

Tracking History Sheet provided by representatives of the U.S. Postal Service for the Notice to the Board and signed by an individual at the Respondent's residence and work address on behalf of the Respondent on September 26, 2019, failed to appear in person and was not represented by an Attorney.

In response to a question from the Board's Hearing Panel Counsel, the Board's Prosecutor indicated that the day before the date and time of the scheduled hearing, he spoke with the Respondent who said that he would not appear for the hearing.

PRELIMINARY MATTERS

In light of the absence of Respondent or any Attorney appearing on his behalf, the Board's Prosecutor informed the Hearing Panel that under the Board's Rules OAC 600: 15-1-12 for a Failure to Appear, the Hearing Panel could proceed with this matter either as a Default as to Respondent due to the absence of Respondent or proceed with the formal hearing against Respondent and determine the matter in the absence of Respondent. The Board's Prosecutor stated his preference would be to proceed with the Default against the Respondent.

The Respondent (who was absent) did not submit any documents for admission as evidence in this matter. Further, no party in these proceedings requested that a court reporter record this matter and no party to these proceedings submitted any proposed findings of fact or proposed conclusions of law to the Disciplinary Hearing Panel for its consideration.

WITNESS AND EVIDENCE PRESENTED

The Board's Prosecutor presented one (1) witness in support of the case against the Respondent: Christine McEntire, the Board's Director.

The Respondent, who was absent, presented no defense.

The Board's Prosecutor called the Board's Director, Christine McEntire, to testify as the Board's first witness.

The evidence presented by the Board's Prosecutor consists of:

Exhibit S-1, a copy of the Notice of Disciplinary Proceedings and Appointment of Hearing Panel in Complaint No. 19-001, mailed on September 25, 2019; and,

Exhibit S-2, a copy of the USPS Tracking History Sheet provided by representatives of the U.S. Postal Service for the Notice to the Board and signed by an individual at the Respondent's residence and work address on behalf of the Respondent on September 26, 2019.

[It should be noted that due to the Respondent's default, the appraisal report in question that is repeatedly referred to herein, was not offered or entered into evidence in this default proceeding.]

Christine McEntire Testimony (Summary)

Upon being duly sworn, Ms. McEntire testified that she is the Director of the Board, that she has been the Board's Director since 2011, and that in her capacity as the Director she is involved with and oversees the appraiser disciplinary process on behalf of the Board.

The Board's Prosecutor provided a copy of Exhibit S-1 to Ms. McEntire, who identified Exhibit S-1 as the Notice of Disciplinary Proceedings and Appointment of Hearing Panel in Complaint No. 19-001 ("Notice") mailed by the Board to the Respondent on September 25, 2019, by first-class U.S. Mail, certified with return receipt requested. Ms. McEntire stated that the Notice was signed for on behalf of the Respondent on September 26, 2019, and that the service of notice to the Respondent was proper.

The Board's Prosecutor provided a copy of Exhibit S-2 to Ms. McEntire, who identified Exhibit S-2 as the USPS Tracking History Sheet provided by representatives of the U.S. Postal Service for the Notice to the Board and signed by an individual at the Respondent's residence and work address on behalf of the Respondent on September 26, 2019.

There being no objection by Respondent, who was absent, Exhibit S-1 and Exhibit S-2 were

admitted into evidence.

Subsequent to the testimony of Ms. McEntire, the Board's Hearing Counsel noted that service of notice to the Respondent was proper.

The Board's Prosecutor, Mr. McCaleb, moved for a Default in this matter under the Board's Rules OAC 600: 15-1-12 for a Failure to Appear. Upon request, the Board's Prosecutor presented his recommendation that, based upon the Respondent's default, the Respondent should be fined in the amount of \$5,000.00 and receive a three-month suspension.

The Respondent did not file a Request for Oral Argument and did not appear at the Board Meeting to address the Disciplinary Hearing Panel Recommendation.

JURISDICTION

1. The OREAB has the duty to carry out the provisions of the Oklahoma Certified Real Estate Appraisers Act as set forth at Title 59 of the Oklahoma Statutes, §§858-701, *et seq.* and to establish administrative procedures for disciplinary proceedings conducted pursuant to the provisions of the Oklahoma Certified Real Estate Appraisers Act.

2. The OREAB has promulgated rules and regulations to implement the provisions of the Oklahoma Certified Real Estate Appraisers Act in regard to disciplinary proceedings as set forth at the Oklahoma Administrative Code, §§600:15-1-1 thru 600:15-1-22, including administrative hearings.

3. The Respondent, MICHAEL D. FLESHER, is a Certified Residential Appraiser in the State of Oklahoma, holding certificate number 13015CRA and was first licensed with the Oklahoma Real Estate Appraiser Board on May 3, 2013.

