

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

In the Matter of **DAVID S. CLARK,**)
) Complaint #06-123
Respondent.)
Disciplinary Hearing)

**BOARD'S DECISION ON DISCIPLINARY
HEARING PANEL RECOMMENDATION**

ON THE 7th day of September, 2007, the recommendation of June 18, 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, Rick L. Carlile, Betty J. Cagle, and Albert A. Wooldridge. Rick L. Carlile 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, Stephen L. McCaleb. Brian L. Peterson appeared on behalf of the Respondent 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. Brian L. Peterson, representing the Respondent, and from its prosecutor, Stephen L. McCaleb, 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 Respondent David S. Clark is a State Licensed Appraiser in the State of Oklahoma, holding certificate number 12236SLA and was first licensed with the Oklahoma Real Estate Appraiser Board on March 21, 2000.

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 April 26, 2006, Financial Concepts Mortgage (the "client") hired Respondent to appraise a parcel of property located at 925 North Madison Street, Enid, Oklahoma 73701 (the "subject property"). Kurt Swink, President of Financial Concepts Mortgage, was a friend of Respondent. Respondent and Swink had been friends from school since approximately 1976. Respondent had a professional relationship with Financial Concepts Mortgage since 2001.

2. On or about April 26, 2006, Respondent signed an appraisal report (the "report") on the subject property and transmitted said report to the client. The appraisal's date of appraised value was reported as April 26, 2006, and Respondent reported a final estimate of value as one hundred ten thousand and 00/100 dollars (\$110,000.00). Respondent's signature on the report certified that the report was prepared in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP") and that Respondent "personally prepared all conclusions and opinions about the real estate that were set forth in [the] appraisal report."

3. The report represents that Respondent used PVPlus, a database that aggregates county assessor data for various counties in the state, and county records as data sources for the comparable properties used in deriving the appraised value. The report also indicates that the transaction for which the report was prepared was a refinance transaction.

4. Gregory L. Goodpasture, a Certified Residential Appraiser, licensed since licensure was implemented in the State of Oklahoma, and practicing the profession since approximately 1985, was retained by Ownit Mortgage Solutions to complete a desk review of Respondent's appraisal report on the subject property. Mr. Goodpasture indicated that Ownit Mortgage Solutions was flexible with its underwriting

standards and did not routinely order reviews, but in this instance Mr. Goodpasture was asked to obtain one or more additional comparables.

5. Mr. Goodpasture's review revealed numerous errors in Respondent's report which in the aggregate led to an inflated value of the subject property.

6. County records obtained through PVPlus reported the subject property's square footage as one thousand five hundred and fifty-six (1,556) square feet and that the subject property was built in 1910. Respondent's report stated that the subject property was one thousand nine hundred and eighty-nine (1,989) square feet and that it was built in 1957. The report offers no explanation for these discrepancies. Respondent's workfile contained no measurement sketch or other data providing a source for the square footage and no data source for the age reported in Respondent's report. Cf. Exh. B and Exh. P.

7. Mr. Goodpasture searched PVPlus for comparable properties based upon the square footage reported by the county assessor and found thirty-seven (37) properties with square footages within three hundred (300) feet of the square footage of subject property as reported by the county assessor that were sold in the subject property's township range and section in the twelve (12) months prior to the effective date of the appraisal. The sale price of the thirty-seven (37) properties ranged from twenty-five hundred dollars (\$2,500.00) to seventy-eight thousand dollars (\$78,000.00). The thirty-seven (37) properties were built between 1900 and 1920 and ranged in square footage from one thousand two hundred and fifty-eight (1,258) square feet to one thousand eight hundred and fifty-six (1,856) square feet. See Exhs. C and D. Mr. Goodpasture did not perform a search based on the square footage and age as reported by Respondent.

8. The subject property was located in an addition called Dunbarton Heights. Accordingly, Mr. Goodpasture additionally searched PVPlus for all property sales within the Dunbarton Heights addition twelve (12) months prior to the effective date of the appraisal. Mr. Goodpasture's search produced seven (7) properties. The properties were built between 1905 and 1910 and the square footages ranged from eight hundred fifty-eight (858) square feet to one thousand eight hundred and fifty-six (1,856) square feet. The sale prices of the seven (7) properties ranged from two thousand dollars (\$2,000.00) to thirty-two thousand five hundred dollars (\$32,500.00). See Exh. N.

