

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

In the Matter of DANIEL E. SIMON,)
)
Respondent.) Complaint No. 20-048

CONSENT ORDER

COMES NOW the Oklahoma Real Estate Appraiser Board (“OREAB”), by and through the Prosecuting Attorney, Stephen McCaleb, and Daniel E. Simon (“Respondent”), by and through his attorney of record, Robert J. Getchell, 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. Respondent has been performing real estate appraisals since he received his real estate broker’s license in 1974, and his appraiser’s license in 1992, and has performed approximately 18,000 single-family residential appraisals for FHA, VA, and numerous conventional mortgage lenders. Respondent has also been qualified as an expert appraisal witness in numerous county district courts in the State of Oklahoma, and the United States Bankruptcy Courts for the Northern and Eastern Districts of Oklahoma. This is the first and only complaint against Respondent in a career spanning approximately 48 years.

2. In August of 2019, Respondent was hired to complete an appraisal (the “appraisal”) for a property located at 9090 Jefferson Road, Okmulgee, OK 74447 (the “subject”). The Lender/Client was Gateway Mortgage Bank/Dept. VA. Respondent completed the appraisal with an effective date of August 27, 2019. The assignment type was for a purchase transaction. The appraisal was performed in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice, and supplemented by regulations and guidelines of the Veterans’ Administration.

3. Respondent committed errors in compiling the report, which led to a report that was not completely accurate, particularly as to the square footage of the property.

4. Notwithstanding the error related to the square footage, the complainant sold the property within several months of the appraisal for an amount in excess of \$25,000 of the appraised value reported by Respondent.

General

5. The Scope of Work was determined by the Form 1805, the VA order form, and the URAR description of the scope of work is consistent with that Form.

Neighborhood

6. Factors that affect marketability should have been more fully described. There is no description of the neighborhood in which the property is situated other than the general location. The comment in this section describes the subject site and should go elsewhere in the report.

Site, Highest and Best Use

7. The site was not adequately identified/defined.

8. Zoning was not accurately reported. There is no zoning outside of the city limits. Therefore, the zoning should be "None" or "No Zoning" rather than AG. However, this may not have impacted the appraised value.

9. The highest and best use was indicated as the present use and the URAR form requires no additional comment in that case; however a fuller explanation as to the highest and best use to conform to USPAP should have been reported

10. The appraiser does not have any comments on the highest and best use. To conform with USPAP, the appraiser must do more than "check the box" on the URAR. There must be a few sentences about how and why the appraiser arrived at the highest and best use.

Improvements

11. Relevant characteristics of improvements and any effect they have on value were not adequately described. However, this may not have impacted the appraised value.

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

13. The drawing in the report does not show the garage or the unfinished area. The appraiser used Realist square footage of 1,832 SF, but this includes "everything under roof". This error was the result of a mistake in the data entry into a brand new software platform, and the error was overlooked in a review of the final URAR, resulting in a misstated square footage figure for the residence. The same data entry mistake also resulted in the appraiser's drawing not matching the pictures (e.g. no garage on the floor plan).

14. The appraiser does not mention the shop building with electric nor the hay barn and Respondent has indicated that the condition of those buildings were such that they did not meet VA Minimum Property Requirements, and therefore it was required that no value be ascribed to them. The appraiser mentions the updating of the subject's kitchen; more information on that topic would have been appropriate.

Cost Approach

15. The site value was not developed by an appropriate appraisal method or technique; however the Cost Approach is neither relied upon nor required by the VA. This should have been reported in the URAR..

Sales Comparison Approach

16. More detailed reasoning for the adjustments, analysis, opinions, and conclusions would have strengthened the Sales Comparison Approach.

17. As mentioned above, Respondent's square footage is not accurate (based on assessor square footage and a floor plan drawing provided by the property owner). Therefore, the square footage adjustment is not reasonable. There is no explanation for the condition and quality adjustments on the comparable sales. Three of the comparable sales used in the appraisal, if the correct square footage is used, would be larger than the subject.

Income Approach

18. While the VA does not require nor rely on an Income Approach, that should have been reported as the reason for the exclusion of the Income Approach.

Final Reconciliation

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

General - Revisited

20. The appraisal results were misleading.

21. 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.

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

23. 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.

24. Although the dwelling was measured correctly, the data entry process and the use of a new software platform created an error in the square footage reported for the property, thus leading to a misleading report on that specific data. There are not adequate comments on the subject and extra features (shop, barn, updating).

25. There is no explanation for the condition, quality, and patio/porch adjustments.

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; and
- C. Standard 1, Standards Rules 1-1, and, 1-4,; 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)(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 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 his right to contest these findings in any subsequent proceedings before the Board and his right to appeal this matter to the District Court.
4. The Respondents 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 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.

¹ Currently, the next Board meeting is scheduled for May 6, 2022, at 9:30 a.m.

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, 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. 612 Residential Site Valuation & Cost Approach 15 Hours

B. 600 National USPAP Course 15 Hours

2. The corrective education may be taken remotely and/or online. 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 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. Respondent shall be placed on **PROBATION** for a period of SIXTY (60) DAYS beginning immediately upon the date he timely completes the two (2) 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) day of each month, detailing all of 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.

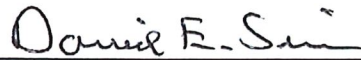
5. Failure to comply with the preceding paragraphs in a timely manner will result in an instant suspension of Respondent's license. For good cause, an extension may be granted by

the Board, which shall include, but not limited to, Respondent's potential recall to active military duty. 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.

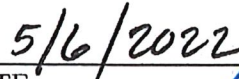
DISCLOSURE

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:



DANIEL E. SIMON



DATE



ROBERT J. GETCHELL, OBA NO. 11317
Counsel for Respondent



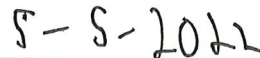
DATE

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.



STEPHEN L. MCCALED, OBA NO. 15649
Board Prosecutor
400 NE 50th St.
Oklahoma City, OK 73105



DATE

IT IS SO ORDERED on this 5th day of May, 2022.

Jenelle LePoint

JENELLE LEPOINT, Board Secretary
Oklahoma Real Estate Appraiser Board



**OKLAHOMA REAL ESTATE
APPRAISER BOARD:**

By: Bryan Neal

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 Ann Reynolds, hereby certify that on the 21st day of July, 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:

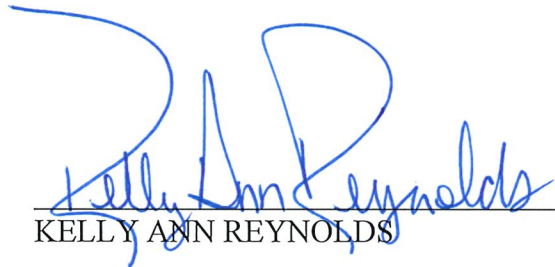
Robert J. Getchell, Esq.
GABLEGOTWALS
110 North Elgin Ave, Suite 200
Tulsa, OK 74120

9214 8902 0982 7500 0480 79

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 ANN REYNOLDS