

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

In the Matter of **CARLTON L. SMITH** and)
 DAVID E. REDDICK,)
)
 Respondents.)
)
Disciplinary Hearing.)

Complaint #05-126

**BOARD'S DECISION ON DISCIPLINARY
HEARING PANEL RECOMMENDATION
AS TO RESPONDENT CARLTON L. SMITH**

ON THE 1st day of June, 2007, the panel recommendation in the above numbered and entitled cause came on for decision before the Oklahoma Real Estate Appraiser Board (the "Board"). The Disciplinary Hearing Panel (the "Panel") making the recommendation consisted of three members, H.E. Ted Smith, Jeanette S. Snovel, and William F. Stephens Jr. H.E. Ted Smith 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 David E. Reddick appeared pro-se and Respondent Carlton L. Smith appeared not, each having been mailed a copy of the Notice of Disciplinary Proceedings and Appointment of Hearing Panel by certified mail with return receipt requested or personally served with a copy of the same 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, being fully advised in the matter, makes the following Order adopting in full the Panel's Recommendation with respect to Respondent Smith:

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 Respondent Carlton L. Smith is a Trainee Appraiser in the State of Oklahoma, holding certificate number 90116TRA and was first credentialed as a trainee appraiser on March 28, 2002.

4. That Respondent David E. Reddick is a State Certified Residential Appraiser in the State of Oklahoma, holding certificate number 10885CRA and was first credentialed on April 16, 1993.

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 November 21, 2003, Respondent Smith prepared and signed an appraisal report (the "report") for a parcel of property located at 1701 Geeta Road, Edmond, Oklahoma 73003, (the "subject property") and transmitted said appraisal for the purposes of a real estate transaction on the subject property which closed on or about November 26, 2003. The cover page indicated that the report was prepared by Respondent Smith. Respondent Reddick's signature appeared on the report, and the report indicated Respondent Reddick did not inspect the subject property. The report listed "MLS" (the Oklahoma City Multiple Listing Service) as a data source. The appraisal's date

of appraised value was reported as November 20, 2003, and Respondents reported a final estimate of value as one hundred thirty-six thousand dollars and no cents (\$136,000.00).

2. Jerry Jones, a Certified General Appraiser in Tecumseh, licensed by the Board, with 24 years of experience and a member National Association of Independent Fee Appraisers, testified that she investigated Respondents' report and associated documentation at the request of Board staff. Rod Stirman, Executive Director of the Board, indicated that he requested that Ms. Jones investigate the matter, and submitted materials to her obtained from Old Surety Life Insurance Company ("Old Surety") via subpoena, among the items by Old Surety submitted pursuant to the subpoena was the report prepared by Respondent Smith. Ms. Jones, using methods commonly accepted by those in her profession, gathered information that would have been available to Respondents in appraising the subject property, including, but not limited to, the MLS data and county record data.

3. Ms. Jones pointed out numerous errors in the report, including, but not limited to:

a. The report indicated that the subject property had a sales price of \$136,000 and sales date of November 27, 2003, showing that Respondent Smith was aware of the existence of a purchase contract.

b. However, Respondent Smith did not note in the report that the purchase contract included a seller "gift back" to M and A Investments for twenty-seven thousand two hundred dollars and no cents (\$27,200.00), along with the seller paying two thousand dollars (\$2,000.00) toward the M and A Investments trust fee. Seller also contributed two thousand dollars (\$2,000.00) to buyer's closing costs. The contract further stated that the commission was to be paid based on one hundred seven thousand two hundred dollars

and no cents (\$107,200.00); that the listing agent was to reduce his/her commission by three hundred dollars (\$300.00); and that the selling agent was to reduce his/her commission by five hundred dollars (\$500.00). Ms. Jones confirmed that no reasonable appraisal would report a value without reviewing a purchase contract if aware of one, and would pursue sources other than the client or lender if either were not forthcoming;

c. The MLS data sheet for the subject property indicated that original list price of the subject property was \$119,500, that at the date of closing, the list price was \$112,000, indicating the price had been lowered during the period it was listed for sale. Yet, the report failed to comment upon the list price versus the contract price.

d. The report also did not list any prior sales of the subject property or the comparables, but county assessor and MLS records indicate the subject property sold on or about January 4, 2002 for \$101,000.

e. The report did not recognize the home owners association and the cost thereof;

f. The property sketch for the subject property appearing in the report is virtually identical to the sketch appearing on the county assessor's web site with the only discernable difference being that the sketch in the report is larger in scale. Therefore, Respondent Smith appears to have cut and pasted the county assessor's floor drawing without independently measuring the subject property;

4. Ms. Jones also pointed out that Respondent Smith chose comparables that weren't truly comparable and failed to make proper adjustments as evidenced by the following:

a. The subject property has an actual age of nineteen (19) years. Respondent Smith used comparables between the ages of nine (9) to eleven (11) years.

