

While the Respondent Joe W. Fisher was present in the building at the Office of the Oklahoma Insurance Department, 3625 N.W. 56th Street, Suite 100, prior to the scheduled time of the hearing at 9:30 a.m. and remained present in the said building during the hearing, the Respondent Joe W. Fisher did not appear in person at the hearing but was represented at the hearing by his son Curtis W. Fisher, an Attorney from Tulsa, Oklahoma. The Respondent through his Attorney elected to have this matter recorded by electronic device and to rely on the electronic recording.

As the Board's Prosecutor, Mr. McCaleb presented his opening statement on behalf of the Board and the Respondent through his Attorney reserved the Respondent's opening statement in his defense until after the Board's Prosecutor presented the Board's case. Mr. McCaleb presented one witness to testify in the presentation of the Board's case.

PRELIMINARY MATTERS

The Board's Prosecutor moved for the admission of nine (9) exhibits for the Board (Exhibits 1, 2, 3, 4, 5, 6, 7, 8, and 9 respectively) contained in a trial notebook noting that all nine such Board exhibits were Bates Stamped with page numbers provided mostly in numerical order (other than several gaps in numbering between Bates #13 and Bates # 29; Bates #84 and Bates #113, Bates #114 and Bates #152; and, Bates #272 and Bates #327). There being no objection, all nine (9) Board exhibits were admitted into evidence.

Exhibit 1 was the Grievance filed in this matter dated March 4, 2014 (Bates #1-2), Exhibit 2 was the Engagement Correspondence between First United Bank and Trust Company and Joe W. Fisher (Bates #3-10), Exhibit 3 was the Letter of Intent between the subject property buyer and seller dated December 17, 2013 (Bates #11-13), Exhibit 4 was the Commercial Property Appraisal Report on 1208 South Main Street, Sapulpa, Oklahoma, prepared by Joe W. Fisher and dated

February 8, 2014 (Bates #29-66), Exhibit 5 was the Listings of Churches and Funeral Homes found by Craig Custer and dated March 11, 2014 (Bates #67-70), Exhibit 6 was the Corrected Commercial Property Appraisal Report on 1208 South Main Street, Sapulpa, Oklahoma, prepared by Joe W. Fisher and dated February 8, 2014 (Bates #71-84), Exhibit 7 was the Respondent's two (2) page Letter Response to the Grievance filed in this matter on April 12, 2014 (Bates #113-114), Exhibit 8 was the Engagement Correspondence between First United Bank and Trust Company and Grace and Sons Appraisal Services (Bates #327-328), and Exhibit 9 was the Commercial Property Appraisal Report on 1208 South Main Street, Sapulpa, Oklahoma, prepared by R. D. Grace of Grace and Sons dated March 25, 2014 (Bates #152-272).

The Respondent through his Attorney offered a trial notebook labeled as "Respondent's Exhibits" that contained Respondent's exhibits marked only as Bates Stamped. The Respondent's Exhibit List provided as follows (in sequence as provided): All Exhibits offered by the Board (Bates #X), Response by Respondent with appraisal (Bates #1-39), Work File 1 (Bates #40-136), Work File 2 (Bates #137-208), Release of Mortgage (Bates #209), Deed (Bates #210), Mortgage (Bates #211-233), Additional documents sought in Discovery (Bates #Unknown), Subpoena to Craig J. Custer (Bates #234-237), Grace & Sons appraisal pages and comparables (Bates # 242-245; 292; 302-306; 311-319; 326-328), and First United Appraisal Review Form by Craig J. Custer (Bates #363-368). There being no objection, the Respondent's exhibits marked as Bates Stamped were admitted into evidence.

Neither party to these proceedings requested that a court reporter record this matter. No proposed findings of fact were submitted to the Board by either party to these proceedings.

WITNESSES AND EVIDENCE PRESENTED

The Board's Prosecutor presented one (1) witness in support of the case against the

Respondent: Craig J. Custer, a certified general appraiser licensed as 120975CGA, of Nokomis, Florida (formerly of Durant, Oklahoma), who testified via telephone to which testimony there was no objection.

