

**BEFORE THE MISSISSIPPI REAL ESTATE APPRAISER
LICENSING AND CERTIFICATION BOARD**

**MISSISSIPPI REAL ESTATE APPRAISER
LICENSING AND CERTIFICATION BOARD**

COMPLAINANT

VS.

NO. 09-2005

JOHNNY GALE SMITH (LICENSE NO. LA-946)

RESPONDENT

CONSENT ORDER

THIS matter came before the Mississippi Real Estate Appraiser Licensing and Certification Board (“Board”) for entry of a Consent Order regarding the Respondent, JOHNNY GALE SMITH who has been issued Mississippi Real Estate Appraiser License No. LA-946. This action is before the Board as the result of Respondent’s appraisal of real property located at 3826 Country Club Blvd., Meridian, Mississippi. By entering into this Consent Order, Respondent Smith waives his right to an administrative hearing before the Board with full due process and the right to appeal any adverse decision that may result from that hearing. Further, as evidenced by Respondent’s agreement and signature as described and set forth herein below, Respondent waives any challenge he may have regarding the Board taking this matter up preliminary for consideration of approval of this Consent Order. Having reached an agreement by consent in this matter, the Board issues its Findings of Fact, Conclusions of Law and Disciplinary Order as follows:

FINDINGS OF FACT

I.

The Mississippi Real Estate Appraiser Licensing and Certification Board is charged by law with the regulation of the practice of real estate appraisal in Mississippi including matters relating to real estate appraiser standards, qualifications and licensing, and disciplinary functions pursuant

to Miss. Code Ann. §§73-34-1, *et seq.*, as amended. The Board, pursuant to this authority, has full, complete and proper jurisdiction over the parties and of the subject matter herein.

II.

Respondent, Johnny Gale Smith (sometimes hereinafter “Respondent” or “Smith”) is an adult resident of Mississippi whose last address of record with the Board is 4933 Skyview Drive, Meridian, Mississippi 39301. Respondent is the holder of a real estate appraiser’s license, No. LA-946, issued by the Board pursuant to Miss. Code Ann. §§73-34-1, *et seq.*, as amended, and, as such, he is subject to all of the provisions, rules, regulations and statutes governing the appraisal of real property and licensing of real estate appraisers under Mississippi law.

III.

On or about March 26, 2020, Respondent submitted an appraisal report for a real property appraisal assignment performed by Respondent of property located at 3826 Country Club Blvd., Meridian, Mississippi 39305, with an effective date of March 24, 2020 (sometimes hereinafter “Appraisal Report” or “Report”).

IV.

On or about May 26, 2020 the Board received a written, sworn complaint from Valerie McClain, an officer of the appraisal management company that had engaged Respondent Smith, Clear Capital (AMC-040), sometimes hereinafter “Complainant,” “AMC,” or “Clear Capital.” The complaint from Clear Capital referenced and included two (2) appraisal reports prepared by Respondent Smith, one dated March 25, 2020 and the other dated March 26, 2020, and both reflecting an effective date of March 24, 2020. The referenced appraisal was conducted on the real property located at 3826 Country Club Blvd., Meridian, Mississippi 39305. Clear Capital’s lender customer was Wells Fargo.

V.

The engagement documentation between Respondent Smith and his AMC client Clear Capital reflected the purpose of the appraisal assignment was a refinance and that the borrowers were Roy Lamar and Lou Ann Lamar, and referenced borrower access information for Mr. Lamar to include an email address for Mr. Lamar's employer Wells Fargo.

VI.

Clear Capital stated that a request for additional information/clarification was presented to Respondent Smith on March 26, 2020 following receipt of Smith's original Report dated March 25, 2020. Smith submitted a final Report to Clear Capital later the same day, March 26. Subsequently, on or about April 14, 2020, Clear Capital received information from its customer Wells Fargo requesting Clear Capital investigate an allegation of inappropriate contact between the borrower, Lamar, and the appraiser, Respondent Smith. The borrower, Lamar, is also an employee of Wells Fargo.

VII.

