

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

IN THE MATTER OF <b>PAUL H. POTTER,</b>  Respondent,  Disciplinary Hearing.	) ) ) ) )	Complaint No. 05-103
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**BOARD'S DECISION ON DISCIPLINARY  
HEARING PANEL RECOMMENDATION**

ON THE 13th day of July, 2007, the recommendation of April 13, 2007 of the Disciplinary Hearing Panel (the "Panel") in the above numbered and entitled cause came on for decision before the Oklahoma Real Estate Appraiser Board (the "Board"). The Panel making the recommendation consisted of three members, William F. Stephens Jr., John M. Travers, and Albert A. Wooldridge. John M. Travers was elected and served as Hearing Panel Chairman. Said panel was represented by the Board's counsel, Joann Stevenson, Assistant Attorney General. The case was prosecuted by the Board's prosecutor, Sue Wycoff. 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 Real Estate Appraiser Act, 59 O.S. § 858-718, and the Oklahoma Administrative Procedures Act, 75 O.S. §§250-323.

The Board, having received oral argument from Mr. David W. Kisner, representing the Respondent, from the Respondent himself, and from its prosecutor, Sue Wycoff, and being thus fully advised in the matter, makes the following Order adopting in full 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 is a State Licensed Real Estate Appraiser in the State of Oklahoma holding credential number 12348SLA.

### **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. That on or about September 18, 2003, Respondent developed an appraisal and wrote an appraisal report ("report") for the property located at 1000 Irvine Drive, Edmond, Oklahoma, (the "subject property") and submitted that report to the lender, United Lending, 5100 N. Brookline, Suite 650, Oklahoma City, Oklahoma (the "lender"). The report valued the property at \$408,000.00.

2. Rod Stirman, Director of the Real Estate Appraisal Division of the Oklahoma Insurance Department who is the chief administrative officer for the Board, testified that Lorrie Davis of a local office of FNMA (the Federal National Mortgage Association) and Board member, Lee Caesar, Jr. had become aware of residential real property transactions in the Oak Tree Addition in Edmond, Oklahoma for which the closing prices were significantly higher than the listing prices. Ms. Davis and Mr. Caesar alerted various state and federal regulatory and law enforcement agencies. These agencies conducted a meeting to discuss the irregularities, with Mr. Stirman being one of the attendees. Mr. Stirman began an investigation of the list of transactions identified by Mr. Caesar and Ms. Davis and which were discussed at the aforementioned meeting. The sale of subject property was among the transactions on that list.

3. Mr. Stirman requested that Oklahoma Department of Consumer Credit ("ODOCC") staff obtain various records, including Multiple Listing Service ("MLS") data sheets, appraisal reports, sales contracts, HUD-1 settlement statements, etc. through its examination powers over mortgage brokers for the transactions on the list, including the sale of the subject property. The report was obtained from the lender by ODOCC staff and forwarded to Mr. Stirman. Mr. Stirman forwarded the report and all other documents to an appraiser who was a member of one of the Board's three standing committees, Molly Leatherwood. Mr. Stirman also asked Nena Henderson, another

member of one of the Board's three standing committees to retrieve a listing history of the subject property from MLS. See Exh. 5.

4. Ms. Leatherwood reviewed the listing history prepared by Nena Henderson, and the documents obtained by ODOCC, including the sales contract which included an addendum, the HUD-1 settlement statement and Respondent's report. Ms. Leatherwood also prepared a comparative market analysis ("CMA") for the subject property using MLS data, a data source listed by Respondent as a data source for comparable properties on the appraisal report for the subject property.

5. Ms. Leatherwood, in reviewing the listing history for the subject property, explained that doing an "archive" search of MLS permitted one to review the sales activity for a property, identified by address, showing listings, sales, and status by date. For the subject property, Ms. Leatherwood showed how the listing history of the subject property established that the subject property was originally listed on or about June 17, 2003 at \$369,500.00, and repeatedly reduced until the list price was \$339,500.00. The listing price was then raised on or about September 10, 2003, to \$407,000.00, and closed at \$405,000.00. See Exh. 5. Ms. Leatherwood testified that typically such an increase would indicate remodeling or an addition. Although Respondent had access to the MLS, Respondent did not report the listing history of the subject property. Respondent's report also does not mention any repairs, remodels, or updates and states that the appraisal is "as is". See Exh. 10 (Respondent's report).

6. Respondent testified that he did not even review the listing history of the subject property until contacted by the FBI and IRS in the investigation initiated by the observations of Mr. Caesar and Ms. Davis. The panel does not credit Respondent's testimony that he was unaware of the listing history for the subject property. Respondent had access to MLS, Respondent reviewed MLS data sheets for his selected comparables, and the Uniform Residential Appraisal Report form ("URAR"), which Respondent used, expressly prompted the appraiser to analyze any listing or sales

of the subject property within one year of the date of appraisal. See Exh. 10 and Exh. 12 (the workfile for the report submitted by Respondent pursuant to a Board subpoena).