WITNESS TESTIMONY (Summary)

Upon being duly sworn, Mr. Custer testified that he is licensed in Oklahoma as a certified general appraiser, that he has been appraising real property for about 40 years, that he was certified in Oklahoma from the beginning of appraiser licensure in Oklahoma, that he currently lives in Nokomis, Florida, and that formerly he was Director of Appraisal Management for First United Bank and Trust Company in Durant, Oklahoma.

Continuing, Mr. Custer testified that the Respondent was hired by First United Bank and Trust Company, Durant, Oklahoma, to do an appraisal on real property in Sapulpa, Oklahoma, that he had filed the Grievance on the Respondent, and that he found the appraisal report prepared and provided by the Respondent to be lacking in reasonableness and credibility. Mr. Custer identified the Board's Exhibit 1 as his Grievance letter (Bates #1-2) and the Board's Exhibit 2 as the engagement correspondence between First United Bank and Trust Company, Durant, Oklahoma, and the Respondent dated February 10, 2014 (Bates #3-10), with an engagement letter attached, noting that he had reached out the bid to the Respondent two or three days before and that the Respondent had acknowledged acceptance. When asked as to why he had sent the bid out to the Respondent, Mr. Custer said that while he had never secured an appraisal from the Respondent prior to this time, the Respondent was on his bank's qualified commercial appraiser list so he extended a bid to the Respondent. At the request of the Board's Prosecutor, Mr. Custer read the Project Information/Description section from the Board's Exhibit 2 into the record (Bates #5) as well as the Scope of Work section from the Board's Exhibit 2 into the record (Bates #6), noting that the

Respondent never voiced any competency issues to him.

According to Mr. Custer, he gave the Respondent a copy of the Board's Exhibit 3 Letter of Intent dated December 17, 2013 (Bates #11-13), real estate mortgages on the subject property for their legal descriptions, and that the Letter of Intent was basically the same as a contract. Continuing his testimony on Board's Exhibit 3 Letter of Intent, Mr. Custer pointed out that the first paragraph of the Letter of Intent identified that the funeral home sale in this matter included personal property and goodwill (Bates #11) as did the fifth paragraph (Bates #11) which he read into the record at the request of the Board's Prosecutor and that the Letter of Intent was signed by the parties on January 13, 2014, noting that this transaction started out as a Small Business Administration (SBA) loan, that he was familiar with the SBA loan process and that the SBA requires use of the cost approach for its purposes.

Mr. Custer identified the Board's Exhibit 4 (Bates #29-66) as the Commercial Property Appraisal Report on 1208 South Main Street, Sapulpa, Oklahoma, dated February 8, 2014 (the "Appraisal Report"), prepared and reported by the Respondent beginning on Bates # 30, and that the "Subject" section of the Appraisal Report (Bates #30) listed the Building Name to be that of "Smith Funeral Home". At the request of the Board's Prosecutor, Mr. Custer read the Appraisal Report's Extraordinary Assumptions in the "Assignment Parameters" section into the record from Bates #30, and stated that the Respondent did not develop a cost approach analysis even though the Respondent reported that he would do so by marking the box for the "Cost Approach" in the "Scope of Work" section in the Board's Exhibit 4 (Bates #30). At the request of the Board's Prosecutor, Mr. Custer read the Appraisal Report's "Subject Property Sale/Transfer History" section "Analysis of Contract/Option" provision into the record (Bates #32) which stated "Basic contract for purchase with usual clauses pending purchase" which analysis Mr. Custer said was not an adequate analysis

