

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

In the Matter of JOE GIBSON,) Complaint #19-030
Respondent.)

CONSENT ORDER

COMES NOW the Oklahoma Real Estate Appraiser Board (“OREAB”), by and through the Prosecuting Attorney, Stephen McCaleb, and the Respondent JOE GIBSON, thru his attorney, David Kisner, 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. Upon information and belief, in June of 2015, Joe Gibson (“Respondent”) was hired to complete an appraisal (the “appraisal” or “report”) for a property located at 1117 East 13th Street, Cushing, OK 74023 (the “subject”). Respondent completed the appraisal with an effective date of June 9, 2015. The report was signed on June 11, 2015. The client was listed as First United Bank Mortgage and the assignment type was for a refinance transaction. Respondent derived a market value of \$550,000. The report was performed in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice (“USPAP”).

2. Respondent committed a series of errors in the report which led to a misleading and non-credible report.

GENERALLY

3. Analysis of agreements of sale, options, or listings of subject property were not current as of the effective date of appraisal, and sales that occurred within three years prior have not been adequately summarized.

4. Respondent reported that the Subject was listed in the year prior to the effective date but he only cited the sales price. There was no reporting or explanation of the listing time and/or if the property was listed on MLS; the subject was listed on MLS.

NEIGHBORHOOD

5. The factors that affect marketability were not adequately and reasonably describe; neighborhood boundaries were not adequately and reasonably defined; and market area trends were not adequately and reasonably discussed and analyzed.

6. According to the boundaries listed in the report, the subject's neighborhood is approximately 84 total miles, which is too large for a "neighborhood."

7. The one-unit housing prices are not accurate, nor is the age range for the reported neighborhood boundaries.

8. According to a comparative market analysis from the Tulsa MLS attached to Respondent's report, the low price was \$8,500 and the high was \$285,000 (the subject property). The average was \$94,078. The median was \$81,500. Thirty-three sales were over \$105,000 and the other 61 sales were below \$100,000. The ages of the properties ranged from year built of 1900 to 2014 with an average of year built of 1957. These sales were in the reported neighborhood boundaries.

9. The information on factors that affect marketability is not sufficient.

HIGHEST AND BEST USE

10. An opinion to the highest and best use was not provided.

11. The highest and best use box is checked residential, but there is no explanation.

IMPROVEMENTS

12. Relevant conditions or depreciation (physical, functional or external) factors that affect the improvements were not reported and analyzed.

13. Relevant conditions or depreciation factors that affect improvements were not reported and analyzed.

14. The subject was purchased in July of 2014 for \$285,000, and less than one year later, Respondent appraised the subject for \$550,000. Respondent provided insufficient information to explain/justify the increase in value.

15. MLS reports the square footage of the subject as 4,780 square feet.

Respondent reports the square footage as 5,067 sf and does not mention if the square footage included a “sunroom.”

16. Respondent reports car storage as 7 cars attached and detached, but does not elaborate or discuss the portico. The MLS listing states there are two garages and a 40x40 foot shop. There is no mention in the report of a shop; only a utility building and a 5 car detached garage.

COST APPROACH

17. The site value was not market oriented.

18. Respondent did not identify and correctly analyze depreciation items.

19. Respondent did not correctly employ recognized methods and techniques.

20. The report does not contain site sales or information on how Respondent arrived at the site value, which makes it so the reader cannot replicate.

21. Respondent reports that he “researched area properties in the area to determine the site value of the subject property. The value was established using comparable sales in the area.” However, research of the Cushing area and only one site sale was found and it was for \$10,000.

22. The site improvements are listed at \$40,000 with no explanation.

SALES COMPARISON APPROACH

23. As described further, Respondent did not select and identify sales similar to and from the same or similar market area to the subject's market area; he did not adequately collect, verify, and report comparable sales; he did not provide adequate reasoning for his adjustments, analysis, opinions and conclusions; and he did not correctly employ recognized methods and techniques.

24. Respondent did not use any sales from the Cushing market.

25. There is one sale, similar to the subject, located at 3723 East 9th Street, Cushing, Oklahoma, that could have been used which sold for \$369,500 on June 5, 2014. It has 3,289 square feet and 5.93 acres. It is a custom built home with a 60x40 foot shop. This would have been a proper property to be used as a comparable on the report. This sale is the best sale to rely on for the subject's market value. It sold slightly over a year from the subject's effective date by 4 days. This sale has 5.03 acres and has 3,289 square feet. Extra features include a 60x40 foot shop. The appraiser does not even mention this sale in his report. This sale is the highest sale in the Cushing area in the past five years.

26. Respondent chose all of the comparables from the Stillwater area, which is a superior area.

27. Three sales from smaller towns than Stillwater could have been used. One, located at 11401 Explorer, Perry, Oklahoma, sold for \$335,000; another, located at 25750 County Road 110, Perry, Oklahoma, sold for \$365,000, and the

third, located at 22 Noble Road, Morrison, Oklahoma, sold for \$320,000.

28. One of the comparables used by Respondent, sale 3, is on a premier golf course in Stillwater. Two of the comparables were sales in a gated community, and two of the sales (4 and 5) have the wrong square footage. There were no location nor lot value adjustments.

29. All the sales are from the Stillwater area. This area is a superior area (larger town, more amenities, college town).

30. Respondent did not use either MLS from the Tulsa area or the MLS from the Stillwater area. All of the sales used in the report, except Sale #1, were listed in the Stillwater MLS. Therefore, the listing price, contract date and days on the market would be available to Respondent. Respondent reported these items were not available.

