

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE APPLICATION:

FOR A LICENSE TO PRACTICE AS A	:	FINAL DECISION
REAL ESTATE APPRAISER	:	AND ORDER
	:	LS0601202APP
TIFFANY A. PETERS,	:	
APPLICANT.	:	

[Division of Enforcement Case No. 05APP001]

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 22nd day of May, 2006.

Celia M. Jackson, Secretary
Department of Regulation and Licensing

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE APPLICATION :

FOR A LICENSE TO PRACTICE AS A	:	PROPOSED FINAL
REAL ESTATE APPRAISER	:	DECISION AND ORDER
TIFFANY A. PETERS,	:	LS # 0601202-APP
RESPONDENT.	:	

[Division of Enforcement Case # 05 APP 001]

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Tiffany A. Peters
5455 Brookview Dr.
Appleton, WI 54913

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation & Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

A hearing in the above-captioned matter was held on February 20, 2006 before Administrative Law Judge Dennis C. Schuh. The Division of Enforcement appeared by Attorney John Nicholas Schweitzer. Respondent, Tiffany A. Peters, appeared in person, without an attorney. On or about November 10, 2005 Tiffany A. Peters submitted an application to the Department of Regulation and Licensing for an appraiser's license. Thereafter, by correspondence dated December 1, 2005 the Department of Regulation and Licensing issued to Ms. Peters a notice of denial, based upon the conviction of crimes the circumstances of which substantially relate to the practice of real estate appraisal, Wis. Stat. § 111.335(1)(c)1. In response to the notice of denial, Ms. Peters timely requested a hearing.

Based upon the record herein, the Administrative Law Judge recommends that the Department of Regulation and Licensing adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Tiffany A. Peters, (DOB 07/18/1981) applied for an appraiser's license on or about November 10, 2006. This application was denied on December 1, 2005.
2. Respondent's most recent address on file with the Wisconsin Department of Regulation and Licensing is 5455 Brookview Dr., Appleton, WI 54913.
3. Information received in the application process was that Ms. Peters had been convicted of the following crimes in

Wisconsin;

Issuance of worthless check, misdemeanor, 1999

Disorderly Conduct , ordinance violation, 2002

Operating a Motor Vehicle under the influence of intoxicants, Operating after suspension of privileges, traffic offense, 2004

Theft by false representation, misdemeanor, 2004

4. The prosecutor conceded that the sole issue was whether the conviction record constitutes convictions substantially related to the practice of real estate appraisal justifying denial of the application.
5. The item noted as “Issuance of worthless check, misdemeanor, 1999” was incorrectly identified. This item is properly identified as a county ordinance violation.
6. The item noted as “Operating a motor vehicle under the influence of intoxicants, Operating after suspension of privileges, traffic offense, 2002” is not a criminal misdemeanor or felony conviction.
7. Ms. Peters was convicted on February 10, 2004 in Brown County Circuit Court case # 03-CM-1491 for a criminal misdemeanor violation of s. 943.20 (1) (d), Stats., Theft of less than \$2,500.00 by False Representations, and received a sentence of six months in county jail imposed and stayed, two year probation, 125 hours of community service, restitution and court costs.
8. Criminal complaint #03-CM-1491 alleged that Ms. Peters while an employee at a department store returned merchandise she had not purchased and received a credit to her account for the value of those items.
9. On November 25, 2004 following completion of all conditions of probation, Ms. Peters was given early discharge from probation.
10. Ms. Peters has timely requested a hearing on the denial.
11. The parties have stipulated that if the conviction is not deemed a barrier to licensure, further review of Ms. Peters application is necessary to determine whether she otherwise qualified for licensure.

