

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

In the Matter of RICHARD L. NICHOLS,)
Respondent.)

Complaint #20-004

CONSENT ORDER

COMES NOW the Oklahoma Real Estate Appraiser Board ("OREAB"), by and through the Prosecuting Attorney, Stephen McCaleb, and the Respondent RICHARD L. NICHOLS (Respondent), by and through his attorney of record Eric Groves, 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 January of 2019, Respondent was hired to complete an appraisal (the "appraisal" or "report") for a property located at 2822 East 2nd Street and 231 South Coltrane Road, Edmond, Oklahoma 73034 (the "subject"). Respondent completed the appraisal with an effective date of January 29, 2020, which was the same date of the inspection. The lender/client was Prime Bank.
2. Respondent committed a series of errors in the report which led to a non-credible report.
3. Given the lack of proper appraisal valuation techniques, lack of

confirmation of data, and the omission of market data support in the Income Approach section by only using the borrower's provided proforma, the appraisal report does not have sufficient support for a credible market value estimate of the subject property. In addition, the appraisal report does not meet the standards of FIRREA by not providing an "as is" market value estimate.

4. There was no explanation for the need for adjustments on demolition costs to a land sale with known improvements on the site at the time of sale and using it as a land sale. There was no supporting market data in the Income Approach; the lack of confirming data and the omission of an "as is" market value because the appraiser was not provided with cost from the borrower for this adjustment.

5. This is a multi-tenant retail property with below stabilized occupancy that is currently being renovated. This appraisal report has an effective date of 01/29/2020 and a delivery date to the client of 01/29/2020. The report appears to be put together as quickly as possible.

6. The report relies heavily on written proforma. Additionally, Respondent used the developer's proforma and added notes. Respondent would need to list extraordinary assumptions in order to do this.

7. The report provides a prospective value upon completion, but the report should also have a prospective effective date.

8. Respondent provided no adjustment grid in the report.

9. Respondent provided no support for expenses to the subject in the report.

10. Respondent failed to use an index in the cost approach.
11. The information from CoStar utilized by Respondent needs to be researched and verified.
12. When using an as-is date with a prospective value the appraiser needed a hypothetical condition.
13. The report needed a statement of extraordinary assumptions.
14. The subject is a retail center that is an investment property. The report needs a statement regarding the as-is value.

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 Competency Rule of the Uniform Standards of Professional Appraisal Practice.
 - B. The Scope of Work Rule of the Uniform Standards of Professional Appraisal Practice;
 - C. Standard 1, Standards Rules 1-1, 1-2, 1-3, 1-4, 1-5 and 1- 6; and
 - D. 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 ."

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)(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.

10. This Consent Order shall be governed by the internal laws of the State of Oklahoma without regard to 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 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 have been made by any of the Parties hereto or any of their agents, employees,

¹ Currently the next Board meeting is scheduled for 9:30 a.m. on November 5, 2021.

representatives, 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:
 - 1) 601 - Basic Appraisal Principles;
 - 2) 602 - Basic Appraisal Procedures; and
 - 3) 907 - Intro To Commercial Property Valuation.
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, within ninety (90) 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. 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.

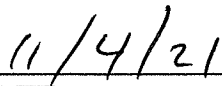
DISCLOSURE

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.

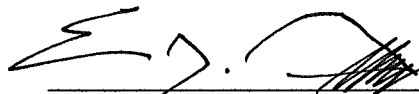
RESPONDENT



RICHARD L. NICHOLS



DATE



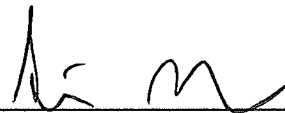
ERIC GROVES,
Counsel for Respondent

4 Nov. 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

11-5-21

DATE

IT IS SO ORDERED on this 5th day of November, 2021.

Jenelle Lepoint

JENELLE LEPOINT, Board Secretary Oklahoma
Real Estate Appraiser Board



**OKLAHOMA REAL ESTATE APPRAISER
BOARD**

By:

Bryan Neal

BRYAN NEAL, OBA #6590

Assistant Attorney General

Attorney for the Board 313

NE 21st Street

Oklahoma City, Oklahoma 73105

CERTIFICATE OF MAILING

I, Kelly Reynolds, hereby certify that on the 8th day of November 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:

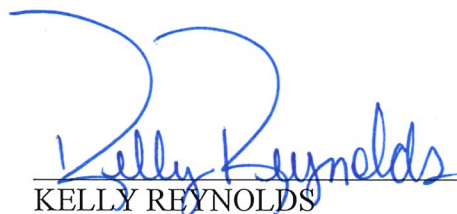
Eric Groves, Esq.
GROVES & ASSOCIATES
The Atrium Building
3601 N Classen Blvd., Ste 207
Oklahoma City, OK 73118

9214 8902 0982 7500 0418 89

and by First Class Mail to:

Bryan Neal, Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
313 NE 21st Street
Oklahoma City, OK 73105

Stephen L. McCaleb
DERRYBERRY & NAIFEH
4800 N Lincoln Boulevard
Oklahoma City, OK 73105


KELLY REYNOLDS