

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

In the Matter of DARRYL L. ROSS,)	Complaints #19-035, 19-037,
)	19-042, and 19-052.
Respondent.)	

CONSENT ORDER

COMES NOW the Oklahoma Real Estate Appraiser Board ("OREAB"), by and through the Prosecuting Attorney, Stephen McCaleb, and the Respondent DARRYL L. ROSS (Respondent), by and thru his attorney of record Ge'Andra Johnson, 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. This resolves complaints 19-035, 19-037, 19-042, and 19-052.

INTRODUCTION

On March 1, 2019, the Board issued Consent Order #19-002 in resolution of Complaint #17-048 as to Darryl L. Ross ("Ross" or "Respondent"). Under the terms of this Consent Order, Ross was to complete corrective education within 90 days of the Board's Order:

Course #611 – Residential Market Analysis & Highest and Best Use;
Course #612 – Residential Site Valuation and Cost Approach; and
Course #613 – Residential Sales Comparison and Income Approach

Ross completed and submitted his course completion certificates on June 7,

2019. Immediately following completion of these corrective education courses, Ross was placed on a 180-day period of probation. During probation, Ross was required to submit monthly work logs identifying all appraisal assignments completed during the month prior. From each work log appraisal assignments were randomly selected for review. Respondent did not pass review in four reports resulting in these complaints. Further, in complaint 19-035, the report requested by the Board and submitted by Respondent to the Board was altered.

COMPLAINT 19-035

AGREED FINDINGS OF FACT

1. On July 12, 2019, pursuant to a request from Board staff, Ross submitted the subject appraisal report in matter 19-035, which was listed on his work log for appraisal assignments completed between June 8th and June 30th.

2. On July 29, 2019, First Enterprise Bank ("First Enterprise") responded to a document subpoena issued by the Board by providing a copy of the subject appraisal report submitted by Ross to First Enterprise.

3. A comparison of the two appraisal reports reveal significant discrepancies between the appraisal report submitted by Ross and the one received from First Enterprise. Based on a review, it appears that Ross attempted to "clean up" his appraisal report prior to sending it in to the Board for a work product review. Respondent admits he changed the report that he submitted to the OREAB. Ross embellished and supplemented his appraisal report prior to submission to the Board from that of the original appraisal submitted to his client, First Enterprise. Work product is to be submitted to the Board in the same manner in which it was provided to the client. Accordingly, there are material misrepresentations in the appraisal submitted for review.

4. USPAP's Ethics Rule states that *"An appraiser must promote and preserve the public trust inherent in appraisal practice by observing the highest standards of professional ethics."*

The Conduct Section of USPAP's Ethics Rule states that an appraiser:

"Must not communicate assignment results with the intent to mislead or defraud;"

"Must not use or communicate a report that is known by the appraiser to be misleading or fraudulent;"

"Must not willfully or knowingly violate the requirements of the RECORDKEEPING RULE."

5. The subject report showed that, in June of 2019, Respondent was hired to complete an appraisal (the "appraisal" or "report") for a property located at 6704 Braniff Drive, Oklahoma City, OK 73105 (the "subject"). Respondent completed the appraisal with an effective date of June 11, 2019. The report was signed on June 18, 2019.

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

GENERALLY

7. The scope of work was not sufficiently summarized to disclose to the clients the level of work used to develop the appraisal.

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

9. Hypothetical conditions in conjunction with each opinion or conclusion affected were not clearly and conspicuously reported.

10. Extraordinary assumptions in conjunction with each opinion or conclusion affected were not clearly and conspicuously reported.

11. Respondent reported the income approach is considered to be not applicable due to the predominance of owner occupancy. 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."

12. Respondent reported that the air condition systems, kitchen appliances, plumbing and electrical were not tested; however, it failed to indicate if an extraordinary assumption of their working order was invoked and if such extraordinary assumptions would have affected the assignment results. In this case the appraisal was made "Subject To" complete remodel, therefore, Respondent should have refrained from utilizing what appears to be a boiler plate comment, not specific to the assignment.

13. The Purchase Contract indicated the sales price was \$55,800; however, Respondent failed to explain the difference between the appraised value of \$145,000 and the contract price. It is unclear if the Intended User/Client requested an "As Is"

value, "Subject "To" value, or both.

