

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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**Before The  
State of Wisconsin  
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES**

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In the Matter of the Application for A Licensed  
Appraiser Certificate of Licensure of Ruben T.  
Wilks, Applicant

FINAL DECISION AND ORDER

Order No. **0005741**

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**Division of Legal Services and Compliance Case No. 18 APP 004**

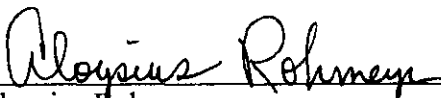
The State of Wisconsin, Department of Safety and Professional Services, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

**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 Safety and Professional Services.

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 at Madison, Wisconsin on the 2nd day of May, 2018.

  
Aloysius Rohmeyer  
Chief Legal Counsel  
Department of Safety and Professional Services



**Before The  
State of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of the Application for A  
Licensed Appraiser Certificate of Licensure  
of Ruben T. Wilks, Applicant

DHA Case No. SPS-18-0013  
DLSC Case No. 18 APP 004

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**PROPOSED DECISION AND ORDER**

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

Ruben T. Wilks  
[REDACTED]

Wisconsin Department of Safety and Professional Services  
P.O. Box 8366  
Madison, WI 53708-8366

Department of Safety and Professional Services, Division of Legal Services and  
Compliance, by

Attorney Stephanie Bloechl-Anderson  
Department of Safety and Professional Services  
Division of Legal Services and Compliance  
P.O. Box 7190  
Madison, WI 53707-7190

**PROCEDURAL HISTORY**

On November 22, 2017, the Department of Safety and Professional Services (Department) denied Applicant Ruben T. Wilks's (Applicant) application for a certificate of licensure as a Licensed Appraiser, application no. 621864, in the State of Wisconsin. The Department's denial was based on Applicant's criminal conviction that substantially relates to the practice of a Licensed Appraiser, and an unreasonable risk of harm to the public because he failed to demonstrate the character and general fitness to command the confidence of the community and warrant a determination that he would operate honestly and fairly, per Wis. Stat. § 458.08(2)(c) and (3), and Wis. Admin. Code § SPS 85.240(1)(c) and (2). On November 27, 2017, Applicant sent a letter requesting a hearing on the Notice of Denial, asserting allegations of mistakes in fact or law, pursuant to Wis. Admin. Code § SPS 1.07.

On January 16, 2018, the Department sent Applicant a letter informing him that his request for a hearing had been granted, pursuant to Wis. Admin. Code § SPS 1.08. On February 2, 2018, the Department served Applicant by sending a copy of the Notice of Hearing to his last known address on file with the Department. On February 2, 2018, the undersigned Administrative Law Judge (ALJ) for the Division of Hearings and Appeals sent a Notice of Telephone Prehearing Conference to the parties scheduling a prehearing conference for February 16, 2018.

The prehearing conference was held on February 16, 2018, and both parties appeared. At the prehearing conference, the Department's Division of Legal Services and Compliance (Division) moved for summary judgment. Applicant then indicated he wished to retain counsel in this matter, and the ALJ therefore set the case over for a status conference on March 5, 2018.

A notice scheduling the March 5, 2018 conference was sent to the parties. Applicant failed to appear at the March 5, 2018 conference and did not return the ALJ's telephone call. On March 6, 2018, the ALJ issued a Notice of Dismissal or Default and Order against Applicant. On March 22, 2018, the Division filed a recommended proposed decision and order in this matter.

### FINDINGS OF FACT

#### Facts Related to the Denial of Certificate of Licensure as a Licensed Appraiser

Findings of Fact 1-9 are taken from the Department's November 22, 2017 Notice of Denial in this matter.

1. On November 26, 2002, the Department granted Applicant a Licensed Appraiser credential, # 1496-4, pursuant to authority under Wis. Stat. § 458.08(3).
2. On or about December 5, 2007, a Grand Jury in the Eastern District Court of Wisconsin charged Applicant with four counts of "Fraud by Wire, Radio, or Television" in a 21-count superseding indictment.
3. On March 17, 2008, Applicant freely and voluntarily entered into a plea agreement, wherein he pled guilty to count 14 of the superseding indictment, which charged that, on or about June 21, 2005, in the State and Eastern District of Wisconsin and elsewhere, Applicant and others, for the purpose of executing a scheme, knowingly caused to be transmitted in interstate commerce by means of a wire communication, certain signs, signals, and sounds which accomplished a wire transfer of approximately \$68,000 from a warehouse bank account for credit to the escrow account of a title company for the purchase of a property in Milwaukee, Wisconsin.
4. In signing the plea agreement, Applicant understood and agreed that he was guilty of the offense charged and admitted, including but not limited to, the following:
  - a. Between a date in 2004, and approximately August 1, 2007, Applicant participated with others in a scheme to defraud mortgage lenders to purchase

distressed properties located in the inner city of Milwaukee by promoting the purchases as investments.

