

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



## Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

### Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscqa>.
- Records not open to public inspection by statute are not contained on this website.

**By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.**

**Correcting information on the DRL website:** An individual who believes that information on the website is inaccurate may contact the webmaster at [web@drl.state.wi.gov](mailto:web@drl.state.wi.gov)

FILE COPY

STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

---

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	FINAL DECISION
GARY R. JENKS,	:	AND ORDER
RESPONDENT.	:	

---

The State of Wisconsin, Real Estate Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Hearing Examiner, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Hearing Examiner, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Real Estate Board.

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

Dated this 28<sup>th</sup> day of September, 1989.

Linda L. Schlaversky

STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

---

IN THE MATTER OF  
DISCIPLINARY PROCEEDINGS AGAINST

GARY R. JENKS,

Respondent

---

PROPOSED DECISION

---

The parties to this proceeding for the purposes of Wis. Stats. sec. 227.53 are:

Gary R. Jenks  
4774 Highway F  
Black Earth, WI 53515

State of Wisconsin Real Estate Board  
1400 East Washington Avenue, Room 281  
P.O. Box 8935  
Madison, WI 53708

Department of Regulation & Licensing  
Division of Enforcement  
1400 East Washington Avenue, Room 183  
P.O. Box 8935  
Madison, WI 53708

The hearing examiner has received a stipulation in the above-captioned matter executed by Gary R. Jenks, respondent herein, and by Henry E. Sanders, attorney for the complainant. A copy of the Stipulation is attached hereto and made a part hereof.

The examiner recommends that the Real Estate Board adopt as its final decision in the matter the following Findings of Fact, Conclusions of Law and Order, which are based upon the terms agreed upon and stipulated to by the parties. Should the board fail to adopt this Proposed Decision as its final decision in the matter, then pursuant to Wis. Admin. Code sec. RL 2.12, the case shall be remanded to the hearing examiner for further proceedings. In such event, the board is requested to notify the examiner of the reasons for failure to adopt the Proposed Decision.

FINDINGS OF FACT

1. Gary R. Jenks, 4774 Highway F, Black Earth, Wisconsin (respondent), is duly licensed to practice as a real estate salesperson in the State of Wisconsin by license #28933, issued June 16, 1988.

200

2. At all times material to the criminal charges described in Finding of Fact #3, below, Jenks was employed as property manager for the Tamarack Trails Condominium Association, 110 South Westfield Road, Madison, Wisconsin.

3. On or about April 21, 1989, in Case No. 88 CF 592, in the State of Wisconsin Circuit Court, Branch 14 - Criminal Division, Dane County, Wisconsin, the Honorable George A. Northrup presiding, Jenks was convicted pursuant to his plea of no contest to two felony counts of theft by a bailee, in violation of Wis. Stats. sections 943.20(1)(b) and 943.20(3)(c). Respondent was ordered incarcerated in the Dane County Jail for eight months with work release privileges, and with the sentence to commence on May 15, 1989. Respondent was also placed on probation for ten years on each of the two counts, with the sentences to run concurrently. Respondent was ordered to pay restitution in the amount of \$38,028.62.

4. The following is offered by the parties by way of mitigation:

(a) While respondent's conviction occurred subsequent to licensure, the underlying conduct occurred prior to licensure.

(b) Respondent is presently employed as a salesperson under the Patten Corporation Great Lakes, Madison, Wisconsin (Patten). Leo S. Kalinowski, Jr., Regional Vice President of Patten, and William Farrell, a broker with Patten, have each stated in writing that they will directly supervise all of respondent's employment activities.

(c) Nancy M. DiBenedetto, respondent's probation and parole officer, has submitted an unsolicited request to the hearing examiner, the effect of which is to request that respondent be permitted to retain his license.

#### CONCLUSIONS OF LAW

1. The Real Estate Board has jurisdiction in this matter pursuant to Wis. Stats. sec. 452.14.

2. By virtue of respondent's criminal conviction, and of the acts underlying that conviction, respondent is deemed to have been convicted of a crime the circumstances of which substantially relate to the practice of a real estate licensee, and to have violated laws the circumstances of which substantially relate to the practice of a real estate licensee, in violation of Wis. Adm. Code sections RL 24.17(1) and (3).

