

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

In the Matter of BARRY R. SIMPSON,)
Respondent.) Complaint #19-005

CONSENT ORDER

COMES NOW the Oklahoma Real Estate Appraiser Board (“OREAB”), by and through the Prosecuting Attorney, Stephen McCaleb, and the Respondent BARRY R. SIMPSON, and enter into this Consent Order 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. In January of 2019, Respondent was hired to complete an appraisal (the “appraisal” or “report”) for a property located at 7253 US Hwy 70, Mead, OK 73449 (the “subject”). Respondent completed the appraisal with an effective date of January 4, 2019.

2. Respondent committed a series of errors in the report which led to a misleading and non-credible report. These errors include, but are not limited to, the following in paragraphs 3-37.

GENERAL

3. The reporting option was not prominently stated. Except for the pre-

printed “Uniform Residential Appraisal Report” at the top of page one of the URAR form, the Appraisal lacks prominent disclosure of the “Report Option” (Appraisal Report, or Restricted Appraisal Report).

4. The report date and effective date were not stated. The addendum (second page) referenced “This market value opinion with the effective date of October 00, 2018 was ordered for Gateway Mortgage Group, LLC and HUD/FHA, and they are considered to be the client.” However, the effective date of the appraisal was not October 00, 2018.

5. The Scope of Work was not sufficiently summarized to disclose to the clients the level of work used to develop the appraisal. The Client’s Letter of Engagement specifies that the Appraiser must provide a detailed reconciliation of the adjusted values for the comparable sales and identify why the sales were given the most weight in arriving at the indicated value for the subject property. Page 2 of the appraisal addendum, second paragraph, reported “The comparable sales considered in this report are the most recent and best sales available to the appraiser. None of the comparable sales can be considered independently reliable but when considered collectively they tend to confirm one another and lead to a reasonable conclusion as to the subject’s market value.” This reconciliation would have been better supported if it included commentary regarding the Listings utilized in the appraisal. No verification indicating “live” photos. The Client’s Letter of

Engagement specifies that the Appraiser is to verify that he/she drove past all of the comparables sales/listings and inspected them from the street and that photos were their own and not MLS photos. However, the report disclosed no commentary which verified the Appraiser's comparables photos were "their own and not MLS photos." The URAR Form addendum (page 1), under Scope of Work, states that the Appraiser inspected each of the comparable sales from at least the street. However there is no commentary in the pre-printed form that the Appraiser's comparable sale photos are his/her own and not from MLS.

6. The Certification did not include names of persons providing significant real property appraisal assistance. The addendum disclosed that Trainee Sean Howard, License #91046TRA, assisted in the completion of this current appraisal by data collection as well as data entry in the appraisal report while being monitored by Barry Simpson. However, the Certification page of the Appraisal (the signature page) did not appropriately display both the Trainee and the Supervisory Appraiser.

7. It was reported there was not sufficient market rental data available to consider the income approach. However, this commentary is not acceptable without additional verbiage added to the Scope of Work, such as "The development of the Income Approach was not necessary in order to arrive at a credible market value."

8. The appraisal results may differ if appraised as commercial property:

Appraisal results may have been different in the event a Feasibility Study were developed, or a Commercial Appraisal was developed by General Certified Appraiser, considering the presence of nearby commercial parcels with same Highway 70 frontage. The Appraisal report lacked any such commentary, or extraordinary assumption invoked which informs the Reader of the report that the appraised value was based on “Residential” use parcels, and that the Subject parcel may have a higher and better potential use as an income producer.