of the contract, in this case, the Letter of Intent, and that he has never seen such a thing as a basic contract as every contract is different than others. Turning to Bates #36, the “Highest and Best Use” section, Mr. Custer read the Respondent’s summary thereof in the Appraisal Report into the record that stated “Highest and best use of subject property is current use and previous use as a place of worship”, as well as the paragraph “Highest and best use as if vacant” that stated “If vacant, the highest and best use would be the same as above. [O]ther uses with modification would only include office space. Present use as a funeral home for several years brings about a phycological [sic] stigma attachment for most people that would limit the likely chance of marketability for uses other than the current use or worship facility”. According to Mr. Custer, the Respondent’s choice of three (3) comparable sales or comparables are provided on Bates #37 with Comparable 1 being a nursing home in Sapulpa, Comparable 2 being a hardware store in Sapulpa, and Comparable 3 being a closed McDonald’s restaurant in Sapulpa, the site of which was scraped clean. Mr. Custer said that he took issue with the Respondent’s comparable choices as Comparable 1, the Sapulpa nursing home, was not comparable as it was not the same use and Comparable 3, the scraped Sapulpa McDonald’s site, was a sale for \$200,000.00, but was reported by the Respondent as being a sale for \$20,000.00 (Bates #37) with a reported adjusted sales price of a negative \$25,000.00 (Bates #37), that Mr. Custer said in theory was not even possible, to have to pay someone to take the property.

As to the Appraisal Report’s “Final Reconciliation” section (Bates #38), Mr. Curtis said that the line for the Value Indication using the Cost Approach that the Respondent represented he would use in the “Scope of Work” section in the Board’s Exhibit 4 (Bates #30), was reported by the Respondent to be “N/A” or not applicable (Bates #38). Craig Custer noted as to the Appraisal Report’s “Assumptions and Limiting Conditions” page (Bates #39), that the “Hypothetical

Conditions and/or Extraordinary Assumptions” section was left completely blank by the Respondent even though the Respondent provided previously information in the Appraisal Report’s “Extraordinary Assumptions” section of the “Assignment Parameters” (Bates #30) about the evidence of a strong influx of water and sand in the basement of the subject property. It was stated by Mr. Custer that the Appraisal Report’s “Appraiser’s Certification” section (Bates #41) contained language that the Respondent’s analyses, opinions and conclusion were developed and the Appraisal Report was prepared in compliance with USPAP, that the Respondent signed the Appraisal Report and submitted it to the client.

Craig Custer noted that the photographs in Board Exhibit 4 (Bates #42) of the subject property depicted a white steeple atop the funeral home in two photos on that page as did a photo on Bates #43 and another on Bates #44, that Bates #55 photos depicted the presence of church pews located within the interior of the subject property funeral home, and that accordingly there was no confusion that the subject property used to be a church building. Continuing, Mr. Custer further noted the Respondent’s photos of all three (3) of his comparables on the same page Bates #64, with Respondent’s Comparable 1 being a nursing home, Respondent’s Comparable 2 being a hardware store and Respondent’s Comparable 3 being a photo of a cleared site that had previously been a McDonald’s restaurant.

In response to a question, Mr. Custer said that he had spoken to the Respondent by phone once he received the Appraisal Report, that the Respondent was argumentative from the start and that the Respondent claimed that he chose his comparables as they were the highest sales in his county (Creek County).

Craig Custer identified the Board’s Exhibit 5 (Bates #67-70) as listings of churches and funeral homes he found on his own (as of March 11, 2014) using Loopnet.com that he said could

have been used as comparables by the Respondent. One potential comparable Mr. Custer found was a different funeral home (Owen Funeral Home) in Sapulpa, also on Main Street (Bates #67) that was off the market together with a list of nine (9) church properties that were located in Tulsa (Bates #70).

Mr. Custer next identified the Board's Exhibit 6 as the Respondent's revised Commercial Property Appraisal Report (Bates #71-114) (the "Revised Appraisal Report"). In comparing the Appraisal Report to the Revised Appraisal Report, Craig Custer noted that the Comparable 3 (McDonald's restaurant site) sales price on Bates #80 was revised and increased to the amount of \$200,000.00 rather than the previously stated amount of \$20,000.00 (Bates # 37) and that there were no photos included in the Revised Appraisal Report. Mr. Custer stated that he did not try to speak with the Respondent again as the Respondent was so argumentative the last time they spoke.

