

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

In the Matter of JEFFREY D. PHILLIPS,	)	
	)	Complaint #11-080
Respondent.	)	

**BOARD'S ORDER AS TO  
DISCIPLINARY HEARING PANEL RECOMMENDATION**

ON THE 7th day of December, 2012, the above numbered and entitled cause came on for hearing before the Oklahoma Real Estate Appraiser Board (the "Board") following a disciplinary hearing held on October 2, 2012. The Board was represented by a Disciplinary Hearing Panel composed of three (3) members, Kelly R. Bridges, of Elgin, Oklahoma, Albert A. Wooldridge of Altus, Oklahoma, and C. Harley Bradshaw of Oklahoma City, Oklahoma, to which there was no objection. Kelly R. Bridges was elected and served as Hearing Panel Chairman at the hearing. Said panel was represented by the Board's attorney, Assistant Attorney General Bryan Neal. The case was prosecuted by the Board's prosecutor, Stephen L. McCaleb. On behalf of the Board, Mr. McCaleb elected to have this matter recorded by electronic device and to rely on the electronic recording.

The Respondent, Jeffrey D. Phillips, of Norman, Oklahoma (the "Respondent"), appeared in person pro se (without an Attorney), after having been mailed a copy of the Notice of Disciplinary Proceedings and Appointment of Hearing Panel by certified mail with return receipt requested pursuant to the Oklahoma Certified Real Estate Appraisers Act, 59 O.S. § 858-724, and the Oklahoma Administrative Procedures Act, 75 O.S. §§250-323. The Respondent, Jeffrey D. Phillips, elected to have this matter recorded by electronic device and to rely on the electronic recording. Neither party to these proceedings requested that a court reporter record this matter.

Prior to receiving or hearing any evidence or testimony in this matter, the Board through its Prosecutor Stephen L. McCaleb, announced that due to an emergency medical situation, one of his witnesses would appear by phone, to which announcement there was no objection. No proposed findings

of fact were submitted to the Board by either party to these proceedings.

The Board's prosecutor presented two (2) witnesses in support of the case against the Respondent: Christine McEntire, the Board's Director and the first witness called to testify; and Donald L. Henderson, 10185CRA, of Tulsa, Oklahoma. Through the course of the hearing, the Board's prosecutor moved for the admission of six (6) exhibits for the Board into evidence, to which the Respondent stated no objection and all such Board exhibits were admitted. The Respondent offered one (1) exhibit for admission into evidence and one (1) Respondent exhibit was admitted into evidence with an objection by the Board.

The Board's Director, Christine McEntire, testified that she has been the Board's Director about one year, that that she had been on the Board staff for about five years total, that she receives the grievances and disciplinary matters for the Board as a part of her job, that the Respondent was placed on disciplinary probation by the Board for one year through an Order issued in November of 2011, that as a result of such probation she receives his monthly logs with his appraisal reports listed, that it is one of those appraisal reports that is the subject of the hearing and that she filed this staff-generated grievance. Ms. McEntire testified that she sent the Respondent's appraisal report in question (Exhibit 1) to a member of the Board's Standards and Disciplinary Committee, Donald Henderson, for him to informally review and comment upon, to which Mr. Henderson responded back in writing through a four page letter filed with the Board on December 28, 2011, that was dated December 27, 2011(Exhibit 2), a copy of which letter Ms. McEntire testified she provided to the Respondent and to which letter the Respondent responded back to the Board with a rebuttal letter and exhibits filed with the Board on January 11, 2012 (Exhibit 3), the three exhibits being admitted into evidence without objection. Further, Ms. McEntire testified that the Probable Cause Committee recommended that the staff-generated grievance be adopted as a formal complaint and that the Board did adopt this staff-generated grievance as a formal complaint, that the MLS sheets provided by the Respondent with his rebuttal letter were dated January 2, 2012 (Exhibit 3, page 9) and that the effective date of the Respondent's appraisal report is November 22, 2011.