NEIGHBORHOOD

14. The neighborhood boundaries were not adequately and reasonably defined.

15. The present land use, reported by Respondent is 96% one unit, 1% 2-4 unit, 0% multi-family, 2% commercial and 1% other. However, based on aerial image of the neighborhood boundaries described in the appraisal, there is a considerably greater amount of commercial use, and a lesser amount of one-unit use. Additionally, it appears there are no 2-4 family properties within the neighborhood boundaries, nor did the appraisal explain "other land use."

SITE/HIGHEST AND BEST USE

16. Easements, restrictions or other items of a similar nature have not been adequately reported and considered.

17. Respondent failed to report parcel easements (setbacks and utility easements) which are found on the plat map available from Oklahoma City zoning map site.

IMPROVEMENTS

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

19. The Subject property was built prior to 1978 and appeared to reveal areas of flaking paint; however, no lead-based paint warnings are found in the appraisal. Additionally, the Subject property appears to contain mold; however, the appraisal failed to disclose this condition nor provide appropriate warnings.

20. The Subject property sketch, found in the appraisal report, contained dimensions and total gross living area identical to those found on the County Assessor Sketch. Page 3 of 6 of the appraisal report, Form 1004, indicates that Respondent measured the property based on ANSI standards. However, it is highly unlikely that the hand measured dimensions by Respondent would be identical to the County Assessor dimensions. In the event Respondent utilized the County Assessor measurements and total gross living area, he failed to disclose why his own measurements and total gross living area were not utilized or obtained.

COST APPROACH

21. Respondent did not identify and correctly analyze depreciation items (physical, functional, external).

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

23. The exclusion of the Cost Approach was not supported.

24. Cost estimates were not analyzed and supported.

25. Respondent should have provided summary of the sales if the site value is market oriented. If another method is used, it needs to be explained in the report.

26. In the Respondent's report, the depreciation should make sense by showing does the effective age and condition of the property carry over to the cost approach. For instance, is the depreciation too excessive for a property that is stated to be in average or good condition? Either the physical depreciation is wrong, or the condition of the property is not accurate.

27. Respondent's report indicated the Subject's land value was determined by using the County Assessor land values; however, this method alone is not an acceptable means of determining land value.

28. Respondent's report indicated the Subject's estimated remaining economic life to be 36 years; however, this figure seems understated when considering the appraisal is made "Subject To" C2 condition, a condition defined as having little or no physical depreciation.

SALES COMPARISON APPROACH

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

30. Sale 3 had \$5,500 or 3.4% of Seller Concessions; however, no adjustment or comment in support of no adjustment was applied. The 1004MC form appeared to explain Seller Concessions; however, the explanation was confusing or insufficient. Respondent reported that Seller concessions have gone from 1.5% to 3.9% in one year; however, no explanation regarding the cause for such an increase. Such a wide range of Seller Concessions is not typical for the Oklahoma City market.

31. MLS reported Sale 3 has a Sunroom, not included in the gross living area; however, no such disclosure or adjustment was applied in the appraisal.

32. Sale 3 had a cumulative days on market of 114 days; however, only 2 days were reported in the appraisal.

33. Sale 1 had a cumulative days on market of 70 days; however, only 10 days were reported in the appraisal.

34. Respondent failed to explain why no site adjustments were applied or required.

35. Respondent reported the prior sale of Sale 1; however, failed to analyze the sale in reference to the subsequent and significant value increase.

INCOME APPROACH

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

37. The statement "The income approach is not used due to a lack of rental properties" is not sufficient. If the approach is not used, then the appraiser should

have a statement in the scope of the work that the development of the approach was not necessary in order to arrive at a credible market value.

FINAL RECONCILIATION

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

39. Applicability and suitability of the approaches used to arrive at the value conclusions have not been adequately reconciled.

40. The Sales Comparison Approach lacked adjustment for Seller Concessions and SUNROOM FOR SALE 3.

41. The Cost Approach would have resulted in a substantially higher indicated value if it was developed in order to be consistent with the "Subject To" assignment, whereas the estimated remaining economic life should have been much higher than 36 years.

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

GENERAL

43. The appraisal results were not conveyed in an appropriate manner (not misleading).

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

45. 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.

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

47. Respondent rendered appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.

48. The neighborhood land use is inaccurate when compared to aerial image.

49. Subject parcel easements were not reported, though original plat map was available.

50. Respondent appeared to have used the County dimensions even though Page 3 of 6 indicated the appraiser measured the Subject property.

51. The cost approach, regarding depreciation was not consistent with the "Subject To" assignment. The land value was not adequately supported.

