

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

IN THE MATTER OF JAMES L. JOHNSTON,  Respondent,  Disciplinary Hearing.	) ) ) )	Complaint No. 06-095
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**BOARD’S DECISION ON DISCIPLINARY  
HEARING PANEL RECOMMENDATION**

ON THE 7th day of December, 2007, the above numbered and entitled cause came on for hearing before the Oklahoma Real Estate Appraiser Board (the "Board"). The Disciplinary Hearing Panel (the "Panel") making the recommendation consisted of three members, Jeanette S. Snovel, William F. Stephens Jr., and Timothy G. Wolzen. Timothy G. Wolzen 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 Johnston appeared not after having been mailed a copy of the Recommendation of the 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, being fully advised in the matter, makes the following Order adopting in part and amending in part 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 12393SLA.

## FINDINGS OF FACT

That the Board adopts in full the Panel's finding that the following facts were proven by clear and convincing evidence.

1. In May of 2004, Respondent prepared and signed an appraisal report (the "report") (REAB Exh. 1) on a parcel of property located at 200 East New Orleans, Broken Arrow, Oklahoma, 74012 (the "subject property") for what Respondent described in his report as "Borrower/Client Clifford Hunt." The lender was described as "First Choice Mortgage Corp." The appraisal's date of appraised value was reported as May 4, 2004, and Respondent reported a final estimate of value as Four Hundred Fifty Thousand and 00/100 dollars (\$450,000.00). Said report was purportedly performed in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP").

2. The report also indicated that the property sold on May 1, 2004 for Four Hundred Fifty Thousand and 00/100 dollars (\$450,000.00).

3. The report contained numerous errors which in the aggregate led to a grossly inflated value of the subject property.

4. Gregory Goodpasture, a certified residential appraiser since licensure was instituted in Oklahoma, performing appraisals since approximately 1985, was retained to perform a review appraisal on the subject property after it went into foreclosure.

5. Mr. Goodpasture testified, his review appraisal report noted (see REAB Exh. 2), and maps generated by Mr. Goodpasture using mapping software (see REAB Exhs. 6 and 10), showed that the subject neighborhood as defined by Respondent was extensive, encompassing over 36 square miles, and included many distinct neighborhoods and land usages, including several commercial areas (see also REAB Exh. 7, the City of Broken Arrow's comprehensive plan, available from its website).

6. Mr. Goodpasture's observations as he testified to and reported in his report (REAB Exh. 2), photographs he took (REAB Exh. 5), the City of Broken Arrow Comprehensive Plan

(REAB Exh. 7), and satellite maps generated by Mr. Goodpasture (REAB Exh. 8 and 9), show that the subject property is at the northeast corner of New Orleans Street (South 101<sup>st</sup> Street) and South 1<sup>st</sup> Place. Across 1<sup>st</sup> Place from the subject property at the northwest corner of the intersection is a vacant lot, which is zoned commercial. At the southwest corner of the intersection diagonal from the subject property is South Intermediate High School. Across New Orleans street from the subject property at the southeast corner of the intersection is undeveloped land, zoned residential. Mr. Goodpasture testified that he consulted Indian Nation Council of Governments data which showed traffic flows at this intersection that were, in his experience, higher than most traditional residential areas and more commensurate with commercial and/or industrial areas in the vicinity.

7. Mr. Goodpasture testified and the Broken Arrow Comprehensive Plan (REAB Exh. 7) (as described in the comment addendum of his review appraisal report [REAB Exh. 2]), showed the subject property is zoned R-1, rural residential (low-density, large residential lots, and surrounded by the same to its immediate north and east. Although the subject property is on a 1.17-acre, unplatted lot, Mr. Goodpasture testified that the residential dwelling is sited at the minimum set backs from both 1st Place and New Orleans, both arterial streets, and satellite mapping obtained by Mr. Goodpasture show the dwelling clearly adjacent to both streets (REAB Exh. 8). The residential dwelling on the subject property is a vinyl-sided, Victorian-style home, with a two-car carport instead of a garage. The exterior style of the home lends itself to vinyl-siding and lack of garage(s), but Mr. Goodpasture pointed out that the exterior style, the siding, the lack of garage(s), and the siting of a dwelling so near the streets when on such a large lot are atypical for area. Mr. Goodpasture also generated multiple listing service (“MLS”) data which showed that lack of garages was unusual for homes the size, age, and price range of the subject property as reported by Respondent throughout the entire marketing area (Cf. REAB Exhs. 22, 23, and 24).