3. By failing to notify the department of the conviction within 30 days after the judgment of conviction, respondent has violated Wis. Adm. Code sec. RL 24.17(1).

4. Pursuant to Wis. Adm. Code sec. RL 24.01(3), respondent has demonstrated incompetency to act as a real estate licensee in such manner as to safeguard the interests of the public within the meaning and in violation of Wis. Stats. sec. 452.14(3)(i).

ORDER

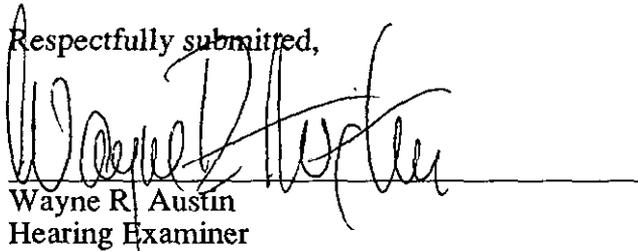
NOW, THEREFORE, IT IS ORDERED that respondent's license as a salesperson be, and hereby is, limited to require that he work as a salesperson exclusively as an employee of Patten under the direct day to day supervision of Leo S. Kalinowski, Jr., Office Manager and Regional Vice President of Patten. Respondent shall not personally handle any real estate trust monies, and any such trust monies involved in any real estate transaction for which respondent acts as salesperson shall be mailed along with the purchase contract directly to the Patten office. All of respondent's activities related to earnest money and deposits shall be strictly supervised by Patten broker William Farrell.

IT IS FURTHER ORDERED that should respondent's probation or other privileges be revoked, he shall forthwith notify the department and shall voluntarily enter into a stipulated agreement that his license be revoked.

IT IS FURTHER ORDERED that until the board orders that this condition is no longer applicable, respondent shall at the time of all future applications for renewal be required to demonstrate to the board his continuing rehabilitation.

Dated at Madison, Wisconsin this 30th day of August, 1989.

Respectfully submitted,



Wayne R. Austin  
Hearing Examiner

wra:10202

STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

GARY R. JENKS,  
RESPONDENT.

:  
:  
:  
:  
:

STIPULATION  
89 REB 138

Respondent Gary W. Jenks, and Complainant's attorney Henry E. Sanders, having reached agreement for disposition of the above-captioned matter, hereby agree and stipulate as follows:

1. This Stipulation shall be submitted to the Hearing Examiner, Wayne R. Austin and the Real Estate Board for approval and disposition of this matter. If the terms of this Stipulation are not acceptable to the Examiner and or approved by the Real Estate Board, the parties shall not be bound by any of the provisions of this Stipulation.

2. Respondent Jenks has been advised of his right to a public hearing on each and every allegation in this matter, but hereby freely and voluntarily waives his right to a hearing in this matter on the condition that all provisions of this Stipulation be acceptable to the Examiner and approved by the Board.

3. Respondent Gary R. Jenks (Jenks) of 4774 Highway F, Black Earth, Wisconsin 53515, was at all time material to the charges to which he pled guilty (hereinafter), was engaged in the unlicensed practice of a property manager for the Tamarack Trails Condominium Association, 110 South Westfield Road, Madison, Wisconsin. Thereafter, he was licensed as a real estate salesperson, and has been so licensed under the provisions of Ch. 452, Wis. Stats., since about June 16, 1988, and is presently employed as a salesperson under the Pattern corporation Great Lakes, Black Earth, Wisconsin.

4. On about April 21, 1989, in case number 88 CF 592, in the State of Wisconsin Circuit Court, Branch 14 - Criminal Division, Dane County, Wisconsin, Honorable Judge George A. Northrup presiding, Respondent was convicted as found guilty pursuant to his plea of no contest to two (2) felony counts of theft by bailee in violation of sec. 943.20(1)(b)(3)(c), Wis. Stats. Respondent was ordered incarcerated in the Dane County Jail with work release privileges for eight months, between the hours of employment, with the sentence to commence on May 15, 1989. Respondent was also placed on probation for ten (10) years on each of the two counts, with each count to run concurrent, Exhibit "A" attached hereto.

a. Respondent was subsequently determined to owe, and was ordered to pay restitution in the amount of, \$38,028.62, Exhibit "A1".

