

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
STATE OF MONTANA

IN THE MATTER OF CASE NO. 2012-REA-LIC-18 REGARDING:

THE PROPOSED DISCIPLINARY)	Case No. 1489-2014
TREATMENT OF THE LICENSE OF)	
JAMES LOCHRIDGE,)	
Certified Residential Appraiser,)	
License No. 746.)	

and

IN THE MATTER OF CASE NO. 2012-REA-LIC-5 REGARDING:

THE PROPOSED DISCIPLINARY)	Case No. 1493-2014
TREATMENT OF THE LICENSE OF)	
THOMAS MCCABE,)	
Certified Residential Appraiser,)	
License No. 942.)	

**ORDER GRANTING MOTION TO WITHDRAW; ADOPTING PROPOSED
FINDINGS OF FACT; CONCLUSIONS OF LAW; AND
RECOMMENDED ORDER**

I. INTRODUCTION

On September 3, 2013, the Montana Board of Real Estate Appraisers (MBREA) issued a Notice of Proposed Board Action and Opportunity for Hearing regarding Thomas McCabe (McCabe), certified residential appraiser license number 942 - Case No. 2012-REA-LIC-5. On January 29, 2014, the MBREA issued a Notice of Proposed Board Action and Opportunity for Hearing regarding James Lochridge (Lochridge), certified residential appraiser license number 746 - Case No. 2012-REA-LIC-18. On February 17, 2014, through counsel, McCabe and Lochridge each requested a hearing on the proposed board action. The cases were transferred to the Office of Administrative Hearings (OAH) on March 12, 2014. The cases were consolidated for hearing - Case No. 1489-2014 (Lochridge) and Case No. 1493-2014 (McCabe).

A Notice of Hearing and Telephone Conference for the consolidated cases was issued on March 14, 2014, and a scheduling conference for both cases was held on March 27, 2014, with Michael Fanning, agency legal counsel, representing the Department of Labor and Industry's Business Standards Division, and Joshua Van de Wetering, attorney at law, representing both licensees. At that time, the parties agreed that the hearing in both matters could be set for September 16, 2014. A Scheduling Order was issued, which set a deadline for disclosure of witnesses and exhibits on August 29, 2014, and a final pre-hearing conference for September 8, 2014.

On August 29, 2014, the Department filed its pretrial disclosures for both cases, which included identification of Department witnesses and exhibits. Nothing was filed on behalf of Lochridge or McCabe. On September 8, 2014, the Hearing Officer held a telephonic final pre-hearing conference with the parties, at which point counsel for Lochridge and McCabe announced that neither Lochridge nor McCabe intended to defend the matter further, that he intended to file a motion to withdraw, and that neither licensee, nor anyone on their behalf, would appear at the scheduled hearing. Counsel for the Department did not object to the proposed motion to withdraw, did not move or request a default judgment, and requested that the scheduled hearing go forward.

The hearing for both cases commenced as scheduled on September 16, 2014. No one appeared on behalf of licensees Lochridge or McCabe, and neither licensee appeared on his own behalf. Michael Fanning, agency legal counsel, participated on behalf of the Department. Prior to commencement of the hearing, the Department requested a ruling on the motion by licensees' counsel to withdraw. The Hearing Officer noted that no one was present for the licensees, but that OAH had not yet received any motion to withdraw, and the request was taken under advisement.

Upon commencement of the hearing, the Department moved to admit what was previously marked as Exhibit 1 in Case No. 1489-2014 (Lochridge). The exhibit (pp. 1 through 121) was received into evidence without objection. The Department moved to admit what was previously marked as Exhibit 1 in Case No. 1493-2014 (McCabe). The exhibit (pp. 1 through 100) was received into evidence without objection.

During the hearing, OAH received licensees' counsel's motion to withdraw in each of the cases. Neither motion complied with Mont. Code Ann. § 37-61-403 and the motion to withdraw for McCabe had apparent errors. On September 17, 2014, the Hearing Officer issued an Order Provisionally Denying the Motion to Withdraw

and an Order to comply with Mont. Code Ann. § 37-61-403, and file the material to satisfy this statute on or before October 1, 2014.

