

9:40 a.m., the time when the proceedings began, and after allowing the Respondent additional time to arrive until 9:43 a.m., the Respondent failed to appear in person and the Respondent was not represented by an attorney at the hearing.

In response to a question from the Board's Hearing Panel Counsel, the Board's Prosecutor indicated that as of the date and time of the scheduled hearing, he had received no word from the Respondent as to whether the Respondent or an attorney on his behalf would or would not appear for the hearing. Also in response to a question from the Board's Hearing Panel Counsel, the Board's Director, Christine McEntire, indicated that as of the date and time of the scheduled hearing, she had not heard from the Respondent by telephone or otherwise as to whether the Respondent or an attorney on his behalf would or would not appear for the hearing.

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.

In light of the absence of the Respondent, the Board's Hearing Panel Counsel asked the Board's Prosecutor how he wished to proceed. The Board's Prosecutor informed the Hearing Panel that under the Board's Rules OAC 600: 15-1-12 for a Failure to Appear, the Hearing Panel could proceed with this matter either as a Default due to the absence of the Respondent or proceed with the formal hearing against the Respondent and determine the matter in the absence of the Respondent. The Board's Prosecutor stated his preference would be to proceed with the formal hearing and present the case in chief against the Respondent. After a brief discussion, the three members of the Hearing Panel each expressed their view to proceed with the formal hearing.

PRELIMINARY MATTERS

The Board's Prosecutor initially moved for the separate admission of one (1) exhibit into evidence which was marked as Exhibit 6 and which exhibit was not included in the trial notebook.

Exhibit 6 was admitted into evidence, to which admission there was no objection. Subsequently, the Board's Prosecutor moved for the admission of five (5) exhibits into evidence, which were marked sequentially as Exhibits 1, 2, 3, 4, and 5, each of which exhibits were contained in a trial notebook, noting that all five such Board exhibits were each Bates-stamped with page numbers provided within each such exhibit in numerical order. Exhibits 1 through 5 in the trial notebook were admitted into evidence, to which admission there was no objection. Not included in the trial notebook provided by the Board's Prosecutor, Exhibit 7 was hand-marked and was presented separately later in the hearing.

The first exhibit presented, marked by hand as Exhibit 6, was identified as a copy of: (1) the U.S. certified mail receipt received by the Board evidencing that the Notice was mailed to the Respondent by first class U.S. certified mail with return receipt requested to his last known residential and business address, 7209 Waverly Ave., Oklahoma City, Oklahoma 73120, on April 12, 2016; and (2) a USPS Domestic Return Receipt bearing the hand-written signature of "Peter Fulmer", the Respondent, with a stamped U.S. Mail postmark dated April 12, 2016, which evidences the fact that the Respondent did receive the Notice on April 12, 2016, which Notice listed the scheduled hearing date of May 18, 2016, at 9:30 a.m., which Exhibit 6 was admitted into evidence without objection. Board's Director, Christine McEntire.

The second exhibit presented, marked as Exhibit 1 (collectively Board's Exhibit 1), was identified as a copy of the Grievance on the Board's standard two page grievance form signed by Jane Price, Chief Appraiser, Prime Lending, 18111 Preston Road, Dallas, Texas 75248, together with a copy of the subject appraisal report by the Respondent on the real property located at 5708 Oliver Court, Oklahoma City, Oklahoma 73142 (the "subject property" or "subject"), which Exhibit 1 was admitted into evidence without objection.

The third exhibit presented, marked as Exhibit 2, was identified as a copy of the Respondent's Response to the Grievance in the form of a four page letter dated July 30, 2015, together with a copy of the Respondent's work file that the Respondent submitted to the Board with his Grievance Response (collectively Board's Exhibit 2), which Exhibit 2 was admitted into evidence without objection.

The fourth exhibit presented, marked as Exhibit 3, was identified as a copy of a Google Earth Map of Subject provided by the Board's witness Nena W. Henderson, which Exhibit 3 was admitted into evidence without objection.

