

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

In the Matter of BRYCE A. GADEN,)
Respondent.) Complaint #19-028

CONSENT ORDER

COMES NOW the Oklahoma Real Estate Appraiser Board (“OREAB”), by and through the Prosecuting Attorney, Stephen McCaleb, and the Respondent BRYCE A. GADEN, 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. This matter concerns two appraisal reports prepared by Bryce Gaden (Respondent), which resulted in his removal from the FHA Appraiser Roster.

The two properties were located at 3736 S 125th East Ave, Tulsa, OK 74146 (Tulsa), and 16147 E. 98th St N, Owasso, OK 74055 (Owasso).

2. Upon information and belief, in June of 2018, Respondent was hired to complete an appraisal (the “appraisal” or “report”) for a property located at 3736 S 125th East Ave, Tulsa, OK 74146 (Tulsa). Respondent completed the appraisal with an effective date of June 5, 2018.

3. Upon information and belief, in June of 2018, Respondent was hired to complete an appraisal (the “appraisal” or “report”) for a property located at 16147 E. 98th St N, Owasso, OK 74055 (Owasso). Respondent completed the appraisal with an effective date of June 13, 2018.

4. Respondent committed a series of errors in the reports which led to misleading and non-credible reports. These errors include, but are not limited to, the following in paragraphs 11-32. Additionally, the allegations contained above in the Background Allegations section are incorporated herein.

GENERALLY

5. In both cases, the appraisal report did not contain a statement that “The intended use of the appraisal is solely to assist FHA in assessing the risk of the property securing the FHA-insured mortgage.”

6. In the Owasso report, Respondent did not appear to report all prior listing activity, including changes to prices and the dates of those changes. Online data indicates that the subject was originally listed for \$199,000 on 11/25/2017 and had seven price reductions until it sold for \$165,000.

NEIGHBORHOOD SECTION

7. In both reports, Respondent reported a wide range of exposure time that was not supported by the data within the appraisal reports, and that was so wide as to be of no value to the reader.

8. In the Tulsa report, on-line satellite mapping indicates discrepancies in the reported present land use percentages. No ‘Other’ land use was identified in the appraisal report; however, the area within the neighborhood boundaries includes a park in the NW quadrant and vacant land in the SW quadrant.

SITE SECTION

9. In the Owasso Report, zoning was reported as ‘SFR’; however, zoning is RS-40 per the Rogers County online zoning map, which allows for a density of approximately 1.09 dwelling

units per acre.

10. In the Owasso report, the subject has a private septic system; however, Respondent did not report on the availability of connection to a public and/or community sewer system and any jurisdictional conditions requiring connection. Additionally, Respondent stated in the Improvements section of the appraisal report that new septic to be installed before closing; however, he did not note any MPR/MPS deficiencies with the existing septic system or the cost to cure. Further, Respondent did not report how he learned that a new septic system was to be installed.

SALES COMPARISON APPROACH SECTION

11. In the Tulsa report, the sale prices mirror the low and high prices reported in the neighborhood section and appear to include sales, especially on the low end, that are not comparable to the subject. The comps used in the appraisal ranged in sale price from \$125,000 to \$134,500, whereas the low end of the range of sale prices reported at the top of the sales comparison section was \$62,000.

12. In the Owasso report, the sale prices mirror the low and high prices reported in the neighborhood section and appear to include sales, especially on the high end, that are not comparable to the subject. The comps used in the appraisal ranged in sale price from \$160,000 to \$189,900, whereas the high end of the range of sale prices reported at the top of the sales comparison section was \$259,900.

13. In the Owasso report, other than stating that the comparables displayed were the best available at the time of appraisal, Respondent did not provide support for his choice of sales which were all of different multi-level style.

14. In the Owasso report, the subject's actual age, design/style, bedroom count and

GLA were not bracketed by the sales. Respondent did not contain commentary addressing the lack of bracketing of these characteristics.

