

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 LICENSE TO PRACTICE AS A :	FINAL DECISION
REAL ESTATE SALESPERSON OF :	AND ORDER
	LS9509191REB
JOHN R. WERNER, :	
APPLICANT. :	

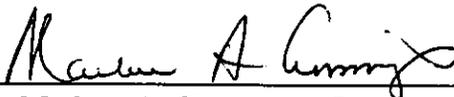
The State of Wisconsin, Department of Regulation and Licensing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

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 20th day of February, 1997.



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 LICENSE TO PRACTICE AS A :
REAL ESTATE SALESPERSON OF: : PROPOSED DECISION
 : [Case No. LS 9509191REB]
JOHN R. WERNER, :
APPLICANT. :
 :
 :

The parties to this proceeding for the purposes of Wisconsin Statutes, sec. 227.53 are:

John R. Werner
9713 Harding Boulevard
Wauwatosa, WI 53226

Department of Regulation and Licensing
P.O. Box 8935
Madison, Wisconsin 53708

Division of Enforcement
Department of Regulation & Licensing
P.O. Box 8935
Madison, Wisconsin 53708

This proceeding was commenced by the filing of a Notice of Hearing on September 19, 1995 scheduling a hearing for October 3, 1995 on the decision of the Department of Regulation and Licensing to deny the application of John R. Werner for a license to practice as a real estate salesperson. The hearing in the above captioned matter was held as scheduled on October 3, 1995. John R. Werner appeared in person and with counsel, Scott N. Burns, and Attorney Steven M. Gloe appeared for the Department. The hearing was recorded and a transcript was prepared.

Based upon the entire record in this matter, the administrative law judge recommends that the Department of Regulation and Licensing adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law and Order:

PROCEDURAL POSTURE

1. On April 27, 1995, the department denied the application of John R. Werner for a real estate salesperson license, on the grounds that Werner has been convicted of a crime the

circumstances of which substantially relate to the circumstances of the practice of a real estate salesperson, that Werner failed to respond to an investigation concerning the criminal conviction which involved his practice as a licensed nursing home administrator, and that Werner made a false statement on his application for licensure concerning forfeiture actions taken against him and Town and Country Manor nursing home.

2. On May 26, 1995, Werner, by his attorney requested and received an extension to June 15, 1995 to file a written request for hearing on the denial of Werner's application.

3. On or about June 13, 1995, Werner, by his attorney filed his written request for hearing, setting forth alleged errors of fact and law made in the denial of his application for real estate salesperson license.

4. The hearing was convened as scheduled and noticed on October 3, 1995. As noted above Werner appeared for the hearing in person and by attorney Scott N. Burns. Attorney Steven Gloe appeared on behalf of the Department.

5. The issues for hearing stated in the Notice of Hearing were:

1) Whether applicant's conviction based upon a no contest plea constitutes a conviction for the purposes of a license denial;

2) Whether applicant's conviction record is substantially related to the practice of real estate sales;

3) Whether Division investigation # 93 NHA 062 relates to the applicant's nursing home administrator license or is a complaint against Town and Country Manor, Inc.; and whether the applicant's failure to respond to an inquiry from the Division relating to this investigation constitutes a basis for license denial; and

4) Whether the applicant's record of conduct as a nursing home administrator as reflected in the applicant's application file constitutes evidence of incompetence.

6. In the Notice of Hearing, the Division conceded that Werner's negative response in his application for a real estate salesperson license to the question of whether any disciplinary action had ever been taken against him by an licensing or credentialing authority was not a false statement on his application.

7. At the hearing, Werner raised a question of jurisdiction and authority of the Department to affirm denial of Werner's application for license because the Department did not take any action on his request for hearing within 20 days as provided for in RL 1.05 (2)(a), Wis. Adm. Code. However, if the Department fails to act on a request for hearing within the 20 day period, the request is deemed denied for purposes of the applicant filing a petition for judicial review under sec. 227.52, Stats. In any event, as ruled upon at the hearing, the Department did

grant the request for hearing, and any defect for not granting the request for hearing within the 20 day period is therefore cured. Failure to grant the request for hearing within the 20 day period does not remove the Department's jurisdiction or authority to hold the hearing or decide to affirm the denial of the application.