Clear Capital alleged that in an April 15, 2020 interview of Respondent Smith by a Clear Capital Compliance Team Member, Smith admitted he had been contacted by the borrower Lamar with a request to review additional comparables and that he had done so at the borrower Lamar's request. At the further direction of the borrower, Respondent Smith admittedly sent a revised Appraisal Report directly to the borrower Lamar. The revised Appraisal Report submitted to the borrower by Smith reflected a concluded value increase from \$345,000 to \$475,000 (an increase of \$130,000 or an approximately 38% increase). Respondent Smith did not submit the revised report (provided to borrower Lamar) to his client Clear Capital.

VIII.

Upon receipt of the sworn complaint from Clear Capital, the Board initiated its own investigation of the subject appraisal performed by Respondent Smith and requested copies of the referenced Appraisal Reports and associated documentation and information.

IX.

During the Board investigation, Respondent provided the Board with an appraisal report signed on April 13, 2020, but with the same effective date as March 24, 2020 as was contained in the original/final Report submitted to Respondent's client Clear Capital. The assignment for the Report was for a refinance and the Report was submitted directly to Wells Fargo, intended user. The current owner/borrower, Lamar, is employed by Wells Fargo. Respondent has in the work file an e-mail from the current owner/borrower stating "per our conversation today please send me an updated appraisal. WF Mortgage will not request one directly from you, if you can send the updated appraisal directly to them please do; if not you can send to me". (Emphasis added). This Report concluded a different market value than the original Report submitted to the AMC client, Clear Capital. In the April 13, 2020 Report, market value was concluded at \$475,000 which is \$130,000 more than the market value reflected in the Report submitted to Respondent Smith's AMC client. Market Value concluded in the Report submitted to Clear Capital and dated March 26, 2020 was only \$345,000. The Board investigation established that the AMC client, Clear Capital, did not receive the \$475,000 report that was submitted directly to Wells Fargo by Respondent Smith.

X.

Respondent did not properly analyze the comparables contained within the sales comparison approach in the Report he signed in April 2020. Respondent failed to analyze or

disclose pertinent information such as the rationale or reason for the adjustments stated in the sales comparison approach section of the referenced Report. No analysis or disclosure was reflected in the Report for the reason there were no adjustments regarding the effective age of 20 years for the subject in comparison to the comparables' actual ages ranging from 12 to 28 years. Respondent made a \$1,000 adjustment for double garage versus triple garage for comparable #1, but only a \$500 adjustment with the same comparison for Comparable #3. Comparable #4 has a double garage with a single carport for golf cart storage which was incorrectly stated as a triple garage in the Report. Respondent stated in the Report that the subject has a pool dressing room that is located over the garage. This was shown as a Den on the sketch in Respondent's work file but should not have been considered as part of the subject's gross living area (GLA) due to access being located in the garage and not inside the subject property. Respondent provided no analysis or disclosure to explain the change of comparables between the March 2020 Report and the April 2020 Report submitted directly to the intended user Wells Fargo. For the March 2020 report, Respondent claimed to have placed the most weight on comparable #1 but changed it to Comparable #4 in the April 2020 Report.

XI.

Respondent did not provide proper analysis or disclosure to explain why there was no cost approach considered in the Report. Site valuation was concluded within the report but was found not to be properly analyzed to reach the concluded site value of \$36,400. Lauderdale County Tax Assessor records reflect an assessment for the site value at \$60,111, a considerable difference that was not explained. Respondent stated the source "MLS" on the addendum but provided no copies of these MLS documents to verify the site information. There was no verification of exactly where these sites were located in reference to the subject property. The sold site comparables may have

been in a different market area and otherwise should have been thoroughly verified or more explanation contained in the Report to explain or justify why these comparables were used.

CONCLUSIONS OF LAW

XII.

Respondent JOHNNY GALE SMITH admits and agrees, by consent with the Board, the above and foregoing described acts and omissions of Respondent constitute violations of Miss. Code Ann. §73-34-35 and §73-34-37 and the Years 2020-2021 Uniform Standards of Professional Appraisal Practice (USPAP) Ethics Rule (*Conduct and Confidentiality*), Competency Rule, Scope of Work Rule (*Problem Identification, Scope of Work Acceptability and Disclosure Obligations*), and Standards Rules 1-1, 1-2, 1-4, 1-6, 2-1, and 2-2(a) which provide, in relevant parts:

§73-34-35(1): ...[T]he rights of any licensed appraiser or licensed certified real estate appraiser may be revoked or suspended, or the holder of the license may be otherwise disciplined, in accordance with the provisions of this chapter for any of the following acts or omissions:

(I) Any act or conduct, whether the same or of a different character than specified above, which constitutes or demonstrates bad faith, incompetency or untrustworthiness; or dishonest, fraudulent or improper dealing; or any other violation of the provisions of this chapter and of rules and regulations established by the board.