The Board's second witness was Donald L. Henderson, 10185CRA, of Tulsa, Oklahoma, who was sworn in and who testified by phone due to a medical emergency that morning, to which there was no objection. Mr. Henderson testified that his office is located in Broken Arrow, Oklahoma, that he is a residential real estate appraiser, that he is a member of the Board's Standards and Disciplinary Committee, that he appraises in the counties of Rogers, Tulsa and Wagoner, that he has been appraising since 1980, that he did an informal review of the Respondent's appraisal report (the "report") consisting of investigating facts, taking photos, reviewing the appraisal report and reviewing comparable sales, and that the location of the subject property is in Rogers County, Oklahoma.

Mr. Henderson testified that while page 5 of the Respondent's appraisal report (Exhibit 1) provides that the real property taxes for the subject property are \$0.00 is accurate as to the current owner, a retired military veteran, it is unusual and the reason for zero taxes was not disclosed and it is personal with the current owner and does not run with the subject property. The Respondent's rebuttal page 4 provides that the Respondent was a disabled military veteran and that such status was revealed to the lender through the loan application and supporting documents. Further, Mr. Henderson testified that there were no site dimensions listed in the report, that it says simply "No Survey provided", that he looked at the no cost, on-line plat map from the Rogers County Assessor's Office that was difficult to read due to its age, that he called the Rogers County Clerk who gave him the site dimensions from their copy as North: 269.82 ft; South 269.39 ft; West 104 ft; and East 119 ft; that 2 acres as listed is not accurate, that the Respondent failed to note the 100 foot GRDA utility easement across the northern part of the subject property in the Tulsa city limits, that the Respondent listed the zoning for the subject property as "RRP" for Rural Residential Platted, that the Indian Council of Governments ("INCOG") Zoning map (location snapshot, Exhibit 5) available at no-cost online listed the applicable zoning designation as "RS-10", which according to the Zoning District Definitions from Rogers County (Exhibit 6) is defined as "Residential Single-Family High Medium Density District", Exhibits 5 and 6 being admitted without objection.

Continuing, Mr. Henderson testified that the presence of a Converted Garage was not mentioned by the Respondent in his report until page 19 where a photograph appears which discloses the existence of the Converted Garage (Exhibit 1), that a Converted Garage should be mentioned throughout a report, that the Respondent's rebuttal (Exhibit 3) states that he had communicated this to the client in some undisclosed fashion outside of his report, that in the Respondent's report (page 6, Exhibit 1) under the Sales Comparison approach that his data source(s) are CAD/MLS his listed MLS number was not an MLS number used by the Tulsa MLS, that his days on market numbers lacked support in the data and that the Respondent's data did not match the MLS data that he (Mr. Henderson) researched and located himself in Tulsa MLS as to the comparables used by the Respondent and provided MLS data to the Board (Exhibit 4), which Exhibit 4 was admitted without objection, that the Greater Tulsa Association of Realtors MLS is a subscription service he uses as a data source and that he thinks it's a necessary expense to do so.

Continuing further, Mr. Henderson testified that as to the Respondent's Sales Comp section of his report that Comp 1 was a Conventional loan with no concessions, that Mr. Henderson contacted the realtor by phone to verify such information to learn that the seller paid \$4,500.00 in concessions according to the realtor who looked it up on her sheets, that Comp 2 was an FHA sale according to Respondent with no concessions, that according to the realtor Comp 2 really had \$2,500 paid as concessions, that Comp 3 was a cash sale according to Respondent with no concessions which the reviewer, Mr. Henderson said was okay, that Comp 4 was a FHA sale with buyer paying all costs which the reviewer, Mr. Henderson again said was okay. Mr. Henderson testified about the comp lot sizes, that the Respondent's lot sizes were in error, that Respondent reported that the subject is 2.00 acres, when it is actually 30,061 square feet, that Comp 1 according to Respondent had 3 acres while the MLS listed the lot at .84 acres, that Comp 3 according to Respondent had 2.49 acres while the MLS data listed 4.977 acres, that Comp 4 according to the Respondent had 1 acre while the MLS had no data but the recorded plat pulled by Mr. Henderson showed an estimated 20,600 sq. ft. lot size, that such differences could affect adjustments, that Comp 3 was a

foreclosure, not an arms-length transaction, the use of which Mr. Henderson would discourage, that Comp 4 started out as a manufactured home that was transformed, that Comp 3 according to the Respondent is a greater fixer-upper yet the Comp 3 Grid lists the quality of construction as okay and that Mr. Henderson said should be listed as average minus quality, and that Comp 4 according to the Respondent had 2 bathrooms while the MLS data shows that it had 2 ½ bathrooms which the Respondent admitted in his rebuttal (Exhibit 3). At this point, the Board rested.

