an appraisal of a property located at 1614 West Willow, Enid, Oklahoma 73703, prepared a report of that appraisal (the "report"), and submitted that report to Robert Emery of Security National Bank, 201 West Broadway, Enid, Oklahoma 73701.
2. On or about December 23, 1999, a security agreement was entered into between Security National Bank of Enid (the "Bank") and T&K Properties, LLC ("T&K"). Signing for the Bank was its senior vice president Robert J. Emery.
3. The report had numerous errors, omissions, inaccuracies and/or misrepresentations, which in the aggregate led to a misleading report.
4. The errors included but were not limited to the following:

5. The report states that it is the "Appraisal Report of T&K Properties, 1614 West Willow, Enid, Oklahoma, 73703." T&K Properties is the borrower. The appraisal report more accurately was of a proposed 8 bay car wash.
6. The report fails to clearly identify the subject of the appraisal assignment. In some instances the report would lead an uninformed reader to believe that there is an existing structure on the subject property and in other instances the report indicates that this is proposed construction.
7. The respondents failed to list their appraiser certificate numbers in the report.
8. Respondent David W. Dick was not, at the time of the report, a State certified appraiser and was therefore prohibited from signing the appraisal pursuant to 12 CFR §323.3(d)(2).
9. The Respondents improperly invoked the departure rule and stated in the report that they did not use either the cost or the income approach, although the Respondents concede that the cost and income approach are considered meaningful in appraising a property of this type.
10. The report fails to identify any intended users of the report.
11. Respondent David W. Dick failed to disclose his lack of knowledge and/or experience and the steps to be taken to complete the assignment competently in the report, but the client was aware of his lack of experience.
12. On page 8 of the report, an incorrect legal description is listed and the report fails to list the current owner and price paid for the property by the current owner.
13. On page 16 of the report, Respondents list the site size as 3.50 acres MOL at the top of the page and 3.47 acres more or less in the analysis/comments section on the same page.
14. On page 16 of the report, Respondents list street frontage as 214 feet. On page 25, Respondents list street frontage as 204 feet, indicating that a typographical error may have occurred.
15. On page 25 of the report, Respondents twice list the square footage of the subject property as 154,638. However, the correct square footage of the subject property is 163,294 or 3.748714 acres, according to the calculations in Respondents' work file and in the analysis comments section on page 25.
16. The report fails to adequately explain the current and/or proposed C-1 zoning status.
17. The report fails to mention the contract for sale.
18. On page 10 of the report, Respondents list the land use as 94%. On the same page, in the neighboring property use section, the report states "the majority of buildings in the area are retail."
19. On page 10 of the report, in the analysis/comments section, the report states that the subject property is a "commercial building", rather than accurately listing it as a vacant lot or a proposed 8 bay car wash.
20. On page 26 of the report, Respondents state that there is a five percent or less vacancy rate for external obsolescence. There contains no explanation of why a vacancy rate may apply to a car wash.
21. The Respondents failed to specify what was to be built or what equipment is proposed for installation. Further, Respondents provide no provisions for site preparation, design, permitting and supervision of construction
22. On page 28 of the report, Respondents failed to adequately describe the property's attributes in the sales comparison approach.

23. On page 35 of the report, Respondents signed the report.
24. On page 82 and 83 of the report, David Dick represents that “[n]o one provided significant professional assistance to the person signing the report.”
25. Respondent Robert Emery signed the report and his company, the client, was also the proposed lender, which at the time was permitted.
26. The report failed to appropriately factor entrepreneurial profit.
27. The report failed to appropriately factor the vacancy rate.

AGREED VIOLATIONS OF LAW

1. That 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 1999 Edition of the Uniform Standards of Professional Appraisal Practice Ethics Rule;
 - b) The Competency Rule in the 1999 Edition of the Uniform Standards of Professional Appraisal Practice;
 - c) The Departure Rule in the 1999 Edition of the Uniform Standards of Professional Appraisal Practice;
 - d) Standards Rule 1 in the 1999 Edition of the Uniform Standards of Professional Appraisal Practice;
 - e) Standards Rule 1-1(a) in the 1999 Edition of the Uniform Standards of Professional Appraisal Practice;
 - f) Standards Rule 1-1(b) in the 1999 Edition of the Uniform Standards of Professional Appraisal Practice;
 - g) Standards Rule 1-1(c) in the 1999 Edition of the Uniform Standards of Professional Appraisal Practice;
 - h) Standards Rule 1-2(e) in the 1999 Edition of the Uniform Standards of Professional Appraisal Practice;
 - i) Standards Rule 1-2(f) in the 1999 Edition of the Uniform Standards of Professional Appraisal Practice;
 - j) Standards Rule 1-1(h) in the 1999 Edition of the Uniform Standards of Professional Appraisal Practice;
 - k) Standards Rule 1-3(a) in the 1999 Edition of the Uniform Standards of Professional Appraisal Practice;
 - l) Standards Rule 1-4(a) in the 1999 Edition of the Uniform Standards of Professional Appraisal Practice;
 - m) Standards Rule 1-4(b)(i) in the 1999 Edition of the Uniform Standards of Professional Appraisal Practice;
 - n) Standards Rule 1-5(a) in the 1999 Edition of the Uniform Standards of Professional Appraisal Practice;
 - o) Standards Rule 2 in the 1999 Edition of the Uniform Standards of Professional Appraisal Practice;
 - p) Standards Rule 2-1(a) in the 1999 Edition of the Uniform Standards of Professional Appraisal Practice;