SITE/HIGHEST AND BEST USE

9. The site has not been adequately identified/defined.
10. Easements, restrictions or other items of a similar nature have not been adequately reported and considered.
11. An opinion as to the highest and best use has not been provided.
12. Subject is located in Bryan County, not the City of Mead, however Respondent failed to adequately clarify this in the report.
13. **Inaccurate reporting of legal description:** The Subject legal description reported in the appraisal lacked the last “W” in W2SES, should be W2SESW. The Subject legal description reported in Realist/County records contain 20 acres, however the Appraisal report shows 30 acres. Note that SEC 29-6S-8E W2SESW equates to 20 acres (SW=160), SE=40, W2-20).
14. **Subject site water source in question:** The report reported the water

source is public, however subject is located in unincorporated Bryan county, therefore, the appraisal should have provided further explanation as to the actual source of the public water.

15. **Highest and Best Use in question:** The front page of the appraisal reported the Highest and Best Use is Conforming to Residential, per County Records, and the addendum reported “Subject property is not a working farm and there was no agricultural, commercial or income producing activity occurring at the time of the inspection.” However, the reported Highest and Best Use is questionable, considering the two neighboring commercial properties located approximately 1600ft and 1900ft respectively to the East of the Subject’s house. Additionally, a parcel of the Subject’s size (20 acres) may have the potential of supporting income producing crops, given its generally level topography. Furthermore, a property of this size, with highway frontage could have a higher and better use than residential, which could be determined with the development of a Feasibility Study (typically a commercial appraisal practice), however no such analysis was found in the appraisal or the work file nor was any such commentary or extraordinary assumption regarding subject’s commercial potential not being pertinent to the assignment was found in the appraisal.

16. **Possible support for Residential Highest and Best Use:** The Appraiser’s work file page entitled “Agent Single Line -RES” (page 73 of 81 in the

file provided to the OREAB), shows a sale located at 5989 US Hwy 70, Mead, OK, with a sales price of \$156,000. According to Realist/County records, this property has 2080sf of gross living area, built in 1950, 7.64 acre site, sold 05/02/2018 for \$156,500 (book: 1466 page: 772). Grantor: Wilson, Grantee: Stinson. According to aerial photo, this property is similarly proximate to the City of Mead, but located on the West side. **It is not explained why the Respondent failed to utilize or properly eliminate this comparable sale,** considering its frontage to the same highway as the subject and being similarly proximate to Mead City limits. If the Appraiser utilized this sale, it may have provided further support of the appraised value, and further support for “Highest and Best Use” as residential.

DESCRIPTION OF IMPROVEMENTS

17. As described further, relevant characteristics of improvements and any effect they have on value were not adequately described; additionally, personal property, trade fixtures or intangible items that are not real property, but included in the appraisal, were not adequately described and considered in the valuation process.

18. The report reported that the crawl space and attic included a head and shoulders inspection. However no explanation was provided as to why the full crawl and attic spaces were not inspected.

COST APPROACH

19. The site value was not supported. The report reported “All site value estimates were derived from research in the market area. This appraiser evaluated other similar site/lots, improved and unimproved with detail to size, use and proximity. County records estimated values were also reviewed, but not wholly relied on for final valuation purposes. Each value assigned to the properties use in this report were estimated and the property adjustments for the differences in values made.” However, there were not land sales in the Appraisal or work file which supported the Subject’s \$45,000 lot value, and the \$1,000 per acre lot adjustment applied to the comparables.

SALES COMPARISON APPROACH

20. As described further, Respondent did not analyze comparable sales data and use appropriate appraisal methods and techniques that support his conclusions; he did not adequately collect, verify, and report comparable sales; he did not provide adequate reasoning for his adjustments, analysis, opinions and conclusions; and did not correctly employ recognized methods and techniques.

21. **Lack of alternate Sale elimination:** The Appraiser’s work file page entitled “Agent Single Line – RES” (page 73 of 81 in the file provided to the OREAB), shows a sale located at 5989 US Hwy 70, Mead, OK, with a sales price of

\$156,000. According to Realist/County record, this property has 2080sf of gross living area, built in 1950, 7.64 acre site, sold 05/02/2018 for \$156,500 (book: 1466 page: 772) Grantor: Wilson, Grantee: Stinson. According to aerial photo, this property is similarly proximate to the City of Mead, but located on the West side. **It is not explained why the Appraiser failed to utilize or properly eliminate this comparable sale**, considering its frontage to same highway as the subject and begin similarly proximate to Mead City limits. Additionally, if the Appraiser utilized this sale, it may have provided further support of the appraised value, and further support for “Highest and Best Use” as residential.

