

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

In the Matter of **DEVIN R. GORDON,**                    )  
Disciplinary Hearing,                                    )  
  )  
Respondent.    )

Complaint No. 05-062

**BOARD’S DECISION ON DISCIPLINARY  
HEARING PANEL RECOMMENDATION**

ON THE 6th day of October, 2006, the above numbered and entitled cause came on for hearing before the Oklahoma Real Estate Appraiser Board (the "Board"). The Disciplinary Hearing Panel (the "Panel") making the recommendation consisted of three members, Nena W. Henderson, James R. Harelson, and Terry L. Hinkle. Nena W. Henderson was elected and served as Hearing Panel Chairman. Said panel was represented by the Board’s counsel, Assistant Attorney General Joann Stevenson. The case was prosecuted by the Board’s prosecutor, Stephen L. McCaleb. Jerry S. Moore appeared on behalf of the Respondent after having been mailed a copy of the Recommendation of the Hearing Panel by certified mail with return receipt requested pursuant to the Oklahoma Real Estate Appraiser Act, 59 O.S. § 858-718, and the Oklahoma Administrative Procedures Act, 75 O.S. §§250-323.

The Board, having heard oral argument by counsel for respondent and petitioner and being fully advised in the matter, makes the following Order adopting in full the Panel’s Recommendation:

**JURISDICTION**

1. That the Oklahoma Real Estate Appraiser Board has jurisdiction of this cause, pursuant to the provisions of the Oklahoma Real Estate Appraiser Act, 59 O.S. § 858-700 *et seq.*
2. That the proceedings were conducted in accordance with the Oklahoma Real Estate Appraiser Act, 59 O.S. § 858-700 *et seq.*, and the Oklahoma Administrative Procedures Act, 75 O.S., § 301-323.
3. That the Respondent is a State Licensed Real Estate Appraiser in the State of Oklahoma holding credential number 12408SLA.

## FINDINGS OF FACT

The Board adopts in full the Panel's finding that the following facts were demonstrated by clear and convincing evidence, as follows:

1. Quality Mortgage Services Corporation (the "client") hired Respondent to appraise a parcel of real estate located at 2600 South Gardenia Place, Broken Arrow, Oklahoma 74012-0809 (the "subject property").

2. On or about October 1, 2004, Respondent prepared and signed an appraisal report (the "report") for the property and transmitted said report to the client.

3. Philip D. Goswick, licensed by the Board since approximately 1991, currently credentialed by the Board as a Certified Residential Appraiser, and since approximately 1978, holding the SRA Designation issued by the Appraisal Institute, testified that he was asked in about August of 2005 to perform an enhanced field review of Respondent's report of his appraisal of the subject property.

4. Mr. Goswick testified credibly regarding numerous errors in Respondent's report and the documentary evidence, admitted without objection, also showed these errors. These errors included, but were not limited to:

- a. Respondent inaccurately reported the subject neighborhood as 25-75% built up, when the neighborhood was approximately 100% built-up.
- b. Respondent reported the neighborhood as 100% one-family use when it was at least partially bounded by a commercial area and approximately 90% residential and 10% commercial.
- c. Respondent described the subject property as one-story in one section of the report and two-story in another portion.
- d. Respondent also did not include in his cost approach analysis the effect of a pool which was reflected in courthouse records, which Respondent's report indicates he consulted.

e. Respondent also reported the square footage of the property as 2,548 square feet when three prior appraisals, reported areas of 2456 square feet, 2472 square feet and 2466 square feet, respectively.

5. Respondent did not dispute the presence of any of the above errors, except that Respondent did not agree with Mr. Goswick that the neighborhood was approximately 100% built-up.

6. The Panel credits Mr. Goswick's testimony and the documentary evidence and finds by clear and convincing evidence that the above errors were present and in the aggregate led to a dishonest, fraudulent and/or misleading result.

7. Mr. Goswick also testified credibly regarding more serious errors in Respondent's report. These errors were also apparent in the documentary evidence, which was admitted without objection. These errors included, but were not limited to:

a. Respondent reported that the values in the subject neighborhood ranged from \$55,000 to \$315,000 with a predominate value of \$195,000, but the MLS for the Tulsa metropolitan area, which Respondent's report indicated he consulted, showed sales in the six months prior to Respondent's report, ranging from \$87,620 to \$238,000 with a predominate value of \$124,644.

b. Mr. Goswick testified that Respondent's cost approach figures assessing the cost of the subject property, which Respondent reported were based at least partially on Marshall & Swift standards, were "totally out of line" at \$85 per square foot, and that only a home of "very good" quality would be so valued, and with the subject property being average "at best", a more appropriate cost per square foot would be in the \$58-\$62 range.