9. The comparable sales in the report signed by Respondent were 1.8 miles, 1.23 miles, 1.66 miles and 0.71 miles, respectively, from the subject property; fifty-one (51) years, seventy-three (73) years, forty-two (42) years, and forty-nine (49) years in age from year built, respectively; and from superior neighborhoods. The selected comparable properties were visually superior in appeal and obvious quality as shown by the photographs in the report signed by Respondent. The photographs in Respondent's report revealed that three of the selected comparables were brick, ranch-style homes with attached two car garages respectively fronting curbed, guttered streets, and the fourth was a two-story brick home for which the street was not visible in the photograph, while the subject property was a vinyl-sided bungalow, with a one-car attached garage fronting an uncurbed street in a less well-maintained area as apparent in the photographs. See Exh. A.

10. An aerial view of the area surrounding the subject property showed that it was adjacent to an apparent industrial area, though the photographs in the report signed by Respondent appeared to be taken from a vantage point that did not reveal the industrial area. The industrial area also had train tracks traversing the industrial area. The aerial photograph appeared to correlate with the map provided in the report signed by Respondent. Cf. Exh. L and Exh. A.

11. Respondent's report made low adjustments for the differences in siding—the adjustments for the siding ranged from three thousand seven hundred and eighty-six dollars (\$3,786.00) to four thousand five hundred sixty-two dollars (\$4,562.00) and, for the garage differences, were each one thousand five hundred dollars (\$1,500.00), respectively. See. Exh. A. County records indicate that the subject property has several outbuildings for which Respondent provided no explanation and/or adjustments. Cf. Exh. B and Exh. A.

12. The report indicated that the subject property was updated but also reports that it is in average condition and meets the property standards for the neighborhood. The report as submitted to Financial Concepts Mortgage did not include photographs from the subject's interior which would show any of the improvements to the property which could support the use of comparables outside of the subject neighborhood. See Exh. O. However, Respondent had photographs of the interior in his possession as evidenced by a third draft of Respondent's appraisal report submitted to the Board's prosecutor, which contained some interior

photographs. See Exh. Q. The interior photographs showed no improvements that would justify use of the comparables selected or the value reported in Respondent’s report. Respondent professed no recollection about how or why the draft of the appraisal report represented by Exhibit Q was prepared.

13. A list found in the workfile for the report on the subject property submitted to the Board by Respondent in response to a subpoena was captioned “For Mark Squier.” Respondent indicated that Mark Squier was a loan officer for Financial Concepts Mortgage and the list was prepared by the owner for Mr. Squier. The list stated near the top of the document “Things Done to Property.” The document stated, among other things:

Purchase Price	17,000 ⁰⁰
[omission]...	
Put in Carpet	1,000 ⁰⁰
Alarm System	350 ⁰⁰
[omission]...	
New Styrofoam Insulation}	25,000 ⁰⁰
New Vinyl siding }	
New Decking & Shingles	18,000 ⁰⁰
Remodel Main Bathroom complete & floor	10,000 ⁰⁰
New Kitchen Counters [illegible]	2,000 ⁰⁰
[omission]...	
New Patio Doors	1500 ⁰⁰
New Bay Window	1800 ⁰⁰
New Shop 8' × 16'	3000 ⁰⁰
New Doghouse 8' × 12'	2800 ⁰⁰
	87,200 ⁰⁰
5-AC	2500 ⁰⁰
4-Heaters	1,000 ⁰⁰
	90,700 ⁰⁰
	[illegible]
	91,050 ⁰⁰

14. The entries “5-AC” and “4-Heaters” in the list above also called into question whether the subject property had central heat and air as reported in the report signed by Respondent.

15. Using the maximum sales price per square foot in the subject neighborhood, Mr. Goodpasture

derived a value of sixty-one thousand nine hundred eighty three dollars and 00/100 (\$61,983.00), but further indicated that an average estimate of value would be closer to thirty thousand dollars and 00/100 (\$30,000.00). Mr. Goodpasture recommended to Ownit Mortgage Solutions that it have another appraisal prepared by a different appraiser. See Exh. A.