§73-34-37: Each real estate appraiser licensed under this chapter must comply with generally accepted standards of professional appraisal practice... Generally accepted standards of professional appraisal practice are currently evidenced by the uniform standards of professional appraisal practice as directed by the Appraisal Subcommittee of the Federal Financial Institutions Examinations Council...

2020-2021 USPAP

ETHICS RULE

An appraiser must promote and preserve the public trust inherent in appraisal practice by observing the highest standards of professional ethics.

CONDUCT:

An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.

An appraiser:

- must not advocate the cause or interest of any party or issue;

- must not perform an assignment in a grossly negligent manner.

CONFIDENTIALITY:

An appraiser must protect the confidential nature of the appraiser-client relationship.

An appraiser must act in good faith with regard to the legitimate interests of the client in the use of confidential information and in the communication of assignment results.

An appraiser must be aware of, and comply with, all confidentiality and privacy laws and regulations applicable in an assignment.

An appraiser must not disclose: (1) confidential information; or (2) assignment results to anyone other than:

- the client;
- the parties specifically authorized by the client;
- state appraiser regulatory agencies;
- third parties as may be authorized by due process of law; or
- a duly authorized professional peer review committee except when such disclosure to a committee would violate applicable law or regulation.

An appraiser must take reasonable steps to safeguard access to confidential information and assignment results by unauthorized individuals, whether such information or results are in physical or electronic form.

An appraiser must: (1) be competent to perform the assignment; (2) acquire the necessary competency to perform the assignment; or (3) decline or withdraw from the assignment. In all cases, the appraiser must perform competently when completing the assignment.

Perfection is impossible to attain, and competence does not require perfection. However, an appraiser must not render appraisal services in a careless or negligent manner. The Rule requires an appraiser to use due diligence and due care.

COMPETENCY RULE

BEING COMPETENT

An appraiser must determine, prior to agreeing to perform an assignment, that he or she can perform the assignment competently. Competency requires:

1. the ability to properly identify the problem to be addressed;
2. the knowledge and experience to complete the assignment competently; and
3. recognition of, and compliance with, laws and regulations that apply to the appraiser or to the assignment.

ACQUIRING COMPETENCY

If an appraiser determines he or she is not competent prior to agreeing to perform an assignment, the appraiser must:

1. disclose the lack of knowledge and/or experience to the client before agreeing to perform the assignment;
2. take all steps necessary or appropriate to complete the assignment competently; and
3. describe, in the report, the lack of knowledge and/or experience and the steps taken to complete the assignment competently.

When facts or conditions are discovered during the course of an assignment that cause an appraiser to determine, at that time, that he or she lacks the required knowledge and experience to complete the assignment competently, the appraiser must:

1. notify the client;
2. take all steps necessary or appropriate to complete the assignment competently; and
3. describe, in the report, the lack of knowledge and/or experience and the steps taken to complete the assignment competently.

LACK OF COMPETENCY

If the assignment cannot be completed competently, the appraiser must decline or withdraw from the assignment.

SCOPE OF WORK RULE

For each appraisal and appraisal review assignment, an appraiser must:

1. identify the problem to be solved;
2. determine and perform the scope of work necessary to develop credible assignment results; and
3. disclose the scope of work in the report.

An appraiser must properly identify the problem to be solved in order to determine the appropriate scope of work. The appraiser must be prepared to demonstrate that the scope of work is sufficient to produce credible assignment results.

PROBLEM IDENTIFICATION

An appraiser must gather and analyze information about those assignment elements that are necessary to properly identify the appraisal or appraisal review problem to be solved.