Mr. Custer indicated that the Revised Appraisal Report was not accepted by the client and that at this point his bank as the client chose to employ a different appraiser from the same group of bidders that had already bid for the work to perform an appraisal on the subject property and chose the second lowest bidder for the work, Grace & Sons Appraisal Service of Shawnee, Oklahoma. The Board's Exhibit 9 (Bates #152-272) was identified by Mr. Custer to be the Commercial Property Appraisal Report of R.D. Grace (11452CGA), for 1208 South Main Street, Sapulpa, Oklahoma (the "Grace Appraisal Report"), whose opinion of value was \$460,000 (Bates #154) rather than the Respondent's opinion of value of \$756,000.00 in both the Appraisal Report (Bates #29) and the Respondent's opinion of value of \$756,000.00 in the Revised Appraisal Report (Bates #72). Mr. Custer noted that that in the Grace Appraisal Report, Mr. Grace used the cost approach (Bates #162) that the SBA requires on an SBA loan transaction such as was involved in this matter, that he reviewed and accepted the Grace Appraisal Report for loan purposes and that the SBA

accepted the Grace Appraisal Report. According to Mr. Custer, the Grace Appraisal Report provided four comparable sales (all church buildings) as shown on the map on Bates #221 and that R.D. Grace went to the City of Tulsa (in Tulsa County) for his comparables. Craig Custer noted that the Grace Appraisal Report Comparable 1 is on Bates #222, Comparable 2 is on Bates #224, Comparable 3 is on Bates #226, and Comparable 4 is on Bates #228. At the request of the Board's Prosecutor, Mr. Custer read the third paragraph on Bates # 230 into the record on R.D. Grace's estimation of market value that included expanded research into most of the state due to the limited number of transactions for this type of property and stated that he accepted the Grace Appraisal Report.

Mr. Custer identified the Board's Exhibit 8 as the Engagement Correspondence between the client and R. D. Grace (Bates #327) and the Board's Exhibit 7 as the Respondent's response to the Grievance (Bates #113), that included a reference to cost data use (second full paragraph), to which reference Mr. Custer stated that if the Respondent developed a cost approach, he did not report it. In response to questions about use of the cost approach, Mr. Custer noted that, from the beginning, he had included the requirement for a cost approach in the client's Request for Proposal (RFP) that was sent out for the bid to the Respondent and to the second lowest bidder, R.D. Grace of Grace & Sons Appraisal Service of Shawnee, Oklahoma, that SBA required a cost approach, and that he had no recollection of telling the Respondent to not include a cost approach.

When questioned about the date that the Respondent's appraisal services were initially engaged, Mr. Custer responded that the Engagement Correspondence from the client was dated February 10, 2014 (Bates #3-4), that the Respondent dated his Appraisal Report's effective date to be two (2) days before he received the bid on February 8, 2014, and that the Appraisal Report stated that the Respondent both inspected the subject property and completed the Appraisal Report on the

very same day, February 8, 2014 (Bates #41). Mr. Custer also noted that while he had never worked with the Respondent and was unfamiliar with him, that the Respondent received an opportunity to bid on the work as he was on the client's list of SBA appraisers

When questioned as to why he used Loopnet.com to find some church properties, Mr. Custer said that he used that resource for reasonableness and price per square foot for each listing, that it was a check on reasonableness and not an evaluation.

Mr. Custer identified the Respondent's Exhibit Bates #210 to be the Deed for the subject property that the documentary stamps indicated the sale was for \$460,000.00 and that Mr. Custer was still working for First United Bank when the subject property was deeded. Mr. Custer noted that the value determination by the Respondent was unreliable and unsupported and that he believes that a cost approach was required here for a credible report.

In response to a question about the Respondent's use of the scraped site of a McDonald's restaurant as his Comparable 3, Mr. Custer pointed out that the Respondent's work file at Respondent's Bates #57 contains a record from the Creek County Assessors' Office on the McDonald's restaurant site dated February 28, 2014, with a photo depicting the McDonald's restaurant physically remaining on the site at that time with the most recent sale thereof listed as being May 4, 1999. Later in the Respondent's work file identified by Mr. Custer at Bates #121, there is a Creek County Assessors' record dated February 28, 2014, that contains a photo with a date of October 12, 2012, that depicts the McDonald's restaurant physically remaining intact on the site at that time. With that being said, the Board rested.

Once the Board rested, the Respondent, Joe W. Fisher, through his son, Attorney Curtis W. Fisher (the "Attorney Fisher"), was given the opportunity to present his opening statement

which had been previously reserved. The Respondent neither testified on his own behalf nor did he present any witnesses in his defense.