16. The report signed by Respondent identified comparable number one as 7 Rolling Hills Drive, which is not a valid address. There is a 7 Rolling Oaks Drive which is the mailing address of the owner of the property whose data was used in the sales comparison grid. See Exh. F. The address corresponding to the data used in the grid is 1522 Ramona Drive in Enid, Oklahoma. Although the data of the comparable agrees with the county tax records found through PVPlus for 1522 Ramona Drive, the photograph in the report does not match the photograph on the tax records for the 1522 Ramona Drive property nor does it match the photograph of the 7 Rolling Oaks Drive property located in the county tax records found through PVPlus. Cf. Exh. A, Exh. F and Exh. G.

17. The photograph of comparable number two, 419 South Grant Street, does not match the photograph from the county records found through PVPlus. Cf. Exh. A and Exh. H.

18. The photograph of comparable number three, 1209 Ponca Avenue, does not match the photograph from the county records found through PVPlus. Cf. Exh. A and Exh. I. The county records found through PVPlus mention that comparable number three, 1209 Ponca Avenue, has a bath house and swimming pool. The report signed by Respondent does not mention and/or adjust for these amenities. Cf. Exh. A and Exh. I.

19. According to the county records found through PVPlus, comparable number four, 102 South Van Buren Street, is an office building. See Exh. J. The photograph of comparable number four does not match the actual property located at 102 South Van Buren. Cf. Exh. A and Exh. J. A search of PVPlus showed the address corresponding to the data used in the grid is 1802 Indian Drive in Enid, Oklahoma and that in the owner information portion of the data for 1802 Indian Drive, the address of the owners was shown as 102 South Van Buren Street. See Exh. K.

20. Respondent submitted a “corrected” appraisal report to Financial Concepts Mortgage which

was brokering the loan. Financial Concepts mortgage requested corrections at the request of Ownit Mortgage Solutions which was considering funding the loan. For the “corrected” report, Respondent did not change its effective date or the appraised value of the subject property. See Exh. O. The “corrected” report contained comparable number one from the original report which remained erroneously identified as 7 Rolling Hills Drive, comparable number two, 419 S. Grant Street, was removed, and replaced with comparable number three from the original report, 1209 Ponca Avenue, but the 1209 Ponca Avenue photograph in the “corrected” report remained different from the photograph in the county tax records retrieved through PVPlus. Respondent also included two additional comparables. Comparable number four from Respondent’s original report became comparable number three in the “corrected” report, 102 South Van Buren Street, and the photograph was corrected. See Exh. O.

21. The second report continued to report that the subject property was built in 1957 and that its square footage was one thousand nine hundred and eighty-nine (1,989) square feet. Respondent indicated that he tried to correct the errors of which he was aware. Respondent and Mr. Swink both indicated that Respondent did not receive any documents comprising Mr. Goodpasture’s desk review of Respondent’s original appraisal report for the subject property.

22. Respondent admitted to the errors identified by Mr. Goodpasture and shown in the exhibits. Respondent testified that Chris Cleary, a trainee appraiser and friend, assisted him in conducting research, performed data entry and “put the report together.” Respondent admitted there were “numerous errors that [he] did not catch.” Respondent testified that he selected comparables and made adjustments based on data gathered by Chris Cleary, but not to reach a “target value” for the subject property. Respondent also testified that he measured the subject property and that the square footage reported in his original appraisal report for the subject property was based on measurement. Respondent then later testified that he did not inspect or measure the subject property and that Chris Cleary was originally engaged by Financial Concepts Mortgage and “had already performed this appraisal” and that he reviewed it without verifying the information.

23. Neither “Chris Cleary” nor any other indication of assistance appears anywhere in the report as contributing in any manner to developing and/or reporting of the value of the subject property. Chris Cleary

did not appear at the instant hearing, and Respondent admitted that he did not request or compel Chris Cleary's attendance. Respondent offered no explanation for certifying that no other person assisted him in developing his opinion of value or drafting the report if Chris Cleary did indeed perform the assignment. Respondent also offered no explanation for not taking the opportunity to review the original report for additional errors, knowing he had not prepared the report before sending the "corrected" report he submitted to Financial Concepts Mortgage except that he was only aware that there was a "wrong photo" in the original appraisal report, which he remedied by removing the questioned comparable.

