

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE APPLICATION	:	
FOR A REAL ESTATE BROKER'S	:	FINAL DECISION
LICENSE OF	:	AND ORDER
	:	LS9307162REB
NEIL J. SCHULTZ,	:	
APPLICANT.	:	

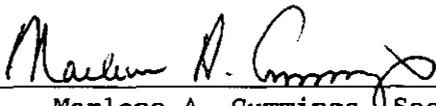
The State of Wisconsin, Department of Regulation and Licensing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

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 Regulation and Licensing.

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 this 29th day of December, 1993.



Marlene A. Cummings, Secretary
Department of Regulation and Licensing

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE APPLICATION
FOR A REAL ESTATE BROKER'S LICENSE OF

NEIL J. SCHULTZ
APPLICANT
LS 9307162 REB

PROPOSED DECISION

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

Neil J. Schultz
41 South Broad Street
Bayfield WI 54814

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

A hearing was held in this matter on November 19, 1993, pursuant to Mr. Schultz's request for a hearing on the Real Estate Examining Board's denial of his application for reinstatement of his license to practice real estate. Mr. Schultz appeared in person, without counsel, acknowledging that he knew he could have an attorney represent him if he wished. The Division of Enforcement appeared by Attorney Charles J. Howden. On the basis of the entire record of the proceeding, the Administrative Law Judge recommends that the Department adopt the following Findings of Fact, Conclusions of Law, and Order as its Final Decision in this matter.

FINDINGS OF FACT

1. Neil J. Schultz has an address of 41 South Broad Street, Bayfield, Wisconsin 54814. He previously held a license as a real estate broker, which license was revoked by the April 25, 1991, Final Decision and Order of the Real Estate Board in proceedings captioned In the Matter of Disciplinary Proceedings Against Donna M. Schultz and Neil J. Schultz, LS 9008071 REB.
2. The Conclusions of Law in the case resulting in the revocation of Mr. Schultz's license contain eleven conclusions that Mr. Schultz demonstrated incompetency in the practice of real estate, misrepresented material facts, misrepresented his own relation to the transaction, and engaged in improper, fraudulent, and dishonest dealing, in two separate transactions.
3. Mr. Schultz applied for reinstatement of the real estate broker's license, which application was considered by the Real Estate Board on March 25, 1993. On March 31, 1993, the Real Estate Board issued a Notice of Denial and Notice of Right to Request Hearing on Denial, which was served on Mr. Schultz by mail April 5, 1993.
4. The Real Estate Board denied the application for reinstatement. In its Reasons for Denial, the Board stated that "The Final Decision and Order revoking (Mr. Schultz's) license in 1991 was based upon his extremely serious misconduct in two transactions. In one, there was a finding of having engaged in improper, fraudulent and dishonest dealings. In both, there were numerous instances of incompetency regarding the law of real estate. . . . There is nothing which has been submitted by the petitioner in support of his request for reinstatement which suggests that his approach to a real estate transaction today would be any more competent or trustworthy than was the case (at the time his license was revoked). For example, in the May, 1993 response to the board's request for additional information regarding petitioner's activities since the time of the revocation, he stated:

"I have not undertaken any activities to keep myself up-dated regarding changes in real estate law.

"I am a general contractor. I have always been a general contractor. I have never received one dime for a real estate commission....The reason I had a real estate license is I felt the public was better protected because I was required to pass a test and take updating classes to keep the license. Having my license reinstated may help protect the public...."

The last statement of petitioner is questionable, at best. Since the board's decision in 1991, petitioner has done nothing to cure his lack of competency. Nor has he expressed any remorse for, or other recognition of his prior dishonesty.

5. Prior to requesting reinstatement of the real estate broker's license, Mr. Schultz contacted the Department of Regulation and Licensing for information on what he would need to do to be reinstated. By letter of January 11, 1993, Mr. Schultz was informed that he would need to provide proof of rehabilitation for the Board to consider the request. Mr. Schultz was provided with a list of factors which were examples of the character of the evidence which the Board would be looking for in determining whether rehabilitation had taken place.

6. Mr. Schultz responded to this information by a letter dated February 1, 1993. His response was narrowly tailored to the factors listed as examples by the Department's letter of January 11, 1993.