CONCLUSIONS OF LAW

1. The Department of Regulation and Licensing has jurisdiction in this matter pursuant to s. 227.01(3)(a), Stats., and RL1 , Wis. Adm. Code.
2. Ms. Peters’ 2004 conviction as described in the Findings of Fact constitutes grounds for denial of a Wisconsin Real Estate Appraisal License pursuant to s. 458.08 (2) (c), Stats.
3. Ms. Peters has met the burden of proof to show rehabilitation such that the license sought should issue. RL1.08 (4).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Ms. Peters’ application for a license to practice real estate appraisal be continued in the review process and if otherwise eligible, a license be issued, subject to the following limitations:

1. Applicant shall practice only under the general supervision of a licensed real estate appraiser pre-approved by the Department or Department Monitor and only in work settings pre-approved by the Department or Department Monitor.
2. Applicant shall arrange for written reports from her supervisor(s) to be provided to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Applicant's work performance,

describe the Applicant's appraisal activities and verify that she complies with the Wisconsin laws governing the practice of real estate as well as with the terms of this order.

3. Applicant shall not personally receive, hold or disburse client funds.
4. Applicant shall provide a copy of this Final Decision and Order immediately to supervisory personnel at all settings where Applicant works or applies to work as a real estate appraiser.
5. Applicant shall report to the Department any change of employment status, residence, address or telephone number within five (5) days of the date of a change.

IT IS FURTHER ORDERED that all notices and correspondence with the Department of Regulation and Licensing Monitor shall be mailed to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935
Telephone (608) 267-3817
Fax (608) 266-2264

OPINION

Proper legal standards allow denial of license applications for criminal misdemeanor and felony convictions.^[1] This concept is embodied in several relevant statutes, §111.335, and §458.08 (2) (c) for example. This concept involves a two step analysis. Is the offense a criminal misdemeanor or felony conviction? And, are the circumstances of the offense substantially related to the profession for which the license is sought?

Following this analytic process, the initial decision to deny the application of Ms. Peters contains a defect. Through no fault of the Department, the offense of issuing a worthless check was considered as a criminal misdemeanor conviction. By the time of the hearing in this matter, the Department of Regulation and Licensing had determined that the information on the Circuit Court Access website was erroneous. The actual records of this proceeding were obtained and entered into evidence as Exhibit 1. Those documents verify that the offense Ms. Peters was found to have committed was a county ordinance violation. This offense will not be considered as a factor in the application review process.

Similarly, the offenses of disorderly conduct, operating a motor vehicle under the influence of intoxicant, first offense and operating a motor vehicle after suspension of operating privileges are not criminal misdemeanor or felony offenses. These offenses all fail to fulfill the first step in the analysis described above and therefore will not be considered in the application review process.

The remaining item is a 2004 conviction for theft by false representation in Brown County, Wisconsin. This offense is a criminal misdemeanor conviction for which the maximum possible penalty was a fine of not more than \$10,000.00 or imprisonment for not more than 9 months or both. This is the type of offense that may properly be considered as a barrier to licensure. The analysis does not stop there however; a determination must be made whether the circumstances of the offense are substantially related to the profession for which a license is sought.

The department introduced a copy of the criminal complaint in Brown County Circuit Court case 03-CM-1491 entitled State of Wisconsin vs. Tiffany A. Peters, as part of Exhibit 4. The probable cause portion of the criminal complaint reflects that Peters was an employee of a department store in the City of Green Bay. That Peters admitted that while employed there she had been returning merchandise that she had not purchased and credited to her account. This activity occurred between the middle of January and the end of February 2003.

A cursory review of these facts supports the conclusion that the activity is substantially related to the profession of real estate appraisal. An appraiser may be given access to customer's business or home for the purpose of inspection and appraisal. There may be items of personal property, inventory or cash located on such premises. A person prone or predisposed to taking and carrying away property of another without consent could violate the trust of the property owner in a manner inconsistent with public protection.

There is a concern that individuals, and the community at large, not bear an unreasonable risk that a convicted person, being placed in an employment situation offering temptations or opportunities for criminal activity similar to those present in the crimes for which he had been previously convicted, will commit another similar crime. The concern is legitimate since it is necessarily based on the well-documented phenomenon of recidivism.

County of Milwaukee v. LIRC, 139 Wis. 2d 805, 407 N.W.2d 908 (1987)

Employment is a vital step in the rehabilitative process, but attempts at employment will not be forced under circumstances where repetitive criminal behavior is likely. Thus the legislature has adopted §111.335 to balance society's competing interests in rehabilitating convicted criminals and protecting them from employment discrimination, with society's interest in protecting its citizens. See *County of Milwaukee v. LIRC*, *supra*. This balancing of rehabilitation opportunities with public protection has been adopted by inference in RL 1.08 (4) Wis. Admin. Code.