- b. To secure financing for these purchases, some scheme participants, including Applicant, created falsely inflated or otherwise fraudulent appraisals for the properties which were the subject of the mortgage loans.
- c. Based upon the false information in the loan applications and settlement statements, lenders approved and funded mortgages to unqualified straw buyers.
- d. The mortgage funds were then divided amongst scheme participants who defaulted on the mortgages, causing properties to go into foreclosure and the lenders to suffer a loss.
- e. During the time of the scheme, Applicant participated in the scheme as the owner of a property appraisal business, Express Valuation.
- f. Applicant completed property appraisals that falsely inflated the condition and value of subject properties.

5. On or about April 14, 2008, Applicant had a plea hearing and entered a plea of “guilty” to one count of Wire Fraud, in violation of 18 U.S.C. §§ 1343 and 2.

6. On November 19, 2008, under the former name Ruben Fields (Wilks), the Real Estate Appraisers Board and Applicant stipulated to the terms and conditions resolving the matter and a Final Decision and Order, number LS0811198APP, was issued, revoking his certificate of licensure as a Licensed Appraiser, number 1496-4.

7. On February 4, 2010, Applicant was convicted of Wire Fraud, in violation of 18 U.S.C. §§ 1343 and 2.

8. On November 22, 2017, the Department denied Applicant’s Licensed Appraiser certificate of licensure application, number 621864.

9. The Department denied Applicant’s certificate of licensure as a Licensed Appraiser application, pursuant to Wis. Stat. § 458.08(2)(c) and (3), and Wis. Admin. Code § SPS 85.240(1)(c) and (2), on grounds that Applicant’s conviction substantially relates to the practice of a Licensed Appraiser, and that granting Applicant’s Licensed Appraiser certificate of licensure would create an unreasonable risk of harm to the public as he has failed to demonstrate the character and general fitness to command the confidence of the community and to warrant a determination that he would operate honestly and fairly.

#### Facts Related to Failure to Appear

10. On February 2, 2018, the Department served Applicant by sending a copy of the Notice of Hearing to his last known address on file with the Department ( [REDACTED] )

[REDACTED], via regular mail. The regular mail copy of the Notice of Hearing, mailed to his last known address on file, was never returned to the Department.

11. The ALJ sent a Notice of Telephone Prehearing Conference on February 2, 2018, to Applicant at [REDACTED] scheduling a prehearing conference for February 16, 2018 at 10:00 a.m.

12. On February 16, 2018, the prehearing conference was held as scheduled and both parties appeared.

13. At the prehearing conference, the Division moved for summary judgment.

14. The ALJ granted the Division's request to submit a motion for summary judgment in this matter.

15. Upon granting the Division's request, Applicant indicated he wished to retain counsel and, accordingly, the ALJ set the case over for a status conference on March 5, 2018, at 11:00 a.m.

16. On February 16, 2018, the ALJ sent a Notice of Telephone Status Conference to both Division counsel and to Applicant at his last known address, [REDACTED]

17. The Notice of Telephone Status Conference stated: "If the Applicant retains counsel, counsel shall file a Notice of Appearance prior to the March 5, 2018 conference. If no such Notice is filed, the ALJ will again contact Applicant for the conference."

18. No Notice of Appearance was filed by counsel on behalf of Applicant prior to the March 5, 2018 telephone status conference.

19. Consistent with discussions held at the March 5, 2018 telephone conference, on March 5, 2018, shortly after the time designated for the telephone status conference, the ALJ attempted to contact Applicant, but he did not answer his telephone. The ALJ left a voicemail message for Applicant, stating that if he did not return the ALJ's telephone call, default may be entered against him.

20. Applicant did not return the ALJ's telephone call and the telephone conference therefore proceeded with Division counsel only.

21. On March 6, 2018, the ALJ issued a Notice of Dismissal or Default and Order, which stated: "If Applicant does not contact the ALJ by the close of business March 9, 2018, his appeal may be dismissed, or he may be found to be in default. If Applicant does contact the ALJ by the March 9, 2018 deadline, the ALJ will inform Division Counsel. If Division Counsel does not hear from the ALJ by March 12, 2018 that Applicant wishes to proceed in this matter, Counsel shall file a recommended proposed decision and order no later than March 22, 2018."

22. On March 22, 2018, the Division filed its recommended proposed decision and order in this matter.

## DISCUSSION AND CONCLUSIONS OF LAW

The Department has jurisdiction over this matter, pursuant to Wis. Stat. § 458.08(2) and (3). In the instant case, Applicant failed to appear at the status conference on March 5, 2018, following due notice of the conference. He has also ignored requests to contact the ALJ regarding this matter. His actions demonstrate an abandonment of his appeal.

When neither the applicant nor his or her representative appears at the time and place designated for the hearing, “the credentialing authority may take action based upon the record as submitted. By failing to appear, an applicant waives any right to appeal the action taken by the credentialing authority.” Wis. Admin. Code § SPS 1.11.<sup>1</sup> Further, pursuant to Wis. Admin. Code § HA 1.07(3)(a), “[i]f an appellant fails to appear at a hearing following due notice, the administrative law judge may dismiss the appeal unless the appellant shows good cause for the failure to appear.” Failure to appear is defined by Wis. Admin. Code § HA 1.07(3)(c):

(c) For a telephone or video hearing or prehearing, the administrative law judge may find a failure to appear grounds for default if any of the following conditions exist for more than ten minutes after the scheduled time for hearing or prehearing conference: . . . (2) the failure to answer the telephone or video conference line; (3) the failure to free the line for the proceeding; (4) the failure to be ready to proceed with the hearing or prehearing conference as scheduled.