22. **Inadequate Prior Sale Verification:** The date of Data Sources, reported in the appraisal for prior sales (bottom of sales grid), is 01/04/2018 for the Subject, 04/27/2018 for Sale 1, 01/04/2018 for Sales 2, 3 and Listings 4 and 5. No explanation was given for these dates which are one year prior to the effective date of the appraisal.

23. **Inadequate Sale Verification:** The Sale Verification Source reported in the appraisal for Sales 1, 2 and 3 is “Assessor Records/Tax Record”. However, this source by itself is considered inadequate without additional information such as document number at a minimum.

24. **Unsupported adjustments:** Listing 5 subsequently sold 04/09/2019 for \$250,000 (\$10,000 higher than its list price) per County Record, then sold for

\$220,000 on 07/12/2010. This brings to question the accuracy of the 20% downward “List to Sell Ratio” adjustment applied to Listing 4 (\$39,000) and Listing 5 (\$48,000), and noted in the 1004MC Form.

25. **Unsupported adjustments:** The \$20 per foot gross living area adjustment, applied across the grid, seems inconsistent when the Comparables ranged in sales price per foot from \$82.98 to \$100.97, and the Subject’s dwelling Cost per Foot was reported to be \$88.00 with effective age of 25 years and remaining economic life of 45 years. This adjustment is in question due to the lack of adequate explanation as to how it was derived, and due to the lack of gross living area bracketing comparables utilized in the appraisal (no bracketing).

26. **Unsupported adjustments:** The appraisal lacked age bracketing sales, however the lack of age adjustments was not adequately explained.

27. **Sales reconciliation borderline acceptable:** The Client’s Letter of Engagement specifies that the Appraiser must provide a detailed reconciliation of the adjusted values for the comparable sales and identify why the sales were given the most weight in arriving at the indicated value for the subject property. Page 2 of the appraisal addendum, second paragraph, reported “The comparable sales considered in this report are the most recent and best sales available to the appraiser. None of the comparable sales can be considered independently reliable but when considered collectively they tend to confirm one another and lead to a reasonable conclusion as

to the subject's market value." This reconciliation would have been better supported if it included commentary regarding the Listings utilized in the appraisal.

28. **Lack of Sale reconciliation:** Sale 3 and Listing 4 have highway frontage. Listing 4 seems to be most similar to the Subject parcel in its location to nearby major town like that of Kingston for Listing 4, and Durant for the Subject. Therefore, the downward \$39,000 "List to Sell Ratio" adjustment to Listing 4 seems "too perfect" in relation to the Subject's appraised value. Although Sale 3 fronts to Hwy 22, it is located in a more rural and smaller town locale (much lower traffic count) than that of Listing 4 and the Subject parcel, however the Appraisal lacked any such reconciliation. This all relates to subject's possible commercial value in the event Subject parcel can be utilized as commercial property, without a required variance.

29. **Lack of Sale reconciliation:** The Appraiser's work file page entitled "Agent Single Line – RES" (page 73 of 81 in the file provided to the OREAB), shows a sale located at 5989 US Hwy 70, Mead, OK, with a sales price of \$156,000. According to Realist/County record, this property has 2080sf of gross living area, built in 1950, 7.64 acre site, sold 05/02/2018 for \$156,500 (book: 1466 page: 772) Grantor: Wilson, Grantee: Stinson. According to aerial photo, this property is similarly proximate to the City of Mead, but located on the West side. **It is not explained why the Appraiser failed to utilize or properly eliminate this**

comparable sale, considering its frontage to same highway as the subject and begin similarly proximate to Mead City limits. Additionally, if the Appraiser utilized this sale, it may have provided further support of the appraised value, and further support for “Highest and Best Use” as residential.