8. In the hearing, the parties stipulated on the record that Werner's conviction record at issue in this proceeding did not involve dishonesty, theft or fraud.

9. The parties stipulated that the time period for completing all requirements for licensure under RL 12.03, Wis. Adm. Code, be stayed pending final decision and order in this proceeding. Accordingly, the operation of RL 12.03 should be stayed during the pendency of this matter.

FINDINGS OF FACT

1. John R. Werner, applicant, date of birth November 27, 1944, of 9713 Harding Blvd., Wauwatosa, WI 53226, filed an application dated January 9, 1995 with the Department of Regulation and Licensing for a license to practice as a real estate salesperson in the state of Wisconsin.

2. Applicant Werner provided a copy of a Certificate of Completion of Educational Requirements indicating that he successfully completed the 72 classroom hours of educational programs required by sec. 452.09(2), Stats.

3. Werner holds a nursing home administrator license, # 201, issued by the Nursing Home Administrators Board attached to the Department of Regulation and Licensing.

4. Werner was the President, Registered Agent, Treasurer, Nursing Home Administrator and owner of the stock of Town and Country Manor, Inc., a Wisconsin certified nursing home. Werner was ultimately responsible for the timely filing of claims for medical assistance reimbursement from the state of Wisconsin for residents of Town and Country Manor, Inc.

5. On July 8, 1994, in Circuit court for Milwaukee County, in Case No. F 941708, John R. Werner pled no contest to, was found guilty and convicted of violation of sec. 49.12(2), Stats., interference with public assistance. The parties in that matter stipulated to the criminal complaint as a basis for judgment. Werner and codefendant Town and Country Manor, Inc., were ordered to pay restitution of \$2600.30 by September 8, 1994 or in the alternative serve 60 days in the house of corrections, to make a \$1000.00 contribution to a crime prevention agency by October 10, 1994 or in the alternative serve 60 days in the house of corrections, Town and Country Manor, Inc., was ordered to pay a fine of \$1000.00 by October 10, 1994, and pay court costs and the victim/witness surcharge.

6. In his request for hearing, and in testimony at the hearing, Werner explained that the foregoing conviction was based upon a failure to file a claim for reimbursement for a

patient's nursing home care, and was due to negligence, inadvertence and the press of other business in the operation of Town and Country Manor, Inc., and not due to any fraud, theft or dishonesty.

7. Richard C. James, Sr., was a resident of Town and Country Manor, Inc., from September through December 1992. Mr. James's family had paid to Town and Country Manor \$2500 per month from their own funds for the care of Mr. James.

8. On or about February 1, 1993, Town and Country Manor, Inc., was notified by the State of Wisconsin that Mr. James had been made eligible for medical assistance payments retroactively to October 16, 1992. Under the Medical Assistance program, it was the responsibility of the nursing home to file claims for reimbursement for the care of a nursing home resident, and reimburse the resident or his or her family for the payments received from Medical Assistance. The Medical Assistance program imposed a one year deadline from the date of services for the filing of a proper claim for reimbursement for the care of nursing home residents.

9. By letters dated May 14, 1993, June 17, 1993, and June 26, 1993, the attorney for the James family requested reimbursement from Town and Country Manor, Inc., for the amounts that Town and Country Manor was eligible to receive from the Medical Assistance program for the care of Mr. James. Werner acknowledged having received and reviewed the letters from the attorney for the James family. However, no response to the letters was received by the attorney from Werner or Town and Country Manor. Werner had stated that he believed that the James family would have to wait for their reimbursement as there were other priorities of Town and Country Manor that demanded his money and attention.

10. Werner and Town and Country Manor did not file any claims for reimbursement from the Medical Assistance program until July 2, 1993, after an investigation by the state of Wisconsin Department of Justice was initiated.