The Respondent reserved his opening statement until such time as he presented his case but as he really just wanted to testify, he waived his opening and was sworn in to testify. Mr. Phillips testified that his office has a coop membership in the Tulsa MLS through its membership in the Oklahoma City MLS, that in page 12 of his rebuttal (exhibit 3) that while PV Plus is a source of square footage, that he uses Zillow for more complete information, that he has an example of his use of Zillow through his Zillow data print-out for 1349 Forest Lane, Catoosa, Oklahoma (his Comp 3), that he identified and introduced into evidence as Respondent's Exhibit 1 with objection by the Board that such data was not submitted with his work file and not listed as a data source, which exhibit was admitted into evidence overruling the Board's objection but noting that such print-out was not submitted to the Board with Respondent's work file.

The Respondent further testified that in his rebuttal at page 3 (Exhibit 3), that he relied upon the property size as provided by the property owner who represented that his property was measured by two different appraisers (whose names the owner couldn't remember and copies of which he did not provide) and that he used such unverified information as his property size of 2 acres. Mr. Phillips admitted that he incorrectly reported the subject property's zoning designation, that it was just an oversight on his part to not disclose the Converted Garage in his report until page 19 with its photograph, that he usually talks about converted garages a lot and lists them in his sales grid, guessed that he just forgot about it, that he was not trying to hide it, that as to the GRDA easement that everybody else had one too, that such easement was not adverse so he didn't list it in his report, that as to a disabled vet not paying taxes that it

was accurate to list taxes as zero dollars but he probably should have stated it in his report, that while he's lived in Norman since 2005, that he knows N.E. Oklahoma because he previously lived there for 15 years, admitted that his Oklahoma City MLS version of data varied some from the Tulsa MLS version of data with some discrepancies and that he will look into such discrepancies as he wants his data to be correct, that page 18 of his rebuttal (Exhibit 3) lists a lot size as .05 acres (a tiny lot) while the data provided by Mr. Henderson in Exhibit 4 page 4 lists the lot size as 5 acres, admitted that he did not like his own Comp 3 but used it as he needed a comp with a frame exterior as all of his others were brick while subject was frame exterior, and that he moved the third comp with the frame exterior to position 3 to accommodate the lender.

On cross-examination, the Respondent said that when he said "we" he meant him and his office which he testified was Mosaic Valuations in Guthrie and includes his son Zachary A. Phillips, 90940TRA, also of Norman, Oklahoma, and Kari B. Sloan (formerly 90669TRA that expired November 30, 2010), of Guthrie, Oklahoma. Mr. Phillips testified that that he has a coop membership in the Tulsa MLS through his Oklahoma City MLS, that "they" were told that Oklahoma City MLS has access to Tulsa MLS but that there appear to be discrepancies between the two, that if there's a discrepancy in the data sources which are supposed to be the same that he has to get to the bottom of it, that he just logs into MLS and he gets Tulsa data, admitted that he has not checked out any data discrepancies even though Mr. Henderson listed it in his letter on page 2 (Exhibit 2), that his cousin is Mark Wayne Mullins (candidate for Congress) whom he does appraisals for just for Mullins' private use, restricted use GP forms, gives a value on such appraisals, that he and Mark Wayne grew up together and that their grandfathers were brothers, that when a property owner claimed two prior appraisals done that he did not ask for the names of such appraisers nor did he ask for a copy of the appraisals performed, admitted that he did not check on zoning with INCOG, and that he's been appraising for 12 years. At this point the Respondent said that he said everything that he had to say and that he rested his case.