By the end of business day October 1, 2014, the OAH had received nothing from the licensees' counsel as ordered. The Hearing Officer issued another Order on October 3, 2014, directing that counsel for the licensees comply and file, on or before October 10, 2014, proof that the licensees consented to his withdrawal and had notice of the withdrawal. The same Order directed counsel for the Department to file, on or before October 17, 2014, Proposed Findings of Fact and Conclusions of Law.

On October 10, 2014, counsel for McCabe filed a Renewed Motion to Withdraw, which met the provisions of Mont. Code Ann. § 37-61-403, and noted that McCabe consented to counsel's withdrawal and had notice of the withdrawal, with the reason for the motion that McCabe elected prior to the scheduled September hearing to leave the field of appraisal, and therefore decided to not defend the case pending against him. On the same date, counsel for Lochridge filed a Motion for Additional Time since Lochridge had moved out of state. On October 14, 2014, OAH issued an Order Granting Motion for Additional Time concerning the matter of counsel's withdrawal for the case against Lochridge.

On October 16, 2014, counsel for Lochridge filed a Renewed Motion to Withdraw, which met the provisions of Mont. Code Ann. § 37-61-403, and noted that Lochridge consented to counsel's withdrawal and had notice of the withdrawal, with the reason for the motion that Lochridge elected prior to the scheduled September hearing to leave the field of appraisal, and therefore decided to not defend the case pending against him. On October 17, 2014, counsel for the Department filed its Proposed Findings of Fact, Conclusions of Law, and Recommended Order.

II. FINDINGS OF FACT

A. Case No. 1489-2014 - In the Matter of the Proposed Discipline of JAMES LOCHRIDGE, Certified Residential Appraiser, License No. 746

In light of licensee's failure to appear and otherwise defend this matter, and the Motion to Withdraw, the Hearing Officer hereby adopts proposed Findings of Fact Nos. 1-20 in the Department's Proposed Findings of Fact, Conclusions of Law, and Recommended Order, In Re James Lochridge, Dept. Case No. 2012-REA-LIC-18, OAH Case No. 1489-2014, Pages 3 to 6 (copy attached to this Order).

B. Case No. 1493-2014 - In the Matter of the Proposed Discipline of THOMAS MCCABE, Certified Residential Appraiser, License No. 942

In light of licensee's failure to appear and otherwise defend this matter, and the Motion to Withdraw, the Hearing Officer hereby adopts proposed Findings of Fact Nos. 1-27 in the Department's Proposed Findings of Fact, Conclusions of Law, and Recommended Order, In Re Thomas McCabe, Dept. Case No. 2012-REA-LIC-5, OAH Case No. 1493-2014, Pages 3 to 8 (copy attached to this Order).

III. CONCLUSIONS OF LAW¹

A. Case No. 1489-2014 - In the Matter of the Proposed Discipline of JAMES LOCHRIDGE, Certified Residential Appraiser, License No. 746

In light of licensee's failure to appear and otherwise defend this matter, and the Motion to Withdraw, the Hearing Officer hereby adopts proposed Conclusions of Law Nos. 1-19 in the Department's Proposed Findings of Fact, Conclusions of Law, and Recommended Order, In Re James Lochridge, Dept. Case No. 2012-REA-LIC-18, OAH Case No. 1489-2014, Pages 7 to 9.

B. Case No. 1493-2014 - In the Matter of the Proposed Discipline of THOMAS MCCABE, Certified Residential Appraiser, License No. 942

In light of licensee's failure to appear and otherwise defend this matter, and the Motion to Withdraw, the Hearing Officer hereby adopts proposed Conclusions of Law Nos. 1-18 in the Department's Proposed Findings of Fact, Conclusions of Law, and Recommended Order, In Re Thomas McCabe, Dept. Case No. 2012-REA-LIC-5, OAH Case No. 1493-2014, Pages 8 to 11.