52. The Sales Comparison Approach lacked adjustments or supporting commentary for lack of adjustment: the Seller concessions of \$5,500 on Sale 3 are high, cumulative days on market for the Sales not reported, lack of site adjustments

not explained, failure to analyze the prior sale of Sale 1.

53. Health hazards, such as defective painted surfaces on property built prior to 1978, and the apparent presence of mold, were neither disclosed nor were proper warnings provided for the reader of the report.

54. It is unclear from the Appraiser Portal log notes if the intended User/Client requested an "As Is" value, "Subject To" value, or both. Therefore, Respondent should have provided clarifying commentary.

COMPLAINT 19-037

AGREED FINDINGS OF FACT

55. Upon information and belief, in July of 2019, Darryl L. Ross ("Respondent") was hired to complete an appraisal (the "appraisal" or "report") for a property located at 1417 Magnolia Lane, Midwest City, OK 73110 (the "subject"). Respondent completed the appraisal with an effective date of July 2, 2019. The report was signed on July 9, 2019. The client was listed as JPMorgan Chase and the assignment type was for a purchase transaction. Respondent's derived a market value of \$75,000. The report was performed in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice ("USPAP").

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

GENERALLY

57. 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.

58. The subject property condition (C3) appears to have been embellished, based on a side-by-side comparison of the Subject and Sales MLS printouts, along with the Subject's 03/2016 MLS printout. The Subject property sold in March of 2016 for \$49,000, and although the prior sale slightly exceeds the 36-months required reporting period, Respondent should have analyzed the significant subsequent value increase from \$49,000 to \$75,000 in just 40 months since prior sale. It appears improvements to the subject were minimal.

NEIGHBORHOOD

59. The factors that affect marketability were not adequately and reasonably described; and neighborhood boundaries were not adequately and reasonably defined.

60. The multi-family land use reported in the appraisal was "0"; however, aerial imagery clearly displays two large apartment complexes located at the SE corner of E. Reno and S. Air Depot, and another near the SE corner of E. Reno and S. Sooner Road.

61. The report defined the neighborhood boundaries as follows: North to – E Reno Ave., South to – SE 15th St., East to – N Air Depot Blvd., West to – S Sooner Rd. However, Respondent failed to explain why Sales 3 and 5, located outside of the neighborhood boundaries, were utilized for value reconciliation.

HIGHEST AND BEST USE

62. The site was not adequately identified/defined.

63. Not until Respondent was asked by the AMC to revise the report did he disclose that the Subject site backs to commercial (cell tower). The Respondent advised that Sales 2 and 4 have similar influence. However, Sale 2 is not similar influence, as it is an interior residential lot, not influenced by adjacent Industrial as indicated in the appraisal report.

IMPROVEMENTS

64. Relevant characteristics of improvements and any effect they have on value were not adequately described.

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

66. 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.

67. The County Assessor reports the subject has 714 sf of gross living area with a 231 sf converted garage (944sf), while the appraisal report indicated 952 sf.

68. The Subject property has a storm shelter; however, Respondent failed to list it in the grid, nor did he assign it value or explain why no value was assigned.

69. The Subject property has a garage conversion; however, Respondent failed to clearly disclose this alteration, failed to explain if conversions are common for the market; what affect they have on market reaction; failed to disclose the attempts to verify if the conversion was completed under permit. Per FannieMae Guidelines, when the Subject's garage has been converted into finished living area, the following questions must be addressed in the appraisal commentary: 1) Is the property, without a garage, still legal per zoning? 2) Is the quality and appearance of the workmanship comparable or superior to the original dwelling? 3) Does the conversion have a positive impact on the market value of the Subject? and 4) Can market acceptance be demonstrated by providing at least one comparable property with a similar garage conversion?

70. Considering Subject's converted garage, the sketch in the report should have included interior walls so that the Reader of the report can judge room ingress/egress, flow pattern, wall layout, etc. (a/k/a functional utility).

71. The appraisal addendum reported no personal property was included.

However, as evidenced by the photos, the subject's range/oven is free standing (personal property).

COST APPROACH

72. The site value was not developed by an appropriate appraisal method or techniques.

73. Cost estimates were not analyzed and supported.

74. Respondent did not identify and correctly analyze depreciation items (physical, functional, external).

75. Calculations were not correct.

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

77. If the site is market oriented, there needs to be a short summary of the sales. If another method is used, it needs to be explained in the report. Example -- "Discussion with local builders" is not sufficient. If the Respondent mentions local builders, there should be a cost analysis from the builder.

