

BEFORE THE REAL ESTATE APPRAISER EXAMINING BOARD  
OF THE STATE OF IOWA

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IN THE MATTER OF:	)	CASE NO. 03-23
	)	DIA NO. 03DOCRE009
KEITH OTTOSON	)	
CERTIFICATE NO. CG01139	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
RESPONDENT	)	DECISION AND ORDER

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On December 15, 2003, the Iowa Real Estate Appraiser Examining Board (Board) found probable cause to file a Statement of Charges against Keith Ottoson (Respondent). The Complaint alleged that the Respondent failed to demonstrate the minimum qualifications for continued licensure and willfully or repeatedly violated Board rules, pursuant to Iowa Code sections 272C.2(1), 272C.10(8), 543D.16, 543D.17(1)(b) and (g)(2003) and 193F IAC 7.2, 7.2(8), and chapters 9 and 11. A Notice of Hearing scheduled a prehearing conference for February 5, 2004 and a hearing for February 12, 2004.

A prehearing conference was held by telephone conference call on February 5, 2004 at 1:00 p.m. The hearing was held before the Board on February 12, 2004 at 9:00 a.m. The Respondent appeared and was not represented by counsel. The state of Iowa was represented by Pamela Griebel, Assistant Attorney General. The following Board members were present for the hearing: Richard Bruce, Appraiser, Chairperson; Richard J. Koestner, Appraiser; Sharon Chism, Appraiser; Karen Oberman, Appraiser; Luther C. Gammon, Appraiser; and David Erickson, Public Member. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, assisted the Board in conducting the hearing. A certified court reporter recorded the proceedings.

The hearing was closed to the public at the election of the Respondent, pursuant to Iowa Code section 272C.6(1)(2003). After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2003) to deliberate its decision. The members of the Board instructed the administrative law judge to prepare the Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

THE RECORD

The record includes the State's Prehearing Conference Report, the testimony of the witness, and the following exhibits:

State Exhibit 1:	Statement of Charges, Notice of Hearing, and Proof of Service
State Exhibit 2:	Law/Rules
State Exhibit 3:	Certificate History
State Exhibit 4:	Consent Agreement, Case No. 99-18
State Exhibit 5:	Application to Renew Certificate, 6/30/03
Respondent Exhibit A:	Respondent Letter 2/9/04; Appraisal Education; Qualifications of the Appraiser

FINDINGS OF FACT

1. The Respondent is a Certified General Real Estate Appraiser in the state of Iowa and was originally issued Certificate No. CG01139 on December 6, 1991. (State Exhibit 3)

2. In June 1999, the Respondent failed to complete the required continuing education for renewal set forth at that time in Iowa Code 543D (1997) and 193F IAC chapter 6. The Board and the Respondent entered into a consent agreement, pursuant to 193F IAC 8.7. The Respondent agreed to pay a civil penalty of \$100 and to complete 43 hours of classroom continuing professional education by December 31, 1999. The Respondent complied with the consent agreement. (Testimony of Respondent; State Exhibits 3, 4)

3. In June 2001, the Respondent provided verification of completion of the required 28 hours of continuing education and renewed his real estate appraiser certificate. (State Exhibit 3)

4. Respondent's real estate appraiser certificate was scheduled for renewal on July 1, 2003. As a condition of renewal, the Respondent was required to complete at least 28 hours of continuing education during the two-year renewal period. The Respondent personally delivered his renewal

application and renewal fee to the Board office on June 30, 2003. The Respondent did not report any hours of continuing education on his application but told Board staff that he would be completing the required continuing education. (Testimony of Respondent; State Exhibit 5)

5. The Respondent admits that he took his last continuing education course on June 29, 2001 and did not take any continuing education courses during the two-year renewal period from July 1, 2001 to June 30, 2003. The Respondent had no explanation or excuse for his failure to comply with the continuing education requirements, except procrastination and some financial problems. (Testimony of Respondent; Respondent Exhibit A)

#### CONCLUSIONS OF LAW

Each licensing board shall require and issue rules for continuing education requirements as a condition to license renewal. Iowa Code section 272C.2(1)(2003).

Iowa Code section 272C.10(8) provides that a licensing board established after January 1, 1978 and pursuant to the provisions of chapter 272C shall by rule include provisions for the revocation or suspension of a license for willful or repeated violations of the provisions of Iowa Code chapter 272C.

Iowa Code section 543D.16 (2003) provides, in relevant part:

**543D.16 Continuing education.**

1. As a prerequisite to renewal of a certification, a certified real estate appraiser shall present evidence satisfactory to the board of having met continuing education requirements.

2. The basic continuing education requirement for renewal of certification shall be the completion, before June 30 of the year in which the appraiser's certificate expires, of the number of hours of instruction required by the board in courses or seminars which have received preapproval of the board...