State of Oklahoma



Kim Holland, Insurance Commissioner

Oklahoma Real Estate Appraiser Board

This is to certify that:

David E. Reddick

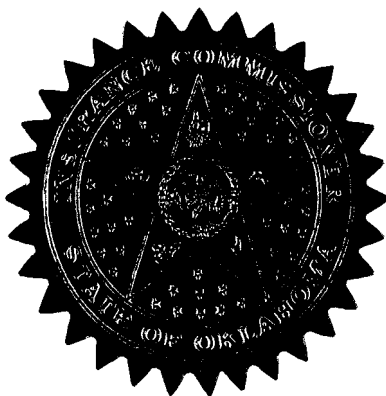
*has complied with the provisions of the Oklahoma Real Estate Appraisers Act to transact business as a **Certified Residential Real Estate Appraiser** in the State of Oklahoma.*

In Witness Whereof, I have hereunto set my hand and caused the seal of my office to be affixed at the City of Oklahoma City, State of Oklahoma, this 29th day of April A.D. 2005.

Handwritten signature of Kim Holland in cursive script.

*Kim Holland, Insurance Commissioner
Chairperson, Oklahoma Real Estate Appraiser Board*

Members, Oklahoma Real Estate Appraiser Board



Handwritten signature of Delli Ferlin in cursive script.

Handwritten signature of Janae Barker in cursive script.

Handwritten signature of Travis Parsons in cursive script.

Handwritten signature of Jimmie R. Burton in cursive script.

Handwritten signature of James W. Hoyt in cursive script.

Handwritten signature of R. Smith, III in cursive script.

Handwritten signature of O.R. [unclear] in cursive script.

Expires: April 30, 2008

*Oklahoma Appraiser Number: **10885CRA***

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3. Ms. Jones pointed out numerous errors in the report, including, but not limited to:

a. The report indicated that the subject property had a sales price of \$136,000 and sales date of November 27, 2003, showing that Respondent Smith was aware of the existence of a purchase contract.

b. However, Respondent Smith did not note in the report that the purchase contract included a seller "gift back" to M and A Investments for twenty-seven thousand two hundred dollars and no cents (\$27,200.00), along with the seller paying two thousand dollars (\$2,000.00) toward the M and A Investments trust fee. Seller also contributed two thousand dollars (\$2,000.00) to buyer's closing costs. The contract further stated that the commission was to be paid based on one hundred seven thousand two hundred dollars

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c. The MLS data sheet for the subject property indicated that original list price of the subject property was \$119,500, that at the date of closing, the list price was \$112,000, indicating the price had been lowered during the period it was listed for sale. Yet, the report failed to comment upon the list price versus the contract price.

d. The report also did not list any prior sales of the subject property or the comparables, but county assessor and MLS records indicate the subject property sold on or about January 4, 2002 for \$101,000.

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4. Ms. Jones also pointed out that Respondent Smith chose comparables that weren't truly comparable and failed to make proper adjustments as evidenced by the following:

a. The subject property has an actual age of nineteen (19) years. Respondent Smith used comparables between the ages of nine (9) to eleven (11) years.

b. The sales price of the comparables are all more than twenty-thousand dollars and no cents (\$20,000.00) more than the list price of the subject property;

c. Respondents Smith failed to make adjustments for age or condition of the subject property *vis-a-vis* the comparables, and provided no supporting comments indicating that there was any updating or remodeling of the subject property;

d. Respondent Smith ignored appropriate comparables that were available per available data sources that are standard for appraisers in the Oklahoma County area. These include Oklahoma City Multiple Listing Service, PVPlus, the Oklahoma County Assessor website, and the Oklahoma State Courts Network. Ms. Jones performed a market analysis searching the MLS and using the following criteria: properties closed within approximately seven months prior to the date of appraisal of the subject property [from April 1, 2003 to November 20, 2003], properties in the MLS map area of the subject property, properties from 1700 to 2000 square feet in size [the subject property 1847 sq. ft.] and built between 1983 and 1995 [the subject property was built in 1984] .

e. Ms. Jones search produced 40 available properties from which to select comparable properties. One of the comparables used in Respondent Smith's report was among the three highest sales on the list of 40 properties. The other properties fell within approximately the top 25% of the range of values of the properties in Ms. Jones's market analysis.