The decision to deny a license in this instance is supported by the analysis thus far. The burden then shifts to the applicant to show by evidence satisfactory to the credentialing authority that she meets the standards for a license. The applicant has presented evidence that supports her claim that she has been sufficiently rehabilitated to make the denial inappropriate.

Rehabilitation is a concept that is difficult to define and to quantify with any degree of accuracy. The ability to predict future behavior based upon currently observed facts is not an exact science. The concept of rehabilitation involves time, specific acts and factors indicating inner change to such a degree that the predictive ability of normal recidivism rates is not applicable.

Acceptance of responsibility for the underlying offense is a common first step in the rehabilitative process. It is generally believed that a person needs to accept the need for change before change can be effectively ingrained. The applicant has accepted responsibility for the offense. She entered a plea to the charge rather than maintaining a presumption of innocence and forcing the state to prove the case against her. She also accepted responsibility for her actions at the hearing in this matter. She did not attempt to blame anyone else "because it is completely my fault." (Transcript p. 24, line 6)

Successful completion of probation is a factor supporting a finding of rehabilitation. Similarly, successfully completing the conditions imposed by the criminal court have evidentiary value toward that determination. Ms. Peters was originally ordered to serve two years probation. She was released after only nine months. This suggests that the Department of Corrections, Probation and Parole Officer determined that Ms. Peters did not need nor would she significantly benefit from continued supervision nor would such supervision be necessary to protect the public from future criminal behavior by the applicant.

Ms. Peters' probation had significant conditions that were fulfilled prior to her discharge. She performed and documented 125 hours of community service. Ms. Peters testified that she performed that service with the Greenville Lioness Club. She testified that she is now a member of that civic service group. Connections to the community coupled with acceptance of the responsibility for public service are also valid indicators of reduced potential for recidivism.

Another condition of probation was the payment of restitution to the victim of the offense. The record is not clear on the total dollar amount but it is clear that full restitution was made. (Early release from probation is not allowed until all conditions are fulfilled.) The victim presumably was made whole financially by Ms. Peters.

Finally, remorse or lack thereof can be indicative of rehabilitation. Ms. Peters expressed her remorse in a manner that appeared to be genuine and truthful. She indicated that she has returned to her faith and her family, both of which she had distanced herself from at the time of this offense.

The Wisconsin Supreme Court, in *County of Milwaukee v. LIRC*, *supra*, stated that reviewing agencies must determine "whether the tendencies and inclinations to behave a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed." The court suggested that the circumstances to be considered are those that foster criminal activity, "e.g., the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the person." Considering the totality of the circumstances and balancing the risk of recidivism with the signs of rehabilitation it appears that the protection of the public can be accomplished by implementing a limited license rather than a complete denial.

Ms. Peters has proven significant indicators that she has been rehabilitated. The limitations outlined in the Order, imposed for a period of 18 months should be sufficient in time and scope to protect the public while providing Ms. Peters with employment opportunities necessary to successful and complete rehabilitation. Ms. Peters has demonstrated a strong desire to distance herself from the activity resulting in her conviction, she has accepted responsibility, paid the price demanded of her in punishment and taken significant steps in her personal and professional development that indicate she is ready to become a

productive and responsible member of the profession of real estate appraisal. These factors outweigh the single criminal conviction that exists as a blemish on her record.

Date April 21, 2006

Dennis C. Schuh
Administrative Law Judge

[1]. Section 458.26 (3) (c) Wis. Stats. provides that an arrest or conviction for an offense the circumstances of which substantially relate to the practice of an appraiser can be the basis of discipline. This language is consistent with §111.335 (1) (c), 1 which refers to “any felony, misdemeanor or other offense ...” An ordinance offense may therefore be considered as well but in the present case, the prosecutor has requested that the non-criminal matters not be considered. (Transcript p. 10, lines 6-10)