15. In both cases, public records and Reallist were reported as the verification sources. There is no indication in the appraisal reports that the comparables were verified with parties to the transactions, and there was no commentary about the lack of verification with parties to the transactions.

16. In the Tulsa report, comp 2 is located on a corner lot. Comp 3 is located on a corner lot and also backs to an elementary school yard. The appraisal report contains no commentary on market reaction to these characteristics.

17. In the Owasso report, comps 1 and 4 are incorrectly reported as 'DT1', whereas they are both 2-story homes. The subject is a single-level ranch style home, whereas all of the comps are 2-story style homes. The appraisal report contains no summary of the appraiser's analysis regarding market reaction to the difference in styles, or support for the decision that the 2-story comps did not warrant adjustment for the difference in style.

18. In the Owasso Report, no adjustment was made for the list-to-sale price ratio to comp 4; however, the 1004MC supports a 3.9% adjustment based on the most recent period, and a 1.8% adjustment based on the average of the three periods. Respondent did not provide commentary to support the decision that no adjustment was warranted for the list-to-sale price ratio.

19. In the Tulsa report, the report did not contain an explanation of which comparable sales were given the most weight or consideration and why. Additionally, the unadjusted (\$130,000 and \$125,000) and adjusted (\$130,000 and \$131,030) list prices of the active and pending listings, comps 4 and 5, do not support the appraiser's \$133,000 opinion of value. Listings

reflect current market activity, whereas the sales used by the appraiser, comps 1 – 3, sold approximately 3, 5 and 8 months, respectively, previous to the effective date of the appraisal. The listings' lower adjusted list prices were not addressed in the reconciliation.

20. In the Owasso report, the appraisal report did not contain an explanation of which comparable sales were given the most weight or consideration and why. Additionally, Respondent did not reconcile his \$173,000 opinion of value with the listing history of the subject. Online data indicates that the subject was listed at \$173,000 from 03/12/18 until 03/29/18, at which time it was reduced in price to \$165,000 with \$5,000 in concessions on 06/02/2018. The appraisal does not contain explanation as to why the subject is worth \$8,000 more than the \$165,000 contract price when it did not garner any interest for 2+ months at the lower list price of \$165,000.

21. In the Tulsa report, the appraisal was made subject to the repair of exposed wiring. However, the appraiser did not provide an estimated cost to cure.

22. In the Owasso report, Respondent reported in the Improvements section of the appraisal report that 'new septic to be installed before closing'; however, the appraisal was not conditioned on inspection of the septic system by a qualified entity or repair of the existing septic system with a cost to cure.

THE COST APPROACH

23. In both cases, the cost approach was developed for the assignment; however, there is no commentary in the reconciliation regarding its applicability and relevance.

24. In both cases, Respondent did not include a summary of the documentation and analysis in the appraisal in support of the extraction method he reported as being used to estimate the site value. Respondent did not state in the report that the comparable land sales data and

supporting information is being retained in the appraiser's files.

25. In both cases, Respondent reported that the source of cost data was 'Local Builders & Suppliers'; he did not use an industry-recognized cost data source nor detail his sources.

CONCLUSION

26. In both cases, the appraiser made a series of errors, stated above, that in the aggregate affected the credibility of the assignment results.

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; and
- 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)(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."

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. 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.

¹ Currently the next Board meeting is scheduled for 9:30 a.m. on August 7, 2020.

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) Basic Appraisal

Principles - 30 Hours; b) Residential Market Analysis and Highest and Best Use - 15 hours; and c) Residential Report Writing and Case Studies - 15 hours; all to be completed within 90 days of the Board's approval of the Consent Order.

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.

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:


BRYCE A. GADEN

12/3/20
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



DATE

IT IS SO ORDERED on this 4~~th~~ day of December, 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 4th day of December 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:

Bryce A. Gaden
2836 E 2nd St
Tulsa, OK 74104

9214 8902 0982 7500 0326 10

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