The fifth exhibit presented, marked as Exhibit 4, was identified as a copy of the Subject Land Sales Documents (including a Special Warranty Deed for Lots 8 and 9, Block 29 in Gaillardia Residential Community Section X, an addition to the City of Oklahoma City) provided by the Board's witness Nena W. Henderson, which Exhibit 4 was admitted into evidence without objection.

The sixth exhibit presented, marked as Exhibit 5, was identified as a copy of the Land Sales in Prior Year provided by the Board's witness Nena W. Henderson, which Exhibit 5 was admitted into evidence without objection.

The seventh exhibit presented, marked as Exhibit 7, was identified as a copy of the Board's licensure records of the Respondent Peter R. Fulmer, which Exhibit 7 was admitted into evidence without objection.

Christine McEntire Testimony as to the Notice (Summary)

According to the sworn testimony of the Board's Director, Christine McEntire, she is the Board's Director, that as part of her duties she oversees the Board's disciplinary matters including this one involving the Respondent Peter R. Fulmer, and that in this matter the Board does have

service of the Notice on the Respondent through first class U.S. certified mail with return receipt requested on April 12, 2016, at the Respondent's last-known residential and business address. Ms. McEntire identified the exhibit marked as Exhibit 6, to be a copy of: (1) the U.S. certified mail receipt received by the Board evidencing that the Notice was mailed to the Respondent by first class U.S. certified mail with return receipt requested to his last-known residential and business address, 7209 Waverly Ave., Oklahoma City, Oklahoma 73120, on April 12, 2016; and (2) a USPS Domestic Return Receipt bearing the hand-written signature of "Peter Fulmer", the Respondent, with a stamped U.S. Mail postmark dated April 12, 2016, which evidences the fact that the Respondent did receive and sign for the Notice on April 12, 2016, which Notice listed the scheduled hearing date of May 18, 2016, at 9:30 a.m. (Exhibit 6).

WITNESSES AND EVIDENCE PRESENTED

In addition to the testimony of the Board's Director, Christine McEntire, as to the Respondent's receipt of prior notice of this hearing previously given, the Board's Prosecutor presented one (1) witness in support of the case against the Respondent: Nena W. Henderson, a certified residential appraiser licensed as 11138CRA, of Edmond, Oklahoma County, Oklahoma.

Nena W. Henderson Testimony (Summary)

Nena W. Henderson, who lives in Edmond, Oklahoma County, Oklahoma, being duly sworn, testified that she has been licensed as a certified residential appraiser in Arkansas since 1992, that since 1994 she has been and currently is licensed as an Oklahoma Certified Residential Appraiser, that she is a National Instructor for National Association of Independent Fee Appraisers (NAIFA), a national association of professional real estate appraisers, and that she serves as a member of the Board's Standards and Disciplinary Procedures Committee (OAC 600:20-1-1), that includes service in disciplinary matters as a witness and that she received no payment for providing

her testimony. Ms. Henderson stated that at the request of the Board's Prosecutor, she reviewed the documents related to this matter that he supplied to her that she identified as including the Grievance by PrimeLending (Exhibit 1, pages 1 and 2), Respondent's appraisal report (Exhibit 1, pages 3 through 33), the Respondent's Response to the Grievance (Exhibit 2, pages 1 through 4), the Respondent's work file (Exhibit 2, pages 5 through 105), and a copy the Board's Probable Cause Committee's summary report (a copy of which was not presented as an exhibit). When asked if she had received any direction from the Board's Prosecutor or any payment for her testimony, Ms. Henderson stated that she had received no such direction and had received no payment for her testimony.

In response to a question as to whether the Respondent's appraisal report on the subject used the Cost Approach, Ms. Henderson testified that the Respondent did not use the Cost Approach in his appraisal report on the subject property, that the subject property was new construction, that the subject property looked like it was just completed, and that the Respondent should have used the Cost Approach as the subject property was newly constructed.