c. Respondent's three comparable properties were not the 0.70, 1.89, and 1.41 miles, respectively, he reported them to be from the subject property, but were actually 4.6, 4.6 and 4.0 miles, respectively, from the subject property. Mr. Goswick testified credibly that, in using the mapping feature of the appraisal software used by Respondent (Mr. Goswick,

Respondent, and Panel members were all familiar with and used the software), Respondent would have had to manually move the arrows which indicated the respective locations of Respondent's selected comparable properties to make the points of the arrows appear closer in proximity to the subject property than they were.

d. All of the comparables selected by Respondent were in superior neighborhoods; two of which were about one block from one another in an addition built around a golf course. Two of Respondent's comparables had 3-car garages for which Respondent made no adjustments, though the subject property had a only 2-car garage. Respondents selected comparables which were also, respectively, 8, 9 and 8 years newer than the subject property, yet Respondent made no adjustments for the difference in age. Respondent also provided no justification in his report for concluding that the subject property which was built in 1983, had an effective age of only approximately 10 years.

e. The photos entered into evidence without objection showed also showed that the comparables selected by Respondent were of clearly superior quality when compared to the subject property.

f. Additionally, none of Respondent's selected comparables had a pool, while the subject property had one per courthouse records. Respondent made +\$10,000 adjustments to all of his selected comparables for their lack of swimming pools.

g. Mr. Goswick testified credibly and reported in his review appraisal report, admitted without objection, that at the time that Respondent performed his appraisal on the subject property, according to the MLS system for the Tulsa metropolitan area, which Respondent's report indicated he consulted, there were 91 properties that were sold six months prior to Respondent's report which were within a square mile of the subject property.

h. Mr. Goswick testified credibly to having no difficulty selecting three comparable properties from the same addition as the subject property, each having a more similar age, a

two-car garage, a swimming pool, and more comparable quality. Mr. Goswick testimony and his review appraisal report also revealed that he selected three additional comparables with similar age, two-car garages, more comparable quality, but without pools, and made the same \$10,000 adjustments reported by Respondent to illustrate the marked difference in the value of the comparables selected by Respondent and the approximate value of the subject property.

i. The subject property sold approximately four years prior to Respondent's report for \$138,000, a sale Respondent noted in his report, yet Respondent valued the subject property at \$215,000.00, using the sales comparison approach, and at \$220,778.00, using the cost approach. This reflected an increase in value of approximately 55%, which Respondent admitted to observing as large at the time of his appraisal report.

j. Mr. Goswick also testified and Respondent's report indicated that the owners of the subject property were refinancing the property and Mr. Goswick testified credibly that the owners ultimately refinanced with a \$176,000 mortgage.

8. Respondent did not dispute any of the above evidence, but argued the following:

a. Although his report indicated he consulted Marshall & Swift for his cost approach figures, he relied mostly on local builders.

b. Respondent only consulted a data source that compiled courthouse records which did not reveal all of the 91 current sales reflected by the MLS system. Although Respondent's report indicated he consulted the MLS system, he argued this was an error from "cloning" a prior report. Respondent also tried to attribute other errors to the cloning of the appraisal report.

c. Respondent did not recall how many sales his data source reported, but testified that he selected his comparables based primarily based on square footage. Respondent admitted that, in using the mapping program of the appraisal software, he manually moved the arrows showing the locations of his selected comparable. Respondent attempted to dispute any intent to mislead, asserting that the mapping program did not locate the comparable properties, instead showing them as "yellow

question marks" and he had to place the arrows were he "thought" they were. Mr. Goswick testified credibly that, less than one year subsequent to Respondent's appraisal report, using the same software employed by Respondent, the mapping program had no difficulty locating Respondent's selected comparable properties.

d. Respondent admitted that he did not travel to his selected comparables to visually inspect them or their respective neighborhoods or to gauge their true distance from the subject property.

9. The Panel, in evaluating the truthfulness and accuracy of the testimony of each witness, considered, among other factors, the consistency of the testimony with the documentary evidence and testimony elicited from other witnesses; the demeanor of each witness; the plausibility of each witness's version of events; and the motive or lack of motive of each witness to testify untruthfully.

10. The Panel does not credit Respondent's explanations for his selection of comparables and finds that only reasonable inference to be drawn from Respondent's selection of comparables such a considerable distance away from the subject property, of apparently superior quality, from superior neighborhoods, when so many more comparable current sales were within the subject square mile, from the fact that the owners of the subject property were attempting to refinance, and from Respondent's failure to reassess his report of value after observing such an unrealistic increase in value for the subject property, is that Respondent intended to produce an opinion of value that was dishonest, fraudulent, and/or misrepresented the true value of the subject property to ensure the owners obtained refinancing.

### **CONCLUSIONS OF LAW**

That the Board adopts in full the Panel's finding that such conduct by the Respondent is in violation of:

1. That Respondent has violated 59 O.S. § 858-723(A)(5): "An act or omission involving dishonesty, fraud, or misrepresentation with the intent to substantially benefit the certificate holder or another person or with the intent to substantially injure another person."