Accordingly, if an appellant fails to appear at a hearing or prehearing conference following due notice, the appeal may be dismissed, unless the good cause is shown for the failure to appear. Wis. Admin. Code § HA 1.07(3)(a); *see also* Wis. Admin. Code § SPS 1.11 (by failing to appear, “an applicant waives any right to appeal the action taken by the credentialing authority.”) Thus, this matter may be dismissed without addressing the merits. Nevertheless, although unnecessary, because Wis. Admin. Code § SPS 1.11 also provides that a failure to appear may result in action being taken “based upon the record as submitted,” I also address the merits based on the facts as alleged in the Division’s November 22, 2017 Notice of Denial.<sup>2</sup>

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<sup>1</sup> The Division also cites the default provisions of Wis. Admin. Code § SPS 2.14, and other provisions of ch. SPS 2. However, the provisions of ch. SPS 2 are inapplicable to license application denials. As stated in the Division’s Notice of Hearing, proceedings for license application denials are governed by Wis. Admin. Code ch. SPS 1.

<sup>2</sup> Using the facts contained in the Notice of Denial as the basis of the findings and order is consistent with the provisions governing disciplinary proceedings under Wis. Admin. Code SPS ch. 2. Pursuant to Wis. Admin. Code § SPS 2.14, when a respondent in a disciplinary proceeding fails to appear, the disciplinary authority “may make findings and enter an order on the basis of the complaint and other evidence.”

Wisconsin Stat. § 458.08 specifies criteria for issuance of a certificate of licensure, and includes that “the applicant submit[] evidence satisfactory to the department that he or she does not have an arrest or conviction record.” Wis. Stat. § 458.08(2).<sup>3</sup> Not only must applicants “[s]atisf[y] the conditions in sub. (2)” of Wis. Stat. § 458.08, but they must also “[s]atisf[y] any other requirements that the department determines, by rule, are necessary to ensure that he or she is qualified to perform an appraisal of real estate described in the rules promulgated under s. 458.03(1)(e) in a federally related transaction.” Wis. Stat. § 458.08(3)(a) and (e), respectively. One of the rules promulgated by the Department, Wis. Admin. Code § SPS 85.240, governs background checks, and provides as follows:

(1) All candidates for licensed or certified appraiser credentials shall undergo background screening in accordance with s. 440.03(13)(c), Stats. The board may not issue a licensed or certified appraiser credential if any of the following applies:

...  
(c) The applicant has failed to demonstrate character and general fitness such as to command the confidence of the community and to warrant a determination that the appraiser will operate honestly and fairly.

(2) Subject to ss. 111.321, 111.322, and 111.335, Stats., an applicant who has a pending criminal charge or has a conviction record shall provide the department with all related information necessary for the department to determine whether the circumstances of the pending charge or conviction substantially relate to the practice of real estate appraisal.

The facts in this case are undisputed and no mistake of fact has been shown. Applicant signed a plea agreement, pled guilty, and admitted to participating in a scheme to defraud mortgage lenders by securing financing for the purchase of property where he had falsely inflated or otherwise created fraudulent appraisals for the properties which were the subject of mortgage loans. On February 4, 2010, he was convicted of Wire Fraud in the Eastern District Court of Wisconsin.

Pursuant to its authority in Wis. Stat. § 458.08(2) and (3), the Department denied the application for a License Appraiser certificate of licensure because granting it would create an unreasonable risk of harm to the public as Applicant had failed to demonstrate the character and general fitness to command the confidence of the community and warrant a determination that he would operate honestly and fairly, and because Applicant’s conviction history substantially relates to the practice of a Licensed Appraiser. *See* Wis. Stat. § 458.08(2)(c), (3)(a) and (3)(e); Wis. Admin. Code § SPS 85.240(1)(c) and (2).

Because Applicant has not established any mistake of fact or law in the Department’s denial of Applicant’s application for a certificate of licensure, the denial is affirmed.

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<sup>3</sup> This criterion is “[s]ubject to ss. 111.321, 111.322 and 111.335” which generally bar consideration of a criminal conviction for employment determinations unless the crime is substantially related to the employment. *Id.*

ORDER

Accordingly, IT IS ORDERED that the Department's November 22, 2017 Notice of Denial is affirmed, and Applicant's request for hearing is hereby dismissed.

IT IS FURTHER ORDERED that the terms of this Order are effective on the date the Final Decision and Order in this matter is signed by the Department.

Dated at Madison, Wisconsin on April 6, 2018.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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By: \_\_\_\_\_

Jennifer E. Nashold  
Administrative Law Judge