

BEFORE THE REAL ESTATE APPRAISER BOARD
STATE OF OKLAHOMA

In the Matter of JOSHUA A. WOODSON,)
)
 Respondent.) Complaint 20-031

CONSENT ORDER

COMES NOW the Oklahoma Real Estate Appraiser Board (“OREAB”), by and through the Prosecuting Attorney, Stephen McCaleb, and the Respondent JOSHUA A. WOODSON (Respondent, 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 December of 2019, Respondent was hired to complete an appraisal (the “appraisal”) for a property located at 5302 E US Highway 66, El Reno, OK 73036 (the “subject”). The Lender/Client was United Wholesale Mortgage. Respondent completed the appraisal with an effective date of December 31, 2019. The assignment type was for a refinance transaction. The appraisal was performed in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice.

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

ALLEGATIONS OF FACT

General

3. The statement of property interest appraised was not reported.

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

5. 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.

6. Property Rights Appraised do not meet Fee Simple, as certain Rights have been Excluded: This appraisal indicated that it values the surface rights only. This detracts from Fee Simple Estate and therefore does not meet the definition. However, since conveyance of only Surface Rights is common in Oklahoma, the Appraisal should have provided further clarification for the Exclusion of sub-surface rights, in order that the Intended User can understand.

7. Scope of Work not sufficiently summarized:

01). Reference to Exclusion of the Income Approach (explained below).

02). Reference to Exclusion of the Cost Approach (explained below).

03). Reference to verifying permit for the garage conversion (plumbing, mechanical, electrical).

04). Reference to the house prohibited from being rebuilt in the same spot of the site, as the house is currently too close to the East property line, per the City, while the current building setback requirement is 30 feet.

05). Reference to failure to verify garage conversion permit; and discussion about possible violations and non-conformities due to no permit.

06). Reference to failure to provide sketch, dimensions and interior photos of the 12 barns and buildings, or an explanation in support of not providing this information.

07). Reference to failure to provide interior wall layout in the sketch due to subject garage conversion (possible functional obsolescence).

8. Inadequate Analysis of Subject sale within prior three (3) years. The Appraisal reported Subjects prior sale for \$347,000; however he failed to adequately analyze it, in particular the reason for the subsequent and significant value increase in 10 months.

The appraisal report has conflicting information on the subject's site and improvements.

9. The report does not provide a credible highest and best use analysis. Respondent should have included the highest and best use in the report.

10. Respondent did not explain why a 2,833 square foot property has only 1 bedroom and 1.1 baths.

11. Respondent did not provide any description on the out-buildings.

12. Respondent reported the zoning was A-1 but used a commercial property as a comparable.

13. Photos and sketch are of a dwelling that is comprised of 2,833 square feet and is not shown on the property maps provided.

14. There are two dwellings, one comprised of 1,472 square feet, the other 2,771 square feet shown on the property maps, which were not disclosed.

15. There is not any information on what uses are allowed in the subject's zoning. Commentary indicates the stables owned by the borrower are in a different zoning than the improvements, yet the zoning maps provided shows they are in the same zoning. A peer appraiser indicated the subject property is a working commercial property surrounded by industrial properties. If it were a single family residential it would have limited effective life since the area is transitioning to industrial use as obtained from the City Planning Division.

Neighborhood

16. Factors that affect marketability were not adequately and reasonably described. The subject fronts a major US Highway and, as such, experiences higher

than normal traffic noise and Commercial / Industrial influences. The Appraisal lacked appropriate analysis. Listing 5 is adjacent Highway 81, however is not as proximate to Commercial / Industrial properties to the extent as the Subject (this Listing, priced at \$499,000, subsequently sold for \$472,000 in June of 2020). The Appraisal lacked analysis of market reaction to the Subject's current or past history of being an Income Producer (commercial property).

17. Neighborhood boundaries were not adequately and reasonably defined. The neighborhood boundaries cited in the appraisal for the subject parcel basically included the whole City of El Reno. The Appraisal failed to more accurately define the subject neighborhood as being situated primarily along a US Highway where the prominent Highest and Best Land Use is Income Production.