Ms. Henderson identified Exhibit 1 to be the Grievance filed by PrimeLending (Exhibit 1, pages 1 and 2) and the Respondent's appraisal report for the subject property (Exhibit 1, pages 3 through 33). The Respondent's appraisal report, according to Ms. Henderson, estimated the subject property's market value to be \$1,600,000.00. Ms. Henderson testified that the Uniform Standards of Professional Appraisal Practice (USPAP) require that an explanation be provided in an appraisal report if no cost approach is used where the subject property is new construction as is the case in this matter. At the request of the Board's Prosecutor, Ms. Henderson read USPAP Standards Rule 2-2(a)(viii) into the record as follows:

(a) The content of an Appraisal Report must be consistent with the intended use of the

appraisal and, at a minimum:

(viii) summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions; exclusion of the sales comparison approach, cost approach, or income approach must be explained.

Ms. Henderson noted that the Respondent's appraisal report (Exhibit 1, page 13) mentions the Cost Approach in the Supplemental Addendum in the section entitled "URAR: Final Reconciliation", but that the Cost Approach was not completed elsewhere such as in the section of the Respondent's appraisal report entitled "Cost Approach to Value" (Exhibit 1, page 8), which section should have been completed.

Nena Henderson next addressed the issue of the need for the proper identification of the client in an appraisal report.

Ms. Henderson testified that the Respondent's appraisal report identifies PrimeLending to be the lender and client (Exhibit 1, page 6). Having looked at the Respondent's Response to the Grievance (Exhibit 2, pages 1 through 4) and the Respondent's work file (Exhibit 2, pages 5 through 105), Ms. Henderson testified that she could not find a letter of engagement from the lender PrimeLending in or with either the Respondent's grievance response or the Respondent's work file.

According to Ms. Henderson, the Respondent provided a chronological summary of the events in his grievance response in which the Respondent notes the first event in this matter was that the borrower Nicholas Hughes telephoned him (Peter Fulmer) on June 24, 2015, as to his desire to have an appraisal done on his new home (Exhibit 2, page 2). Next, Ms. Henderson noted that the Respondent sent an e-mail to the borrowers Nicholas and Ashley Hughes on July 1, 2015, with copies of the Respondent's appraisal report attached for the borrowers in pdf format and for

PrimeLending in .xml format as well as a copy of the Respondent's paid invoice (as already paid by the borrowers Nicholas and Ashley Hughes) addressed to PrimeLending as the "client" (Exhibit 2, pages 99 and 100).

The Board's Prosecutor directed Ms. Henderson's attention to a copy of USPAP Advisory Opinion 25 (AO-25) on the subject entitled "Clarification of the Client in a Federally Related Transaction", and summarized the Advisory Opinion. At this point, the Board's Prosecutor directed Ms. Henderson to the Advisory Opinion's comments section, line 37, page A-88, first full sentence, which Ms. Henderson proceeded to read into the record as stating:

Before an appraiser accepts an assignment knowing the intended use of the appraisal is, or may be, for a federally related transaction by a federally regulated financial institution, it is that appraiser's responsibility to disclose to the prospective client that the lender or its agent is required to directly engage the appraiser.

According to Ms. Henderson, based on such language in the comments section to USPAP Advisory Opinion 25, the lender PrimeLending, is required to directly engage the appraiser for the assignment. Further, Ms. Henderson noted that in the definitions in USPAP at page U-2 is a definition of the word "client" with comments following such definition that provides that the client may engage and communicate with the appraiser directly or through an agent. In her review of the Respondent's grievance response (Exhibit 2, pages 1 through 4) and the Respondent's work file (Exhibit 2, pages 5 through 105), Nena Henderson testified that she could find no evidence of any authorization by PrimeLending to make the borrowers Nicholas and Ashley Hughes, its agent.

Nena Henderson next addressed an issue related to the subject property as such subject property was identified by the Respondent in his appraisal report.