78. The depreciation does not make sense -- does the effective age and condition of the property carry over to the cost approach. Either the physical depreciation is wrong, or the condition of the property is not accurate.

79. The report indicates the land value was estimated from County

Assessor land values. However, this method is not acceptable without additional supporting explanation. Other methods such as Allocation and extraction would be acceptable when no land sales are available.

80. The Cost Approach listed the 400 sf carport but did not include its cost.

81. Respondent reports the Subject has a remaining economic life of 33 years out of a 60-year life expectancy. However, 33 years seems low or otherwise inconsistent with a property in C3 condition.

SALES COMPARISON APPROACH

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

83. Respondent did not adequately explain his adjustments.

84. The Subject's reported C3 condition appears embellished. An observation of the MLS interior photos of the sales utilized in the appraisal report revealed conditions and updating which seem to be superior to that of the Subject. Based on MLS and Respondent's interior photos, the subject's condition is more consistent with mid- to upper-C4 rather than the reported C3.

85. The Subject property sold in March of 2016 for \$49,000, and although

the prior sale slightly exceeds the 36-month required reporting period, Respondent should have analyzed the significant subsequent value increase from \$49,000 to \$75,000 in just 40 months since prior sale. The MLS interior photos contained within both the Subject's 2016 MLS listing and the 2019 MLS listing which appear to indicate that the only upgrades subsequent to the 2016 sale were perhaps carpeting, HVAC and water heater. The 2016 MLS listing reported a storm shelter installed in 2013, updates include sewer line, custom storm doors, low-e windows, upgraded electric, bathroom remodeled, seller will give \$1,000 toward carpet allowance with full price offer. The 2019 MLS listing reported the condition is outstanding with updated roof, heat/air, windows, flooring. Additionally, since the 2016 MLS listing reported the low-e windows, this is strong evidence the windows were already in place when listed in 2019.

86. Sale 1 has a garage conversion. The report indicated the gross living area (GLA) is 975 sf, while County Assessor reported 750 sf with a 348 sf garage conversion, the GLA discrepancy of which was not explained in the appraisal report. This sale also fronts to a busy street which was not disclosed nor analyzed in the report.

87. Sale 2 has a garage conversion. The report indicated the gross living area (GLA) is 970 sf, while County Assessor reported 750 sf with a 220 sf garage

conversion, the GLA discrepancy of which was not explained in the appraisal report.

88. Sale 3 lacks a verification source document number. The document number is Book: 13879 Page: 870.

89. MLS revealed the following two alternate sales from subject's subdivision that were not utilized in the appraisal report nor properly eliminated from use. If these sales were utilized and adjusted accordingly, their adjusted values would not be consistent with the appraisal report:

Alt Sale 1: 7201 SE 15th, 12/20/2018, Sold: \$47,500, GLA: 771sf, Blt: 1949, converted garage, original wood floors have been refinished, 0.31 acres. Interior photos reflect similar condition as subject.

Alt Sale 2: 1424 Magnolia Ln, 05/07/2019, Sold: \$70,000, GLA 960sf, Blt: 1949, Updates include: kitchen cabinets have new paint and backsplash, added breakfast bar and granite countertops, new flooring, new: front bedroom and bathroom doors, new baseboards throughout, bathroom has new tile floor and shower, and cabinet.

90. The following alternate sale is more recent and/or proximate than any of the sales utilized in the appraisal report. If utilized and adjusted accordingly, this sale would not be consistent with the appraisal report.

Alt Sale 3: 108 W Myrtle Dr. 03mi SW, 06/16/2019, Sold: \$74,000, GLA: 1041sf, Blt: 1947, updated in 2015, all new flooring throughout, siding repairs, plumbing and electrical repairs, gas lines repaired, blinds on all windows, new light fixtures, new hot water heater replaced doors. Interior photos reflect similar condition as the subject.

INCOME APPROACH

91. Exclusion of the income approach was not supported.
92. Reasonable support for capitalization rate or GRM was not provided.
93. The statement "The income approach is not used due to a lack of rental properties" is not sufficient. If the approach is not used, then the appraiser should have a statement in the scope of the work that the development of the approach was not necessary in order to arrive at a credible market value.
94. Respondent indicated the Gross Rent Multiplier (GRM) of 99 was extracted from market data and County Assessor market values. However, the appraiser failed to provide necessary support for that conclusion. Gross Rent Multiplier is obtained from homes that sold while being rented (Sales price divided by monthly rent = GRM). All of the Rentals utilized in the appraisal report had recent or relatively recent sale dates which equate to GRMs of 119, 103 and 98 respectively, therefore the appraiser failed to adequately reconcile why he/she used a GRM from the low end as opposed to 103 or 119. R1 – sold 7/2/2018 for \$86,000, per County Assessor, therefore the GRM would be 119. R2 – sold 9/5/2018 for \$82,000, per County Assessor, therefore the GRM would be 103. R3 – sold 6/17/2019 (less than 1 month prior to subject appraisal date) for \$81,000, therefore the GRM would be 98.

