

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

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IN THE MATTER OF THE APPLICATION:

FOR A CERTIFIED RESIDENTIAL :	FINAL DECISION
APPRAISER AND LICENSED :	AND ORDER
APPRAISER CREDENTIAL FOR :	LS0508013APP
	:
JAMES J. MONETTE,	:
APPLICANT.	:

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Division of Enforcement Case No. 05APP046

The State of Wisconsin, Department of Regulation and Licensing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Department of Regulation and Licensing.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 12th day of July, 2006.

Secretary Celia M. Jackson  
Department of Regulation and Licensing

IN THE MATTER OF THE APPLICATION :  
FOR A CERTIFIED RESIDENTIAL : PROPOSED FINAL  
APPRAISER AND LICENSED APPRAISER : DECISION AND ORDER  
CREDENTIAL FOR :  
 :  
 :  
**JAMES J. MONETTE,** :  
 : Case No. LS0508013APP  
 :  
 APPLICANT. :

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Division of Enforcement Case Number 05 APP 046

To: James. J. Monette  
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Madison, WI 53711

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Department of Regulation and Licensing  
Division of Enforcement  
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#### PROCEDURAL HISTORY

On May 27, 2005, the Department of Regulation and Licensing issued a decision denying the application of James J. Monette for a licensure as a Certified Residential Appraiser. The decision to deny was based on the determination that Mr. Monette provided false information in his application regarding his prior disciplinary history. Mr. Monette made a timely request for a hearing. On February 23, 2006, a hearing was held in the above-captioned matter before Administrative Law Judge Colleen Baird. Mr. Monette appeared in person acting on his own behalf. The Division of Enforcement appeared by Attorney Mark A. Herman. Based upon the entire record in this case, the Administrative Law Judge recommends that the Department of Regulation and Licensing adopt as its final decision in the matter the following Findings of Fact, Conclusions of Law, and Order.

#### FINDINGS OF FACT

1. The applicant, James J. Monette, date of birth February 10, 1968, is, and was at all times relevant herein, licensed in the state of Wisconsin as an appraiser. Mr. Monette's appraiser license was first granted on September 28, 1994.
2. Mr. Monette's latest address on file with the Department of Regulation and Licensing ("Department") is 10 Lambeth Circle, Madison, WI 53711.
3. On or about April 27, 2005, Mr. Monette applied for a certificate of licensure as a Certified Residential Real Estate Appraiser.
4. The application for a residential real estate appraiser's certificate requires that applicant answer the following question:

"Has any licensing authority or other credentialing agency ever taken disciplinary action against you, including but not limited to, any warning, reprimand, suspension, probation, limitation or revocation?" If yes, attach a sheet providing details about the action, including the name of the credentialing agency and date of application.

5. Mr. Monette's response to the application question was to check the box marked "No."
6. Information on file at the Wisconsin Department of Regulation and Licensing shows that Mr. Monette was disciplined on two separate occasions by the Wisconsin Real Estate Appraisers Board.
7. Mr. Monette was disciplined on August 22, 2001- LS 0108224 APP, DOE Case No, 99 App 028, for engaging in conduct while practicing as a real estate appraiser that evidenced a lack of knowledge or the ability to apply professional principles or skills and failing to comply with the Uniform Standards of Professional Appraisal Practice (USPAP).
8. Mr. Monette was disciplined on March 2, 2005 –LS0503025 APP, DOE Case No. 01 APP 02, for errors in his use of multiple listing real estate data and for failing to accurately describe the amenities of a comparable property.
9. On May 27, 2005, the Department denied Mr. Monette's application for a certificate of licensure as a Certified Residential Appraiser on the basis that he had provided false information to the Department in his application regarding his prior disciplinary history.

### CONCLUSIONS OF LAW

1. The Department of Regulation and Licensing has jurisdiction in this matter under Wis. Stat. § 458.03 and §458.26 .
2. The circumstances of the applicant's prior disciplinary actions substantially relate to the practice of a Certified Residential Real Estate Appraiser within the meaning of Wis. Stat. §111.335 (1)(c)(1).

### ORDER

NOW, THEREFORE, IT IS ORDERED that the denial of the application of James J. Monette for a certificate of licensure to practice as a Certified Residential Real Estate Appraiser be, and hereby is, AFFIRMED.

### OPINION

There are three basic issues in this proceeding: 1) whether the Department's denial of Mr. Monette's application for a certificate of licensure as a Certified Residential Appraiser was proper; 2) whether the circumstances surrounding the submission of his application for a certificate is substantially related to that practice and constitutes unprofessional conduct, and 3) whether Mr. Monette's prior discipline by the Real Estate Appraiser Board is substantially related to that practice and relevant to his application for a certificate. The burden of proof is on the applicant, Mr. Monette, to establish that the decision of the Department in denying his application was wrong. The evidence presented at the hearing in this matter fails to convincingly demonstrate that a certificate of licensure should be issued to Mr. Monette given his prior disciplinary history, which is substantially related to his practice as an appraiser, and the evidence showing that he provided false information to the Department in his application for the credential. Therefore, it is recommended by this Administrative Law Judge that the decision of the Department be affirmed.

