

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

In the Matter of KERN MCMINN,	)	
	)	Complaint #09-026
Respondent.	)	

**CONSENT ORDER FOR RESPONDENT KERN MCMINN**

COMES NOW the Oklahoma Real Estate Appraiser Board ("OREAB"), by and through the Prosecuting Attorney, Stephen McCaleb, and the Respondent KERN MCMINN, represented by Jerry Benson, and enter into this Consent Order in lieu of a formal administrative hearing pursuant to Oklahoma Statutes Title 59 §858-700, et seq. and Oklahoma Administrative Code 600:10-1-1, et seq. All sections of this order are incorporated together.

**AGREED FINDINGS OF FACT**

1. On or about June 30, 2008, Respondent, a state licensed appraiser, was hired by First State Bank (the "client") to appraise a parcel of property located at 518 Chisholm Trail Drive, Watonga, Oklahoma 73772 (the "subject property").
  
2. On or about July 3, 2008, Respondent completed an appraisal of the subject property (the "appraisal"). The appraisal's date of appraised value was reported as July 1, 2008. Respondent reported a final estimate of value as Two-Hundred Five Thousand Dollars and 00/100 (\$205,000.00). The report was submitted to the client.
  
4. Said appraisal states in the appraiser's signed certification that the appraiser's analyses, opinions and conclusions were developed and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP").
  
5. The report contained numerous errors which in the aggregate led to an inaccurate and misleading appraisal. Some of the errors include, but are not limited to, the following paragraphs 6-23.

6. Respondent failed to use appropriate data sources for the geographical area of the subject property, resulting in incomplete information utilized in the report.
7. The contract for purchase clearly identifies that half of lot 4 is included in the transfer, but appraiser only indicated lot 3.
8. Comparables 1 and 2 are both inferior in living area, garage stalls are both outside stalls, both are outside of the subject's city, and are less than the best comparables in light of the availability of other comparables.
9. Comparable 3 is also in Weatherford, outside of the subject's city, and is inferior in gross living area ("GLA") while being similar in age and garage stalls.
10. Comparable 4 is in Kingfisher and is inferior in GLA while being superior in age. Comparable 5 is inferior in GLA and is far superior in land area.
11. All five comparables were inferior in GLA and none were in Watonga, the subject city. These two economic forces on value therefore could not be analyzed properly by the comparable selections made.
14. Respondent applied a 10% deduction to four of the five sales for location, adjusting them to Okeene economics rather than Watonga, yet the report did not state how this 10% figure was derived
15. Respondent failed to mention how the precise figure of \$32.50 was arrived at for refining GLA differences other than a comment about market abstraction.
16. Direct comparison of the sales used clearly indicates a different and larger refinement for the garage stall differences than applied.

17. Respondent failed to mention the potential differences in site/land values by way of municipality locations, nor of the significantly larger size of the land area with sale five.
18. The cost approach indicates 'reproduction cost' rather than replacement cost
19. Respondent chose assessment records for land value rather than analyzing the recorded vacant lot sales in Watonga, and the appraiser noted 'good quality' materials tabular entries based on his perspective whereas 'paired approach analysis' (a relevant market comparison method) then suggests significant obsolescence from sources other than physical.
20. Comparable 1 had earlier transfer within a month prior to the sale date in the grid. The form only requests 3 years for the subject and one year for the sales, however, the appraiser elected to provide analysis on 3 year histories for the comparables as well. Respondent ignored the prior sale within the stated three years of sale 4.
21. The refinements made to the comparables selected are irrelevant and inadequate in that the conclusions arrived at are speculative to such a degree that the value opinion was 111% of the contracted value which appears market driven by knowledgeable participants acting in their own best interests (see definition of value in addendum); and that insufficient commentary is provided to follow the logic used to arrive at each refinement.
22. Respondent claimed the cost approach was an indication of reproduction cost, yet quoted the Marshall/Swift Handbook as one source (the handbook is replacement cost only).
23. Respondent claimed in his 'scope of work analysis, paragraph number 8' that he conducted an exterior inspection of each comparable, yet later admitted, as confirmed in the photograph, that he did not personally inspect the Kingfisher comparable and used an internet photo.

**AGREED CONCLUSIONS OF LAW**



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) The Scope of Work Rule of the Uniform Standards of Professional Appraisal Practice;

D) Standards Rules 1, 1-1, 1-2, 1-3, 1-4, 1-5, 1-6, 2, 2-1, 2-2 and 2-3 of the Uniform Standards of Professional Appraisal Practice.

3. That Respondent has violated 59 O.S. § 858-723(A)(6): "Violation of any of the standards for the development or communication of real estate appraisals as provided in the Oklahoma Real Estate Appraisers Act."

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)(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 Respondent has 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."