As part of his opening statement the Attorney Fisher, referring to the Notice, said that that he wanted the phrase "...because the client told him not to do it" stricken from the allegations in the Notice at Number 14 concerning the Respondent having failed to perform a cost approach on the basis that no such evidence was presented. The Board's Prosecutor agreed that he had presented no such evidence.

Continuing his opening statement, Attorney Fisher asserted that the scope of work presented in the client's Engagement Correspondence in Board's Exhibit 2 (Bates #5) was not the "scope of work" before the Respondent evidenced by the absence of the Respondent's signature of acceptance of the assignment on Bates #6 which blank space is also undated. Attorney Fisher stated that the only acceptance of the assignment by the Respondent was an e-mail acceptance.

As another part of his opening statement, Attorney Fisher stated that no act by the Respondent involved dishonesty, fraud or misrepresentation contrary to the allegation number 6 in the Notice as to the alleged violations of law and that he wanted that allegation dismissed at the appropriate time. Attorney Fisher admitted, on behalf of the Respondent, that the Respondent had some typos in his Appraisal Report and that the Respondent "used the same standards [in this appraisal] that he has used for fifty years". At this point Attorney Fisher ended his opening statement and rested the Respondent's case as he had no witness to present.

The Board's Prosecutor presented a closing statement as did the Respondent through his Attorney.

The Respondent, Fisher, did not file a Request for Oral Argument and did not appear at the June 3, 2015 Board Meeting to discuss the Hearing Panel Recommendation.

JURISDICTION

1. The OREAB has the duty to carry out the provisions of the Oklahoma Certified Real Estate Appraisers Act as set forth at Title 59 of the Oklahoma Statutes, §§858-701, *et seq.* and to establish administrative procedures for disciplinary proceedings conducted pursuant to the provisions of the Oklahoma Certified Real Estate Appraisers Act.

2. The OREAB has promulgated rules and regulations to implement the provisions of the Oklahoma Certified Real Estate Appraisers Act in regard to disciplinary proceedings as set forth at the Oklahoma Administrative Code, §§600:15-1-1 thru 600:15-1-22, including administrative hearings.

3. The Respondent, JOE W. FISHER, is a State Certified General Appraiser in the State of Oklahoma, holding certificate number 10508CGA and was first licensed with the Oklahoma Real Estate Appraiser Board on March 23, 1992.

FINDINGS OF FACT

The Board adopts the Findings of Fact of the Hearing Panel, as hereinafter modified, and that the following Facts were proven by clear and convincing evidence:

1. The Respondent, JOE W. FISHER, is a State Certified General Appraiser in the State of Oklahoma, holding certificate number 10508CGA and was first licensed with the Oklahoma Real Estate Appraiser Board on March 23, 1992.

2. On or about February 10, 2014, the Respondent was hired by the First United Bank and Trust Company in Durant, Oklahoma (the “client”) to complete an appraisal (the “appraisal”) for a property located at 1208 South Main Street, Sapulpa, Oklahoma (the “subject property”), with the Building Name in the report reported as Smith Funeral Home. The

Respondent completed a *Commercial Property Appraisal Report* and transmitted to the client, with an effective date of February 8, 2014. The appraisal's intended use was for "Mortgage Financing".

3. Respondent committed a series of errors in the appraisal report which led to a misleading and non-credible appraisal report. These errors include but are not limited to the following in paragraphs 4 – 6.

4. The Respondent chose three comparables which were not comparable to the subject property, a funeral home. Comparable one (1) is a nursing home; comparable two (2) is a hardware store; and, comparable three (3) is a former McDonald's restaurant.

5. The Respondent should have increased the area of his search for comparables as the market area for a funeral home cannot be established in just a few blocks; it could be an entire zip code, county or even a larger market area.

6. The Respondent had the Letter of Intent dated December 17, 2013 (the "Letter of Intent") (Board Exhibit 3) to analyze but failed to adequately analyze the Letter of Intent. The Respondent should have given additional details in his appraisal report of his analysis of the Letter of Intent.