5. Respondent Reddick noted that the report did not list a client or lender in the appropriate field on the cover page, and suggested it had not been delivered. However, Mr. Stirman confirmed the report was produced pursuant to a subpoena issue to Old Surety, indicating that it was indeed delivered to Old Surety, and other evidence identified

Old Surety as the lender in the sale of the subject property that took place following the appraisal of the subject property.

6. Respondent Reddick disavowed any knowledge of the appraisal, stated that the signature purporting to be his appearing thereon was not affixed by him, and that he did not review the appraisal or supervise Respondent Smith in performing the appraisal. Respondent Reddick speculated that his signature was copied from other reports. Respondent Reddick admitted that he did not keep a log of appraisals showing those for which he supervised Respondent Smith to introduce as evidence showing the appraisal of the subject property did not appear thereon, and stated that he had only "faxed" copies of workfiles on appraisals of properties for which he supervised Smith. Respondent Reddick also acknowledged that he did not attempt to contact Respondent Smith to secure any workfiles, other documentary evidence or testimony to support his claim that he did not sign the report on the subject property.

7. Respondent Reddick's testimony and lack of supporting evidence showed that he did not appropriately supervise Respondent Smith, because appropriate record-keeping is essential to proper supervision and would have resulted in documentation to support his contention that he did not sign the report on the subject property.

CONCLUSIONS OF LAW

That the Board adopts in full the Panel's conclusions of law as follows:

1. That Respondent Smith 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 Respondent Smith violated 59 O.S. § 858-723(A)(6) through 59 O.S. §858-726, in that Respondent Smith 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) Standards Rule 1 of the Uniform Standards of Professional Appraisal Practice;
- D) Standards Rule 1-1(a), (b) and (c) of the Uniform Standards of Professional Appraisal Practice;
- E) Standards Rule 1-5(a) and (b) of the Uniform Standards of Professional Appraisal Practice;
- F) Standards Rule 2 of the Uniform Standards of Professional Appraisal Practice; and
- G) Standards Rule 2-1(a), (b) and (c) of the Uniform Standards of Professional Appraisal Practice.

3. That Respondent Reddick violated 59 O.S. § 858-723(A)(6) through 59 O.S. §858-726, in that Respondent Reddick 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;

4. That Respondent Smith 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."

5. That Respondent Smith 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."

6. 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." Respondent Reddick additionally by violating Board Rule OAC 600:10-1-16.

7. That Respondent Smith 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."

8. That Respondents have violated 59 O.S. § 858-723(A)(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

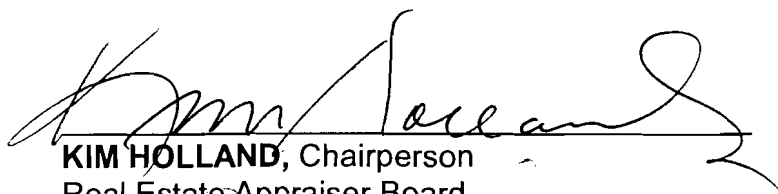
The Board, having adopted in full the Panel's Findings of Fact and Conclusions of Law as set forth above, sets forth the following final order.

With Respect to Respondent Carlton L. Smith:

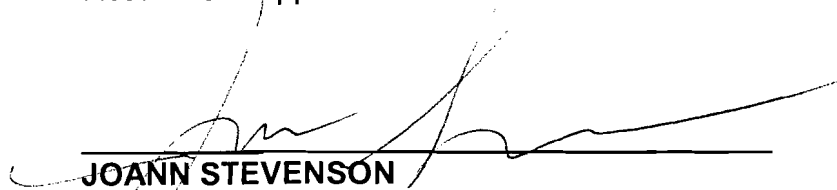
Respondent Smith's appraisal credential be hereby **REVOKED** without the right to reinstate.

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 1st day of June 2007.



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 was mailed by certified mail, return receipt requested, on the 7th day of June, 2007 to:

Carlton L. Smith
12202 Quail Ridge Circle
Edmond, OK 73034

CERTIFIED MAIL NUMBER
7006 0100 0000 9939 5409

and that copies were mailed by first class mail to:

H.E. "Ted" Smith, P. O. Box 362, Stillwater, OK 74076-0362;
Jeanette S. Snovel, P. O. Box 225, Chandler, OK 74834;
William F. Stephens, Jr., P. O. Box 871, Pauls Valley, OK 73075;
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
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