No Request for Oral Argument was filed by the Respondent and none was given by either the Respondent, or Board Prosecutor, Steven McCaleb.

#### 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 JEFFREY D. PHILLIPS is a state certified residential appraiser in the State of Oklahoma, holding certificate number 12646CRA and was first licensed with the Oklahoma Real Estate Appraiser Board on September 12, 2005.

#### FINDINGS OF FACT

The Board hereby adopts in full the Findings of Fact of the Disciplinary Hearing Panel:

1. The Respondent JEFFREY D. PHILLIPS is a state certified residential appraiser in the State of Oklahoma, holding certificate number 12646CRA and was first licensed with the Oklahoma Real Estate Appraiser Board on September 12, 2005.

#### Introduction

2. On or about November 4, 2011, the Board issued an order against the Respondent which provided that, in part, Respondent be placed on Board-ordered probation. The evidentiary hearing in the matter (10-102) occurred on September 20, 2011. As part of the probation, Respondent was ordered to submit a monthly log of his appraisal reports that would be subject to review. The

Findings of Fact in the Board's Order includes specific statements pertaining to geographic competence. The Order states "reports and work files will be specifically reviewed for geographic competency as to membership with the appropriate data services for each area."

#### THE SUBJECT APPRAISAL

3. In November of 2011, Network Funding, (the "client") hired Respondent to complete an appraisal (the "appraisal") for a property located at 1130 North 169<sup>th</sup> East Avenue, Tulsa, Oklahoma (the "subject property"). Respondent's address of record with the Board is in Norman, Oklahoma.

4. The Respondent derived an opinion of value of \$125,000.00 on the subject property. Respondent transmitted said report to the client upon its completion, with an effective date of November 22, 2011.

5. The Respondent committed errors in the report which led to a misleading report. Respondent did not have the competence to complete a reliable, USPAP-compliant report nor did he disclose in his report any affiliation with a competent appraiser. These include the following errors listed in paragraphs 5-19.

#### SUBJECT SECTION

6. Respondent reports that there are no real estate taxes on the subject property, but failed to report and analyze that the current owner is a 100% disabled veteran due to military service, and thus has the exemption, which said exemption does not stay with the property upon its transfer of title.

#### SITE SECTION

7. In the site section of the appraisal, Respondent does not report the dimensions of the site, but rather writes "No Survey Provided". He then reports that the area is 2 acres. Information available with the Rogers County Assessor's Office indicates that the overall site size is 30,061 +/-

square feet; Respondent, according to his report, used county records as a data source. Donald L. Henderson, 10185CRA, testified that a plat map was available on-line that the Respondent did not consult nor did he contact the County Clerk to get the dimensions of the site.

8. Respondent also failed to recognize and account for a 100 foot Grand River Dam Authority utility easement which encroaches across the northern portion of the subject site. Accordingly, no analysis was performed to determine how the easement may affect the valuation of the subject site.

9. Respondent reported that the specific zoning classification is "RRP Res" and that the Zoning Description as Rural Residential Platted; however the correct zoning is RS-10; and the description should be Residential Single Family High-Medium Density District based on Exhibit 5 INCOG Zoning Map and Exhibit 6 INCOG Zoning District Definitions according to the testimony of Donald L. Henderson, 10185CRA.

#### IMPROVEMENTS SECTION

10. Respondent admitted that he failed to comment in the descriptive areas of the report to indicate that the garage was converted to living space, nor any analysis of the conversion.

#### SALES COMPARISON APPROACH SECTION

11. Respondent reports that he utilized Multi Listing Service (MLS) as a data source. Respondent testified that he used the Oklahoma City MLS as a data source and that through the Oklahoma City MLS he is a coop member of the Tulsa MLS.

12. In the Sales or Financing section of the Sales Comparison Approach section, Respondent reports "None" for all four comparables. However, Donald L. Henderson, 10185CRA, testified that for comparable one, the sale was CONV; for comparable 2, the sale was FHA; for comparable 3, the sale was CASH SALE; and for comparable 4, the sale was FHA, based on a telephone call he placed to a realtor.