24. Respondent's testimony regarding Chris Cleary is of dubious credibility in light of the evidence outlined above undermining it. Even if the Panel were to credit this testimony, failure to report that Respondent did not develop the appraisal report on the subject property compounded by Respondent's failure to readdress the report once Respondent discovered there were errors in the report would constitute an act or omission involving dishonesty, fraud, or misrepresentation benefiting himself and/or Chris Cleary in willful disregard of the injury to the client or any subsequent investor and would be in willful disregard of Respondent's obligation to perform ethically and competently and to render an unbiased real property valuation with impartiality, objectivity and independence and without accommodation of personal interests.

CONCLUSIONS OF LAW

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

1. That Respondent has 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 has violated 59 O.S. § 858-723(A)(6) through violation of 59 O.S. §858-726, in that Respondent 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 of the Uniform Standards of Professional Appraisal Practice;
- E) Standards Rule 1-2 of the Uniform Standards of Professional Appraisal Practice;
- F) Standards Rule 1-4 of the Uniform Standards of Professional Appraisal Practice;
- G) Standards Rule 1-5 of the Uniform Standards of Professional Appraisal Practice;
- H) Standards Rule 2 of the Uniform Standards of Professional Appraisal Practice;
- I) Standards Rule 2-1 of the Uniform Standards of Professional Appraisal Practice; and
- J) Standards Rule 2-2 (c) of the Uniform Standards of Professional Appraisal Practice.

3. That Respondent has 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 Respondent has 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 Respondent has 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 has 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

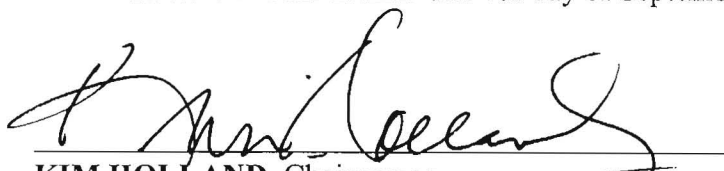
The Board, having adopted in full the Panel's Findings of Fact and Conclusions of Law as set forth above, sets forth the following final order, adopting in full the Panel's recommended disciplinary sanctions:

Respondent's State Licensed Real Estate Appraiser credential be **REVOKED** with the right to

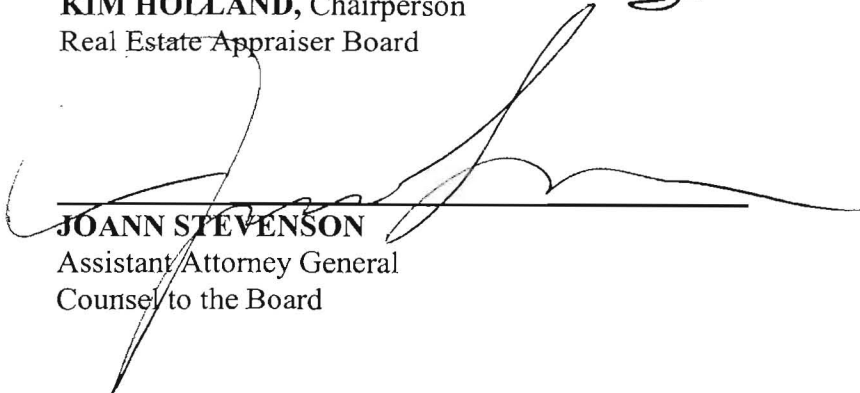
reapply conditioned on Respondent making application for a credential as a Trainee Appraiser based on successful completion of qualifying education required by the Criteria for Trainee Appraiser and establishment of a supervisory relationship as contemplated by OAC 600:10-1-16 and the Criteria, acquisition of the requisite 2000 hours of USPAP compliant qualifying experience as required by the Criteria, successful completion of qualifying education for the State Licensed Real Estate Appraiser credential required by the Criteria, and successful completion of the State Licensed Real Estate Appraiser examination. All references to “the Criteria” contained herein are defined as the Appraiser Qualification Criteria to include the Core Curriculum promulgated by the Appraiser Qualifications Board of The Appraisal Foundation which become effective on January 1, 2008. It is further directed that all qualifying education courses required by this order be taken from one of the sponsoring organizations of The Appraisal Foundation.

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 7th day of September 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 27th day of September 2007 to:

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