7. Ms. Leatherwood reviewed the sales contract for the subject property (Exh. 7) which stated a sales price of \$405,000.00 and included an addendum providing that "Seller agrees to give Alliance Construction \$60,000.00 For [sic] remodelling [sic] to be done after close." The report offered no analysis of the sales contract. Respondent testified that he never saw the addendum to the sales contract, though he did have in his workfile the other pages of the sales contract. The panel finds that even in the absence of knowledge of the addendum that there was sufficient information available to Respondent to call into question his valuation in the report.

8. For her CMA, Ms. Leatherwood searched for sales in the Oak Tree subdivision that closed September 18, 2002 to September 18, 2003 (a year prior to the effective date of Respondent's report); between 3,000 and 4,000 square feet (Respondent reported the subject property to be 3,514 square feet); built between 1990 and 2000 (Respondent reported the subject property to be 8 years old [or built in approximately 1995]). The comparables selected by Respondents were three (3) highest selling properties of the seventeen (17) properties produced by Ms. Leatherwood's search, and the only properties which sold for over \$400,000.00. See Exh. 9. Respondent pointed out that the MLS may not contain all sales and questioned Ms. Leatherwood regarding the existence of possibly two additional sales, one or more perhaps over \$500,000.00.

9. Ms. Leatherwood also reviewed the MLS data sheets for each of Respondent's selected comparables. Respondent's comparables were on golf course lots and the subject property was listed as being on an interior lot. Ms. Leatherwood also reviewed county assessor data showing the comparables have higher assessed land values than the subject property. Respondent made a low \$15,000 adjustment for the difference between the subject property's lot and the superior golf course lots on Comparables 1 and 2, though the difference in value according to the county assessor was larger. Respondent even made a negative adjustment of \$7,500 for Comparable 3's lot because it was smaller than the subject property's lot, even though the county

assessor gave it a higher value than the subject property's lot. See Exh. 4, 11 and 10. Comparables 1 and 3 had swimming pools, while the subject property did not have a swimming pool, according to Respondent. Respondent gave the comparables a \$3,000 adjustment for the pools in a neighborhood Respondent described as "one of the premier housing additions in Oklahoma, it is normally at the top end of the real estate market." Ms. Leatherwood described the pool adjustment as "very low" for homes in these price ranges.

10. Each of Respondent's selected comparables had two (2) stories while the subject property was a one-story home. One panel member noted that on the market analysis performed by Ms. Leatherwood, there were several one-story homes similar in size to the subject property which generally sold for lower prices than similarly-sized two-story homes, indicating that market dictated a lower price per square foot for one-story properties in the subdivision. Respondent testified that his research resulted in many of same properties produced on Ms. Leatherwood's market analysis, but Respondent had no explanation for why he did not choose some of the one-story properties as comparables.

11. The report describes the neighborhood as having "average appeal" and "homes of average quality and appeal" and then in an addendum states that "The Subject Property is located in Oak Tree Addition in Edmond, OK. It is one of the premier housing additions in Oklahoma, it is normally at the top end of the real estate market". No explanation is given for these contradictory statements.

12. On or about November 8, 2006, a felony indictment was filed charging a real estate agent and the purchaser involved in the sale of the subject property during the course of which Respondent provided the report, with wire fraud, among other charges, alleging that the defendants "were engaged in schemes to defraud various mortgage lenders by artificially inflating the sales prices of homes and submitting false loan applications" and "intended to personally profit by funneling substantial sums of money back to themselves and others from the excess sales proceeds under the guise of remodeling, repair costs or marketing services fees." The indictment alleged that

“in many cases sellers’ agents would increase the MLS list price for the properties to an amount equal to or above the agreed inflated purchase price to avoid detection by the lenders and others.” See Exh. 2. The defendants were ultimately convicted of the charges.

13. The indictment charged specifically, with respect to the subject property, that the convicted real estate agent on behalf of the convicted purchaser submitted to the sellers of the subject property a purchase contract for \$405,000, which was \$65,500 above the MLS list price. The sellers later accepted an addendum to the purchase contract prepared by the convicted real estate agent on behalf of the convicted buyer in which the sellers agreed to pay \$60,000.00 for purported remodeling. The subject property ultimately went into foreclosure, see Exhs. 3 & 4.

14. Respondent testified that the convicted real estate agent contacted him about appraising the subject property because Respondent knew the convicted real estate agent’s father. Respondent testified that he received no order form from the lender, though he lists the lender as the client and gives its address in his report. Respondent stated that he met the convicted real estate agent, the convicted purchaser and the sellers on or about September 18, 2003 at the subject property. Respondent testified that he was informed that the list price was \$409,000.00 and that there was a sales contract for \$405,000.00. Respondent asserted that he assumed he was “dealing with a regular, arms-length transaction” and that “everybody there was going to be honest.” Respondent suggested that he did not have the experience to do the appraisal. Respondent testified that he stated under oath in the criminal trial for the convicted real estate agent and convicted buyer that he had not seen the addendum, and would either have not performed the assignment or would have made the report subject to final inspection had he been aware of the addendum.