8. Significantly, Respondent did not report the listing history of the subject property (REAB Exh. 4). On the effective date of Respondent’s appraisal report for the subject property, May 4, 2004, (Exh. 1) the subject property had been listed since April 6, 2004 for \$284,000. Respondent gave no explanation for the huge discrepancy between the list price and the contract price reported in

his appraisal report. The subjected property had also been listed for 45 days (from December 1, 2003 to January 14, 2004) for \$260,000 before the listing was withdrawn. The subject property had also been listed for 132 days (March 4, 2003 to July 12, 2003) for \$299,900, before the listing was withdrawn.

9. Mr. Goodpasture pointed out in his testimony and report, and county and MLS records showed that the comparable sales selected by Respondent were not truly comparable to the subject property. Mr. Goodpasture testified that Comparable No. 1 was located in a high end subdivision of large homes, (53 tracts, most of which are developed with 4,675 square feet average, average sales price of \$311,110, including more than one third of the properties valued in excess of \$400,000 [See REAB Exh. 14] ). Comparable No. 1 was at the end of a cul de sac (which would occasion less traffic than the subject property), had a 3-car garage, a circle driveway, and in-ground pool. Photographs in MLS data, the county records and taken by Mr. Goodpasture showed that Comparable No. 1, was superior and more typical in visual appeal, with its traditional brick construction (Cf. REAB Exhs. 3, 4 and 5 with REAB Exhs. 11, 12, 13).

10. County records also showed in 2006, the taxable market value of the land on which Comparable No. 1 was situated was three times that of the taxable market value of the land on which the subject property was situated (Cf. REAB Exhs. 3 and 11). Though this was later in time than the effective date of Respondent's report, it was relevant and indicative of Comparable No. 1's far superior location, and Comparable No. 1 did not show an outsized increase in value over the time period to reflect an increase in land values anywhere near as large as the difference of the land values for Comparable No. 1 and the subject property. Respondent made small adjustments for Comparable No. 1's pool (\$5,000) and garage (\$6,000), but made no adjustments for site or design and appeal (REAB Exh. 1).

11. The sale (for \$625,000) upon which Comparable No. 2 was based sold after being listed for \$645,000 for only fifteen (15) days on market, indicative of its market appeal (REAB Exh. 16). Respondent gave no explanation for the inclusion of a comparable sale approximately 40% higher than his Comparable No. 1. Comparable No. 2 also had traditional brick construction, a

gunite pool, and 3-car garage (REAB Exhs. 17 and 18). Comparable No. 2's lot is unplatted and is bounded on one side by an arterial street, but Mr. Goodpasture testified and his photograph indicates it is to the rear of its 1.071-acre wooded lot. Respondent made small adjustments for Comparable No. 1's pool (\$5,000) and garage (\$6,000), but made no adjustment for site or design and appeal.

12. Mr. Goodpasture indicated that Comparable No. 3 is also unplatted and is bounded on one side with an arterial street, but also well set back in its 1.94 acre lot. Comparable No. 3 is also traditional brick construction with a two-car garage (REAB Exh. 19 and 20). Although, Mr. Goodpasture argued that the property was actually 5.09 acres and included income-producing RV storage, it is unclear whether the additional acreage containing the incoming producing property was purchased with the pertinent sale of Comparable No. 3, or subsequently purchased (REAB Exhs. 19 and 20). Respondent made only a small adjustment for the garage (\$3,000) and made a large positive adjustment for Comparable No. 3's smaller square footage.