7. By letter of February 26, 1993, the Real Estate Board, through its legal counsel, informed Mr. Schultz it had reviewed the letters of January 11 from the Department to Mr. Schultz, and the letter of February 1 from Mr. Schultz to the Department in response. The Board's letter to Mr. Schultz stated, in pertinent part:

The board is in need of additional information in order to act upon your request. Given the serious nature of the violations found in your case, such information is necessary to assure the board that such conduct will not be repeated in future should your license be reinstated.

The board requests information and documentation in the following areas:

1. Efforts or activities undertaken since your revocation to keep yourself up-to-date regarding changes in the real estate laws.
2. Any letters of reference from individuals in your community who would support your return to practice at this time.
3. A more detailed description of your employment activities since your revocation.

8. Mr. Schultz responded by letter of March 3, 1993. His letter included the information that he had not undertaken any activities to keep himself up-dated regarding changes in real estate law.

9. Mr. Schultz caused a reference letter to be sent to the Department from Jeffrey L. Sowl, a real estate broker in the Bayfield area. The body of Mr. Sowl's letter, dated March 5, 1993, read:

I have known and worked with Neil Schultz for approx. 15 years. I have always known him to be fair and honest in all of his dealings.

For some reason his real estate lic. was revoked. I am sure Neil Schultz will use this experiance (sic) to enlighten and improve himself in real estate rules.

If you choose to reinstate his license, I am sure he will live up to the standards expected.

I look forward to working with Neil Schultz in the future.

10. At the hearing, Mr. Schultz produced a second letter of reference, dated March 16, 1993, from Ralph Neff, Sheriff of Bayfield County. That letter reads:

Mr. Neil Schultz has asked me to make a comment or two about his application for re-instatement of his real estate license. I, as Bayfield County Sheriff, usually refrain from becoming involved with such requests. However, Mr. and Mrs. Schultz and I have been acquainted for approximately 15 years, personally and professionally.

Bayfield is a typical small community where chit-chat is a recreation. I have heard a lot of comments over the years about Neil Schultz and his business practices. In most cases I have been able to separate fact from fiction because of my law enforcement duties. Reading the factual print, most of Neil's problems were/are from just plain disorganization and rushing into things. I believe his license revocation/penalties was appropriate. Donna Schultz will over-see his real estate transactions. If she were not in the picture, I may not have done this.

I support Neil's request for re-instatement. He had the rug pulled out from underneath him and this time it hurt. The community will be watching him and I think he wants their support back. Having the knowledge of why he did loose his license will certainly way (sic) heavy in any negative dealings I have with him. I do not foresee those negatives happening.

11. Mr. Schultz testified that he had watched a three or four hour video presentation about the use of newly adopted real estate forms within two or three weeks prior to the hearing. There is no evidence that the presentation he watched would qualify for continuing education credits toward the 12 hour education requirement for real estate license renewal. Mr. Schultz

testified that he had had no other real estate education subsequent to the revocation of his license.

CONCLUSIONS OF LAW

1. The Department of Regulation and Licensing has jurisdiction in this matter pursuant to s. 452.05(1)(a), Stats.

2. The Real Estate Board had sufficient reason to deny Mr. Schultz's application for re-instatement of the real estate broker's license which had been revoked in 1991, because Mr. Schultz did not demonstrate that he was rehabilitated from either the ignorance of real estate fundamentals or the dishonesty which resulted in the revocation of his license in 1991.

ORDER

NOW THEREFORE the application of Neil J. Schultz, applicant, for a license to practice real estate in Wisconsin is DENIED.

OPINION

Mr. Schultz requested a hearing on the denial of his application for re-instatement, and during a long pre-hearing conference repeated his desire for a hearing. During the pre-hearing conference, Mr. Schultz stated that he had been trying to get somebody to tell him what he had to do to get his license back, and nobody would answer that simple question. Mr. Schultz was apparently not satisfied with the description of the process, and the description of the factors considered on applications for re-instatement of revoked credentials; at the hearing, the better part of his opening statement was a continuation of his complaint that nobody would give him the answers to the question of what he needed to do to get his license back.