Ms. Henderson commented that the Respondent's appraisal report (Exhibit 1, page 6)

provides that the property address for the subject property is “5708 Oliver Ct., Oklahoma City, Oklahoma 73142”, and that the appraisal report listed legal description of the subject property is “Lot 9 in Block 29 of the Gaillardia Residential Community Sec X to Oklahoma City”. In connection with her review of the Respondent’s grievance response (Exhibit 2, pages 1 through 4) and the Respondent’s work file (Exhibit 2, pages 5 through 105), Nena Henderson looked at the on-line records of the Oklahoma County Assessor (on May 17, 2016) related to the subject property at 5708 Oliver Ct., Oklahoma City, Oklahoma, and found that the borrowers Nicholas and Ashley Hughes actually own Lots 8 and 9, Block 29 in Gaillardia Residential Community Section X, an addition to the City of Oklahoma City (Exhibit 4, page 1), rather than just Lot 9, Block 29 in Gaillardia Residential Community Section X, an addition to the City of Oklahoma City as disclosed by the Respondent in his appraisal report. Ms. Henderson noted that the on-line records of the Oklahoma County Assessor related to the subject property provide other important information including in the “Sales Documents/Deed History” section (Exhibit 4, page 1) that the real property sale of the subject property to Nicholas and Ashley Hughes on May 15, 2013, was a “DEMP” type sale that involved multiple parcels of real property (*See* Exhibit 4, page 2 for explanations of the Oklahoma County Assessor document and deed abbreviations) and not a single lot for \$466,000.00 and which land sale was recorded in the records of the County Clerk of Oklahoma County in Book 12248 at page 1745 (*See also* Special Warranty Deed recording stamp Exhibit 4, page 6). Ms. Henderson indicated that the Respondent should have listed Lots 8 and 9, in Block 29, and not just Lot 9, in Block 29, in his appraisal report on the subject property and that the Respondent in his research of the Oklahoma County Assessor records (Respondent’s work file, Exhibit 1, page 37, with a research date of July 1, 2015) should have noticed that the land sale to Nicholas and Ashley Hughes on May 15, 2013, was a “DEMP” type sale that involved multiple parcels of real property

and not a single lot for \$466,000.00.

Ms. Henderson testified that in connection with her review of the Respondent's grievance response (Exhibit 2, pages 1 through 4) and the Respondent's work file (Exhibit 2, pages 5 through 105), she found land sales on her own in the Gaillardia Residential Community Section X addition as well as the Special Warranty Deed for Lots 8 and 9, Block 29 in Gaillardia Residential Community Section X, an addition to the City of Oklahoma City, Oklahoma County, Oklahoma dated May 15, 2013, in which Nicholas and Ashley Hughes acquired the real property located at 5708 Oliver Ct., Oklahoma City, Oklahoma 73142 (Exhibit 4, page 6). Ms. Henderson stated that the Respondent got the square footages all wrong on his comparable sales and the first two land sales (Exhibit 5, pages 1 (.3125 acres) and 3 (.3532 acres)) were very similar in size to the subject (Exhibit 4, page 1 (.3686 acres)) and that the new house constructed on the subject property was in her opinion constructed in the middle of both Lots 8 and 9, in Block 29 in Gaillardia Residential Community Section X to which Ms. Henderson referred to the Google Earth map of the subject property she identified and provided in support (*See* one page Exhibit 3, Google Earth Map of Subject) together with the Oklahoma County Assessor-provided Measure Area Tool with On-line Mapping for the plat of the real property located at 5708 Oliver Ct., Oklahoma City, Oklahoma 73142 depicting both Lots 8 and 9, in Block 29 with an area (estimated using the Oklahoma County Assessor-provided Measure Area Tool) of 14,356.0 in square footage of both parcels (Exhibit 4, page 9).

