

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

In the Matter of **ROY B. BLACK,**)
)
Respondent.) Complaint #07-061
)
Disciplinary Hearing.)

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

On the 4th day of April, 2008, 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, David W. Story, H. E. Ted Smith, and Frank E. Priegel Jr. During the course of preliminary matters, Mr. Story became aware that a conflict existed and recused himself from hearing the instant matter. By agreement of both Petitioner and Respondent, the hearing proceeded with the remaining two appraiser hearing officers constituting a quorum. H. E. Ted Smith was elected and served as Hearing Panel Chairman. Said panel was represented by the Board's attorney, Assistant Attorney General Joann Stevenson. The case was prosecuted by the Board's prosecutor, Stephen L. McCaleb. The Respondent, Roy B. Black, appeared pro-se after having been mailed a copy of the Notice of Disciplinary Proceedings and Appointment of Hearing Panel by certified mail, 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, being fully advised in the matter, makes the following Order adopting 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. Section 858-700 *et seq.*

2. That the proceedings were conducted in accordance with the Oklahoma Real Estate Appraiser Act 59 O.S. Section 858-700 *et seq.*, and the Oklahoma Administrative Procedures Act, 75 O.S. Section 301-323.

3. That Respondent Roy B. Black is a Certified Residential Real Estate Appraiser in the State of Oklahoma, holding credential number 10283CRA, and was first credentialed as a state licensed appraiser on December 20, 1991

FINDINGS OF FACT

The Board adopts in full the finding of the hearing panel that the following facts were proved by clear and convincing evidence:

1. In May of 2007, Kelly Lyles (the "client") hired Respondent to appraise a parcel of property located at 18475 260th Street, Washington, Oklahoma 73093 (the "subject property"). The subject property owned by the client and her husband was subject to foreclosure proceedings begun by the United States Department of Agriculture's Farm Services Agency ("USDA/FSA").

2. On or about May 15, 2007, Respondent prepared and signed an appraisal report (the "report") on the subject property and transmitted said report to the client. The appraisal's date of appraised value was reported as May 15, 2007, and Respondent reported a final estimate of value as Eighty Four Thousand and 00/100 dollars (\$84,000.00). Said report was purportedly performed in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP") and was done "as is."

3. Connie Burk, State Certified General Appraiser, #11015CGA, Senior Staff Appraiser for USDA/FSA, who has been with USDA/FSA for 30 years, was contacted by a

colleague on the legal services staff for USDA/FSA in Purcell, OK to review Respondent's report for compliance with USPAP. Ms. Burk determined that a field review was necessary because Respondent did not include photos of the comparables and the photos of the subject were not clear in the copy of the report she received. Ms. Burk performed a USPAP technical review of Respondent's report which included external inspection of the subject property and the comparables selected by Respondent. Ms. Burk also accessed Photo Viewer Plus ("PV Plus"), a proprietary database which aggregates county assessor data, for other available sales in the area.

4. Respondent prepared his report on a Fannie Mae Form 2055 (March 2005 version). He stated that the assignment type was to "Determine market value" without mentioning any pending litigation and that the intended use was to "evaluate the property . . . for a mortgage finance transaction" despite the fact that in his testimony and in his written response to the grievance filed with the Board, he indicated that the appraisal was for potential court proceedings. Ms. Lyles, the client, testified during this proceeding that the foreclosure proceedings settled and admitted on cross-examination that it was in the Lyles' interest that the value of the property be lower.

5. Respondent chose for his first comparable a mobile home despite reporting that the subject property was a traditional, brick veneer home. Respondent did not report that Comparable No. 1 was a mobile home and admitted that this was a mistake. Respondent chose for his second comparable a house that was 67 years old, despite reporting that the subject property was built in 1969, and made no adjustments for age relative to the subject property, yet did not report a younger effective age for Comparable No. 2 than its reported actual age. Respondent chose for his third and final comparable an A-frame home. Respondent did not report that Comparable No. 3 was an A-frame and admitted that this was a mistake.

6. Respondent stated in his written response to the grievance giving rise to this matter, and his testimony, that he chose the comparables reported, over comparables that were similar in age and square footage with brick construction, because the subject property was "atypical". The owners had constructed an addition to the property, and though he did not

conduct an interior inspection, he assumed that the construction was not of similar quality to what he described as “contractor-built” construction. He also testified that the client advised him that the new construction was on a slab foundation while the original dwelling was over a crawl space. Respondent testified that consequently he chose “atypical” comparables to compare with the subject, though he admitted they were not of similar construction. He also stated he could not use comparables in the Tri-City (Newcastle, Blanchard, and Tuttle) area because it was superior.

7. Respondent never states in his report that the subject is atypical, that it has an addition, or that there may be functional issues. In fact, in his report, Respondent states with respect to the subject property that “the improvements appear to be average condition with no physical inadequacies and no repairs needed” and “the subject property appears to conform to typical construction style, materials and floor plans typically found” Respondent called these statements “canned comments” that were just standard on his forms. Respondent also described the subject neighborhood as including the Tri-City area.