As the exhibits demonstrate, Mr. Schultz has repeatedly been advised of the evidence he needs to provide to demonstrate that he is now a fit candidate for a license to practice real estate, and he has repeatedly failed to provide it. He has instead taken a very narrow, cagey reading of questions which are reasonably calculated to elicit information about what, if anything, he has done to become reasonably well-informed about real estate practice, what he can show as evidence that he appreciates the need for honesty in the practice of real estate, and what he has done with his time while he was not licensed to practice real estate.

Mr. Schultz' testimony in this hearing is ample reason to deny his application for a license. On the one hand, he testified that he did no real estate practice, that everybody knows he does no real estate practice, and that he tells anyone who asks that he does no real estate practice. On the

other hand, he testified that people come to him to get real estate forms and he helps them out because it's a small town. How much real estate practice, if any, he engages in is open to question, but it is clear that Mr. Schultz has not been trying to dissuade people from using him as a real estate practice resource.

Further, it is clear from his testimony that Mr. Schultz has taken no particular interest in improving the state of his knowledge of the fundamentals of real estate in the period since his revocation. He points out that he is and always has been a general contractor, and that he has never made a dime practicing real estate, and he makes it remarkably clear that he saw no reason to take any real estate practice instruction because he does not need any. It is still his view that there has never been any harm to anyone because of his real estate practice.

The reference letters Mr. Schultz provided do not present persuasive evidence that he is a fit candidate for licensure. Mr. Sowl's letter mentions the previous revocation of Mr. Schultz's license, but indicates that Mr. Sowl does not know the reason for that revocation; nonetheless, Mr. Sowl says he has always known Mr. Schultz to be fair and honest in all of his dealings, and further indicates that he is sure Mr. Schultz will use the experience of the license revocation to improve his understanding of real estate practice. Mr. Sowl does not indicate in what capacity he knows Mr. Schultz to be fair and honest. Mr. Schultz's record in those character traits in relation to the practice of real estate is poor. Given Mr. Schultz's history of incompetence and dishonesty in practice of real estate, and his lack of interest in continuing real estate education, one wonders how well Mr. Sowl knows Mr. Schultz, which diminishes the value of the reference.

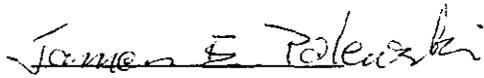
The letter from Sheriff Neff raises more questions than it answers. Apparently, Sheriff Neff has heard quite a bit about Mr. Schultz's business practices and has had to make some judgments about which of the information he has heard is true, and which is not. The Sheriff does not indicate the comparative weight of the positive and the negative comments he has heard, but does indicate that the factual negatives are mostly the result of Mr. Schultz being disorganized and rushing into things. Sheriff Neff advises that the community will be watching Mr. Schultz, and that Mr. Schultz likely wants to regain the community's trust; the implication is that Mr. Schultz will behave himself because of the community scrutiny. Licensed professionals are supposed to be honest even if people are not watching them; Sheriff Neff apparently harbors some doubt about Mr. Schultz's capacity for self-regulation. Indeed, Sheriff Neff surmises that if not for Donna Schultz, Neil's wife, overseeing his real estate practice, he may not have written the reference letter at all.

Donna Schultz is not permitted to oversee Mr. Schultz's real estate practice. The Final Decision and Order which revoked Mr. Schultz's real estate license also resulted in discipline against Mrs. Schultz. The Order permits Mrs. Schultz to retain her license only for so

long as she prevents Mr. Schultz from having any part in the operation, management, or control of any real estate brokerage under her supervision or control. There is no evidence that the Real Estate Board has modified that portion of the Order.

Mr. Schultz has failed to demonstrate competence in the fundamentals of real estate practice, and he has not demonstrated that he is any more trustworthy now than he was in 1991. At the same time, it is apparent that while he has repeatedly been informed of the showing he must make to regain a real estate license, Mr. Schultz either will not or cannot accept that the standards apply to him as well as to all others in his situation. In as much as Mr. Schultz' refusal or inability to comply with universal standards was a major cause of the initial revocation of his license, it would not be prudent to re-instate the license now.

Dated this ¹⁴13th day of December, 1993.


James E. Polewski
Administrative Law Judge

bdls2:3926

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.

Serve Petition for Rehearing or Judicial Review on:

STATE OF WISCONSIN DEPARTMENT OF REGULATION AND LICENSING
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708.

The Date of Mailing this Decision is:

JANUARY 10, 1994.

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)