Ms. Henderson testified that, although it's not strictly accurate, she used the Oklahoma County Assessor-provided Measure Area Tool with On-line Mapping to estimate the parcel square footages of comparable sales she located as follows: (1) Lot 9, Block 23, Gaillardia Residential Community Section VII, Oklahoma City, Oklahoma 13,833.1 square feet (Exhibit 5, pages 1-2); (2)

Lot 10, Block 23, Gaillardia Residential Community Section VII (14820 Gaillardia Lane), Oklahoma City, Oklahoma 13,833.1 square feet (Exhibit 5, pages 3-4); (3) Lot 11, Block 19, Gaillardia Residential Community Section VII, Oklahoma City, Oklahoma 38,031.0 square feet (Exhibit 5, pages 5-7); (4) Lot 1, Block 24, Gaillardia Residential Community Section IX, Oklahoma City, Oklahoma 31,455.4 square feet (Exhibit 5, pages 8-9); (5) Lot 2, Block 25, Gaillardia Residential Community Section IX, Oklahoma City, Oklahoma 20,493.7 square feet (Exhibit 5, pages 10-11); (6) Lot 4, Block 22, Gaillardia Residential Community Section VII, Oklahoma City, Oklahoma 29,707.9 square feet (Exhibit 5, pages 12-13); together with six additional parcels as comparable sales (Exhibit 5, pages 14-26). Ms. Henderson noted that these parcel square footage calculations should have warranted land site adjustments by the Respondent and that other site sales should have been used by the Respondent in making adjustments in his appraisal report.

Nena Henderson moved back to the Respondent's appraisal report (Exhibit 1, pages 3 through 33) for her next comment related to the Respondent's definition of the word "client". Ms. Henderson pointed out that the Respondent purports to use the USPAP definition of the word "client" in his Supplemental Addendum in his appraisal report (Exhibit 1, page 14) by referring to USPAP Statement #9 [Statement on Appraisal Standards No. 9 (SMT-9), USPAP page U-83] but when comparing the USPAP Statement No. 9 to the Respondent's version of the USPAP Statement No. 9, she said that the Respondent left out part of the USPAP language. Ms. Henderson testified that in reviewing the Respondent's work file (Exhibit 2, pages 5 through 105), she found no contract documents in which PrimeLending was the actual client, that in her opinion the Hughes' were the actual client and not PrimeLending, that there was no evidence in his work file that the Respondent ever even spoke with PrimeLending, and that the Respondent certified in his grievance

response that he had provided his complete work file to the Board (Exhibit 2, page 4).

In response to a question from the Hearing Panel as to whether this transaction was an FHA transaction, Ms. Henderson answered "Who knows?" but that she thinks the financing was a conventional loan due to the value opinion of 1.6 million dollars but that there was no disclosure as to what type of financing was involved. As to the days on the market (DOM), Ms. Henderson noted that the house was a custom home and as such it was not on the market at all, but the Respondent's appraisal report (Exhibit 1, page 6) states that the days on the market (DOM) are 957. The Respondent's appraisal report discloses the purchase of raw land by Nicholas and Ashley Hughes at a price of \$466,000.00 (Exhibit 1, page 7) and that as this was a newly constructed custom home, there should be no Multi-List (MLS) sheets in the Respondent's work file but in Exhibit 2, page 58, there is one for Lot 9, Block 29 in Gaillardia Residential Community Section X, an addition to the City of Oklahoma City, for the raw land with a list price of \$251,000.00 but there is no MLS sheet for the other lot, Lot 8, Block 29 in Gaillardia Residential Community Section X, an addition to the City of Oklahoma City. Ms. Henderson noted that both Lots 8 and 9, Block 29 in Gaillardia Residential Community Section X, an addition to the City of Oklahoma City, were purchased at the same time. In fact, Ms. Henderson stated that in her research of land sales, she found the two lots purchased by Nicholas and Ashley Hughes that she included in the list submitted by her herein as Exhibit 4, page 3, which are the first two lots in the list of sales from the records of the Oklahoma County Assessor. The tax records she found in the records of the Oklahoma County Assessor that Ms. Henderson provided in Exhibit 4, page 4, shows that both lots involved, Lots 8 and 9, Block 29, have now been combined into one parcel after the sale to Nicholas and Ashley Hughes and that Exhibit 4, page 5 shows that both lots 8 and 9, Block 29 were purchased at the same time according to Ms. Henderson. The Special Warranty Deed for the purchase of Lots 8 and 9, Block 29, was also

provided by Nena Henderson in Exhibit 4, pages 6 through 8.