8. Respondent provided no sufficient information in his report to explain or justify acreage adjustments of \$1,000 per acre. testified only to general knowledge about the market and what was “customary”, and professed to using MLS land sales though he reported or provided none.

9. Respondent did not provide sufficient information in his report to explain or justify his negative One Thousand Dollar (-\$1,000.00) half-bathroom adjustment beyond what was “customary” by his experience.

10. Respondent did not provide sufficient information in his report to explain or justify his Two Thousand Five Hundred Dollar (\$2,500.00) adjustments for a thirty (30) feet by (50) feet workshop with electricity and plumbing. He stated that the market would bear no more than that, that it was a “typical” adjustment and that an underwriter would reject any larger adjustment. He could point to no market data he found or used to support his contention that the “market” would not bear any larger adjustment.

11. Respondent indicated that because he did a “drive-by” appraisal on a Form 2055 that some of the above deficiencies were justified despite the comment in USPAP pointing out that “Standard 2 does not dictate the form, format, or style of real property appraisal reports. The form, format, and style of a report are functions of the needs of intended users and appraisers. *The substantive content of a report determines its compliance.*” (Emphasis supplied). Respondent also suggested that he was just “getting the job done” and alluded to not spending all the time required to justify his conclusions, provide any analysis or explain his methodologies because it was not justified.

CONCLUSIONS OF LAW

The Board adopts in full the conclusion of the Hearing Panel that said conduct by the Respondent is in violation of:

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 Uniform Standards of Professional Appraisal Practice Ethics Rule;

B) The Competency Rule of the Uniform Standards of Professional Appraisal Practice:

C) Standards Rule 1 of the Uniform Standards of Professional Appraisal Practice:

D) Standards Rule 1-1 of the Uniform Standards of Professional Appraisal Practice:

E) Standards Rule 1-2 of the Uniform Standards of Professional Appraisal Practice:

F) Standards Rule 1-4 of the Uniform Standards of Professional Appraisal Practice;

G) Standards Rule 2 of the Uniform Standards of Professional Appraisal Practice;

H) Standards Rule 2-1 of the Uniform Standards of Professional Appraisal Practice; and

I) Standards Rule 2-2 of the Uniform Standards of Professional Appraisal Practice.

2. 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."

3. 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."

4. 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"

5. 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 the Findings of Fact and Conclusions of Law as set forth above, sets forth the following Final Order adopting in full the recommendation of the Hearing Panel:

1. Respondent shall be fined One Thousand Dollars (\$1,000.00) due within **THIRTY (30) DAYS** per 59 O.S 858-723(B) of a Board order adopting this recommendation or be subject to the penalties provided therein.

2. Respondent successfully completes corrective education courses from the Appraiser Qualification Board's Core Curriculum as follows:

- Course 600: The National USPAP Course, **FIFTEEN (15) HOURS**;
- Course 611: The Residential Market Analysis and Highest and Best Use Course. **FIFTEEN (15) HOURS**;
- Course 614: The Residential Report Writing and Case Studies Course, **FIFTEEN (15) HOURS**.

All courses must be completed with copies of the certificates of course completion transmitted to the administrative office of the Board within **SIX (6) MONTHS** from the date of any Board order accepting this recommendation. The courses must be tested, must be provided by one of the sponsoring organizations of the Appraisal Foundation, must be live courses, attended in-person by Respondent (not distance and/or correspondence courses), and shall not count towards continuing education. The Board's Director may grant an extension of time for completion of the above and foregoing corrective education courses for a period of time not to exceed six (6) months for good

cause shown upon receipt of a request in writing. Any such request for extension must be received by the Director prior to the date that the certificates of course completion would have been due in the Board's administrative office.

2. If Respondent does not submit certificates of course completion in accordance with the above and foregoing requirement, the Director shall, on behalf of the Board, immediately suspend Respondent's appraiser credential, provide notification to Respondent and to the Appraisal Subcommittee for inclusion on the National Registry, and issue a notice and order directing Respondent to appear and show cause why he should not be further disciplined

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 7 day of April, 2008.





KIM HOLLAND, Chairperson
Real Estate Appraiser Board



PRESTON DRAPER
Assistant Attorney General
Counsel to the Board

CERTIFICATE OF MAILING

I, Christine McEntire, hereby certify that a true and correct copy of the above and foregoing Board's Decision on Disciplinary Hearing Panel Recommendation was mailed postage prepaid by certified mail with return receipt requested on this day of April, 2008 to:

Roy B. Black
909 Morningside Drive
Norman, Oklahoma 73071

Certified Mail Return Receipt
7002 2410 0001 7592 7496

and that copies were mailed to:

David Story, Hearing Panel Member
P.O. Box 985
Woodward, Oklahoma 73802

H.E. "Ted" Smith, Hearing Panel Member
P.O. Box 362
Stillwater, Oklahoma 74076

Frank Priegel, Jr., Hearing Panel Member
P.O. Box 627
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Christine McEntire, Legal Secretary
Real Estate Appraiser Board