INCOME APPROACH

30. The exclusion of the Income Approach was not supported.

31. Respondent reported there was not sufficient market rental data available to consider the Income approach. However, this commentary is not acceptable without additional verbiage added to the Scope of Work, such as “The development of the Income Approach was not necessary in order to arrive at a credible market value.”

FINAL RECONCILIATION

32. Quality and quantity of data was not adequately reconciled.

33. Quality and quantity of data available and analyzed within the approaches used has not been inadequately reconciled.

34. The applicability and suitability of the approaches used to arrive at the value conclusions were not adequately reconciled.

35. The Subject property has a design feature which appears to be atypical for the development (garage conversion); however the report failed to analyze market reaction to garage conversions (no garage converted sales were provided),

failed to develop the Cost Approach, with special attention to functional depreciation, failed to condition the report for further inspections such as HVAC for the gas fired equipment (apparent lack of combustion fresh air ventilation), structural inspection (wall removal; was it load bearing?), electrical and mechanical permits (electrical outlets and HVAC vents installed in the conversion), and perhaps failure to verify permit for garage conversion (if permits are necessary for garage conversions).

36. The report lacked Comparable Sales with garage conversions, therefore market reaction to conversions was not analyzed; the across-grid garage adjustments were not supported; lack of adjustment or commentary for functional utility category not provided; the GLA per foot adjustment applied in the OAR seems overstated and includes units of comparison other than living area.

37. Without the analysis of the above noted conditions, the applicability and suitability of the approaches used to arrive at the value conclusion has not been adequately reconciled.

AGREED VIOLATIONS OF LAW

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

A) The Ethics Rule and the Conduct Section 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) Standard 1, Standards Rules 1-1, 1-2, 1-3, 1-4, 1-5, and 1-6; and Standard 2, Standards Rules 2-1, 2-2, and 2-3 of the Uniform Standards of Professional Appraisal Practice. These include the sub-sections of the referenced rules.

2. 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."

3. 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."

4. 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."

5. 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."

6. That Respondent has violated 59 O.S. § 858-723(C)(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."

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

8. The OREAB reserves the right to amend or addend these allegations should evidence presented or discovered during the proceeding constitute clear and convincing proof that such amendments or addenda are warranted.

CONSENT AGREEMENT

The Respondent, by affixing his signature hereto, acknowledges:

1. That Respondent has been advised to seek the advice of counsel prior to signing this document.

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.

7. Respondent acknowledges this will be placed on the Board's agenda for its next monthly meeting after receipt of the executed Order from Respondent, and notice for the Order's placement on that agenda is accepted.¹

8. All parties to this Consent Order have been represented by counsel.

¹ Currently the next Board meeting is scheduled for 9:30 a.m. on January 3, 2020.

9. This Consent Order may be executed in one or more counterparts, but all of such counterparts, taken together, shall constitute only one Consent Order. When delivered to the other party, facsimile and visual digital reproductions of original signatures shall be effective the same as if they were the originals.

10. This Consent Order shall be governed by the internal laws of the State of Oklahoma without regard to the conflict of law principles.

11. This Consent Order contains the entire agreement between the parties hereto and all provisions of this Consent Order are contractual and not a mere recital. The Parties acknowledge that no presentation or promise not expressly set forth in this Consent Order has been made by any of the Parties hereto or any of their agents, employees, representatives, or attorneys. No modification of, or amendment to, this Consent Order shall be valid unless it is in writing and signed by the Parties. In the event any portion of this Consent Order shall be declared illegal or unenforceable as a matter of law, the remainder of the Consent Order shall remain in full force and effect.