Ms. Henderson identified Exhibit 3 to be the Google Earth Map of the subject that she provided because it shows how both Lots 8 and 9, Block 29 have been built on and cannot now be separated.

In response to a question about an opinion of value on the subject property, Ms. Henderson stated that she has given no opinion as to value of the real property involved in this matter.

Christine McEntire Testimony as to Licensure of Respondent (Summary)

Upon being recalled by the Board's Prosecutor and upon being reminded that she remained under oath, Ms. McEntire identified Exhibit 7 as the Board's licensure record for the Respondent (with his Social Security Number redacted) and stated that the Respondent, having been licensed by the Board since 2007, was currently licensed by the Board until January 2019.

There being nothing further, the Board's Prosecutor rested his case and provided a brief closing statement.

Although Mr. Fulmer did not appear at the disciplinary hearing, an Entry of Appearance and Request for Oral Argument was filed by attorney Patricia Podolac, on behalf of the Respondent. At the time of the filing, Ms. Podolac also requested a continuance from the July 6, 2016 board meeting agenda at which the Board was originally scheduled to hear the recommendation of the disciplinary hearing panel. A brief in support of her request for oral argument was timely filed. The Board's prosecutor, Stephen L. McCaleb, subsequently filed a Motion to Strike Respondent's brief as it fell in its entirety outside the scope of what is permitted during oral argument, attempting, in essence, to re-try the case and submit new evidence through her brief. Both Ms. Podolac and the Board's prosecutor, Stephen L. McCaleb, appeared and presented oral argument on behalf of their clients at the August 3, 2015 board meeting.

JURISDICTION

1. The Oklahoma Real Estate Appraiser Board has jurisdiction of this cause, pursuant to the provisions of the Oklahoma Certified Real Estate Appraisers Act as set forth at Title 59 of the Oklahoma Statutes, § 858-700, *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 proceedings herein were conducted in accordance with the provisions of the Oklahoma Certified Real Estate Appraisers Act, 59 O.S. § 858-700 *et seq.*, the Oklahoma Administrative Procedures Act, 75 O.S. §§ 301-323, and as set forth at the Oklahoma Administrative Code, §§600:15-1-1 thru 600:15-1-22.

3. The Respondent PETER R. FULMER is a certified residential appraiser in the State of Oklahoma, holding certificate number 12705CRA and was first licensed with the Oklahoma Real Estate Appraiser Board on January 10, 2007.

FINDINGS OF FACT

The Board adopts in full the Findings of the Hearing Panel and that the following Facts were proven by clear and convincing evidence:

1. The Respondent PETER R. FULMER is a certified residential appraiser in the State of Oklahoma, holding certificate number 12705CRA and was first licensed with the Oklahoma Real Estate Appraiser Board on January 10, 2007.

2. On or before June of 2015, PrimeLending received an appraisal (*See* Grievance Exhibit 1, page 1) for a property located at 5708 Oliver Court, Oklahoma City, Oklahoma (the “subject”).

3. Subsequent to PrimeLending receiving an appraisal on the subject property in a

mortgage transaction, the borrowers Nicholas and Ashley Hughes, contacted the Respondent directly to complete an additional appraisal on the same real property.

4. Respondent appraised the same real property for the borrowers Nicholas and Ashley Hughes (the “appraisal”), but improperly identified PrimeLending as the client. There was no Letter of Engagement from PrimeLending in the Respondent’s work file hiring the Respondent to perform any appraisal (Exhibit 2, pages 5 through 105) and the Grievance filed by PrimeLending (Exhibit 1, page 1) expressly denied PrimeLending was the client in this appraisal.