31. Sale No. 1: Stillwater area, superior area; located in a gated subdivision - definitely superior to the subject's immediate area; located among homes similar in style, age and size to the sale; cash sale (not conventional as stated in the appraisal); the lot has a county assessor value of \$80,000. This sale should have a negative location adjustment and a negative site adjustment. This was not a true comparable. This sale was not listed for sale in MLS and the Respondent would have needed to confirm the sale with either buyer or seller. A gated area is not similar to the subject's location.

32. Sale No. 2: Stillwater area, superior area; land is assessed at \$88,000. There should have been a negative location adjustment and a negative site adjustment.

33. Sale No. 3: Stillwater area, superior area; located in a subdivision on a premier golf course (Karsten Creek); site backs to the 13th green; screened in porch. Land is assessed at \$125,000. This was not a true comparable. The subject is not located on a golf course.

34. Sale No. 4: Stillwater area; superior area; located in same gated community as Sale No. 1; MLS states the dwelling has 5,300 square feet per "appraisal/owner" while Respondent reported it has 4,513 square feet. It has a three-car garage, portico and a detached fourth car garage. The lot has an assessed value of \$56,000.

35. Sale No. 5: Stillwater area; superior area; per MLS listing the dwelling has 4,803 square feet per "appraisal/owner" while Respondent reported it has 4,806. The land is assessed at \$42,376.

36. Adjustments: Respondent does not explain any of the adjustments. There are "canned" comments about adjustments in general, but no specific comments on each adjustment. The Respondent should explain each adjustment.

37. Respondent states the sales used were sales in "this community".

Stillwater is not the community for Cushing. It would appear that the comments on adjustments and sales are "canned" comments that could be used in any report and are not specific to the subject appraisal. All of the sales are from subdivisions in Stillwater that have restrictions on size. Therefore, the homes are all somewhat similar in size. The subject is located in an area with no restrictions and very few homes similar in size in the subject's immediate area.

38. The highest sales in the Cushing area in the year prior to the effective date were: \$265,000, 3,402 square feet and 4.85 acres; \$260,000, 2,670 square feet and 40.00 acres; \$248,000, 2,158 square feet and 0.86 acres; and \$242,000, 3,265 square feet and 1.00 acres.

INCOME APPROACH

39. Exclusion of the income approach was not supported.

40. Respondent reported the Income approach was not necessary in order to arrive at a credible market value. However, Respondent failed to indicate why the Income Approach was not necessary.

FINAL RECONCILIATION

41. The quality and quantity of data available and analyzed within the approaches used was not adequately reconciled.

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

43. The value was not appropriately identified.

44. Respondent did not discuss the cost or income approaches in the final reconciliation.

45. Respondent made the report subject to completion of remodel job with a final inspection. There is no explanation on what needs to be finished, or the materials to be used.

GENERAL

46. It does not appear the Respondent understands the appraisal process.

47. The report does not contain sufficient information to enable the client and intended user who receive or rely on the report to understand it properly.

48. The appraisal results were not conveyed in an appropriate manner and contained numerous canned comments.

49. The salient and factual data reported and analyzed were not reported in a consistent manner throughout the assignment.

50. Respondent used sales from a superior area, does not adequately describe the improvements and any remodeling done since the subject sold less than a year of the effective date.

51. There should have been explanation as why the subject value went from \$295,000 to \$585,000 in less than a year.

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 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, 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)(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)(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.¹

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.

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

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 shall take the following corrective education courses:
 - a) 611 Residential Market Analysis & Highest & Best Use - 15 Hours;
 - b) 612 - Residential Site Valuation & Cost Approach - 15 Hours; and
 - c) 614 - Residential Report Writing and Case Studies - 15 Hours.
2. 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 courses completed. Failure to complete and pass the courses in a timely matter will result in suspension until the courses are passed and

completed with proof of completion and passing of the tests to the Board's office. Said courses shall be completed within 180 days of this Order.

3. Respondent shall pay an administrative fine of \$2,500, to be paid within thirty (30) days of notification of the certificate holder by the Board of the order of the Board imposing the administrative fine, pursuant to 59 O.S. §858-723.
4. Respondent shall be placed on **PROBATION** for a period of **NINETY (90) DAYS** beginning immediately upon the date he timely completes the three courses listed in paragraph one of this section. During the period of probation, Respondent shall provide an appraisal log on REA Form 3 to the administrative office of the Board no later than the fifth (5th) 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.
5. Failure to comply with the preceding paragraphs in a timely manner will result in an instant suspension of Respondent's license. For good cause, an extension may be granted by the Board. An application for an Extension of Time should be filed at least five business days in advance of the Board meeting to be placed on a Board meeting agenda in advance of the deadline to comply with this Consent Order.

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:



JOE GIBSON

10/02/2020
DATE



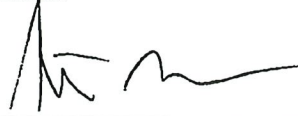
DAVID KISNER, Counsel for
Respondent

10-2-20
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
400 NE 50th Street
Oklahoma City, Oklahoma 73105

11-3-20

DATE


IT IS SO ORDERED on this 6th day of November, 2020.



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, Jenelle LePoint, hereby certify that on the 13th day of November, 2020 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:

David W. Kisner

9214 8902 0982 7500 0320 47

Lee & Kisner
One Broadway Executive Park
201 NW 63rd Street, Suite 230
Oklahoma City, OK 73116
Attorney for Joe Gibson

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


JENELLE LEPOINT