18. Market area trends were not adequately and reasonably discussed and analyzed.

Site/Highest and Best Use

19. The site has not been adequately identified/defined. The Appraisal reported "The real estate involved in this report property appraisal is currently in use as a single family residence and was appraised as such. The property is legally zoned, physically permissible, financially feasible and maximally productive. In the Appraiser's opinion, the current use reflects the highest and best use of the subject

property." However, there is evidence of past or present Commercial Use as one of more of the following: a Farm, Livestock boarding, etc.

20. The Subject dwelling might be a duplex (or if it has high potential to be), as evidenced by the second kitchen within the garage conversion. The Appraisal failed to adequately discuss the garage conversion and if it was constructed under permit. Board investigation found that if the garage conversion included mechanical, electrical or plumbing, then a permit would have been required.

21. The zoning was not adequately and accurately reported. Although the Appraisal indicated the Subject is legally conforming to zoning, it failed to sufficiently explain what is allowed under A-1 zoning. Board investigation revealed A-1 zoning permits the commercial boarding and training of livestock. Any such permitted commercial use should have been clearly disclosed and analyzed within the Highest and Best Use Analysis.

22. Easements, restrictions or other items of a similar nature were not adequately reported and considered. City Officials informed the Board investigator that if the Subject dwelling is destroyed, it cannot be rebuilt in the same spot on the site due to being too close to the East property line, whereas the current building setback requirement is 30 feet. Therefore, the Subject property is likely considered to be a Legal non-conformity (grandfathered) with regard to prohibited placement

(reconstruction) of the Subject property on the same spot (house situs), if destroyed, due to current Easement Restrictions (building setback). The City of El Reno advised there were no such permits on file for the Subject's garage conversion. Therefore, as such the Subject property may likely be in violation of City Codes, due to property alteration without permit, and likely cannot be rebuilt with converted garage, at a minimum, if destroyed. The Appraisal indicated a portion of the Subject parcel is within a 500 year flood plane; however, it failed to disclose the parcel also appears to include areas of 100 year flood plane. The Flood Map provided within the Appraisal is insufficient, as the property label is covering up the most important section of the parcel. Furthermore, the Appraisal states there does not appear to be any adverse market reaction to the flood zone location, however no support for that conclusion was provided.

23. The current use was not reported. The Appraisal indicated the Subject's current use is as a single family dwelling; however, it lacked appropriate disclosure and analysis of the Subject's past or current commercial activity and potential for future commercial use.

Improvements

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

25. Relevant conditions or depreciation factors that effect the improvements were not reported and analyzed.

26. Relevant Subject characteristics and functional utility were not adequately described:

a). Considering that the Subject's garage has been converted to living space, and it has 1 bedroom and 1.5 bathrooms, the Sketch should have included interior walls in order that the Intended User can better understand the floor plan traffic flow, and to provide better evidence the dwelling is not a duplex or suffers functional obsolescence. Per Fannie Mae Guidelines, interior walls are to be included in the sketch any time functional utility or obsolescence may be of concern. Furthermore, the Appraisal lacked appropriate verification or any attempt to verify building permit for the garage conversion. Board investigation with City of El Reno found no such permits on file. Therefore, the Subject property may likely be in violation of City Codes, due to property alteration without permit, and likely cannot be rebuilt with converted garage, at a minimum, if destroyed.

27. Functional depreciation was not adequately analyzed. For example, can the garage conversion interior be accessed without going through the original house? Does the conversion have its own main entry/exit door not attached to the main house? Has the reported neutral functional utility been established by analyzing

sales with similar garage conversions?

28. The Subject is reported to contain a converted garage, 1 bedroom, 1.5 bathrooms and 2 kitchens within the 2,833 sf of gross living area. The Appraiser indicated there does appear to be some curable functional obsolescence to the floor plan in comparison to the comparables; however, there were no Sales found with similar room count for the past 24 months. Although the Appraisal indicated there was a lack of data available from which to measure market reaction, there should have been further attempt made to provide at least 1 Sale with atypical number of bedrooms, a Sale with converted garage or some other offsetting atypical design and layout element as that of the Subject, going back further in time than 24 months if necessary.

29. External depreciation was not adequately analyzed. The Subject fronts directly to a US Highway, however, the Appraisal cites the View as Neutral/Residential.