- q) Standards Rule 2-1(b) in the 1999 Edition of the Uniform Standards of Professional Appraisal Practice;
 - r) Standards Rule 2-1(c) in the 1999 Edition of the Uniform Standards of Professional Appraisal Practice;
 - s) Standards Rule 2-2(a)(iii) in the 1999 Edition of the Uniform Standards of Professional Appraisal Practice;
 - t) Standards Rule 2-2(b)(i) in the 1999 Edition of the Uniform Standards of Professional Appraisal Practice;
 - u) Standards Rule 2-2(b)(iii) in the 1999 Edition of the Uniform Standards of Professional Appraisal Practice;
 - v) Standards Rule 2-2(b)(ix) in the 1999 Edition of the Uniform Standards of Professional Appraisal Practice;
 - w) Standards Rule 2-2(b)(x) in the 1999 Edition of the Uniform Standards of Professional Appraisal Practice;
 - x) Standards Rule 2-2(b)(xi) in the 1999 Edition of the Uniform Standards of Professional Appraisal Practice;
 - y) Standards Rule 2-5 in the 1999 Edition of the Uniform Standards of Professional Appraisal Practice;
2. That Respondents have violated 59 O.S. § 858-719(B): "Each trainee, state licensed, state certified residential or state certified general real estate appraiser shall place that appraiser's certificate number adjacent to or immediately below the title Trainee Appraiser, State Licensed Appraiser, State Certified Residential Appraiser or State Certified General Appraiser when used in an appraisal report or in a contract or other instrument used by the certificate holder in conducting real property appraisal activities."
 3. That 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 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 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 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."

AGREED SETTLEMENT

The Respondents, by affixing each of their signatures hereto, acknowledges that:

1. Respondent Robert Emery agrees to pay a one-thousand dollar (\$1,000.00) fine, due within thirty (30) days from the date of this order. If the fine is not received by the office of the Oklahoma Real Estate Appraiser Board by the 30th day, Respondent's license shall be suspended until payment is received.
2. Respondent David W. Dick agrees to pay a one-thousand dollar (\$1,000.00) fine, due within thirty (30) days from the date of this order. If the fine is not received by the office of the Oklahoma Real Estate Appraiser Board by the 30th day, Respondent's license shall be suspended until payment is received.
3. Further, respondent David W. Dick, agrees that he will not do real estate appraisals other than one to four family, non-complex, residential properties with transaction values not to exceed one million dollars (\$1,000,000.00), without receiving approval from the Oklahoma Real Estate Appraiser Board.

IT IS SO ORDERED on this 9th day of FEBRUARY, 2007.

APPROVED BY:

Robert J. Emery
 ROBERT J. EMERY, RESPONDENT

1/22/07
 Date

Glenn Devoll
 GLENN DEVOLL
 Counsel to Robert J. Emery


1-22-07
 Date

David W. Dick
 DAVID W. DICK, RESPONDENT

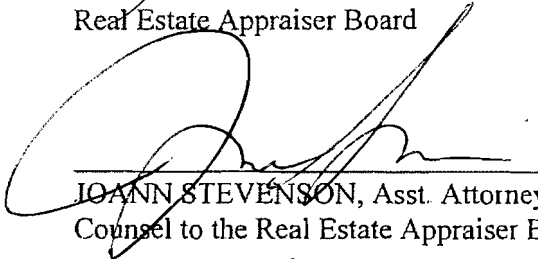
1/23/07
 Date

Glenn Devoll
 GLENN DEVOLL
 Counsel to David W. Dick

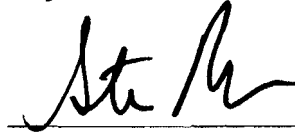
1-22-07
 Date


KIM HOLLAND, CHAIRPERSON
Real Estate Appraiser Board

2/22/07
Date


JOANN STEVENSON, Asst. Attorney General
Counsel to the Real Estate Appraiser Board

2.21.07
Date


STEPHEN McCaleb
Real Estate Appraiser Board Prosecutor

1-25-07
Date

CERTIFICATE OF MAILING

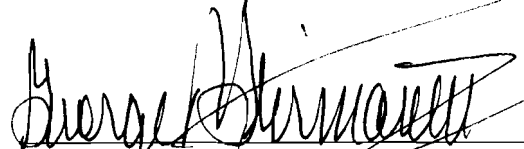
I, George R. Stirman III, hereby certify that a true and correct copy of the above and foregoing Consent Order was mailed by certified mail, return receipt requested, on the 23rd day of February, 2007 to:

Robert J. Emery
David W. Dick
c/o Glen Devoll
Gungoll, Jackson, Collins, Box & Devoll, PC
PO Box 1549
Enid, OK 73702

**VIA CERTIFIED MAIL
7001 0320 0004 2329 8038**

and that copies were mailed by first class mail to:

Tony McKeig, Complainant, 3005 Trails Court, Norman, OK 73072
David W. Atkinson, Hearing Panel Member, PO Box 30156, Midwest City, OK 73140;
Randal M. Boevers, Hearing Panel Member, Rt 4, Box 130, Okarche, OK 73762;
Brett M. Brown, Hearing Panel Member, 10409 Major Ave, Oklahoma City, OK 73120;
Connie S. Burk, Alternate Panel Member, 100 USDA, Ste 102, Stillwater, OK 74074;
Stephen L. McCaleb, Derryberry Law Firm, 4800 N Lincoln Blvd, Oklahoma City, OK
73105; and
Joann Stevenson, Board Counsel, 313 N.E. 21st Street, Oklahoma City, OK 73105.



GEORGE R. STIRMAN III, Director
Real Estate Appraiser Board
PO Box 53408
Oklahoma City, OK 73152
Telephone: (405) 521-6636
Facsimile: (405) 522-4599