Iowa Code section 543D.17(1)(b) and (g)(2003) provide, in relevant part:

**543D.17 Disciplinary proceedings.**

1. The rights of a holder of a certificate as a certified real estate appraiser may be revoked or suspended, or the holder may otherwise be disciplined in accordance with this chapter. The board may investigate the actions of a certified real estate appraiser and may revoke or suspend the rights of a holder or otherwise discipline a holder for violation of a provision of this chapter, or chapter 272C, or of a rule adopted under this chapter or commission of any of the following acts or omissions:

...

b. Failure to meet the minimum qualifications established by this chapter.

...

g. Willful disregard or violation of a provision of this chapter or a rule of the board of the administration and enforcement of this chapter.

193F IAC 7.2 sets out the grounds for disciplinary actions against certificate holders and includes a violation of Iowa Code chapter 272C. 193F IAC 7.2(8)

193F IAC 9.1 provides that real estate appraiser certificates expire biennially on June 30 and must be renewed every two years. Applications for renewal shall report continuing education claimed in compliance with Iowa Code section 543D.16 and 193F-11.2 unless those requirements have been waived pursuant to the hardship and disability provisions found in rule 193F-11.3.

193F IAC 11.2 provides that a certified general real estate appraiser shall complete a minimum of 28 credit hours in approved continuing education during the two-year renewal period. The purpose of continuing education is to ensure that the appraiser participates in a program that maintains and increases the appraiser's skill, knowledge and competency in real estate appraising.

The preponderance of the evidence established that the Respondent failed to meet the minimum qualifications for renewal of his real estate appraiser certificate because he did not complete 28 hours of continuing education during the biennial renewal period of July 1, 2001 to June 30, 2003. Indeed, the Respondent failed to complete any continuing education during this time period. Moreover, although the Respondent was well aware that he had not completed the required continuing education when he submitted his renewal application on June 30,

2003, the Respondent still had not attended any continuing education as of the date of the hearing. The Respondent has not applied for or obtained a waiver from the Board, and his failure to complete the continuing education is inexcusable.

The Respondent also failed to complete continuing education during the 1997-1999 renewal period. At that time he entered into a consent order with the Board and agreed to complete 43 hours of continuing education and pay a civil penalty of \$100. In light of the Respondent's past violation of the continuing education rules and his failure to complete continuing education during the seven-month period leading to the hearing, his violation in this case is both repeated and willful. The Respondent has violated Iowa Code sections 272C.2(1), 272C.10(8), 543D.16, 543D.17(1)(b) and (g), and 193F IAC 7.2(8), 9.1, and 11.2.

The Respondent has left the Board with no choice but to suspend his license, pending completion of the continuing education requirements outlined in this Order. Unless the required continuing education is completed, the Respondent has not met minimum qualifications to hold a certificate.

In addition, the rules outline numerous factors that the Board may consider in determining whether a particular violation merits the assessment of a civil penalty. Many, if not most of those factors are present in this case. This is a willful and repeated violation of requirements that are unequivocally spelled out in the Board's rules and are repeatedly communicated by the Board to certificate holders. The terms of the prior Consent Order were clearly inadequate to deter this second violation by the Respondent within a relatively short period of time. Finally, the Respondent not only failed to complete any of the required continuing education during the renewal period, he did not complete any continuing education in the seven months leading to this hearing. 193F IAC 8.15(2), (3), (5), (6), (7), (9), (10), (11). Based on these factors, the Board has determined that the Respondent's violation merits the maximum civil penalty permitted under Board rules.

#### DECISION AND ORDER

IT IS THEREFORE ORDERED that Iowa Real Estate Appraiser Certificate No. CG01139, issued to Keith R. Ottoson, is hereby SUSPENDED, effective immediately upon service of this Decision and Order. The Respondent shall immediately return his certificate to the Board office.

IT IS FURTHER ORDERED that prior to the reinstatement of his certificate, the Respondent must fully comply with the following requirements:

A. The Respondent shall complete twenty-eight (28) hours of elective continuing education in Board-approved programs AND shall complete a fifteen (15) hour tested USPAP course, for a total of forty-three (43) hours of Board approved continuing education. None of these hours will be applicable to the 2005 certificate renewal.

B. The Respondent shall pay a civil penalty of \$1000.00.

The suspension of the Respondent's certificate shall continue until the Respondent has completed the continuing education requirements set out in this order and has paid the \$1,000 civil penalty.

IT IS FURTHER ORDERED that the Respondent must complete the required forty-three (43) hours of continuing education and pay the \$1,000 civil penalty no later than six (6) months from the date of issuance of this Decision and Order. If the Respondent fails to comply within six (6) months, his certificate will be REVOKED.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 193 IAC 7.41, that the Respondent shall pay \$75.00 within thirty (30) days of receipt of this decision for fees associated with conducting the disciplinary hearing.

Dated this 19<sup>th</sup> day of February, 2004.

[REDACTED]

Richard Bruce, Appraiser  
Chairperson  
Iowa Real Estate Appraiser Board

cc: Keith R. Ottoson  
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Suite 10  
Ames, IA 50014  
(CERTIFIED)

Pamela Griebel  
Assistant Attorney General

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(LOCAL)

Judicial review of the Board's decision may be sought in accordance with the terms of Iowa Code chapter 17A. If a party does not file a petition for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the board's final decision. 193 IAC 7.37.