Comment: The assignment elements necessary for problem identification are addressed in the applicable Standards Rules (i.e., SR 1-2, SR 3-2, SR 5-2, SR 7-2, and SR 9-2). In an appraisal assignment, for example, identification of the problem to be solved requires the appraiser to identify the following assignment elements:

- client and any other intended users;
- intended use of the appraiser's opinions and conclusions;

This information provides the appraiser with the basis for determining the type and extent of research and analyses to include in the development of an appraisal. Similar information is necessary for problem identification in appraisal review assignments.

Communication with the client is required to establish most of the information necessary for problem identification. However, the identification of relevant characteristics is a judgment made by the appraiser that requires competency in that type of assignment.

SCOPE OF WORK ACCEPTABILITY

The scope of work must include the research and analyses that are necessary to develop credible assignment results.

Comment: The scope of work is acceptable when it meets or exceeds:

- the expectations of parties who are regularly intended users for similar assignments; and
- what an appraiser's peers' actions would be in performing the same or a similar assignment

Determining the scope of work is an ongoing process in an assignment. Information or conditions discovered during the course of an assignment might cause the appraiser to reconsider the scope of work.

An appraiser must not allow assignment conditions to limit the scope of work to such a degree that the assignment results are not credible in the context of the intended use.

An appraiser must not allow the intended use of an assignment or a client's objectives to cause the assignment results to be biased.

DISCLOSURE OBLIGATIONS

The report must contain sufficient information to allow the client and other intended users to understand the scope of work performed. The information disclosed must be appropriate for the intended use of the assignment results.

STANDARD 1: REAL PROPERTY APPRAISAL, DEVELOPMENT

In developing a real property appraisal, an appraiser must identify the problem to be solved, determine the scope of work necessary to solve the problem, and correctly complete research and analyses necessary to produce a credible appraisal.

STANDARDS RULE 1-1, GENERAL DEVELOPMENT REQUIREMENTS

In developing a real property appraisal, an appraiser must:

- (a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;
- (b) not commit a substantial error of omission or commission that significantly affects an appraisal; and
- (c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.

STANDARDS RULE 1-2, PROBLEM IDENTIFICATION

In developing a real property appraisal, an appraiser must:

- (a) identify the client and other intended users;
- (b) identify the intended use of the appraiser's opinions and conclusions;

Comment: An appraiser must not allow the intended use of an assignment or a client's objectives to cause the assignment results to be biased.

(e) identify from sources the appraiser reasonably believes to be reliable, the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal...

(i) its location and physical, legal and economic characteristics;

(h) determine the scope of work necessary to produce credible assignment results in accordance with the SCOPE OF WORK RULE.

STANDARDS RULE 1-4, APPROACHES TO VALUE

In developing a real property appraisal, an appraiser must collect, verify, and analyze all information necessary for credible assignment results.

- (a) When a sales comparison approach is necessary for credible assignment results, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.
- (b) When a cost approach is necessary for credible assignment results, an appraiser must:
 - (i) develop an opinion of site value by an appropriate appraisal method or technique;
 - (ii) analyze such comparable cost data as are available to estimate the cost new of the improvements (if any); and
 - (iii) analyze such comparable data as are available to estimate the difference between the cost new and the present worth of the improvements (depreciation).

STANDARDS RULE 1-6, RECONCILIATION

In developing a real property appraisal, an appraiser must:

- (a) reconcile the quality and quantity of data available and analyzed within the approaches used; and
- (b) reconcile the applicability and relevance of the approaches, methods and techniques used to arrive at the value conclusion(s).

STANDARD 2: REAL PROPERTY APPRAISAL, REPORTING

In reporting the results of a real property appraisal, an appraiser must communicate each analysis, opinion, and conclusion in a manner that is not misleading.

STANDARDS RULE 2-1, GENERAL REPORTING REQUIREMENTS

Each written or oral real property appraisal report must:

- (a) clearly and accurately set forth the appraisal in a manner that will not be misleading;
- (b) contain sufficient information to enable the intended user(s) of the appraisal to understand the report properly; and
- (c) clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions used in the assignment.

STANDARDS RULE 2-2, CONTENT OF A REAL PROPERTY APPRAISAL REPORT

Each written real property appraisal report must be prepared under one of the following options and prominently state which option is used: Appraisal Report or Restricted Appraisal Report.