2. That Respondent has violated 59 O.S. § 858-723(A)(6) through 59 O.S. § 858-726, in that

Respondent violated:

- a. The Conduct and Management Sections of the 2004 Edition of the Uniform Standards of Professional Appraisal Practice Ethics Rule;
  - b. The Competency Rule in the 2004 Edition of the Uniform Standards of Professional Appraisal Practice;
  - c. Standards Rule 1 in the 2004 Edition of the Uniform Standards of Professional Appraisal Practice;
  - d. Standards Rule 1-1(a) in the 2004 Edition of the Uniform Standards of Professional Appraisal Practice;
  - e. Standards Rule 1-1(b) in the 2004 Edition of the Uniform Standards of Professional Appraisal Practice;
  - f. Standards Rule 1-1(c) in the 2004 Edition of the Uniform Standards of Professional Appraisal Practice;
  - g. Standards Rule 2 in the 2004 Edition of the Uniform Standards of Professional Appraisal Practice;
  - h. Standards Rule 2-1(a) in the 2004 Edition of the Uniform Standards of Professional Appraisal Practice;
3. That Respondent has violated 59 O.S. § 858-723(A)(7): "Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal."
  4. That Respondent has violated 59 O.S. § 858-723(A)(8): "Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal."
  5. That Respondent has violated 59 O.S. § 858-723(A)(9): "Willfully disregarding or violating any of the provisions of the Oklahoma Certified Real Estate Appraisers Act or the regulations of the Board for the administration and enforcement of the provisions of the Oklahoma Certified Real Estate Appraisers Act."

6. That Respondent has violated 59 O.S. § 858-723(A)(10): "Accepting an appraisal assignment when the employment itself is contingent upon the appraiser reporting a predetermined estimate, analysis or opinion, or where the fee to be paid is contingent upon the opinion, conclusion or valuation reached, or upon the consequences resulting from the appraisal assignment."

7. That Respondent has violated 59 O.S. § 858-723(A)(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."

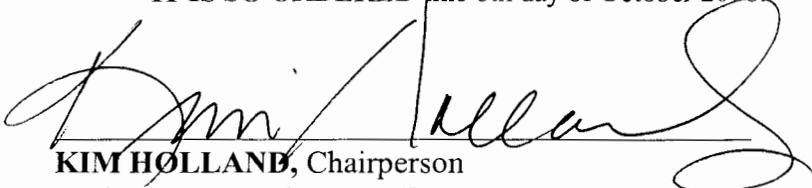
### **FINAL ORDER**

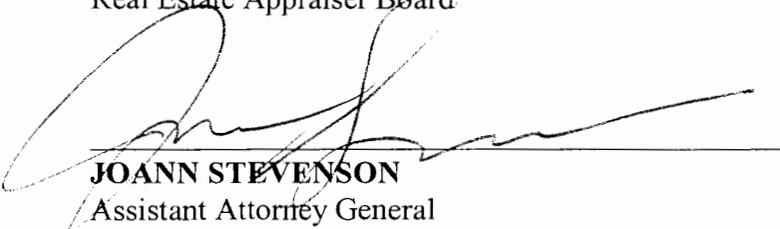
The Board, having adopted in full the Panel's Findings of Fact and Conclusions of Law as set forth above, sets forth the following final order.

That Respondent's real estate appraiser credential be revoked.

**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 6th day of October 2006.

  
**KIM HOLLAND**, Chairperson  
Real Estate Appraiser Board

  
**JOANN STEVENSON**  
Assistant Attorney General  
Counsel to the Board

CERTIFICATE OF MAILING

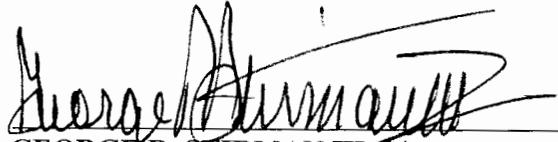
I, George R. Stirman III, hereby certify that a true and correct copy of the above and foregoing Board's Decision on Disciplinary Hearing Panel Recommendation was mailed by certified mail, return receipt requested, on the 10th day of October, 2006 to:

Devin R. Gordon  
c/o Jerry S. Moore  
Denton Law Firm  
236 S. Muskogee  
Tahlequah, OK 74464,

**VIA CERTIFIED MAIL**  
**7006 0810 0002 6164 4687**

and that copies were mailed via first class mail to:

Joann Stevenson, Asst Atty General, 4545 N. Lincoln Blvd, Ste 260, Okla. City, OK 73105;  
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James R. Harelson, Panel Member, PO Box 22906, Oklahoma City, OK 73123;  
Rusty R. Hartsell, Panel Member, PO Box 542, Weatherford, OK 73096;  
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