IV. RECOMMENDED ORDER

A. Case No. 1489-2014 - In the Matter of the Proposed Discipline of JAMES LOCHRIDGE, Certified Residential Appraiser, License No. 746

1. The Renewed Motion to Withdraw filed with the OAH on October 16, 2014 complies with Mont. Code Ann. § 37-61-403, and the Department does not

¹ Statements of fact in the conclusions of law are incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

object to the Motion. IT IS HEREBY ORDERED that the Motion to Withdraw in Case No. 1489-2014 is GRANTED.

2. IT IS HEREBY ORDERED that license number 746, of James Lochridge, certified real estate appraiser, is INDEFINITELY SUSPENDED as provided in Mont. Code Ann. § 37-1-312(1)(b), and that he must immediately surrender his license, if he has not already done so, by sending it certified mail return receipt to:

Montana Board of Real Estate Appraisers
301 S. Park
P.O. Box 200513
Helena, MT 59620-0513

3. IT IS FURTHER HEREBY ORDERED that the indefinite suspension is STAYED, as provided in Mont. Code Ann. § 37-1-312(2), no more than 45 days following entry of the MBREA's Final Order in this case, and during that 45-day period, Lochridge is subject to the following terms:

a. Supply MBREA or its designee satisfactory proof of enrollment in (but not necessarily completion of) the education described in Paragraph 4 below.

b. Proof of enrollment will preserve the stay for only a six-month period as described in Paragraph 4(b) below.

c. Failure to timely supply satisfactory proof of enrollment in each of the required courses will result in the automatic lift of the stay and Lochridge's appraisal license will be indefinitely suspended with notice of that event posted on the MBREA's public records, as well as recorded with federal real estate appraiser regulatory offices.

4. To be eligible to petition to lift the suspension and return his license to active status, Lochridge must successfully complete the following remedial education at his own expense subject to the prescribed terms. Mont. Code Ann. § 37-1-312(1)(d).

a. Mandatory remedial education: (i) Thirty hours of qualifying education on principles of real estate appraisal offered by the Appraisal Institute; (ii) Thirty hours of qualifying education on practice of real estate appraisal offered by the Appraisal Institute; and (iii) Fifteen hours of Appraisal Foundation USPAP qualifying education course.

b. This remedial education is subject to the following terms: (i) All courses must be completed within six months of the date of the MBREA's Final Order in this matter, and Lochridge shall provide to the MBREA or its designee timely documentary proof of satisfactory completion of this educational requirement; (ii) The remedial courses may not be used as credit towards Lochridge's 28 hours of continuing education requirement for the current two-year cycle as set forth in Admin. R. Mont. 24.207.2101; (iii) No online or alternative USPAP courses will be accepted pursuant to Admin. R. Mont. 24.207.2101(5); and (iv) Lochridge must successfully pass each post-course test with a sponsor-established score. For any online courses taken for appraisal principles and appraisal practice described in Paragraph 4(a)(i) or (ii) above, the post-course tests must be taken in Helena, Montana, at the MBREA's office and proctored by an MBREA representative in "closed book" (no notes or references) format.

5. Upon any resumption or return to the active practice of real estate appraisal work in the state of Montana, Lochridge's real estate appraiser license shall be placed on probation for two years as provided by Mont. Code Ann. § 37-1-312(1)(g), and that during the two year probation, Lochridge comply with the conditions as proposed by the Department in the attached.²

6. Should Lochridge fail to complete the courses prescribed in this Recommended Order within the six months allotted, fail to abide by the terms of the MBREA's Final Order, or if probation is granted, otherwise fail to complete his probation successfully, the Department may seek sanctions for a violation of an MBREA order under Mont. Code Ann. § 37-1-316(8), and/or file a new disciplinary case as may be warranted.

7. During the period of suspension and/or probation, all pertinent statutes and rules guiding Lochridge's conduct as a real estate appraiser in the state of Montana continue to apply including timely completing renewal applications and all continuing education.

² See Department's Proposed Findings of Fact, Conclusions of Law, and Recommended Order, In Re James Lochridge, Dept. Case No. 2012-REA-LIC-18, OAH Case No. 1489-2014, Page 11, ¶ 4.

