

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

In the Matter of NANCY L. CATES,)
)
Respondent.) Complaint No. 20-052

CONSENT ORDER

COMES NOW the Oklahoma Real Estate Appraiser Board (“OREAB”), by and through the Prosecuting Attorney, Stephen McCaleb, and Nancy L. Cates (“Respondent”), by and through her attorneys of record, K. Ellis Ritchie and Kyle E. Long, 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 June of 2019, Respondent was hired to complete an appraisal (the “appraisal”) for a property located at 311 South Broadway Street, Skiatook, OK 74070 (the “subject”). The Lender/Client was RCB Bank. June 21, 2019 Respondent completed and transmitted the appraisal with an effective date of June 19, 2019 to RCB Bank. The assignment type was for a single family conventional refinance transaction. The appraisal was performed in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice.

2. Following submission of the original report to Fannie Mae, Fannie Mae raised issues with the report and the appraiser made a revised appraisal report attempting to address those issues.

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

General

4. 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. Respondent mentions the subject's previous sale, but does not analyze it. At a minimum, the appraiser should have indicated the basis for the appraiser’s belief that the previous sale of the property prior to the remodel project was not relevant based on the change of condition of the property. The appraiser must go into more detail than quote the price and book/page per USPAP.

5. Neighborhood boundaries were not adequately and reasonably defined for failure to reference the name of the city in which the neighborhood was being described.

Site, Highest and Best Use

6. Respondent explains the highest and best use "as improved", but does not mention the highest and best use "as vacant". Both should be explained.

Improvements

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

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

9. The subject is an older home with a new addition. Respondent did not mention any special features and does not include a copy of the specifications for the part being built and part being remodeled. Board investigation was not able to determine the quality of the subject without more information in the report (such as kind of kitchen counter tops, backsplash, flooring, etc.). It is not explained how the appraiser came up with a Q4 rating without any information in the report about the quality of construction.

Cost Approach

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

11. The cost estimates were not analyzed and supported.

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

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

14. Per the instructions on the cost approach section, Respondent should have a summary of land sales used. There is no summary of site sales or how the appraiser arrived at the subject's land value. The replacement cost is taken from "builder information", but there is no information on the form so a reader cannot duplicate the cost approach.

Sales Comparison Approach

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

16. Adequate reasoning was not provided for adjustments, analysis, opinions and conclusions.

17. Respondent selected three sales all with car storage. One sale used is on small acreage. The subject is located on a city lot. Therefore, a buyer looking for acreage would not consider the subject site and a buyer looking for a city lot would not consider acreage. Therefore Sale No. 3 is not a comparable that would be a good "substitute" for the subject property. Sale No. 1 is a reasonable sale to use, but without any information on the subject's extra features, it is unclear if a quality adjustment is warranted on this sale. This sale has granite counter tops. If the subject is not going to have granite counter tops, then it would be appropriate to make a negative quality adjustment on this sale. Sale No. 2 has extensive crown moldings, hardwood floors, granite counter tops and is full brick. This is more indicative of a Q3 rating and may be superior to the subject in appeal and quality. There are other sales on city lots that could have been used in the appraisal. Subject's lot value is \$10,000. Sale No. 1 sold for \$15,000 (lot only), but no lot adjustment is made on the grid.

Income Approach

18. Exclusion of the Income Approach was not explained nor supported.

Final Reconciliation

19. There are no specifications attached to the report or in the work file that were submitted by the appraiser. Specifications should be attached to the report. There is no mention that a final inspection is required. If a final inspection is not part of the appraisal report, then it becomes a new assignment when the lender asks for a final inspection.

General - Revisited

20. The appraisal report 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.

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

22. Standards Rule 1-1 (c): Appraiser must not render 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.

23. The appraiser submitted the appraisal to the lender. The lender submitted the appraisal to Fannie Mae and Fannie Mae took issue with several items on the appraisal. One being CI rating - a CI rating must be for a house that has never been occupied. Part of the subject is an older home that therefore had been occupied at one time.

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)(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."

6. The OREAB reserves the right to amend or addend these allegations should evidence presented or discovered during the proceeding constitute clear and convincing proof that such amendments or addenda are warranted.

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 factfinding 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 her; 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 both her right to contest these findings in any subsequent proceedings before the Board and her right to appeal this matter to the District Court.

4. The Respondents 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. When delivered to the other party, facsimile and visual digital reproductions of original signatures shall be as effective 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

¹ Currently, the next Board meeting is scheduled for March 4, 2022, at 9:30 a.m.

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, 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 into 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 that:

1. Respondent shall take the following corrective education:

- | | | | |
|----|-----|--|----------|
| A. | 611 | Residential Market Analysis & HBU | 15 Hours |
| B. | 612 | Residential Site Valuation & Cost Approach | 15 Hours |
| C. | 600 | USPAP | 15 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 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 in the amount of five-hundred dollars (\$500), to be paid within thirty (30) days of notification of Respondent of the Board's Order 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 through §24-A.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:

Nancy L. Gates
NANCY L. GATES

3-1-2022
DATE

[Signature]
K. ELLIS RITCHIE, OBA NO. 14443
Counsel for Respondent

3/11/2022
DATE

CERTIFICATE OF BOARD'S 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.

[Signature]
STEPHEN L. MCCAULEB, OBA NO. 15649
Board Prosecutor
400 NE 50th St.
Oklahoma City, OK 73105

3-4-22
DATE


IT IS SO ORDERED on this 4th day of March, 2022.

Jenelle LePoint
JENELLE LEPOINT, Board Secretary
Oklahoma Real Estate Appraiser Board



**OKLAHOMA REAL ESTATE
APPRAISER BOARD:**

By:


BRYAN NEAL, OBA NO. 6590
Assistant Attorney General
Attorney for the Board
313 NE 21st St
Oklahoma City, OK 73105

CERTIFICATE OF MAILING

I, Kelly Reynolds, hereby certify that on the 4th day of March, 2022, a true and correct copy of the above and foregoing Consent Order was sent via first-class U.S. Mail, certified and return-receipt requested, with proper postage prepaid thereon, to the following:

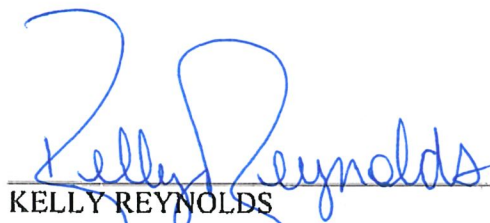
K. Ellis Ritchie, Esq.
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Ritchie, Rock, McBride & Atwood
PO Box 246
Pryor, OK 74362-0246

9214 8902 0982 7500 0444 39

and by first-class U.S. Mail to:

Bryan Neal, Assistant Attorney General
Office of the Attorney General
of the State of Oklahoma
313 NE 21st St
Oklahoma City, OK 73105

Stephen L. McCaleb, Esq.
Derryberry & Naifeh, LLP
4800 N. Lincoln Blvd
Oklahoma City, OK 73105


KELLY REYNOLDS