

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

In the Matter of <b>DUANE A. WARDEN,</b>	)	
	)	Complaint #09-104
Respondent	)	
Disciplinary Hearing	)	

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

**ON THE** 10th day of September, 2010, the above numbered and entitled cause came on for hearing before the Oklahoma Real Estate Appraiser Board (the "Board"). The Board was represented by a Disciplinary Hearing Panel consisting of three members, Randal M. Boevers, Kelly R. Bridges, and Kelly A. Davis. Randal M. Boevers was elected and served as Hearing Panel Chairman. Said panel was represented by the Board's attorney, Assistant Attorney General Bryan Neal. The case was prosecuted by the Board's prosecutor, Stephen L. McCaleb. The Respondent, Duane A. Warden, appeared represented by counsel, Vance Armor, 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. Respondent Duane A. Warden, appearing pro-se, and the Board's prosecutor, Stephen L. McCaleb, attended the September 10, 2010 Board meeting and presented oral argument.

The Board, being 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 Duane A. Warden is a Certified Residential Appraiser in the State of Oklahoma, holding certificate number 10281CRA and was first credentialed with the Oklahoma Real Estate Appraiser Board on October 16, 1991.

### FINDINGS OF FACT

The Board adopts in full the finding of the hearing panel that the following facts were proved by clear and convincing evidence:

1. On or about August 10, 2009, Respondent was hired by the Department of Veteran Affairs (the "client") to complete an appraisal (the "appraisal") for a parcel of property located at 1820 SW 28<sup>th</sup> Street, Moore, Oklahoma (the "subject property").

2. The appraisal's date of appraised value was reported as August 14, 2009. Respondent reported a final estimate of market value as Two Hundred Sixty Thousand Dollars and 00/100 (\$260,000.00). The report was submitted to the client.

3. That Respondent's appraisal report stated, in the Appraiser's Certification, that the appraisal was developed and the report prepared in conformity with the Uniform Standards of Professional Appraisal Practice.

4. Respondent's comparable number one (1), 1520 SW 35<sup>th</sup> Street, Moore, Oklahoma, was subject to a foreclosure proceeding in the District Court of Cleveland County, State of Oklahoma, case number CJ-2008-1053. It sold at the sheriff's sale for \$227,142.00; said sale was confirmed by the court on or about November 12, 2008. The high bidder at the sheriff's sale was First Horizon Home Loans, a division of First Tennessee Bank, National Association, who assigned the judgment and bid to Homesales, Inc.

6. On or about February 9, 2009, Homesales, Inc, sold the property to Reilly and Adalyn Burke for \$245,100.00.

7. In his report, Respondent reported that his research "did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale." Accordingly, this statement is misleading due to the foreclosure sale

confirmed within a year of the comparable sale utilized by Respondent.

8. Respondent's comparable number two (2), 4104 Hidden Lake Circle, Moore, Oklahoma, was subject to a foreclosure proceeding in the District Court of Cleveland County, State of Oklahoma, case number CJ-2005-1472. It sold at the sheriff's sale for \$186,760.00; said sale was confirmed by the court on or about May 28, 2008. The high bidder at the sheriff's sale was Deutsche Bank National Trust Company.

9. On or about November 21, 2008, Deutsche Bank National Trust Company sold the property to Rodney and Maegan Tompkins for \$228,000.00.

10. In his report, Respondent reported that his research "did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale." Accordingly, this statement is misleading due to the foreclosure sale confirmed within a year of the comparable sale utilized by Respondent.

11. More appropriate comparable sales were available than those chosen by the Respondent.

12. Respondent admitted that he did not develop the cost approach and did not disclose why he did not do so on a fourteen (14) year old home with an effective age of ten (10) years.

13. Respondent did not prove land value adjustment through any substantiation.

14. Respondent's comparable sales 1 and 2 were reported as being in good condition despite MLS notations that the properties were foreclosed properties with comp #2 noted as "requiring TLC."

