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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

RUSSELL J. WARREN,
RESPONDENT.

FINAL DECISION AND ORDER
LS 9010081 REB

The parties to this proceeding for purposes of s. 227.53, Stats., are:

Russell J. Warren
215 North Spring Street
Beaver Dam, WI 53916

Wisconsin Real Estate Board
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

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

A hearing was held in this matter on November 15, 1990 before an administrative law judge, James E. Polewski. Respondent Warren appeared in person, and with counsel Ervin L. Doepke, 110 Monroe Street, Beaver Dam, WI 53916. The Complainant, Division of Enforcement was represented by Richard Castelnuovo. The hearing was limited to the issue of what discipline, if any, is appropriate based upon Respondent's stipulation to the allegations of the complaint in this matter. The administrative law judge filed his Proposed Decision on February 13, 1991. The Complainant filed objections to the Proposed Decision on February 18, 1991, and respondent filed objections dated February 22, 1991.

Based upon the entire record in this case, the Real Estate Board makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Russell J. Warren is a real estate broker licensed to practice in Wisconsin, and has been so licensed since January 1, 1983. Respondent was previously licensed as a real estate salesperson between August 28, 1980 and December 31, 1982, and as The Realty Company, Inc., between January 19, 1983, and July 1, 1983.

2. For each of the years from 1980 to 1985, Respondent earned income in the practice of real estate in Wisconsin, specifically serving as salesperson and broker-officer in the Best Realty Co., a real estate corporation licensed to practice in Wisconsin, and later being employed by J&S2, In.c, d/b/a Coldwell Banker TRC & Associates, a real estate corporation licensed to practice in Wisconsin.

3. For the tax years 1979, 1980, 1981, 1982, 1983, and 1984, Respondent failed to file Wisconsin state income tax returns when they became due, even though he knew the returns should have been filed and was capable of filing the returns, and no reasonable excuse for failure to file the returns.

4. In the tax year 1983, Respondent earned a total income of \$35,683, but failed to file a return by the April 16, 1984, deadline.

5. In the tax year 1984, Respondent earned a total income of \$38,263, but failed to file a return by the April 15, 1985 deadline, even though his wife timely filed a return as a married person filing separately.

6. On April 10, 1987, a two count criminal complaint was filed against Respondent in Dodge County Circuit Court on the basis of his failure to file tax returns for tax years 1983 and 1984 when due.

7. On December 23, 1987, Respondent entered a plea of no contest to two misdemeanor counts of income tax evasion in violation of s. 71.11(41), Stats., because of his failure to timely file income tax returns, and was convicted of the crimes.

8. Respondent was sentenced to two concurrent six month terms in the Dodge County jail, with execution of the jail term stayed, and placed on two concurrent three year terms of probation.

9. As conditions of probation, Respondent was required to pay \$500 in fines, \$115 in court costs, and \$40 in victim/witness assistance assessment, and file his 1983 and 1984 tax returns, and pay all taxes, interest, and penalties due.

10. Respondent did not send a copy of the Complaint or other information describing the circumstances of the crime to the Department within 30 days of his conviction.

CONCLUSIONS OF LAW

1. The Real Estate Board has jurisdiction in this matter pursuant to s. 452.14, Stats.

2. Respondent's actions in failing to timely file income tax returns are crimes which substantially relate to the practice of real estate, in violation of s. RL 24.17(2), Wis. Admin. Code, and his failure to notify the Department of the circumstances of the conviction within thirty days is a violation of s. RL 24.17(1), Wis. Admin. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the real estate broker's license previously issued to Russell J. Warren be and hereby is SUSPENDED for one month, effective 10 days after the signing of this Order.

EXPLANATION OF VARIANCE

The board has adopted the administrative law judge's Findings of Fact and Conclusions of Law, which were rendered pursuant to a stipulation between the parties. The board has also accepted that portion of the recommended order imposing a one month suspension of respondent's real estate brokers license. However, it has deleted the recommendation that costs be imposed in this proceeding since the Complaint issued in this matter does not seek such an order due to--according to complainant's attorney--respondent's cooperation in this matter.

The board also considered other objections to the discipline recommended by the administrative law judge: complainant's attorney arguing for a limitation upon respondent's trust account activities in addition to the one month suspension, and respondent's attorney asking that only a private reprimand be imposed. Both attorneys cited two past disciplinary actions of the board: In the Matter of Anthony (May 24, 1990), and In the Matter of Salant (June 28, 1990). These cases give each attorney a basis for their respective arguments, in that both matters resulted in a reprimand coupled with trust account restrictions.

Upon consideration, the board has adopted the recommendation that a one month suspension be imposed. The Anthony and Salant cases both involved fully settled cases, including discipline which was agreed upon by the parties. Accordingly, the acceptance by the board may be viewed as a determination that the discipline was within a reasonable range of possible sanctions so as to obviate the need for a formal hearing which would delay an ultimate result and require additional expenditures of time and expense for both parties.

Therefore, in relationship to respondent's argument for a private reprimand, it cannot be assumed that had the Anthony and Salant cases proceeded to a formal hearing on discipline that a suspension might not have

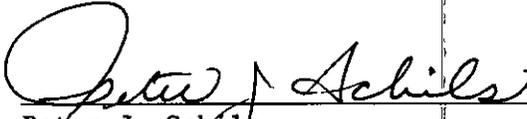
been imposed, especially since the Anthony case involved a conviction for conducting an illegal gambling enterprise and failing to pay the special tax thereon, and Salant involved a conviction for theft by fraud involving medicaid reimbursements. Thus, respondent's argument that a reprimand should flow from prior stipulated disciplines is not persuasive.

Regarding complainant's suggestion that trust account limitations be imposed here in addition to a suspension, the acceptance of the trust account limitations in the Anthony and Salant decisions, again pursuant to the parties' agreement, can be viewed as a result of the substantial relationship between the integrity of trust accounts in the hands of those operating illegal gambling enterprises or having engaged in theft, as well as possibly the lack of a formal suspension of licensure in the agreements. However, under the facts in this case there is no showing that the respondent's failure to file tax returns, alone, exhibited such dishonesty as to clearly indicate an established current threat to any trust account to which respondent may have access.

For the reasons stated within the administrative law judge's Opinion, including his intentional failure to file returns for several years, it is the board's opinion that a one month suspension of respondent's license is an appropriate sanction to impose in this case in order to promote the rehabilitation of respondent in this area and to discourage other real estate licensee's from similarly disregarding the tax laws. See, State v. Aldrich, 71 Wis. 2d 206, 209 (1976).

Dated: APRIL 25, 1991.

STATE OF WISCONSIN
REAL ESTATE BOARD


Peter J. Schils
Chairman

BDLS2-176

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 the 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 the 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: the State of Wisconsin Real Estate Board.

The date of mailing of this decision is April 26, 1991.

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.