

FILED
AUG 04 2023
Real Estate Appraiser Board
State of Oklahoma

Real Estate Appraiser Board
State of Oklahoma

CONSENT ORDER

COMES NOW the Oklahoma Real Estate Appraiser Board (“OREAB”), by and through the Prosecuting Attorney, Stephen McCaleb, and Randy J. Davidson (“Respondent”), by and through his attorneys of record, Robert A. Bragalone and Fareshteh H. Hamidi, 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 February of 2022, Respondent was hired to complete an appraisal (the “Appraisal”) for a property located at 67692 S. 311th Way, Wagoner, OK 74467 (the “Subject”). The Lender/Client was American Advisors Group. Respondent completed the Appraisal with an effective date of February 28, 2022. The assignment type was for a reverse mortgage transaction. The Appraisal was purportedly 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.

General

3. Based upon Respondent's responses to the Board regarding this complaint, the Board's investigation resulted in the following comments:

- a) The appraiser's inspection date is February 28, 2022. There are three reports in the work file, plus a fourth report. The appraiser changed the report date on the report sent to the state. The report date only needs to be changed when the report is "edited" or "amended". The state wants the EXACT report that was sent to the client. The report date should not be changed when the report is requested by OREAB. Printing or attaching a report does not require a different report date.
- b) This is an FHA assignment. FHA and VA have different "rules" than a conventional appraisal report. An appraiser should decide if he/she can

abide by the FHA rules whether we agree with them or not when taking an FHA assignment.

- c) There is no time limit as to when the client can ask questions about a report or ask for revisions. There is also no limit as to the number of times they can contact an appraiser. While this may seem like "harassment" to the appraiser, it is part of the job. An appraiser can decide whether to take future assignments from a client if they feel they are being harassed by a client.
- d) The FHA handbook states for the appraiser to contact the lender as soon as possible, if there are problems with certain criteria - one of which is unique properties. It probably would have been best if the appraiser had contacted the lender about 3 areas: (1) legal description; (2) no attic access; (3) whether to value the boat dock. These items should have been settled before the appraisal is finished. If FHA and the lender say "do not value the boat dock", then at that time the appraiser can "back out" of the assignment. But once the report is turned in to the client, the appraiser cannot "back out".

3. There is a boat dock on an adjacent waterway which Respondent included as real property on the Subject, which was not supported (further discussed below).

Site, Highest and Best Use

- 4. The zoning of the Subject property was not adequately and accurately reported.
- 5. Respondent should comment on why the property is "legal non-conforming" (as reported). It would be helpful if a comment was made as to if this is common for properties in the Subject's immediate area or is this issue just for the Subject property.

Improvements

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

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. There appears to be a road between the Subject site and the lake and boat dock. If this is the case, in most cases the boat dock cannot be considered as part of the Subject site. If there is no road, then, in some cases, the boat dock can be considered to be part of the Subject property. In this case, the assessor has said they value the boat dock as personal property, and FHA has

decided to side with the assessor (possibly because of the road). It doesn't matter if the market says boat docks go with the property - the legal entities have the final say. In this case, it is the FHA and the county assessor.

8. Respondent did not elaborate on the condition of the Subject. On the sales grid, the Subject is stated to be Q4 in quality and C4 in condition. There are not enough comments in the Appraisal for the investigator to decide if the ratings are accurate.

9. Conventional appraisals may be able to consider personal property such as boat docks (which the Subject has), but FHA stated in their comments to the appraiser that personal property cannot be valued in the Appraisal.

Cost Approach

10. The site value was not market oriented.

11. The instructions on the 1004 form state "Provide adequate information for the lender/client to replicate the below cost figures and calculations". The appraiser has to put the summary of lot sales in the appraisal not in the work file. The lot sales are in the work file, but a summary needs to be in the Appraisal and was not on the Appraisal.

Sales Comparison Approach

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

13. There is no "proof" in the report as to why no site adjustments are made. The appraiser comments on similar values; However, there is no support in the report. Typically, lake properties tend to be sold by "lake frontage" and/or "deep water/cove water". But there is no explanation in the report for the reasoning behind no site adjustments.

14. There is no explanation in the report for the quality and/or condition adjustments on the sales. If this information cannot be put in the area on page 2, then it is helpful to the reader for the appraiser to identify on what page the additional comments are located. There were no comments on the quality and condition adjustments.

Income Approach

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

Final Reconciliation

16. 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

17. 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.

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 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 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 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 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 July 7, 2023, 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. 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 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 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. | 613 | Residential Sales Comparison & Income 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 one-hundred-twenty (120) 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. Respondent shall receive credit for the courses referenced in paragraph 1(A)-(C), hereinabove.

3. 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.

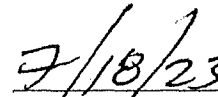
DISCLOSURE

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:



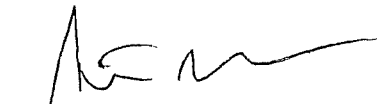
RANDY J. DAVIDSON



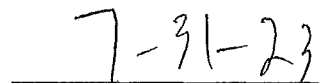
DATE

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 4th day of August, 2023.

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 4th day of August 2023, 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:

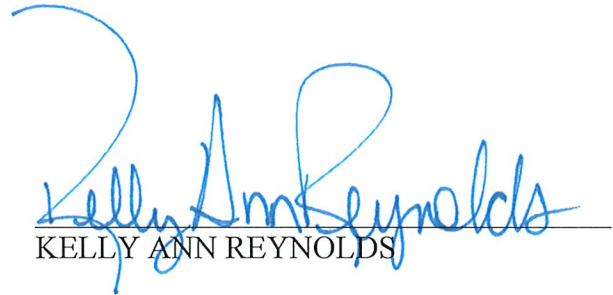
Bob Bragalone
Fareshteh H. Hamidi
GORDON & REES LLP
2200 Ross Avenue, Suite 3700
Dallas, TX 75201

9214 8902 0982 7500 0563 26

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

Bryan Neal, Assistant Attorney General
Office of the Attorney General
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