15. The MLS system indicates that comparable sale 2 has an in-ground pool that was not reported in the comparable sales grid or adjusted for.

16. The dollar amount of the seller concessions (sixteen thousand three hundred seven dollars [\$16,307]) appears to be an excessive amount and warranted more and better explanation.

17. Comparable sale #2 was described in MLS as being an REO property needing

TLC, and whose sale price represented a forty thousand dollar (\$40,000) reduction from its original list price, and this information indicates that the property was not in good condition as reported by the Respondent.

18. Comparable sale #1, per MLS report, had a sale price that was eleven thousand four hundred twenty five dollars (\$11,425) greater than the list price with no explanation by the Respondent in his report.

19. Respondent admitted that he failed to go to the courthouse or otherwise verify his data through the county clerk's records of deeds.

20. Respondent admitted that two of his comparable sales were sales of foreclosed properties and that this information was not disclosed by him in his appraisal report, but indicated that this had no effect on the value.

21. Respondent's failure to comply with the requirements of USPAP resulted in a misleading appraisal report.

22. Respondent's exhibits 1 and 2 were not included in the work file produced by Respondent in response to the Board's subpoena duces tecum; therefore, Respondent failed to produce a complete work file.

#### **CONCLUSIONS OF LAW**

The Board adopts in full the Conclusions of Law recommended by the hearing panel:

1. That Respondent has violated 59 O.S. § 858-723(C)(6) through 59 O.S. §858-726, in that Respondent violated:

A) The Conduct and Recordkeeping 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. These include the sub sections of the referenced rules.

3. That Respondent has violated 59 O.S. § 858-723(C)(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(C)(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(C)(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(C)(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 adopting the recommendation of the Hearing Panel:

1. Respondent shall be placed on probation for a period of one (1) year beginning on the date of receipt of the final order in this matter during which period Respondent will submit a log of all of his appraisals to the administrative office of the Board not later than the fifth day of each month and will provide copies of any appraisal reports and work files upon request of the Board during the period of probation.

2. Respondent shall successfully complete corrective education as follows:
  - The **THIRTY (30) HOUR** Course Number 601: Basic Appraisal Principles; and
  - The **FIFTEEN (15) HOUR** Course Number 611: Residential Market Analysis and Highest and Best Use.

All courses must be completed with copies of the certificates of course completion transmitted to the administrative office of the Board within **ONE (1) YEAR** from the date of this Board Order. The courses must be tested and must be live courses, attended in-person by Respondent (not distance and/or correspondence courses).

3. Respondent be fined five hundred dollars (\$500.00).
4. Respondent shall pay a sum of five hundred dollars (\$500.00) to be applied toward the costs of the proceedings.
5. Payment of the fine and costs outlined above shall be remitted to the Board in accordance with the manner contemplated by 59 O.S. Section 858-723 (B)(2) and (4).

**THE BOARD WISHES TO ADVISE THE RESPONDENTS THAT THEY HAVE THIRTY (30) DAYS TO APPEAL THIS ORDER WITH THE APPROPRIATE DISTRICT COURT.**

**IT IS SO ORDERED** this 10th day of September, 2010



Handwritten signature of Shannon N. Gabbert in blue ink.

**SHANNON N. GABBERT**, Secretary  
Real Estate Appraiser Board

Handwritten signature of Bryan D. Neal in black ink.

**BRYAN D. NEAL**, Assistant Attorney General  
Counsel to the Board

**CERTIFICATE OF MAILING**

This will certify that on the 17 day of September, 2010, a true and correct copy of the above and foregoing Board's Decision on Hearing Panel Recommendation was forwarded by certified mail, return receipt requested, with postage prepaid thereon, to the following:

**DUANE A. WARDEN**  
1613 SW 85th St  
Oklahoma City, OK 73159

**7009 2820 0001 5683 7581**

And that copies were mailed by regular mail to the following:

**DERRYBERRY & NAIFEH, LLP**  
Attn: Stephen McCaleb  
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**CHRISTINE MCENTIRE**