

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

In the Matter of COESTER VMS)	Complaint# A18-040
Respondent.)	

**BOARD'S DECISION AS TO
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDATION OF HEARING OFFICER**

ON THE 6TH day of December 2019, the above numbered and entitled cause came on for hearing before the Oklahoma Real Estate Appraiser Board (the "Board" or "OREAB") following a disciplinary hearing that was held on October 7, 2019. The Hearing Examiner, Assistant Attorney General, Sandra Balzer, was duly appointed by the Oklahoma Real Estate Appraiser Board to hear this matter. The case was prosecuted by the Board's Prosecutor, Stephen L. McCaleb. Respondent Coester VMS did not appear and was not represented by an attorney.

At the election of Mr. McCaleb, the matter was audio recorded. No party to these proceedings submitted any proposed findings of fact or proposed conclusions of law to the Hearing Examiner for consideration.

WITNESSES AND EVIDENCE PRESENTED

The Board's Prosecutor presented one (1) witness, Christine McEntire, in support of the case against the Respondent. The Board's Prosecutor offered Exhibits A and B as proof of attempted service of the Notice of the Hearing on Respondent via USPS certified mail, postage prepaid, return receipt requested. The exhibits were admitted. Exhibit A is a photocopy of an envelope addressed to Respondent Coester VMS. Exhibit B is the USPS Tracking History printout from the USPS website associated with the certified mail tracking number on the envelope.

Upon being duly sworn, Ms. McEntire testified that she is the Director of the OREAB and her duties include handling disciplinary proceedings against appraisal management companies. Ms.

McEntire stated that Respondent was an appraisal management company registered by the Board at the time the events alleged in the complaint took place. She confirmed that she received a complaint against Respondent from James Ramsey alleging that Respondent failed to pay him for eight (8) appraisals he performed for Respondent. Ms. McEntire testified that Exhibit A contained the Notice of Disciplinary Hearing mailed to Respondent. Exhibit B, the USPS printout, indicates that there was an expired forwarding order for the envelope. Ms. McEntire stated that Respondent Coester VMS is no longer licensed in Oklahoma.

Ms. McEntire testified regarding the functions of an appraisal management company ("AMC"). The AMC acts as a third party vendor between the lender and the appraiser to make blind assignments to an appraiser to prevent lenders from "cherry picking" appraisers. She stated that the AMC maintains a pool or roster of appraisers to conduct appraisals for lenders who contact the AMC. She testified regarding the OREAB statute which requires an AMC to pay an appraiser within sixty (60) days after the appraiser provides the appraisal report to the AMC. She stated that a copy of the complaint was sent to Respondent with a request for a response. When no response was received, OREAB issued a subpoena to Respondent for records of payment information for the invoices. No response was received.

Ms. McEntire testified that in accordance with OREAB rules, she sent Notice of the Disciplinary Proceedings, Exhibit A, to Respondent's last address reported to the Board, and has not received a response. She stated that the events alleged in the complaint occurred prior to the expiration of Respondent's license in June 2019.

Prosecutor McCaleb then offered into evidence Exhibit 1, the complaint filed with the Board by Mr. Ramsey, as well as eight invoices from Mr. Ramsey for work performed for Respondent. The exhibit was admitted. The hearing official took judicial notice of the copies of Oklahoma Appraisal Management Company Regulation Act and rules provided by Mr. McCaleb. Ms. McEntire testified

that there is a national database of disciplinary actions against appraisers. If Coester VMS is found guilty of the allegations in this complaint, the information would be provided to the database.

Mr. McCaleb announced that although he was initially seeking a default judgement, there is sufficient evidence in the record to show that a violation of 59 O.S. 858-821(A) occurred. Section 858-821(A) requires an AMC to pay an appraiser within sixty (60) days after the appraiser provides the appraisal report to the AMC. The complaint was filed on December 4, 2018. Respondent's license expired in June 2019 and no payment has been made. Mr. McCaleb stated that 59 O.S. § 858-827 authorizes a penalty of five thousand dollars (\$5,000.00) per occurrence of a violation. He recommended that a fine of seven thousand three hundred twenty dollars (\$7,320) be assessed. That amount equates to twice the amount of the unpaid invoices – three thousand one hundred sixty dollars (\$3,160). Mr. McCaleb further recommended that should Respondent re-apply for licensure, reinstatement of the license be conditioned upon payment of the \$7,320 fine to the Board as well as payment of the unpaid amount of the invoices, \$3,160, to Mr. James Ramsey, with proof of payment to complainant to the Board.