CONCLUSIONS OF LAW

The Board adopts in the full the Conclusions of Law as determined by the Hearing Panel below:

1. The Respondent has violated 59 O.S. §858-723(C)(6) through 59 O.S. §858- 726, in that the Respondent violated:

A) The Competency Rule of the Uniform Standards of Professional Appraisal Practice;

B) Standard 1, Standards Rules 1-1, 1-4 and 1-6 of the Uniform Standards of Professional Appraisal Practice. These include the sub sections of the referenced rules.

2. The 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."

FINAL ORDER

WHEREFORE, having adopted in full the Findings of Fact and Conclusions of Law entered by the Disciplinary Hearing Panel, the Board issues it's Final Order, modifying the Recommendation of the Disciplinary Hearing Panel, in part, as follows:

1. Respondent Joe W. Fisher's appraiser credential shall be **SUSPENDED** for a period of **SIX (6) MONTHS** from the date that any final agency order is entered in this matter plus a period of thirty (30) days after the Respondent is notified of the final agency order either personally or by certified mail, return receipt requested.

2. Respondent Joe W. Fisher shall be placed on **PROBATION** for a period of **ONE (1) YEAR** beginning immediately upon the date his period of suspension ends. During the period of probation, Respondent Joe W. Fisher shall provide an appraisal log on REA Form 3 to the administrative office of the Board no later than the fifth working 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.

3. The Respondent Joe W. Fisher shall pay an administrative fine in the amount of **ONE THOUSAND DOLLARS (\$1,000.00)** to the Board. Payment of the fine shall be remitted to the Board in accordance with the manner contemplated by 59 O.S. § 858-723(B).

4. Respondent Joe W. Fisher, during the period of suspension as hereinabove provided, shall successfully complete corrective education as follows:

- The **SEVEN (7) HOUR** Course Number 700: USPAP Update

The course(s) must all be completed during the period of suspension with copies of certificates of course completion transmitted to the administrative office of the Board within **SIX (6) MONTHS** from the date of the Board Order plus a period of thirty (30) days after the Respondent is notified of the final agency order either personally or by certified mail, return receipt requested. The course(s) must be tested and must be live courses, attended in person by the Respondent (not distance and/or correspondence and/or on-line courses). The course(s) shall not be counted toward continuing education credit by the Respondent.

5. Respondent Joe W. Fisher shall pay the costs expended by the Board for legal fees and travel costs incurred in this matter. The Board staff will provide a statement of the costs incurred to Respondent with the final order. Costs shall be paid in accordance with 59 O.S. § 858-723(B).

6. Failure by Respondent to comply with any requirement of this order shall result in his appraisal credential being suspended instantly, with notification forwarded immediately to Respondent by Certified U. S. mail, return receipt requested.

THE BOARD WISHES TO ADVISE THE RESPONDENT THAT HE HAS THIRTY (30) DAYS TO APPEAL THIS ORDER WITH THE APPROPRIATE DISTRICT COURT.

IT IS SO ORDERED this 3rd day of June, 2015.



By: *Eric M. Schoen*
ERIC SCHOEN, Board Secretary

By: *Bryan Neal*
BRYAN NEAL, Assistant Attorney General
Counsel to the Board

CERTIFICATE OF MAILING

I, Ashley Snider, hereby certify that on the 10th day of June, 2015 a true and correct copy of the above and foregoing Board Decision as to Disciplinary Hearing Panel Recommendation was served by First Class - Certified Mail, Return Receipt Requested to:

Curtis W. Fisher
THE FISHER LAW OFFICE
2021 South Lewis, Suite 450
Tulsa, Oklahoma 74104

7014 2120 0003 4178 2862

and that copies were forwarded by first class mail to the following:

Randal M. Boevers, Hearing Panel Member
23765 White Road
Ft. Gibson, Oklahoma 74434

Terry L. Hinkle, Hearing Panel Member
7814 NW 94th Street, Suite A
Oklahoma City, Oklahoma 73162

Philip J. Isaacs, Hearing Panel Member
2919 NW 122nd Street, Ste E
Oklahoma City, Oklahoma 73120

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

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



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