13. In the Concessions section of the Sales Comparison Approach section, Respondent reports "None Noted" for all four comparables. However, Donald L. Henderson, 10185CRA, testified that for comparable one, the seller paid \$4,500 costs per realtor; for comparable 2, the seller paid \$2,500 costs per realtor; and for comparable 4, the buyer paid all costs based on a telephone call he placed to a realtor. These concessions were not reported nor analyzed in Respondent's report.

14. Respondent's reporting of the lot sizes for the subject property and comparables 1, 3, and 4, is incorrect according to the testimony of Donald L. Henderson, who utilized Core Logic data and Tulsa MLS data to determine the lot sizes. Respondent reported that comparable 1 is 3.00 acres, when it is actually 36,590 square feet; Respondent reported that comparable 3 is 2.49 acres, when it is actually 4.97 acres; Respondent reported that comparable 4 is 1.00 acre, when it is actually 20,650 square feet; Respondent reported that the subject is 2.00 acres, when it is actually 30,061 square feet. As a result, the lot size adjustments were not correct.

15. Comparable 3 was originally a manufactured home which was then expanded to its current configuration at the time of the report. It also was a property that was put in foreclosure. The MLS data stated that the improvements were not in very good condition. Accordingly, Comparable 3 should not have been used and the Respondent testified that he agreed that he should not have used Comparable 3 and that he only used it because it had a frame exterior.

16. The Respondent reported that Comparable 4 has 2 bathrooms, when it actually has 2.5 bathrooms and the Respondent admitted Comparable had 2.5 bathrooms.

17. Comparable number 1, according to the Tulsa MLS, has 1,835 square feet of gross living area; a local appraiser supported database, Core Logic, reports that Comparable 1 has 1,863 square feet. The Respondent reported that Comparable 1 has 1,514 of square feet of gross living area. The Respondent relied on the MLS data reported by the county through PV Plus and the Oklahoma City MLS.

18. Comparable number 2, according to the Tulsa MLS, has 1,574 square feet of gross living area. The Respondent reported that Comparable 2 has 1,472 of square feet of gross living area. The Respondent relied on the data reported by the county through PV Plus and the Oklahoma City MLS.

#### COST APPROACH

19. The report does not contain any support for his opinion of site value in his cost approach. The Respondent admitted that he left out his sentence regarding the allocation method for the site value and that he couldn't believe that he had done so.

#### CONCLUSIONS OF LAW

The Board hereby adopts in full the Conclusions of Law of the Disciplinary Hearing Panel that:

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 its 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 and 1-1, 1-2, 1-3 and 1-4; Standard 2, Standards Rule 2-1, and 2-2, 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)(7): "Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal."

3. 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."

4. The 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."

**FINAL ORDER**

WHEREFORE, the Board, having adopted in full the Findings of Fact and Conclusions of Law as set forth above, sets out the Final Order modifying the Recommendation of the Hearing Panel as follows:

1. Respondent, Jeffrey D. Phillips shall be **SUSPENDED** for a period of **SIX (6) MONTHS** from the date that any final order is entered in this matter.

2. Respondent Jeffrey D. Phillips shall be placed on **PROBATION** for a period of **ONE (1) YEAR** from the date that any final order is entered in this matter. 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 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. Respondent Jeffrey D. Phillips 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).

4. Failure by Respondent Jeffrey D. Phillips to comply with any requirement of this order shall result in his appraisal credential being suspended instanter, 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 TO APPEAL THIS ORDER WITH THE APPROPRIATE DISTRICT COURT.**

IT IS SO ORDERED this 7th day of December, 2012.



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

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

**CERTIFICATE OF MAILING**

I, Rebecca Keesee, hereby certify that on the 11<sup>th</sup> day of December, 2012 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 by certified mail, return receipt requested to:

**Jeffrey D. Phillips**  
422 Willow Branch Road  
Norman, Oklahoma 73072

**7006 2760 0005 6607 3434**

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

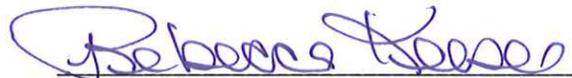
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