Ms. Balzer asked whether the Board's rules authorize service via certified mail, return receipt requested, to Respondent's last reported address to the Board. Mr. McCaleb responded that Board rule OAC 600:35-1-7 authorizes such service.

The duly appointed Hearing Examiner in this matter, after having received all evidence and being fully advised in the premises as to the above matter, makes the following Findings of Fact, Conclusions of Law and disciplinary recommendations:

JURISDICTION

1. The OREAB has the duty to carry out the provisions of the Oklahoma Appraisal Management Company Regulation Act as set forth in Title 59 of the Oklahoma Statutes, §§858-801,

et seq., and to establish administrative procedures for disciplinary proceedings conducted pursuant to the provisions of the Oklahoma Appraisal Management Company Regulation Act.

2. The OREAB has promulgated rules and regulations to implement the provisions of the Oklahoma Appraisal Management Company Regulation Act in regard to disciplinary proceedings as set forth at the Oklahoma Administrative Code §§600:35-1-1 through 600:35-1-20, including administrative hearings.

3. The Oklahoma Real Estate Appraisal Board has appointed the Hearing Officer, Sandra Balzer, Assistant Attorney General, as Hearing Examiner in this case pursuant to OAC 600:35-1-10.

4. The Respondent, COESTER VMS, was an appraisal management company previously registered in the State of Oklahoma under certificate number #60120AMC, and was first registered with the Oklahoma Real Estate Appraiser Board on June 5, 2012. Respondent's certification in Oklahoma as an approved appraisal management company expired in June 2019.

5. In accordance with the requirements set forth in OAC 600:35-1-7, Respondent was served with Notice of Disciplinary Proceedings by certified mail, return receipt requested, and addressed to the last address reported by Respondent to the Board.

PROPOSED FINDINGS OF FACT

The Board hereby adopts in full the Findings of Fact of the Hearing Examiner as follows:

1. On December 4, 2018, James Ramsey, an Oklahoma Certified Residential Appraiser filed a complaint with the OREAB, alleging that he completed eight (8) appraisals for Respondent and had not received payment. He stated in the complaint that he received payment for one appraisal, but the check was returned for insufficient funds. He also stated that he attempted to contact Respondent "every day" but got "no answer." Exh. 1.

2. At the request of OREAB staff, Mr. Ramsey subsequently submitted eight (8) invoices for services he provided to Respondent. The invoices include the addresses of the appraised

properties, the lender, and the amount charged. The eight invoices totaled two-thousand seven hundred sixty dollars (\$2,760.00). Exh. 1.¹

3. There were no dates on three of the invoices. The dates of the remaining five invoices ranged from July 11, 2018 to September 5, 2018. Exh. 1. For those five invoices, more than sixty days had elapsed from the date of the invoice to the date Mr. Ramsey filed his complaint on December 4, 2018.

PROPOSED CONCLUSIONS OF LAW

The Board hereby adopts in full the Conclusions of Law of the Hearing Examiner as follows:

1. Respondent violated 59 O.S. § 858-821)(A), by failing to "make payment to an appraiser for the completion of an appraisal or valuation assignment within sixty (60) days of the date on which the appraiser transmits or otherwise provides the completed appraisal or valuation study to the AMC or its assignee unless a mutually agreed upon alternate arrangement has been previously established." Although three of the invoices were undated, more than sixty days has elapsed since the complainant, James Ramsey, submitted those invoices to the OREAB, alleging that they were unpaid. In the absence of any response from Respondent Coester VMS disputing the allegations, judgment should be entered against Respondent for all eight invoices.

2. Pursuant to 59 O.S. § 858-827, the OREAB may impose administrative fines not to exceed Five Thousand Dollars (\$5,000.00) per violation of the Oklahoma Appraisal Management Company Regulation Act, for committing any act in violation of the Oklahoma Appraisal Management Company Regulation Act.