5. Attached hereto as Exhibit "B" is a copy of the criminal complaint, and criminal Information, respectively, upon which Respondent based his plea of no contest.

6. By virtue of the acts enumerated in the criminal complaint and information, and the judgment of conviction enumerated supra in paragraphs 2-3, Respondent is deemed to have violated sec. RL 24.17(1)(2), Code, violated any laws the circumstances of which relate to the practices of real estate licensees, and failed to send to the Department or otherwise notify it of the conviction against him within the required thirty days after the judgment of conviction (or any time subsequent), violated the provisions of or terms or conditions of Ch. 452, Stats., Chs. RL, Wis. Adm. Code, respectively, and therefore is deemed pursuant to sec. RL 24.01(3), Wis. Adm. Code, to have demonstrated incompetency to act as a real estate licensee in such manner as to safeguard the interests of the public within the meaning of sec. 452.14(3)(i), Wis. Stats.

7. Based upon the above and in settlement of this matter, Respondent hereby consents, accepts and agrees to a limitation of his real estate licenses and licensure privileges, in that he shall be required to work as a salesperson under the direct supervision on a day to day basis under Leo S. Kalinowski, Jr., Exhibit "C" attached hereto; and Respondent is not to personally handle any real estate trust monies, but any such trust monies involved in any real estate transaction being handled by Respondent, shall be mailed directly to Respondent's employer, the Pattern Corporation office, along with the purchase contract, and all of his activities related to earnest money and deposits, shall be supervised strictly by William Farrell, Exhibit "CL" attached hereto.

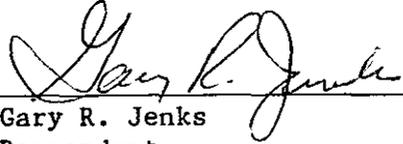
Respondent further understands and agrees that if his probation and or Huber privileges are revoked, then he shall forthwith notify the Department, and voluntarily enter into a stipulated agreement that his licenses/licensure privileges shall be revoked.

a. At each of Respondent's renewal period, he shall be required to demonstrate rehabilitation to the Board, prior to renewal or relicensure, until the Board order that this condition is no longer applicable, or warranted.

8. As basis in mitigation and acceptance of this stipulated agreement, all of the offenses to which Respondent was convicted, related to a period when he was not licensed (the conviction occurred during licensure); the department received an unsolicited letter from Respondent's probation officer, Exhibit "C2", which requested that Respondent be allowed to retain his licensure status, and letters from his supervising brokers/employers agreeing to strictly supervise respondent's real estate related activities.

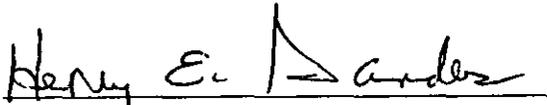
9. Respondent and Complainant's attorney agree that this Stipulation may be incorporated into the Examiner's Proposed Decision and the Final Decision of the Board as if fully set forth therein.

10. Respondent further agrees that Complainant's attorney may appear at any closed deliberation meeting of the Board with respect to this Stipulation but that appearance is limited solely to statements in support of this Stipulation and for no other purpose.



Gary R. Jenks  
Respondent

8/18/89  
Date



Henry E. Sanders  
Complainant's Attorney

8/22/89  
Date

HES:jrb  
DOEATTY-844

## NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,  
the times allowed for each and the identification  
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

### 1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with State of Wisconsin Real Estate Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

### 2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon State of Wisconsin Real Estate Board.

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: State of Wisconsin Real Estate Board.

The date of mailing of this decision is October 2, 1989.

WLD:dms  
886-490

**227.49 Petitions for rehearing in contested cases.** (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

**227.52 Judicial review; decisions reviewable.** Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employe trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

**227.53 Parties and proceedings for review.** (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally

disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.