FINAL RECONCILIATION

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

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

97. Subject condition appears to have been embellished, based on a side-by-side comparison of the Subject and Sales MLS printouts.

98. The sales adjusted values appear embellished in the sales comparison approach by failure to apply downward condition adjustments, or otherwise a failure to utilize sales similar to the subject in condition.

99. In the cost Approach, the building cost per foot appears embellished for a home of the subject's quality. Furthermore, the reported estimated remaining economic life of 33 years seems low or otherwise inconsistent with a home reported to be in C3 condition.

100. Under the income approach, it lacked reconciliation with regard to how the Gross Rent Multiplier (GRM) of 99 was determined when 2 of 3 of the Rentals utilized in the appraisal report have GRMs higher than 99, when factoring their prior sales.

101. The Final Reconciliation in the report indicated each sale was weighted

equally and required only minor adjustments. However, this conclusion seems flawed when there is strong evidence that the appraisal report utilized sales superior to the subject property in condition, or the Subject's condition was otherwise embellished. Further evidenced by the lack of support for the subsequent and significant value increase of the Subject property, from \$49,000 to \$75,000 since its 03/2016 sale.

GENERAL

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

103. 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.

104. The appraisal results were not conveyed in an appropriate manner.

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

COMPLAINT 19-042

AGREED FINDINGS OF FACT

106. In August of 2019, Respondent was hired to complete an appraisal (the "appraisal" or "report") for a property located at 1604 Julie Place, Oklahoma City, OK 73127 (the "subject"). Respondent completed the appraisal with an effective date of August 13, 2019. The report was signed on August 23, 2019.

107. 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 10-55. Additionally, the allegations contained above in the Background Allegations section are incorporated herein.

GENERALLY

108. The scope of work was not sufficiently summarized to disclose to the clients the level of work used to develop the appraisal.

109. The Subject's Gross Living Area and building diagram, reported in the appraisal, is identical to the County Assessor's footage and diagram, which was not explained by Respondent. Additionally, the USPAP Compliance Addendum, included in the appraisal, indicated Respondent made a personal inspection of the subject property; however, it failed to explain if the inspection included personal measurements, or why personal measurements were not obtained. Furthermore, Page 4 of 7 of form 1025, Scope of Work, reported "The viewing of the property consisted of measuring of the improvements (based on ANSI standards)". However, it does not appear that the Respondent personally measured the improvements.

NEIGHBORHOOD

110. The neighborhood boundaries were not adequately and reasonably defined.

111. The market area trends were not adequately and reasonably discussed and analyzed.

112. Neighborhood parameters not accurate: The Appraisal reported the "Research parameters for substitute properties included sales and/or listings with transaction dates within the past 12 months, located within three miles of the subject. GLA range +/-20% sf. and Year built: +/- 10 years" However, Sale 3 exceeds 3 miles and 10 years AGE difference, which was not explained.

113. Neighborhood price range: The Appraisal reported the 2-4 unit housing price range is \$105,000 to \$221,000 with a \$150,000 predominant value; however, a 10-year MLS search for 2-4 family within the described neighborhood boundaries reveals a low of \$45,000, high of \$499,999, median of \$142,500.

114. Neighborhood age range: The Appraisal reported the 2-4 unit age range is 36 to 98 years of age with a predominant age of 66. A 10-year MLS statistics review indicated a low age of 11 years, high of 91, and a predominant age of 48.

SITE/HIGHEST AND BEST USE

115. Easements, restrictions or other items of a similar nature have not been adequately reported and considered.

116. Easements: The Appraisal failed to disclose and analyze the Subject's easements. The plat map displays a 20 foot utility easement at the rear, and a 25 foot

building setback at the front.

IMPROVEMENTS

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

118. Relevant characteristics of improvements and any effect they have on value were not adequately described.

119. 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.

120. Relevant characteristics of improvements not adequately described: The Subject's Gross Living Area and building diagram, reported in the appraisal, is identical to the County Assessor's footage and diagram, which was not explained by the Respondent. Additionally, the USPAP Compliance Addendum, included in the appraisal, indicated Respondent made a personal inspection of the subject property; however, it failed to explain if the inspection included personal measurements, or why personal measurements were not obtained. Furthermore, Page 4 of 7 of form 1025, Scope of Work, reported "the viewing of the property consisted of measuring of the Improvements (based on ANSI standards)".

121. Relevant condition or depreciation not adequately analyzed: The

indicated value by the Cost Approach is \$242,893, while the Subject is appraised at \$162,000. Therefore, either the Cost Figures are incorrect, the Physical, Functional, Economic Depreciation is incorrect, the Effective Age is incorrect and/or the Lot Value is incorrect. There was no reconciliation found in the Report which would explain such a widespread discrepancy.

122. Personal property included: The Appraisal reported the Subject property includes two range/ovens; however, these amenities appear to be free standing (personal property), not disclosed or analyzed in the appraisal. Although a free-standing range/oven is commonly conveyed as real estate, the Appraiser still needs to disclose that it is technically personal property.

COST APPROACH

123. Respondent did not identify and correctly analyze depreciation items (physical, functional, external).

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

125. Cost estimates were not analyzed and supported.

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

127. The Appraisal indicated the "Land value is estimated from vacant land

sales and county assessor land values.” However, Respondent failed to provide lot sale examples.

128. Cost Estimates and Depreciation not supported: The indicated value by Cost Approach is \$242,893, while the Subject is appraised at \$162,000. Therefore, either the Cost Figures are incorrect, the Physical, Functional, Economic Depreciation is incorrect, the Effective Age is incorrect and/or the Lot Value is incorrect; however, there was no reconciliation found in the Report. There was no reconciliation found in the Report which could explain such a wide- spread.

SALES COMPARISON APPROACH

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

130. The Appraisal reported “Research parameters for substitute properties included sales and/or listings with transaction dates within the past 12 months, located within three miles of the subject. Gross Living Area range: +/-20% sf. And Year built: +/-10 years.” However, Sale 3 exceeds 3 miles and 10 years AGE difference, which was not explained.

131. Listing 5 fronts to a main E/W thoroughfare (NW 36th St); however,

this site influence was not disclosed or analyzed in the Appraisal.

INCOME APPROACH

132. Respondent did not adequately collect, verify, and report comparable rental data.

133. There was no reasonable support for income, expenses, vacancy provided in the report.

134. Projections of future rent and expenses were not based on reasonably clear and appropriate market evidence.

135. The statement "The income approach is not used due to a lack of rental properties" is not sufficient. If the approach is not used, then Respondent should have a statement in the scope of the work that the development of the approach was not necessary in order to arrive at a credible market value.

136. Comparable Rental Data was not adequately collected or verified: The Appraisal reported the rental amount for Rental 3 is \$1,100 per unit, per MLS; however, this information was not found in MLS. Agent, Dick Marshal, was contacted by the Board, who advised the tenants were long term and only paying \$750-\$800 per month, per unit, with the tenants responsible for repairs. One side was in good condition, while the other was maintained, though not updated.

137. Income, expenses and projections of future rent and expenses were not

provided. This information is provided in an Operating and Income Statement; however, the report contained no such document or explanation in support of its exclusion.

FINAL RECONCILIATION

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

139. Applicability and suitability of the approaches used to arrive at the value conclusions have not been adequately reconciled.

140. Rental 3 information verification is questionable.

141. The indicated value by Cost Approach is 50% higher than the Appraised value by Sales Comparison Approach; however, the Appraisal lacked adequate reconciliation.

142. The Appraisal indicated the Sales comparison approach was given most weight; however, it failed to explain why.

143. The Appraisal indicated the Cost and Income approaches were supportive of the final value conclusion. However, neither the Cost Approach at \$242,893, nor the Income Approach at \$153,550, support the Appraised value of \$162,000.

GENERAL

144. The appraisal results were not conveyed in an appropriate manner (not misleading).

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

146. 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.

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

148. Respondent rendered appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.

149. Sale 3 falls outside the Comparables search parameters reported in the Appraisal, which was not adequately explained.

150. Respondent indicated that the Subject property was personally measured; however, the diagram (sketch) and dimensions included in the Appraisal report for the subject property are identical to the diagram and dimensions found on the County Assessor sketch.

151. Insufficient or non-understandable information: The indicated value by Cost Approach is \$242,893, while the Subject is appraised at \$162,000.

Therefore, either the Cost figures are incorrect, the Physical, Functional, Economic Depreciation is incorrect, the Effective Age is incorrect and/or the Lot Value is incorrect; however, there was no reconciliation found in the Report.

152. The Appraisal indicated the "Land value is estimated from vacant land sales and county assessor land values." However, Respondent failed to provide lot sale examples. The lot value reported in the Appraisal matches the County Assessor value.

153. Comparable Rental Data not adequately collected or verified: Comparable Rental Data was not adequately collected or verified: The Appraisal reported the rental amount for Rental 3 is \$1,100 per unit, per MLS; however, this information was not found in MLS. Agent, Dick Marshal, was contacted by the Board, who advised the tenants were long term and only paying \$750-\$800 per month, per unit, with the tenants responsible for repairs. One side was in good condition, while the other was maintained, though not updated. Additionally, the income, expenses and projections of future rent and expenses were not provided. This information is provided in an Operating and Income Statement; however, no such document or explanation in support of its exclusion.

COMPLAINT 19-052

AGREED FINDINGS OF FACT

154. In October of 2019, Respondent was hired to complete an appraisal (the “appraisal”) for a property located at 500 Holly Hill Road, Edmond, OK 73003 (the “subject”). Respondent completed the appraisal with an effective date of October 16, 2019. The report was performed in accordance with USPAP.

155. 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 10-37.

GENERAL

156. The Scope of Work is not sufficiently summarized to disclose to the clients the level of work used to develop the appraisal.

157. Respondent lacked adequate description regarding the “Extent” of the assistance provided by the Inspector/Realtor Aaron Olsson. The comment section of Page 3 of 6 of the URAR form reported the following: “Inspector: Aaron Olsson, Company Name: Aaron Olsson Enterprises, License Number: 175411, State: OK, expiration Date: 10/31//2021, License Type: Real Estate Agent.” The “Additional Comments Addendum” reported “The visual interior and exterior inspection was not completed by the appraiser; however, was completed by the above-named inspector who collected the information through an interior and exterior inspection.” Note that SR 2-2(b)-(vii) lines 707, 708 indicates “When any portion of the work involves

significant real property appraisal assistance, the Appraiser must state the extent of that assistance.” The Appraisal only included an Extraordinary Assumption within the Addendum regarding the assumed accuracy of the property inspection, which stated, “Should the information found in the Property inspection be inaccurate, these assumptions could significantly alter the opinions and conclusions contained within this report.”

DESCRIPTION OF IMPROVEMENTS

158. As described further, relevant characteristics of improvements and any effect they have on value were not adequately described; additionally, relevant conditions or depreciation (physical, functional or external) factors that affect the improvements were not reported and analyzed.

159. RELEVANT CHARACTERISTICS OF IMPROVEMENTS AND ANY EFFECT ON VALUE NOT ADEQUATELY DESCRIBED: The Additional Comments Addendum in the Appraisal indicated “Per property inspection report, the Subject has a converted garage (1 bay). County Assessor records do not show the conversion. It is unknown if the conversion was permitted and if it was completed in workmanship/quality as the remainder of the subject. The appraiser did not count the conversion as additional living space.” However, the Appraisal lacked appropriate analysis regarding area conformity of garage conversions, and/or

why garage converted Sales were not utilized for value reconciliation. Additionally, the Appraisal reported the Gross Living Area (GLA) for the Subject property is 1,300 square feet, while the County Assessor reports 1,360 square feet, which was not explained.

160. RELEVANT CONDITIONS OR DEPRECIATION FACTORS THAT AFFECT THE IMPROVEMENTS NOT ADEQUATELY REPORTED OR ANALYZED: Functional depreciation, with regard to the garage conversion, was not adequately analyzed in the Appraisal. The Appraisal only indicated that the conversion was not treated as additional living space.

COST APPROACH

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

162. Respondent did not identify and correctly analyze depreciation items (physical, functional, external), and the calculations were not correct.

163. If the site is market oriented, there needs to be a short summary of the sales. If another method is used, it needs to be explained in the report. Depreciation should make sense – does the effective age and condition of the property carry over to the cost approach. Either the physical depreciation is wrong, or the condition of the property is not accurate.

164. SITE VALUE NOT DEVELOPED BY AN APPROPRIATE METHOD OR TECHNIQUE: The Cost Approach section of the appraisal reported the "Land value is estimated from vacant land sales and County Assessor land values." However, no specific details regarding the vacant land sales or Assessor land values were provided.

165. APPRAISAL FAILED TO CORRECTLY IDENTIFY DEPRECIATION ITEMS: The Subject property has a converted garage. The garage conversion was not included in gross living area; however, based on the interior photos and sketch, the garage appears to have diminished functional utility (functional depreciation), as it cannot currently be utilized for two car storage without applying repairs or alterations.

166. CALCULATIONS ARE INCORRECT: The Appraisal failed to report the "As Is Value" of Site Improvements.

SALES COMPARISON APPROACH

167. Respondent did not analyze comparable sales data and use appropriate appraisal methods and techniques that support the conclusions.

168. Respondent did not adequately collect, verify, and report comparable sales.

169. Adequate reasoning was not provided for adjustments, analysis,

opinions and conclusions.

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

171. Respondent did not adequately explain the adjustments rather than a “blanket” statement as to the adjustments.

172. APPRAISAL FAILED TO USE APPROPRIATE METHODS AND TECHNIQUES THAT SUPPORT THE CONCLUSIONS: The Subject property has a converted garage; however, the Appraisal failed to adequately explain why garage converted sales were not utilized.

173. APPRAISER INADEQUATELY COLLECTED, VERIFIED AND REPORTED COMPARABLE SALES: The Gross Living Area reported in the Appraisal for Sale 3 is 1106 square feet, while the County Assessor reported 1065 square feet, which was not explained. Aerial image of Sale 2 revealed that it backs to a greenbelt; however, the Appraisal lacked disclosure and analysis.

174. INADEQUATE REASONING PROVIDED FOR ADJUSTMENTS (or lack of adjustments), ANALYSIS, OPINIONS AND CONCLUSIONS: All of the Sales utilized in the Appraisal have a two car non-converted garage, compared to the Subject’s converted garage; however, no adjustments were applied, nor was explanation provided in support of the lack of garage adjustments or functional

utility adjustments.

INCOME APPROACH

175. Exclusion of the Income Approach was not supported.

176. The statement "The income approach is not used due to a lack of rental properties" is not sufficient. If the approach is not used, then the appraiser should have a statement in the scope of the work that the development of the approach was not necessary in order to arrive at a credible market value. The Appraisal Addendum reported "The Income Approach was considered but not performed due to subject not income producing and the lack of rental data to accurately determine a Gross Rent Multiplier (GRM)." However, this commentary is not acceptable without additional verbiage added to the Scope of Work.

GENERAL

177. The appraisal does not contain sufficient information to enable the client(s) and intended user(s) who receive or rely on the report to understand it properly.

178. The report did not contain sufficient information to enable the intended user to understand the report properly.

179. Scope of Work insufficiently summarized and the description of the extent of Appraisal assistance is insufficient.

180. Relevant Subject Improvement characteristics and effect on value not adequately described. Relevant Conditions or Depreciation Factors that affect the improvements were not adequately reported/analyzed.

181. Site Value not developed by an appropriate method or technique. The Appraisal failed to correctly analyze depreciation items. Calculations are incorrect or missing.

182. The appraisal failed to use appropriate methods and techniques that support the conclusions. The appraisal inadequately collected, verified and reported comparable sales. There was inadequate reasoning provided for adjustments (or lack of adjustments), analysis, opinions and conclusions.

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) The Record Keeping 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)(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.

¹ Currently the next Board meeting is scheduled for 9:30 a.m. on April 9, 2021.

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 a **THIRTY (30) DAY SUSPENSION**. The suspension, shall run from **May 1, 2021, thru May 30, 2021**.
2. Respondent shall take the following corrective education courses:
 - 1) 614 – Residential Reporting Writing and Case Studies (15 Hours), and;
 - 2) 602 – Basic Appraisal Procedures (30 Hours).
3. 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, within sixty (60) days from the date the Board approves this Order. 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.

4. Respondent shall be placed on **PROBATION** for a period of **NINE (9) MONTHS** 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:



DARRYL L. ROSS

03 / 04 / 2021

DATE



GE'ANDRA JOHNSON,
Counsel for Respondent

March 4, 2021

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

4-8-21


DATE

IT IS SO ORDERED on this 9th day of April, 2021.




Jenelle LePint, 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 19th day of May, 2021 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:

Ge'Andra D. Johnson

Green, Johnson, Mumina & D'Antonion
400 N. Walker Avenue, Ste. 100
Oklahoma City, OK 73102
Attorney for Darryl L. Ross

9214 8902 0982 7500 0376 08

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