

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

In the Matter of DUSTY A. COTTON,        )  
Respondent.                                        )       Complaint #18-038

**CONSENT ORDER**

COMES NOW the Oklahoma Real Estate Appraiser Board (“OREAB”), by and through the Prosecuting Attorney, Stephen McCaleb, and the Respondent DUSTY A. COTTON, represented by James K. Secrest, II, 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 October of 2018, Respondent was hired by Municipal Employees Credit Union (the “client”) to complete an appraisal (the “appraisal”) for a property located at 3340 Pintail Cir., Blanchard, OK 73010 (the “subject”). Respondent completed and transmitted the appraisal with an effective date of October 11, 2018.
2. An analysis of agreements of sale, options, or listing of the subject property within prior three years was not disclosed and analyzed. According to MLS Realist, the Subject property sold on 10/29/2015 for \$40,000 (book: 4976 page: 300), which was not disclosed in his report.
3. Respondent used condition ratings that were invalid in this in this type

of reporting format and did not make sense when compared to the actual ages of the subject and comparables. The grid adjustments were inconsistent and could not be replicated. There were age adjustments on sale 4 without without explanation and Respondent failed to recognize the pool on the subject and the geo thermal unit. Respondent failed to include his original appraisal report in his work file.

#### **SITE HIGHEST AND BEST USE**

4. The appraisal addendum indicated the highest and best use of the subject property is assumed to be its present use; that is, one-four family residential use. However, it failed to summarize the support and rationale for that opinion. An appraiser must analyze the relevant legal, physical, and economic factors to the extent necessary to support the appraiser's highest and best use conclusion(s).

#### **DESCRIPTION OF IMPROVEMENTS**

5. Respondent failed to explain how the market values of \$4,000 and \$15,000 for the Geo-thermal and Swimming pool, respectively, were derived.

#### **COST APPROACH**

6. The site value was not developed by an appropriate appraisal method or technique.

7. Although Respondent indicated the Cost Approach was not relevant, he failed to provide appropriate support for that conclusion. For example, the Subject property is two years old and has a geo-thermal system and swimming

pool, however the report failed to address and analyze market reaction to such amenities, perhaps in the form of associated functional obsolescence (super-adequacy). Respondent failed to explain how the market values of \$4,000 and \$15,000 for the Geo-thermal and Swimming pool, respectively, were derived, and how these adjustments compare to the actual cost of such amenities.

### SALES COMPARISON APPROACH

8. Respondent did not adequately explain the adjustments.

9. Sale 2 exceeds one year, and the report failed to provide market trending analysis from which to determine if a time adjustment was required. Additionally, Respondent utilized Sale 4 from outside Subject's subdivision, in a development called Oakmont, however there was another MLS sale available from Oakmont that was available though not utilized or properly eliminated from use.

10. There was not adequate reasoning provided for adjustments. The sales utilized in the report range in size from 1.44 to 2.09 acres, however no adjustments were applied, nor was an explanation provided in support of the lack of adjustments. No explanation was found in the report or work file in support of how the AGE, BED, BATH, Gross Living Area, Geo-Thermal, Swimming Pool, Shelter, Shop, Condition adjustments were derived or why on adjustment applied. Furthermore, Sale 4 is located 1.20 miles from the Subject property, however, Respondent failed

to provide a Comparative Market Analysis between the Subject's subdivision and Sale 4 subdivision.

11. Respondent also failed to explain C1, C2, C3 for the property conditions within the grid.

#### AGREED CONCLUSIONS 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 Record Keeping Rule of the Uniform Standards of Professional Appraisal Practice;

B) Standard 1, Standards Rules 1-1, 1-2, 1-3, 1-4, 1-5, and 1-6; and 2-2 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)(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."

#### 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.<sup>1</sup>

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<sup>1</sup> Currently the next Board meeting is scheduled for 9:30 a.m. on May 1, 2020.

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

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 that he will successfully complete, pass the test, and provide proof of completion and passing of the tests to the Board's office for the following corrective education courses within sixty (60) days from the date the Consent Order is approved by the Board. The courses to be taken are:

- a) Course #60C or 602: Basic Appraisal Procedures (no CE credit given);



b) Course #60G or 614: Residential Report Writing and Case Studies;

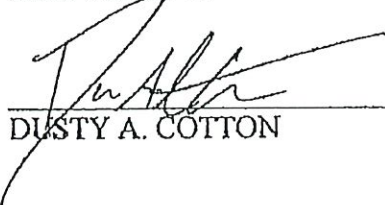
c) Course #60F or 613: Residential Sales Comparison & Income Approach; and

2. Respondent shall pay costs of \$1,000, to be paid within thirty (30) days of the Final Order, pursuant to 59 O.S. §858-723.

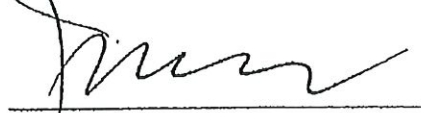
**DISCLOSURE**

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:

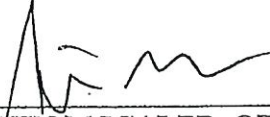
  
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DUSTY A. COTTON

03/24/2020  
\_\_\_\_\_  
DATE

  
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JAMES K. SECREST, II  
Counsel for Respondent

**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 56<sup>th</sup> Street, Suite 100  
Oklahoma City, Oklahoma 73112

3-26-20

DATE

IT IS SO ORDERED on this 8<sup>th</sup> day of April, 2020.




ERIC SCHOEN, Board Secretary  
Oklahoma Real Estate Appraiser Board



**OKLAHOMA REAL ESTATE  
APPRAISER BOARD**

By:

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

**CERTIFICATE OF MAILING**

I, Shannon Burns, hereby certify that on the 9<sup>th</sup> day of April 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:

**James K. Secrest, II**  
7134 South Yale, Suite 900  
Tulsa, OK 74136  
Counsel for Respondent

9214 8902 0982 7500 0282 55

and by First Class Mail to:

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

**Stephen L. McCaleb**  
DERRYBERRY & NAIFEH, LLP  
4800 N. Lincoln Blvd.  
Oklahoma City, OK 73105

  
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SHANNON BURNS