B. Case No. 1493-2014 - In the Matter of the Proposed Discipline of THOMAS MCCABE, Certified Residential Appraiser, License No. 942

1. The Renewed Motion to Withdraw filed with the OAH on October 10, 2014 complies with Mont. Code Ann. § 37-61-403, and the Department does not object to the Motion. Therefore IT IS HEREBY ORDERED that the Motion to Withdraw in Case No. 1493-2014 is GRANTED.

2. IT IS HEREBY ORDERED that license number 942, of Thomas McCabe, certified real estate appraiser, is INDEFINITELY SUSPENDED as provided in Mont. Code Ann. § 37-1-312(1)(b), and that he must immediately surrender his license, if he has not already done so, by sending it certified mail return receipt to:

Montana Board of Real Estate Appraisers
301 S. Park
P.O. Box 200513
Helena, MT 59620-0513

3. IT IS FURTHER HEREBY ORDERED that the indefinite suspension is STAYED, as provided in Mont. Code Ann. § 37-1-312(2), no more than 45 days following entry of the MBREA's Final Order in this case, and during that 45-day period, McCabe is subject to the following terms:

a. Supply MBREA or its designee satisfactory proof of enrollment in (but not necessarily completion of) the education described in Paragraph 4 below.

b. Proof of enrollment will preserve the stay for only a six-month period as described in Paragraph 4(b) below.

c. Failure to timely supply satisfactory proof of enrollment in each of the required courses will result in the automatic lift of the stay and McCabe's appraisal license will be indefinitely suspended with notice of that event posted on the MBREA's public records, as well as recorded with federal real estate appraiser regulatory offices.

4. To be eligible to petition to lift the suspension and return his license to active status, McCabe shall be required to successfully complete the following remedial education at his own expense subject to the prescribed terms. Mont. Code Ann. § 37-1-312(1)(d).

a. Mandatory remedial education: (i) Thirty hours of qualifying education on principles of real estate appraisal offered by the Appraisal Institute; (ii) Thirty hours of qualifying education on practice of real estate appraisal offered by the Appraisal Institute; and (iii) Fifteen hours of Appraisal Foundation USPAP qualifying education course.

b. This remedial education is subject to the following terms: (i) All courses must be completed within six months of the date of the MBREA's Final Order in this matter, and McCabe shall provide to the MBREA or its designee timely documentary proof of satisfactory completion of this educational requirement; (ii) The remedial courses may not be used as credit towards McCabe's 28 hours of continuing education requirement for the current two-year cycle as set forth in Admin. R. Mont. 24.207.2101; (iii) No online or alternative USPAP courses will be accepted pursuant to Admin. R. Mont. 24.207.2101(5); and (iv) McCabe must successfully pass each post-course test with a sponsor-established score. For any online courses taken for appraisal principles and appraisal practice described in Paragraph 4(a)(i) or (ii) above, the post-course tests must be taken in Helena, Montana, at the MBREA's office and proctored by an MBREA representative in "closed book" (no notes or references) format.

5. Upon any resumption or return to the active practice of real estate appraisal work in the state of Montana, McCabe's real estate appraiser license shall be placed on probation for two years as provided by Mont. Code Ann. § 37-1-312(1)(g), and that during the two year probation, McCabe comply with the conditions as proposed by the Department in the attached.³

6. Should McCabe fail to complete the courses prescribed in this Recommended Order within the six months allotted, fail to abide by the terms of the MBREA's Final Order, or if probation is granted, otherwise fail to complete his probation successfully, the Department may seek sanctions for a violation of an MBREA order under Mont. Code Ann. § 37-1-316(8), and/or file a new disciplinary case as may be warranted.

7. During the period of suspension and/or probation, all pertinent statutes and rules guiding McCabe's conduct as a real estate appraiser in the state of Montana

³ See Department's Proposed Findings of Fact, Conclusions of Law, and Recommended Order, In Re Thomas McCabe, Dept. Case No. 2012-REA-LIC-5, OAH Case No. 1493-2014, Pages 12-13, ¶ 4.

continue to apply including timely completing renewal applications and all continuing education.

DATED this 22nd day of October, 2014

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ LEANORA O. COLES
LEANORA O. COLES
Hearing Officer

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.