INTRODUCTION (from NOTICE)

On January 8, 2018, the Board issued Board Order #18-002 as to Complaints #17-002, #17-005, and #17-019. Under the terms of that Order, Flesher was placed on a six-month period of probation. Probation commenced after the completion of corrective education. Flesher timely completed the required education courses and probation began on July 11, 2018. As part of this probation, Flesher was required to submit monthly work logs for all appraisal assignments performed during the month prior. From each work log, appraisal assignments are randomly requested for review.

On January 8, 2019, pursuant to a request from Board staff, Flesher submitted the subject appraisal report (the "subject report"), which was identified on his work log for appraisal assignments completed during the month of December. The subject report was submitted to the Board's Appraiser-Examiner for review. As noticed below, the subject report was not sufficient.

FINDINGS OF FACT

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

1. The Respondent, MICHAEL FLESHER, is a Certified Residential Appraiser in the State of Oklahoma, holding certificate number 13015CRA and was first licensed with the Oklahoma Real Estate Appraiser Board on May 3, 2013.
2. In December of 2018, the Respondent was hired to complete an appraisal (the "appraisal") for a property located at 105 SW 142nd Street, Oklahoma City, Oklahoma 73170 (the subject"). The Respondent completed the appraisal with an effective date of December 22, 2018.
3. The Respondent committed a series of errors in the appraisal report which led to a

misleading and non-credible appraisal report. These errors include, but are not limited to, the following in paragraphs 4-28.

GENERAL

4. The identity of the client and intended user were not stated in the appraisal report.
5. The Scope of Work does not sufficiently summarize or disclose the clients the level of work used to develop the appraisal.
6. The appraisal report was an FHA report; however, Respondent only listed the Lender/Client as the Intended User. FHA/HUD is required to be included as an Intended User when the appraisal report is for a FHA loan.

NEIGHBORHOOD SECTION

7. The neighborhood boundaries were not adequately and reasonably defined.
8. The market area trends were not adequately and reasonably discussed and analyzed.
9. Neighborhood boundaries reported in the appraisal report are acceptable; however, the value range reported in the appraisal report indicated a low of \$52,000, a high of \$557,000, and predominant value of \$122,000, while the neighborhood boundaries indicated a low of \$93,000, a high of \$257,000 and median of \$184,765. Note that three of four sales utilized in the appraisal report are located outside of the described neighborhood boundaries, which was not explained.
10. The appraisal report's neighborhood section reported stable trends, however the stats and charts provided in the appraisal report indicate the Subject's market was increasing. Typically, when a market is changing, clients require a minimum of two sales within 90 days, however, the appraisal report included only one.

DESCRIPTION OF IMPROVEMENTS

11. As described further, relevant characteristics of improvements and any effect they have on value were not adequately described.

12. Personal property, trade fixtures or intangible items that are not real property, but included in the appraisal report, were not adequately described and considered in the valuation process.

COST APPROACH

13. The lot value reported in the appraisal report for the subject was \$20,000 (same as County Assessors Lot Value), and it was based on sales at 14609 Sylene Way and 1021 Eagle Drive. However, Multi-List Service (MLS) reports those lots sold for \$33,000 and \$35,000, respectively.

14. Subject has a garage conversion; however, the appraisal report failed to analyze market reaction to garage conversions (functional obsolescence). Note that no sales with garage conversions were utilized in the appraisal report for value reconciliation nor were any explanations provided as to why none were provided.

15. Due to garage conversion, the development of the Cost Approach may have provided a more credible appraisal report or would have been considered a good practice at a minimum.

16. The exclusion of the Cost Approach was not supported; recognized methods and techniques were not employed; the site value was not developed by an appropriate appraisal method or technique; and Respondent failed to identify and correctly analyze depreciation items (physical, functional, external).

SALES COMPARISION APPROACH

17. 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.

18. The Subject property has a garage conversion and is located in a development where garage conversions appear to be atypical; however, none of the sales utilized in the OAR have converted garages. Therefore, market reaction to garage conversions has not been analyzed. The Reviewer could not locate any garage converted sales in the past 12 months within the Subject's mile section or subdivision; however the following converted garage sale located within two miles was found in MLS (included only to ML#809345; 1008 Kings Rd., Moore, OK; 2 mi N), sold 4/12/2018 for \$110, 000, Gross Living Area (GLA) 1500 sf per County sketch (1046 sf, main,454 sf garage), built 1978.

19. All utilized sales have larger site area; however, no adjustment or explanation provided.

20. GLA adjustment on sale 1 was \$93.05, sale 3 was \$92.59, however these adjustments are similar to the full sales price per foot of sales 1, 2 and 4 (\$92.62, \$93.49, respectively), which suggests the GLA adjustment figure applied to the comparable sales included other units of comparison in addition to the living area, such as land, site improvements, garage, site, etc.

21. A Lis Pendens transaction on 09/12/2018 for Sale 2 was not disclosed in the appraisal report.

22. Respondent failed to explain or provide support for any of the adjustments to the comparable sales.

FINAL RECONCILIATION

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

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

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

26. The Subject property has a design feature which appears to be atypical for the development (garage conversion); however the appraisal 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 appraisal 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).