Cost Approach

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

31. Exclusion of the cost approach was not supported. The report failed to Determine the scope of work necessary to produce credible assignment results in

accordance with the Scope of Work Rule. Further Respondent failed to state the reasons for excluding the cost approach has not been developed. The Appraisal only indicated the Cost Approach was not considered necessary to develop credible assignments results.

Sales Comparison Approach

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

33. Adequate reasoning was not provided for adjustments, analysis, opinions and conclusions. The subject's site area is not bracketed, therefore the substantial site adjustments are not supported, nor do they appear to be consistent with the numerous land sales provided in the report. Subject's external Site influence (highway frontage) is not bracketed, therefore the lack of View adjustments is not supported. The Subject's functional utility, being a garage conversion with 1 total bedroom, is not bracketed, therefore the lack of functional utility adjustments is not supported. Failure to verify permit for the garage conversion, and discussion regarding possible City Law Violations and non-conformities due to no permit. The Subject's past or present income Production was not adequately analyzed. Sale 4 is the same zoning as the Subject, and its Seller was Petree Ranch LLC, which may be an indication of past or present income production; however, there is no such

disclosure and analysis found in the Appraisal. Sale 4 has a geothermal heat source per MLS, a high cost component, not disclosed or analyzed in the Appraisal. The Appraisal indicated most weight was given to Sales 1 and 2; however, no explanation was given. Furthermore, Sales 1 and 2 adjusted at \$531,000 and \$513,100 respectively; however, the Subject's Appraised value is \$500,000. A typical Intended User would likely assume that if Sales 1 and 2 were most weighted, then the Final Reconciliation of value should have been between \$513,100 and \$531,000. Sale 4 is the same zoning as the Subject, and its Seller was Petree Ranch LLC, possible indication of income production; however, the Appraiser failed to explain why its adjusted value of \$514,600 was not weighted.

34. Respondent did not correctly employ recognized methods and techniques. The adjustments were stated but not adequately explained or supported.

35. The appraised value is not bracketed by the unadjusted Sales prices of the utilized sales, therefore the final value conclusion lacks support.

Income Approach

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

37. Respondent did not report support for income, expenses, and vacancy.

38. Respondent did not provide reasonable support for capitalization rate or GRM.

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

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

41. Exclusion of the income approach was not supported as it failed to determine the scope of work necessary to produce credible assignment results in accordance with the Scope of Work Rule. Stating the reasons for excluding the income approach has not been developed: Simply stating "The Appraisal reported the Subject is in an area of primarily owner occupied properties thus the Income Approach is not considered meaningful" does not meet the USPAP requirement to state the reasons why it was not developed. Stating an approach was not necessary without providing some basis for that opinion also fails to meet the requirement. The report must give some explanation of why an excluded approach is not necessary for credible results. The USPAP requirement to state the reasons for the exclusion of an approach to value from the analysis is necessary to provide the client and other intended users with insight into why the analysis was not performed.

42. In this particular case, as evidenced by Commercial signage at the roadway in front of the Subject parcel, 12 outbuildings per County sketch, and at least 2 on-line ads for horse boarding, the property is or has been utilized as an income producer. Therefore, the Normal Course of Business and Peers Actions would have dictated the Income Approach be developed, or a Commercial Appraisal be written.

Final Reconciliation and Summary

43. The quality and quantity of data available and analyzed with the approaches used was not adequately reconciled. Subject's current or past income production was neither disclosed nor analyzed. Potential Highest and Best Use as Commercial Property was not adequately analyzed.

44. The applicability and suitability of the approaches used to arrive at the value conclusions was not adequately reconciled. The Exclusion of the Cost and Income Approaches not adequately supported. Sales Approach lacks credibility due to lack of support for adjustments.

The Appraisal indicated most weight was given to Sales 1 and 2; however, no explanation was given in support of that conclusion. Furthermore, Sales 1 and 2 adjusted at \$531,000 and \$513,100 respectively; however, the Subject's Appraised value is \$500,000. A typical Intended User would likely assume if Sales 1 and 2

were most weighted, then the Final Reconciliation of value should have been between \$513,100 and \$531,000. Note that Sale 4 is the same zoning as the Subject, and its Seller was Petree Ranch LLC, possible indication of income production, however the Appraiser failed to explain why its adjusted value of \$514,600 was not weighted.