12. This Consent Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understanding, discussions, negotiations, and commitments (written or oral). This Consent Order may not be altered, amended, modified, supplemented or otherwise changed except

by a writing executed by an authorized representative of each of the parties.

13. The undersigned Respondent agrees that presentation of this Consent Order to the OREAB without the undersigned Respondent being present shall not constitute an improper *ex parte* communication between the OREAB and its counsel.

14. The Parties represent and warrant to one another that each party has authority to enter into this binding Consent Order. The OREAB represents and warrants that the undersigned have full authority to execute this Consent Order on behalf of the OREAB and bind the OREAB to the terms set forth herein.

15. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Consent Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

16. The parties acknowledge that they understand the provisions of this Consent Order.

CONSENT ORDER TO BE ACCEPTED OR REJECTED BY THE BOARD

The Oklahoma Real Estate Appraiser Board will not submit this Consent Order for the Board's consideration until its agreement and execution by the Respondent(s). It is hereby agreed between the parties that this Consent Order shall be presented to the Board with recommendation for approval of the Board at the next scheduled meeting of the Board. The Respondent understands that the Board is free to accept or reject this Consent Order and, if rejected by the Board, a formal hearing

on the complaint may be held. If the Board does not accept the Consent Order, it shall be regarded as null and void. Admissions by Respondent in the rejected Consent Order will not be regarded as evidence against him at the subsequent disciplinary hearing. Respondent will be free to defend himself and no inferences will be made from his willingness to have entered this agreement. It is agreed that neither the presentation of the Consent Order nor the Board's consideration of the Consent Order will be deemed to have unfairly or illegally prejudiced the Board or its individual members and therefore will not be grounds for precluding the Board or any individual Board member from further participation in proceedings related to the matters set forth in the Consent Order.

ORDER

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

1. Respondent agrees to take the following corrective education courses within six months (by of the approval by the OREAB of this Order:
 - a. Residential Market Analysis and Highest and Best Use (611) (15 hours);
 - b. Residential Sales Comparison and Income approaches (613) (30 hours);
 - c. and Residential Appraiser Site Valuation (612) (15 hours); and

d. an administrative fine of \$500, to be paid pursuant to 59 O.S. §858-723.

At least one of the three classes shall be taken live and all three courses shall be tested and successfully completed within the sixth month time period. Respondent shall provide proof to the OREAB office within the sixth month time period.

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:



BARRY R. SIMPSON

12/10/19

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 Prosecutor
3625 NW 56th Street, Suite 100
Oklahoma City, Oklahoma 73112

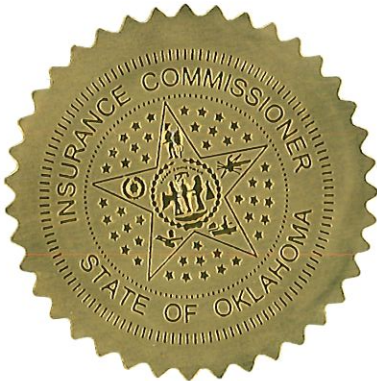
1-10-20

DATE

IT IS SO ORDERED on this 10th day of January, 2020
~~December~~



ERIC SCHOEN, Board Secretary
Oklahoma Real Estate Appraiser Board



**OKLAHOMA REAL ESTATE
APPRAISER BOARD**

By:



BRYAN NEAL, OBA #6590
Assistant Attorney General
Attorney for the Board
313 NE 21st Street
Oklahoma City, Oklahoma 73105

CERTIFICATE OF MAILING

I, Christine McEntire, hereby certify that on the 10th day of January 2020 a true and correct copy of the above and foregoing Consent Order was placed in the U.S. Mail, with postage pre-paid, by certified mail, return receipt requested to:

Barry R. Simpson
434565 E. 1630 Rd.
Tuskahoma, OK 74574

9214 8902 0982 7500 0268 00

and by First Class Mail to:

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



Christine McEntire