- (a) The content of an Appraisal Report must be consistent appropriate for the intended use of the appraisal and, at a minimum:

- (viii) summarize the scope of work used to develop the appraisal;

- (x) provide sufficient information to indicate that the appraiser complied with the requirements of STANDARD 1 by:

- (1) summarizing the appraisal methods and techniques employed;
- (2) stating the reasons for excluding the sales comparison, cost, or income approach(es) if any have not been developed;

- (4) stating the value opinion(s) and conclusion(s); and
- (5) summarizing the information analyzed and the reasoning that supports the analyses, opinions, and conclusions, including reconciliation of the data and approaches;

DISCIPLINARY ORDER

The Board, by Respondent JOHNNY GALE SMITH's agreement and consent, hereby Orders and imposes discipline upon Respondent as follows:

1. Respondent's license (No. LA-946) is suspended for ninety (90) days following approval of this Consent Order by the Board.
2. Following the period of suspension, Respondent's license shall be on probation for a period of one hundred eighty (180) days. During the period of probation, Respondent shall provide the Board with a log of all appraisal work performed during the period of probation, with said log due within five (5) working days following the end of each month during the period of probation.
3. Respondent shall complete a fifteen (15) hour 2020-2021 national USPAP course, and pass the accompanying examination, within one hundred eighty (180) days of the approval of this Consent Order by the Board. The required USPAP course must be completed in a classroom environment if available.
4. Respondent shall be an ANSI course, and pass any accompanying examination, within one hundred eighty days of the approval of this Consent Order by the Board.
5. Respondent shall be a course regarding "supporting adjustments," and pass any accompanying examination, within one hundred eighty days of the approval of this Consent Order by the Board.
6. Respondent shall be a Sales Comparison Approach course, and pass any accompanying examination, within one hundred eighty days of the approval of this Consent Order by the Board.
7. Any credit hours generated by the successful completion of the above-mandated courses may not be used to satisfy the twenty-eight (28) hours of continuing education required for the next renewal of Respondent's license following completion of all requirements of this Consent Order. Respondent is required to submit written evidence of satisfactory completion of all courses required in this Consent Order.

8. Respondent EXPRESSLY AGREES that failure to comply with any of the terms of this Consent Order, within the time period(s) required, shall constitute grounds for additional disciplinary action by the Board without further notice to Respondent. Respondent further agrees that failure to complete the required courses, within the time period ordered, will effect the immediate placement of Respondent's license in inactive status until such time as Respondent provides the Board with proof of satisfactory completion of the required courses and full compliance with all other terms of this Consent Order.

9. This action and Order of the Board shall be public record and shall be spread upon the Minutes of the Board as its official act and deed and shall be reported to and posted with appropriate authorities and shall be published in the Disciplinary Proceedings section of the Board's website.

10. Respondent, as evidenced by his signature affixed hereto, expressly waives any and all objections he may have regarding or arising out of this matter, the entry of this Consent Order, or any of its terms. Respondent acknowledges and agrees that by entering into this Consent Order, he waives any and all rights to appeal any adverse ruling that may have issued following an administrative hearing before the Board.

11. Respondent, as evidenced by his signature affixed hereto, expressly waives any legal objections that may otherwise be available to him as to the Board taking this matter up preliminarily for the purpose of considering and voting whether or not to approve entry of this Consent Order. Should the Board decline to approve entry of this Consent Order, Respondent acknowledges and agrees he remains entitled to a fair and impartial administrative hearing of this matter before the Board.

12. This Consent Order with respect to Respondent JOHNNY GALE SMITH shall be effective upon the date the Consent Order is approved by the Board, as evidenced by the signature of the Chairman of the Board.

SO ORDERED, this the 16th day of November, 2021.

MISSISSIPPI REAL ESTATE APPRAISER LICENSING
AND CERTIFICATION BOARD

By: [Signature]
Norman Cannady, Chairman

AGREED:
[Signature]
JOHNNY GALE SMITH

10/14/21
DATE



I Justin Branstetter am notarizing for Johnny Gale Smith
on 14th of October 2021.

Sign: [Signature]
14th Oct. 21