General Revisited

45. The appraisal results were misleading.

46. It does not appear that Respondent understands the appraisal process.

47. The appraisal report does not contain sufficient information to enable the client to understand it properly.

48. The salient and factual data reported and analyzed was not reported in a consistent manner.

49. 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.

50. The appraiser violated USPAP by changing the appraisal and not making it a "new assignment". Per USPAP guidelines, you cannot change the contract section on Page 1 nor delete or change the comparables once the appraisal

is sent to the client. If the contract section is changed and comparables changed, then the appraiser must do a new assignment. This means a new effective date because per USPAP you must analyze the sales contract "as of the effective date".

51. General - Property Rights being limited to "Surface Rights Only" lacks appropriate explanation.

02). General - Scope of Work not sufficiently summarized (See list above, under General).

03). General - Subject prior sale was reported though not adequately analyzed.

04). Neighborhood - Factors that affect marketability were inadequately described and analyzed.

05). Site - Site not adequately identified - mainly regarding Highest and Best Use Analysis.

06). Site - Zoning not sufficiently reported and explained.

07). Site - Easements, restrictions or other items of a similar nature not adequately considered (flood zone/setbacks).

08). Site - Present and/or past Commercial Land Use not adequately stated or explained.

09). Improvements - Relevant Subject characteristics and functional utility not adequately described or analyzed.

- 10). Improvements - External and Functional depreciation not adequately analyzed.
- 11). Garage conversion permit not verified. Failure to discuss the likely non-conformity or violations resulting from lack of permit.
- 12). Cost / Income - Exclusion of The Cost and Income Approaches not adequately supported.
- 13). Sales Analysis - Inadequate reasoning for adjustments, lack of adjustments and conclusions.
- 14). Sales Analysis - Incorrectly employed methods and techniques.
- 15). Comps location map is incorrectly labeled. Example, Sale 1 on the map is actually Sale 4.

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."

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."

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 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

¹ Currently the next Board meeting is scheduled for 9:30 a.m. on September 10, 2021.

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) 613 – Residential Sales Comparison & Income Approach (30 Hours);
 - 2) 611 – Residential Market Analysis & Highest and Best Use (15 Hours); and
 - 3) 612 – Residential Appraiser Site Valuation and Cost Approach (15 Hours).
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.

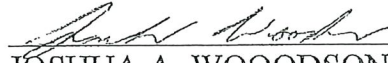
4. Respondent shall be placed on **PROBATION** for a period of **NINETY (90) DAYS** beginning immediately upon the date he timely completes the three courses listed in paragraph one of this section. During the period of probation, Respondent shall provide an appraisal log on REA Form 3 to the administrative office of the Board no later than the fifth (5th) 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.

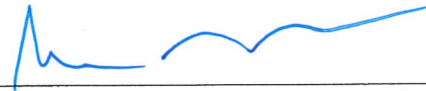
RESPONDENT:


JOSHUA A. WOODSON,
Respondent

9/6/2021
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


9-10-21
DATE

IT IS SO ORDERED on this 10th day of September, 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, Kelly Reynolds, hereby certify that on the 10th day of September 2021, a true and correct copy of the above and foregoing Consent Order was placed in the U.S. Mail, with postage prepaid, by certified mail, return receipt requested to:

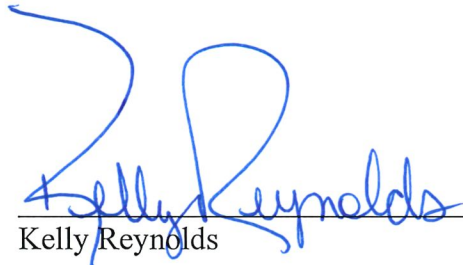
Joshua A. Woodson
19104 Pinehurst Trail
Edmond, OK 73012

9214 8902 0982 7500 0399 16

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, LLP
4800 North Lincoln Boulevard
Oklahoma City, OK 73105



Kelly Reynolds