Further, the Respondent in his appraisal report (Exhibit 1, pages 3 through 33), improperly listed the subject property located at 5708 Oliver Court, Oklahoma City, Oklahoma, to have a legal description of “Lot 9 in Block 29 of the Gaillardia Residential Community Sec X Addition to Oklahoma City” (Exhibit 1, page 6), while the subject property consisted of “Lots 8 and 9, Block 29, in Gaillardia Residential Community Section X, an addition to the City of Oklahoma City, Oklahoma County, Oklahoma”, as evidenced by the records of the Oklahoma County Assessor that the subject property at 5708 Oliver Court consists of multiple lots contained in the Respondent’s work file (*See* notation Sales Documents/Deed History (Type) “DEMP”, Exhibit 2, page 37) and in the Special Warranty Deed (Joint Tenancy) to the subject property at 5708 Oliver Court, Oklahoma City, Oklahoma (Exhibit 4, page 6).

5. Further, the subject property, which was new construction, appraised for \$1,600,000.00. Despite the subject property being new construction, the Respondent failed to include any information in his appraisal report about the cost approach.

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 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 1-2; Standard 2, Standards Rule 2-1 and 2-2 of the Uniform Standards of Professional Appraisal Practice. These include the subsections of the referenced rules.

2. The 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."

3. The 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."

4. 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."

5. The Respondent has violated 59 O.S. §858-723(C)(13), in that Respondent violated 59 O.S. §858-732(A)(1): "An appraiser must perform ethically and competently and not engage in conduct that is unlawful, unethical or improper. An appraiser who could reasonably be perceived to act as a disinterested third party in rendering an unbiased real property valuation must perform assignments with impartiality, objectivity and independence and without accommodation of personal interests."

FINAL ORDER

WHEREFORE, having adopted in full the Findings of Fact and Conclusions of Law entered by the Disciplinary Hearing Panel, the Board modifies its Final Order as follows:

1. The Respondent Peter R. Fulmer 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).

2. The Respondent Peter R. Fulmer shall successfully complete corrective education as follows:

A. The **FIFTEEN (15) HOUR** Course Number 612: Residential Site Valuation and Cost Approach.

The course must be completed with copies of certificates of course completion transmitted to the administrative office of the Board within **ONE HUNDRED EIGHTY (180) DAYS** from the date of the Board Order plus a period of thirty (30) days after the Respondent Peter R. Fulmer is notified of the final agency order either personally or by certified mail, return receipt requested. The course may be taken live or on-line. The course shall **not** be counted toward continuing education credit by the Respondent.

B. The **FIFTEEN (15) HOUR** Course Number 600: National USPAP Course.

The course must be completed with copies of certificates of course completion transmitted to the administrative office of the Board within **ONE HUNDRED EIGHTY (180) DAYS** from the date of the Board Order plus a period of thirty (30) days after the Respondent Peter R. Fulmer is notified of the final agency order either personally or by certified mail, return receipt requested. The course must be tested and must be a live course, attended in person by the Respondent (not distance and/or correspondence and/or on-line course). The course shall **not** be counted toward continuing education credit by the Respondent.

3. Respondent Peter R. Fulmer shall be placed on **PROBATION** for a period of **ONE (1) YEAR** beginning immediately upon the date **ONE HUNDRED EIGHTY-ONE (181) DAYS** from the date of the Board Order plus a period of thirty (30) days after the Respondent Peter R. Fulmer is notified of the final agency order either personally or by certified mail, return receipt requested. During the period of probation, Respondent Peter R. Fulmer 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.

4. The Respondent Peter R. Fulmer shall pay all of 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).

5. Failure by Respondent Peter R. Fulmer to comply with any requirement of this order shall result in his appraisal credential being suspended instantler, with notification forwarded immediately to Respondent by Certified mail, return receipt requested.

THE BOARD WISHES TO ADVISE THE RESPONDENT THAT HE HAS THIRTY (30) DAYS FROM THE DATE THE RESPONDENT IS NOTIFIED OF THIS ORDER, EITHER PERSONALLY OR BY CERTIFIED U.S. MAIL, RETURN RECEIPT REQUESTED, TO APPEAL THIS ORDER WITH THE

APPROPRIATE DISTRICT COURT.

IT IS SO ORDERED this 3rd day of August, 2016.