3. Pursuant to 59 O.S. § 858-828, the OREAB has the authority, pursuant to the Administrative Procedures Act and the Oklahoma Certified Real Estate Appraisers Act and rules

¹ Exhibit A as provided to the Hearing Examiner included nine invoices. There were two copies of Invoice # 0040-2018, in the amount of \$400.00. The total amount of unpaid invoices as represented by Mr. McCaleb was accordingly reduced by the amount of \$400.00.

promulgated thereunder, to conduct administrative proceedings, and may issue an order imposing one or more of the following penalties whenever the Board finds, by clear and convincing evidence, that the registrant has violated any provision of the Oklahoma Appraisal Management Company Regulation Act or rules promulgated thereunder:

- a. Revocation of the registration with or without the right to reapply;
- b. Suspension of the registrant for a period not to exceed five (5) years;
- c. Stipulations, limitations, restrictions and conditions relating to conduct of the registrant's appraisal management services practice;
- d. Censure, including specific redress, if appropriate;
- e. Reprimand;
- f. Administrative fines not to exceed Five Thousand (\$5,000.00) per violation;
- g. Payment of costs expended by the Board for any legal fees and costs and monitoring fees, including but not limited to administrative costs, witness fees and attorney fees.

4. Pursuant to 600:35-1-10, Disciplinary Proceedings, the Hearing Examiner appointed by the OREAB is authorized to conduct disciplinary proceedings and issue proposed findings of fact, conclusions of law, and disciplinary recommendations for the Board's consideration and issuance of a final order.

FINAL ORDER

WHEREFORE, having adopted in full the Findings of Fact and Conclusions of Law entered by the Hearing Examiner, the Board hereby adopts in full the recommendation of the Hearing Examiner and hereby makes its Final Order as follows:

- (1) The Respondent, COESTER VMS, shall pay a fine in the amount of five thousand five hundred twenty dollars (\$5,520.00) for the violation of 59 O.S. § 858-821(A) involving the failure to make payment to Mr. James Ramsey for eight appraisals. That amount equates to twice the amount of the eight unpaid invoices – two thousand seven hundred sixty dollars (\$2,760.00).
- (2) Respondent's right to re-apply for registration is conditioned upon the following.

- a. Payment in full of the fine of five thousand five hundred twenty dollars (\$5,520.00) to OREAB.
- b. Payment in full of two thousand seven hundred sixty dollars (\$2,760.00) to Mr. James Ramsey.
- c. Submitting to the OREAB satisfactory proof of payment of two thousand seven hundred sixty dollars (\$2,760.00) to Mr. Ramsey.

THE BOARD WISHES TO ADVISE THE RESPONDENT THAT IT HAS 30 DAYS FROM THE DATE THE RESPONDENT IS FIRST NOTIFIED OF THIS ORDER, EITHER PERSONALLY OR BY CERTIFIED U.S. MAIL, RETURN RECEIPT REQUESTED, TO APPEAL THIS ORDER WITH THE APPROPRIATE DISTRICT COURT.

IT IS SO ORDERED on this 6th day of December 2019.



ERIC SCHOEN, Administrative Officer
Real Estate Appraiser Board

12-9-2019
Date



BRYAN NEAL
Assistant Attorney General and
Attorney for the Board

12/9/19
Date



CERTIFICATE OF MAILING

I, Kayla Dekat, hereby certify that on the 10th day of December 2019 a true and correct copy of the above and foregoing Board Order was placed in the U.S. Mail, with postage pre-paid, by certified mail, return receipt requested to:

Coester VMS

Attention: Brian C. Coester
555 Quince Orchard Rd. Ste. 650
Gaithersburg, MD 20878

9214 8902 0982 7500 0262 51

and by First Class Mail to:

Sandra Balzer, Administrative Hearing Examiner

Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
313 N.E. 21st Street
Oklahoma City, OK 73105

Bryan Neal, Assistant Attorney General

OFFICE OF THE ATTORNEY GENERAL
313 N.E. 21st Street
Oklahoma City, OK 73105

Stephen L. McCaleb

DERRYBERRY & NAIFEH
4800 N. Lincoln Boulevard
Oklahoma City, OK 73105


KAYLA DEKAT