Set forth below is a summary and analysis of the evidence presented at the hearing.

Mr. Monette testified at the hearing that he knew and understood that he had been formally disciplined by the Real Estate Appraiser's Board in 2001 and 2005. Copies of the disciplinary orders were marked and admitted as evidence in this proceeding. [Transcript at pg. 10, Exhibit 1]. Mr. Monette's explanation for why he failed to disclose his prior discipline when he applied for a license as a Certified Residential Appraiser on April 27, 2005, shortly after his second discipline in 2005, was that he simply made a mistake. He testified as follows:

Q: Okay. Do you have any problem reading or understanding question C?

A: No.

Q: No? Question C asks if you have ever been disciplined, correct?

A: Correct.

Q: And you answered no, correct?

A: Correct.

Q: Do you have an explanation as to how you could have answered no?

A: I – all I can figure is that I missed the line and marked the wrong box.

Q: Okay.

A: It was a mistake and I admitted it was a mistake and as soon as I found out it was a mistake, I corrected it immediately.

Q: And who did you find out it was a mistake from?

A: From you.

[Transcript at pgs. 19-20]

Mr. Monette's explanation as to misreading the lines was not convincing. The application lines directly below and above the question C were also marked in the box with the responses "no." [Transcript at pg. 20]. The only question which was marked "yes" in Mr. Monette's original application dated April 25, 2005, was question F. Had Mr. Monette simply misread the liens, one would expect that the answer "yes" would appear on the line either above or below question; it does not.

Q: Okay, if you marked the wrong line, then it would make sense that you would have yes either below or above number C, wouldn't it?

A: Pardon me?

A: Well, if I read question B and had a no answer and marked the line on question marked no on C line, then that wouldn't apply.

[Transcript at pg. 20]

Mr. Monette testified that he had been in the Department for about two hours going back and forth trying to get his application filled out. He testified that he had been given a wrong application form and told the wrong amount of license fees. He also claimed that he did not read the application carefully and just wanted to get it filed rather than take it home and read it carefully. [Transcript at pgs. 27-28]. Mr. Monette acknowledged that he also failed to attach a sheet of information about his prior discipline orders as required under question C. [Transcript at pg. 29]. He testified as follows:

A: . . . I figured the sooner I get this done the sooner they would call me and say we need this or that or that in addition, so I should have took it home and filled it out more carefully and brought it back the next day, but I guess I figured I needed to get it done. I wasted too much time. I've been working on this for three months and I still hadn't gotten a copy of a correct application after three months of asking." [Transcript at pg. 28]

At first blush, the explanation offered by Mr. Monette is appealing. He attempts to portray his experience with Department as that of someone who was overwhelmed by bureaucracy; that he was frustrated and failed to pay close attention to the details of his application. While there may be an element of truth in his characterization, the fact remains that he chose to proceed with his application, rather than take it home, read it carefully and complete it accurately. He was not forced by the Department to file it hastily. This was not the first time that Mr. Monette filed an application with the Department. Nor was the first time that he had dealings with the Division of Enforcement or the Real Estate Appraiser Board.

The consequences of Mr. Monette's actions cannot be blamed upon anyone other than himself. There was no evidence presented to corroborate that he was given wrong information or advice by the Department about the questions on the application or regarding his prior discipline. Perhaps Mr. Monette thought the Department would not discover his omissions and issue the credential anyway. He testified that he hoped to get his application approved faster by filing it that day. Mr. Monette's decision to hastily proceed was his own.

If the circumstances surrounding the mistakes on Mr. Monette's application were the first incident in his licensure history, his explanation of the events might be more plausible. However, Mr. Monette has been disciplined not once, but twice, within a five year period for mistakes in his appraisal work. The pattern of conduct in these disciplinary actions involves failing to take information and report it accurately on appraisal forms; the essential qualities of the practice of a real estate appraiser. There can be no doubt that the prior discipline constitutes a finding of unprofessional conduct that is substantially related to the practice of a real estate appraiser. The question is now whether this prior misconduct is relevant to Mr. Monette's application for an advanced credential in this field.

Even assuming that Mr. Monette did not intend to deliberately deceive or mislead the Department, the mistakes on his application reflect poorly on Mr. Monette's qualifications to hold an advanced certification in the appraisal field. The manner in which Mr. Monette handled his application for this credential does not befit one entrusted with the privilege to practice in this profession, at least not at this juncture. Being a certified residential appraiser requires more hours of education, more hours of experience and brings more credibility and prestige to the credential holder than merely holding a license as an appraiser. By this order, Mr. Monette would not be permanently foreclosed from obtaining such a credential in the future; he is certainly capable of learning from his mistakes and perhaps acquiring the necessary skills commensurate with the responsibilities of a certified residential appraiser.

However, based on the record of evidence before me, it is the recommendation of this Administrative Law Judge that the decision of the Department denying the application of Mr. Monette for a Certified Residential Appraiser be affirmed.

The rights of a party aggrieved by this Decision to petition the Board for a rehearing and to petition for judicial review are set forth in the attached "Notice of Appeal" information.

Dated this \_\_\_\_\_ day of June, 2006

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Colleen M. Baird  
Administrative Law Judge