27. The appraisal 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.

28. 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.

CONCLUSIONS OF LAW

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

1. It is the finding of the Disciplinary Hearing Panel through the Respondent's default based upon the evidence that such conduct by the Respondent is in violation of 59 O.S. §858-723(C)(6) through 59 O.S. §858- 726, in that the Respondent violated:
 - A. The Ethics Rule and 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; Standard 2, Standards Rules 2-1, and 2-2 of the Uniform Standards of Professional Appraisal Practice. These include the sub sections of the referenced rules.
2. The 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."
3. 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".
4. 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."

5. 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."

6. 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".

7. 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

WHEREFORE, having adopted in full the Findings of Fact and Conclusions of Law entered by the Disciplinary Hearing Panel, the Board hereby adopts the Recommendation of the Hearing Panel and issues its Final Order as follows:

1. The Respondent Michael D. Flesher shall pay an administrative fine in the amount of **FIVE THOUSAND DOLLARS (\$5,000.00)** to the Board. Payment of the fine shall be remitted to the Board in accordance with the manner contemplated by 59 O.S. § 858-723(B).

2. The appraiser credential of the Respondent Michael D. Flesher, shall be **SUSPENDED** for a period of **NINETY (90) DAYS** from the date that any final order is entered in this matter plus a period of thirty (30) days after Respondent Michael D. Flesher is notified of the final agency order either personally or by certified mail, return receipt requested.

3. Respondent Michael D. Flesher, shall be placed on **PROBATION** for a period of **ONE (1) YEAR** beginning immediately upon the date that the period of **ONE (1) YEAR SUSPENSION** as ordered hereinabove to be completed shall end. During the period of probation, Respondent Michael D. Flesher shall provide an appraisal log on REA Form 3 to the administrative office of the Board no later than the fifth working day of each month detailing all his appraisal activity during the preceding month. The Board may select and require samples of work product from these appraisal logs be sent for review, to include for review the appropriate work file of the Respondent Michael D. Flesher.

4. Failure by Respondent Michael D. Flesher, to comply with any requirement of this order shall result in her appraisal credential being suspended instanter, with notification forwarded immediately to Respondent Michael D. Flesher, either personally or by Certified U. S. mail, return receipt requested.

THE BOARD WISHES TO ADVISE THE RESPONDENT THAT HE HAS 30 DAYS FROM THE DATE HE 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 10th day of January 2020



ERIC SCHOEN, Administrative Officer
Real Estate Appraiser Board

1-10-2020

Date



BRYAN NEAL
Assistant Attorney General and
Attorney for the Board

1/10/2020

Date





OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

FILED

JAN 27 2020

Real Estate Appraiser Board
State of Oklahoma

ATTORNEY GENERAL OPINION
2020-4A

Christine McEntire, Director
Oklahoma Real Estate Appraiser Board
3625 N.W. 56th St., Ste. 100
Oklahoma City, OK 73112

January 27, 2020

Dear Director McEntire:

This office has received your request for a written Attorney General Opinion regarding action that the Oklahoma Real Estate Appraiser Board intends to take with respect to licensee 13015CRA. The licensee was previously disciplined and was on probation. *See* A.G. Opin. 2018-15A. While on probation, the licensee performed an appraisal that failed to meet the required standards. The licensee did not appear at the scheduled hearing. The Board proposes to require the licensee to pay a \$5,000 administrative fine, suspend the license for 90 days, and upon completion of the suspension, place the license on probation for one year.

The Oklahoma Certified Real Estate Appraisers Act authorizes the Board suspend and revoke certificates pursuant to the disciplinary proceedings and require payment of fines. *See* 59 O.S.Supp.2019, § 858-723(A)(2), (3) & (8). The Board may discipline licensees who “[v]iolat[e] any of the provisions in the code of ethics set forth in [the] Act.” *Id.* § 858-723(C)(13). The Act requires adherence to the USPAP, which contains professional requirements pertaining to ethics, competency, and scope of work. 59 O.S.2011, § 858-726. The Board may reasonably believe that the proposed action is necessary to prevent future violations.

It is, therefore, the official opinion of the Attorney General that the Oklahoma Real Estate Appraiser Board has adequate support for the conclusion that this action advances the State’s policy to uphold standards of competency and professionalism among real estate appraisers.

A handwritten signature in black ink that reads "Mike Hunter".

MIKE HUNTER
ATTORNEY GENERAL OF OKLAHOMA

A handwritten signature in blue ink that reads "Ethan Shaner".

ETHAN SHANER
DEPUTY GENERAL COUNSEL

CERTIFICATE OF MAILING

I, Christine McEntire, hereby certify that on the 28th day of January 2020 a true and correct copy of the above and foregoing Board's Decision as to Disciplinary Hearing Panel Recommendation was placed in the U.S. Mail, with postage pre-paid, by certified mail, return receipt requested to:

Michael D. Flesher
3712 Millers Creek Ln.
Mustang, OK 73064

9214 8902 0982 7500 0270 36

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