9. That Respondent has violated 59 O.S. § 858-723(A)(6) through 59 O.S. §858-719(B).

### CONSENT AGREEMENT

The Respondent, by affixing his signature hereto, acknowledges:

1. That Respondent has been advised of his right to seek the advice of counsel prior to signing this document, and has in fact retained Jerry Benson as his legal counsel, and
2. That Respondent possesses the following rights among others:
  - a. the right to a formal fact finding hearing before a disciplinary panel of the Board;
  - b. the right to a reasonable notice of said hearing;
  - c. the right to be represented by counsel;
  - d. the right to compel the testimony of witnesses;
  - e. the right to cross-examine witnesses against him; and
  - f. the right to obtain judicial review of the final decision of the Board.
3. The Respondent stipulates to the facts as set forth above and specifically waives

his right to contest these findings in any subsequent proceedings before the Board and to appeal this matter to the District Court.

4. The Respondent consents to the entry of this Order affecting his professional practice of real estate appraising in the State of Oklahoma.

5. The Respondent agrees and consents that this Consent Order shall not be used by him for purposes of defending any other action initiated by the Board regardless of the date of the appraisal.

6. All other original allegations in this matter are dismissed.

**ORDER**

WHEREFORE, on the basis of the foregoing Agreed Findings of Fact and Agreed Conclusions of Law, it is ordered and that:

1. Respondent, KERN MCMINN, agrees to take the following corrective education classes, all provided by one of the sponsoring organizations of the Appraisal Foundation

<u>NUMBER</u>	<u>HOURS</u>	<u>COURSE NAME</u>
612	15	Residential Site Valuation and Cost Approach
614	15	Residential Report Writing and Case Studies
622	15	Advanced Residential Applications and Case Studies

These hours shall be successfully completed within three hundred sixty-five days of the adoption of this order. Certificates of course completion shall be filed in the administrative office of the Board within the time prescribed.

2. Respondent, KERN MCMINN, is placed on probation for one year with the following stipulations:

(1) KERN MCMINN shall transmit a log on the REA Form 3 of all appraisal reports rendered during each month to the administrative office of the Board, to arrive by the fifth calendar day of the following month, with the understanding that the Board will request work product from such logs for the purpose of review for compliance with USPAP.



3. Respondent shall pay an administrative fine in the amount of Five Hundred and 00/100 Dollars (\$500.00).

4. Fines and costs prescribed herein shall be paid in the manner contemplated by 59 Okla. Stat. §858-723B4.

5. Failure to comply with the provisions of this Order will cause Respondent's license to be suspended instanter until compliance occurs.

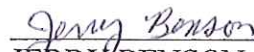
**DISCLOSURE**

Pursuant to the Oklahoma Open Records Act, 51 O.S. §§24-A.1 – 24A.21, the signed original of this Consent Order shall remain in the custody of the Board as a public record and shall be made available for public inspection and copying upon request.

RESPONDENT:

  
KERN MCMINN

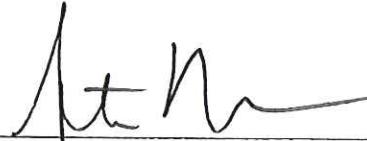
1/27/2010  
DATE

  
JERRY BENSON, Attorney for McMinn

1/27/2010  
DATE

**CERTIFICATE OF BOARD PROSECUTING ATTORNEY**

I believe this Consent Order to be in the best interests of the Oklahoma Real Estate Appraiser Board, the State of Oklahoma and the Respondent with regard to the violations alleged in the formal Complaint.



STEPHEN MCCALED, OBA #15649  
Board Prosectuor  
2401 NW 23<sup>rd</sup> Street, Suite 28  
Oklahoma City, Oklahoma 73152

1-27-10

DATE

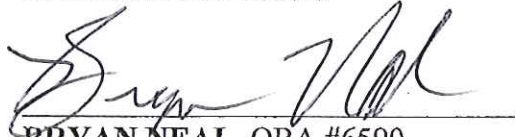
IT IS SO ORDERED on this 12<sup>th</sup> day of February, 2010.



KIM HOLLAND, Chairwoman  
Real Estate Appraiser Board

**OKLAHOMA REAL ESTATE  
APPRAISER BOARD**

By:



BRYAN NEAL, OBA #6590  
Assistant Attorney General  
Attorney for the Board  
2401 NW 23<sup>rd</sup> Street, Suite 28  
Oklahoma City, Oklahoma 73152



**CERTIFICATE OF MAILING**

I, Christine McEntire, hereby certify that a true and correct copy of the above and foregoing Consent Order for Respondent Kern McMinn was mailed Certified Mail, Return Receipt Requested on this 19<sup>th</sup> day of February, 2010 to:

**JERRY EARL BENSON**  
119 E. Second Street  
P.O. Box 6  
Watonga, Oklahoma 73772-0006


**7008 3230 0000 8455 4261**

and by First Class Mail to:

**OFFICE OF THE ATTORNEY GENERAL**  
Attn: Bryan Neal  
313 N.E. 21<sup>st</sup> Street  
Oklahoma City, OK 73105

**DERRYBERRY & NAIFEH, LLP**  
Attn: Stephen McCaleb  
4800 North Lincoln Blvd.  
Oklahoma City, Oklahoma 73105

**Kern McMinn**  
2020 Huntington Place  
Ponca City, Oklahoma 74604

  
Christine McEntire