13. Mr. Goodpasture took issue with Respondent's adjustments for certain amenities, such as the pools and garages on the comparable properties which the subject lacked, and the 30X50 shop on Comparable No. 2. The Panel does not necessarily agree with the adjustments Mr. Goodpasture made in his review appraisal or his justifications therefor. However, the Panel does agree pool adjustments and garage adjustments Respondent made were clearly too low, and that adjustments for the subject's inferior site and siding should have been made. Mr. Goodpasture also took issue with the size of the "neighborhood" defined by Respondent. The neighborhood was overlarge and could have been appropriate under certain circumstances had defining such a large neighborhood facilitated selection of more suitable comparable sales.

14. The much more significant problem was the material and deliberate omission of vital information, the exclusion of which any minimally competent appraiser would know would injure any entity lending funds based upon the derived value of the subject property. The evidence presented clearly and convincingly established that Respondent's deliberate failure to report the listing history of the subject property, its atypical siting and style, and especially the external and functional obsolescence occasioned by the atypicality was more than negligent and in reckless, if not

conscious, disregard of the inevitable injury to the lender. This property also was a complex residential property because of its unusual characteristics and reported value in excess of \$250,000 and, therefore, clearly not within Respondent's scope of practice as a state licensed appraiser.

### **CONCLUSIONS OF LAW**

That the Board adopts in full the Panel's conclusion that it was proven by clear and convincing evidence that Respondent's conduct was in violation of the following:

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 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 1-3 of the Uniform Standards of Professional Appraisal Practice;

G) Standards Rule 1-4 of the Uniform Standards of Professional Appraisal Practice;

H) Standards Rule 1-5 of the Uniform Standards of Professional Appraisal Practice;

I) Standards Rule 1-6 of the Uniform Standards of Professional Appraisal Practice;

J) Standards Rule 2 of the Uniform Standards of Professional Appraisal Practice;

K) Standards Rule 2-1 of the Uniform Standards of Professional Appraisal Practice; and

H) Standards Rule 2-2 (b) of the Uniform Standards of Professional Appraisal Practice.

3. 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."

4. 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."

5. 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."

6. 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."

7. 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."

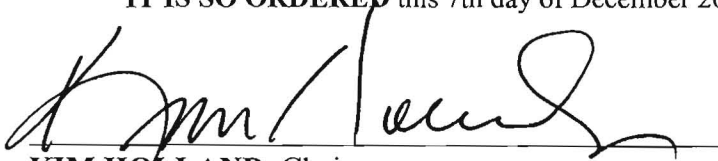
**FINAL ORDER**

The Board, having adopted the Findings of Fact and Conclusions of Law as set forth above, sets forth the following final order:

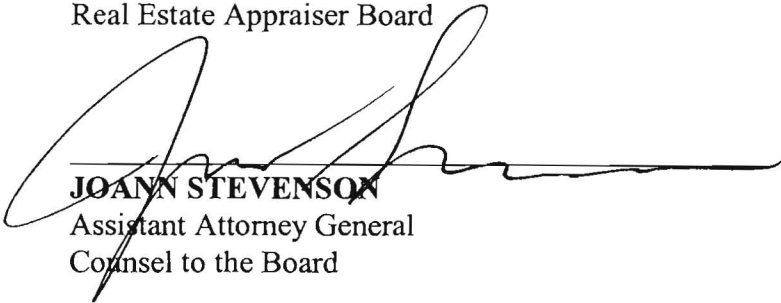
Respondent's appraisal credential be **REVOKED** for **TWENTY-FIVE (25) MONTHS [TWO (2) YEARS AND ONE MONTH]** with the right to reapply.

**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 December 2007.



**KIM HOLLAND**, Chairperson  
Real Estate Appraiser Board



**JOANN STEVENSON**  
Assistant Attorney General  
Counsel to the Board





**CERTIFICATE OF MAILING**

I, Christine McEntire, hereby certify that a true and correct copy of the above and foregoing Board's Decision on Disciplinary Hearing Panel Recommendation was mailed postage prepaid by certified mail with return receipt requested on this 9 Day of December 2007 to:

**James L. Johnston**  
1613 S. Sycamore Avenue  
Broken Arrow, Oklahoma 74012

**CERTIFIED NUMBER**  
7002 2410 0001 7593 4005

and that copies were mailed to:

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