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

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

CERTIFICATE OF MAILING

I, Sherry Ainsworth, hereby certify that on the 7th day of September, 2016 a true and correct copy of the above and foregoing Board's Decision as to Disciplinary Hearing Panel Recommendation was placed in the U.S. Mail, with postage pre-paid, by certified mail, return receipt requested to:

Patricia Anne Podolec
FOSHEE & YAFEE
PO Box 890420
Oklahoma City, Oklahoma 73189

7015 1520 0003 4174 4585

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

Patti L. Fisher, Hearing Panel Officer
P.O. Box 645
Shawnee, OK 74802

Robb E. Glendening, Hearing Panel Officer
733 E. Smith Ferry Road
Muskogee, OK 74403

Richard E. Grace, Hearing Panel Officer
PO Box 3579
Shawnee, OK 74802-3579

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


SHERRY AINSWORTH



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SEP 07 2016

OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

Real Estate Appraiser Board

ATTORNEY GENERAL OPINION
2016-535A

Christine McEntire, Director
Oklahoma Real Estate Appraiser Board
3625 N.W. 56th St., Ste. 100
Oklahoma City, OK 73112

September 6, 2016

Dear Director McEntire:

This office has received your request for a written Attorney General Opinion regarding agency action that the Oklahoma Real Estate Appraiser Board intends to take with respect to licensee 12705CRA. The proposed action is to fine the licensee \$1,000 and require payment of the Board's prosecutorial costs. The Board will also impose one year of probation and require the licensee to complete two educational courses covering (1) residential site valuation and cost approach and (2) requirements of the Uniform Standards of Professional Appraisal Practice ("USPAP"). During probation, the licensee will submit work logs to the Board, and the licensee's work product will be subject to review. The licensee was retained by mortgage borrowers to appraise a residential property that had already been appraised by the mortgage lender. At the borrower's request, the licensee improperly listed the mortgage lender as the licensee's client. The report also contained an error in the property's legal description and contained no "cost approach" analysis despite the fact that the property was new construction.

The Oklahoma Certified Real Estate Appraisers Act, 59 O.S.2011 & Supp.2015, §§ 858-700–858-732, authorizes the Oklahoma Real Estate Appraiser Board to discipline licensees based on "[v]iolation of any of the standards for the development or communication of real estate appraisals," "[f]ailure . . . to exercise reasonable diligence in developing an appraisal [or] preparing an appraisal report," "[n]egligence or incompetence," or "[v]iolati[on] of any of the provisions in the code of ethics set forth in [the Act]," 59 O.S.Supp.2015, § 858-723(C)(6), (7), (8), (13); *see also* 59 O.S.2011 § 858-732(A)(1) (real property valuations must be performed "ethically and competently"). The Act requires adherence to the "current edition of" the Uniform Standards of Professional Appraisal Practice ("USPAP"), 59 O.S.2011, § 858-726, which is the 2014-2015 edition.

The USPAP contains professional requirements pertaining to ethics, competency, and scope of work. *See* ETHICS RULE, USPAP-7 (prohibiting the use of misleading reports); COMPETENCY RULE, USPAP-11 (requiring ability to complete assignment competently and comply with applicable laws and regulations); SCOPE OF WORK RULE, USPAP-13 (appraiser must identify the intended use of appraiser's opinions and conclusions). USPAP also contains standards such as Standard 1, which requires the appraiser to "complete research and analyses

necessary to produce a credible appraisal.” USPAP-16. Components of Standard 1 require that the appraiser must properly identify the client. USPAP-17. Further, Standard 2 requires that appraisal reports communicate all analyses, opinions, and conclusions in a manner that is not misleading, including the identity of the client. USPAP-21-22.

The action seeks to enforce requirements of professionalism embodied in the Act and in USPAP aimed at preventing misleading and flawed appraisals. The Board may reasonably believe that imposing probation and educational requirements will prevent future violations.

It is, therefore, the official opinion of the Attorney General that the Oklahoma Real Estate Appraiser Board has adequate support for the conclusion that this action advances the State of Oklahoma’s policy to uphold standards of competency and professionalism among real estate appraisers.

A handwritten signature in black ink, appearing to read "Scott Pruitt", with a long horizontal line extending to the right.

E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA