

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

In the Matter of DIANA VEREL,)
Respondent.) Complaint #20-003

CONSENT ORDER

COMES NOW the Oklahoma Real Estate Appraiser Board ("OREAB"), by and through the Prosecuting Attorney, Stephen McCaleb, and the Respondent DIANA VEREL (Respondent), by and through her attorney of record Joseph Farris, and enter into this Consent Order pursuant to Oklahoma Statutes Title 59 §858-700, et seq. and Oklahoma Administrative Code 600:10-1-1, et seq. All sections of this order are incorporated together.

AGREED FINDINGS OF FACT

1. In October of 2018, Respondent was hired to complete an appraisal (the "appraisal" or "report") for a property located at 5105 Ladbrook Street, Norman, Oklahoma 73072 (the "subject"). Respondent completed the appraisal with an effective date of October 23, 2018. The report was signed on October 24, 2018. The lender/client was Arvest Bank. The assignment type was for a purchase transaction. The borrower was Sara Kathryn McDaniel.

2. 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 10-31.

GENERALLY

3. The statement of property interest appraised lacks explanation. Page 3 of 6 of the Appraisal indicates the value includes "Surface Rights" only. This statement conflicts with the Property Rights Appraised as Fee Simple on page one of the appraisal. The statement also conflicts with the definition of Market Value. Fee Simple Interest is defined as an absolute fee, a fee without limitations to any particular class of heirs or restrictions but subject to the limitations of eminent domain, escheat, police power, and taxation. An inheritable estate. Fee Simple includes air rights, mineral rights, leased fee rights, timber rights, and water rights. This Reviewer assumes the Appraiser is mainly referring to mineral rights, whereas mineral rights are not typically conveyed with Oklahoma Warranty Deeds. However, the Appraiser is responsible for providing further clarification in a case like this where a property right is excluded from the Bundle of Rights.

SITE/HIGHEST AND BEST USE

4. The site was not adequately identified/defined. The Site dimensions reported in the Appraisal report were 65 feet x 138 feet (8,970 sf); however, the plat

map for the Subject's site indicates the dimensions are 65 feet x 129.45 feet (8,414 sf).

5. Easements, restrictions or other items of a similar nature were not adequately reported and considered. The plat map displays a 27 foot Drainage Easement at the rear, and a 25 foot Building Line at front; however, the Appraisal report provided no such disclosure. Furthermore, the FEMA flood map and an aerial image of the Subject's site indicates it is adjacent to a creek (flood zone AE); however, no such disclosure nor analysis was made in the Appraisal report.

IMPROVEMENTS

6. Relevant characteristics of improvements and any effect they have on value were not adequately described. Based on a side-by-side comparison of the property sketches included in the Appraisal report (1,621 sf GLA with a 447 sf garage), the refinance Appraisal report by Todd Flannery (1,443 sf GLA with a 460 sf garage), dated 08/19/2019, and the County Assessor sketch (1,421 sf GLA with 463 sf garage), the Appraiser appears to have incorrectly measured the exterior footprint of the Subject property, and incorrectly measured the garage. Note the West wall of the Subject property was measured by the Appraiser at 42.84 foot long, while Todd Flannery and the County Assessor measured 40.3 feet and 40 feet in length, respectively. Board staff contacted the homeowner who provided several

photos of the garage interior, confirming the accuracy of the property diagrams found in the Flannery Appraisal and at the Cleveland County Assessor website. Board staff review concludes that the Subject's Gross Living Area/Garage Size is more consistent with 1,443sf/460sf, based on the Flannery Appraisal, and further support provided by the County Assessor's measurement at 1,421sf/463sf.

7. 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. Respondent included the Subject's free-standing range/oven (personal property) in value without proper disclosure.

SALES COMPARISON APPROACH

8. As described further, Respondent did not analyze comparable sales data and use appropriate appraisal methods and techniques that support her conclusions; she did not provide adequate reasoning for his adjustments, analysis, opinions and conclusions; Respondent did not adequately collect, verify, and report comparable sales; and she did not correctly employ recognized methods and techniques.

9. GLA discrepancy was not explained. The Gross Living Area (GLA) reported in the Appraisal for Sale 1 was 1,569 sf, while MLS and the County Assessor reported 1,560 sf. The GLA reported in the Appraisal for Sale 3 was 1,732 sf, while MLS and the County Assessor reported 1,733 sf and 1,724 sf respectively.

10. There was a Sale price discrepancy. The Sales price reported in the Appraisal for Sale 3 was \$179,500, while MLS and Assessor reported \$187,000.

11. Lot size discrepancies were not explained. The site area reported in the Appraisal for Sale 1 was 9,100 sf, while the Assessor reported 9,148 sf. Sale 2 was 7,500 sf, while the Assessor reported 7,405 sf. Sale 3 was 10,000 sf, while the Assessor reported 10,019 sf. Sale 4 was 5,848 sf, while the Assessor reported 5,663 sf.