15. Respondent testified that the subject property had been “one of the nicest” Respondent had ever seen. Respondent also testified that he “struggled with the lots” and knew the subject property was not on a golf course lot, but asserted it had an “open view” of the golf course. Respondent admitted that the view was open because no one had built on the lots that were across

from the subject property. Respondent acknowledged that the swimming pool adjustments seemed low, but stated that he was inexperienced in neighborhoods of that magnitude. Respondent stated that he was accustomed to doing appraisals in Chickasha and parts of the South Oklahoma City metropolitan area.

16. Respondent admitted that he selected comparables with the contract price that was reported to him in mind and assumed he was looking at the "higher end" of the market in the area. Respondent testified that he probably eliminated some reported sales as having "sub-zero" lots with lot lines not extending very far from the homes sited on the properties, though he had no explanation why he chose Comparable #3 which had the smallest lot of any of the properties on Ms. Leatherwood's CMA. Respondent's workfile contained MLS data sheets for his selected comparable properties printed contemporaneously with the effective date of the report. The only other independent data for possible comparables in Respondent's workfile were not printed contemporaneously with the report but shortly before the instant hearing. The panel finds that Respondent offered no credible explanation for why he chose the three highest selling properties in subdivision according to MLS as comparables, and that the only reasonable inference from the clearing and convincing evidence presented is that Respondent intended to reach the contract value, despite all data available to him that called that value into question.

17. The panel did not review or credit evidence of discipline imposed upon other appraisers who provided reports for transactions involving the convicted real estate agent and/or the convicted purchaser.

### **CONCLUSIONS OF LAW**

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

That Respondent's conduct as alleged above is in violation of the following:

1. 59 O.S. § 858-723 A. (5), (7), (8), (9) & (10).
2. 59 O.S. § 858-723 A (6) by violation of:
  - a. Ethics Rule, Conduct Section USPAP (2004 edition)

- b. Standard 1 and Standards Rule 1-1(a), (b) & (c)
  - c. Standard 2 and Standards Rule 2-1(a) & (b)
3. 59 O.S. § 858-723 A. 13 by violation of 59 O.S. § 858-732 A (1) & (2).

### **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 full the Panel's recommended disciplinary sanctions:

That Respondent's appraisal credential to be **REVOKED** with a right of reinstatement no sooner than six months following a Board order adopting this recommendation, subject to the following conditions:

1. That Respondent submit to the Board office within fifteen (15) days of a Board order adopting this recommendation, six (6) appraisal reports completed for lender(s) prior to April 13, 2007; and
2. That Respondent successfully complete corrective education as follows:
  - A) A fifteen (15) hour two- (2) day tested ethics course;
  - B) Fifteen (15) hour(s) residential market analysis course(s);
  - C) Fifteen (15) hour(s) residential site valuation and cost approach course(s);

All courses must be provided by a sponsoring organization of the Appraisal Foundation with certificates of course completion delivered to the Board office.

The above conditions must be met prior to Respondent seeking reinstatement.

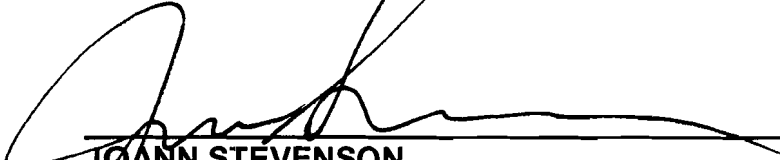
THE BOARD WISHES TO ADVISE THE RESPONDENT THAT HE HAS THIRTY (30) DAYS TO APPEAL THIS ORDER WITH THE APPROPRIATE DISTRICT COURT.



IT IS SO ORDERED this 13th day of July 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 17th day of July, 2007 to:

Paul W. Potter  
c/o David W. Kisner  
The Pavilion Building, Suite 240  
6701 Broadway Extension  
Oklahoma City, OK 73116

**VIA CERTIFIED MAIL  
7006 0100 0000 9939 7403**

and that copies were mailed first class mail to:

William F. Stephens, Jr., Hearing Panel Member, PO Box 871, Pauls Valley, OK 73075;  
John M. Travers, Hearing Panel Member, 9028 S Norwood Avenue, Tulsa, OK 74137;  
Albert A. Wooldridge, Hearing Panel Member, 1707 W Broadway, Altus, OK 73521;  
Sue Wycoff, Board Prosecutor, 301 NW 63rd St, Ste 550, Oklahoma City, OK 73116; and  
Joann Stevenson, Board Counsel, 313 NE 21st St, Oklahoma City, OK 73105.



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