12. Respondent reported inadequate reasoning for adjustments. The Gross Living Area adjustment applied in the appraisal for the Sales was \$45 per foot, while the Board's investigation by Linear Regression Analysis indicates an adjustment of \$84 per foot. Note that a 12-month statistical analysis for Subject's subdivision revealed a median sales price per foot of \$106.28 (which includes the land and improvements). Based on the median sales price statistics alone, the \$45 per foot GLA adjustment appears inconsistent or otherwise unsupported.

13. Respondent failed to disclose/analyze Sales amenities. The Subject does not have granite kitchen tops or a jetted tub. MLS reported Sale 1 has a jetted tub and granite kitchen tops, not disclosed or analyzed. MLS reported Sale 2 has a jetted tub and granite tops, not disclosed or analyzed. MLS reported Sale 3 had a shelter and granite tops, not disclosed or analyzed. MLS reported Sale 4 has an open

patio; however, the Appraisal reported a covered patio.

14. There was a days on market (DOM) discrepancy. The DOM reported in the Appraisal for Sale 3 was 3,443, while MLS reported 34.

15. Respondent inadequately analyzed prior sales. Respondent reported the prior sale on Sale 1; however, failed to analyze it, in particular the reason for the subsequent value increase.

INCOME APPROACH

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

17. 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 reported the Income approach was not required by the Lender. However, this commentary is not acceptable without additional verbiage added to the Scope of Work, such as the following example: "The development of the Income Approach was not necessary in order to arrive at a credible market value."

FINAL RECONCILIATION

18. The quality and quantity of data available and analyzed within the approaches used were not adequately reconciled. The Appraisal incorrectly reported

the Subject's gross living area and garage area, per a subsequent appraisal report. The Appraisal incorrectly reported the Subject's lot dimensions. The Appraisal failed to disclose and analyze the Subject's adjacent flood zone and rear 27 ft D/E. The Appraisal indicated that the Subject's valuation included Surface Rights only; however, lacked appropriate explanation. The Appraisal reported that Sale 3 sold for \$179,500, while MLS and Assessor reported \$187,000. The Appraisal lacked support for the Sales Gross Living Area adjustment figure of \$45.00. The Appraisal failed to report and analyze Sales amenities which may be elements of comparison. The Appraisal reported Sale 4 having a covered patio, while MLS shows an open patio. The Appraisal reported though did not analyze the prior sale of Sale 1.

19. Applicability and suitability of the approaches used to arrive at the value conclusions have not been adequately reconciled. The Appraisal reported the income approach was not required by the Lender. However, this commentary is not acceptable without additional verbiage added to the Scope of Work, such as the following example: "The development of the Income Approach was not necessary in order to arrive at a credible market value."

GENERAL

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

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

24. 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.

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."

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 her 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 her 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 her 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 her 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 her at the subsequent disciplinary hearing. Respondent will be free to defend herself and no inferences will be made from her 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:
 - 1) 613 – Residential Sales Comparison & Income Approach (30 Hours), and;
 - 2) 611 – Residential Sales Comparison & Income Approach (30 Hours).
2. Respondent agrees that she 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.

3. Respondent shall pay an administrative fine of five hundred dollars (\$500) to be paid within thirty (30) days of notification to Respondent of the order of the Board imposing the administrative fine pursuant to 59 O.S §858-723.

4. Respondent agrees she will pay half of the costs of prosecution, capped at a total cost to Respondent of \$2,500.

5. Respondent shall be placed on **PROBATION** for a period of **SIXTY (60) DAYS** beginning immediately upon the date she 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.

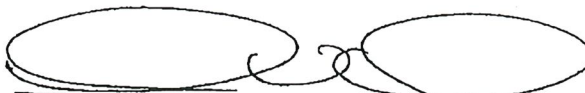
6. Failure to comply with the preceding paragraphs in a timely manner will result in an instant suspension of Respondent's license. For good cause, an

extension may be granted by the Board. An application for an Extension of Time should be filed at least five (5) 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:



DIANA VEREL,
Respondent

4-9-2021

DATE

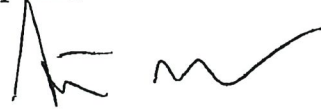


JOSEPH FARRIS,
Counsel for Respondent

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.

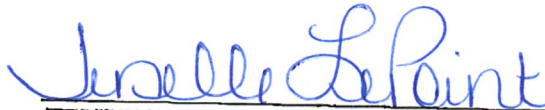


STEPHEN MCCALED, OBA #15649
Board Prosecutor
400 NE 50th Street
Oklahoma City, Oklahoma 73105

4-9-2021

DATE

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



JENELLE LEPOINT, 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 Consent Order was placed in the U.S. Mail, with postage pre-paid, by certified mail, return receipt requested to:

Joseph R. Farris

9214 8902 0982 7500 0376 22

Franden, Farris, Quillin, Goodnight
& Roberts

2 W. 2nd Street, Ste. 900

Tulsa, Oklahoma 74103-3115

Attorney for Diana Verel

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