11. On July 2, 1993, claims for services for Mr. James were submitted by Town and Country Manor, Inc., to the Medical Assistance program for reimbursement. On July 11, 1993, one claim for services to Mr. James for the period of October 16, 1992 to October 31, 1992, was paid to Town and Country in the amount of \$994.40. The funds from this paid claim were garnished by the Internal Revenue Service, however, Town and Country paid the amount of this reimbursement over to the James family from other funds. The remainder of the claims were rejected by EDS Federal, the claim administrator for the Medical Assistance program, because of repeated technical errors in the claims involving procedure codes, which were, Mr. Werner testified, the responsibility of EDS Federal, and errors in a date of service and a provider code, which were the responsibility of Town and Country Manor, Inc. On August 24, 1993, Town and Country Manor, Inc., resubmitted claims for services for Mr. Edwards for November and December 1992, which claims were again rejected because of similar technical errors.

12. Following August 27, 1993, the date of the last rejection of claim by EDS Federal, corrected claims for reimbursement for services for Mr. Edwards for the months of

November and December 1992 were not submitted by Mr. Werner or Town and Country Manor, Inc. The one year deadline for submitting the remaining unpaid claims for nursing home services for Mr. Edwards expired in November and December 1993, respectively. Mr. Werner, through his attorneys, thereafter attempted to obtain from the state of Wisconsin an exemption from the deadline for filing corrected claims for reimbursement for services for Mr. Edwards for the months of November and December, 1992, which exemptions were denied.

13. Neither Mr. Werner nor Town and Country Manor, Inc., paid over to the family of Mr. Edwards any reimbursement for the care of Mr. Edwards for November and December 1992, until ordered by the court as a result of the conviction noted above.

14. Werner admits that the role of a nursing home administrator is the operation of the nursing home, that Werner as nursing home administrator for Town and Country Manor, Inc., had ultimate responsibility for the activities and operation of the home, that as nursing home administrator it was his responsibility under the law to obtain Medical Assistance reimbursement for eligible patients, and that the errors in the rejected reimbursement claims for Mr. Edward's care for November and December 1992 were easy to correct.

15. Following the rejection of the reimbursement claims for Mr. Edward's care, Werner had 3 and 4 months respectively to file corrected reimbursement claims with Medical Assistance for Mr. Edward's care for the months of November and December 1992, before the one year deadline for such claims.

16. The practice of a real estate salesperson involves acting in a fiduciary capacity on behalf of clients, and the proper and timely completion of legal documents and other documents having legal and financial significance and impact upon clients' legal rights and financial interests.

17. The circumstances of Mr. Werner's record of criminal conviction for interference with Public Assistance under sec. 49.12(2), Stats., are substantially related to the circumstances of the practice of a real estate salesperson.

18. On or about October 7, 1993, the Department of Regulation and Licensing received a complaint from Anna Marie Michon, by her sister, Julia Murphy, D.P.O.A., acting on her behalf, against Town and Country Manor, Inc., complaining that following the closing of the facility on July 27, 1993, Town and Country Manor, Inc., and John R. Werner, its administrator, had failed to return to Ms. Michon \$990.00 in nursing home fees that had been prepaid through August 6, 1993 for the care of Ms. Michon.

19. The Department of Regulation and Licensing, Division of Enforcement, opened an investigation, 93 NHA 062, of the complaint of Ms. Michon on behalf of the Nursing Home Administrators Examining Board, which had licensing and disciplinary authority over Werner's license as a nursing home administrator. By letter dated August 4, 1994 addressed to John R. Werner at his residence address, the Division notified Werner of the Michon complaint and requested an immediate written response to the allegations and further questions concerning the

closing of Town and Country Manor, Inc., information on any other former residents that were owed money, any plan for reimbursement of any money owed to former patients or their families, trust account information and the status of the above described criminal action which was pending at the time. No response was received from Werner, and a second letter dated August 25, 1994 was sent by the Division of Enforcement. Again, no response was made by Werner. By letter dated March 23, 1995, Division of Enforcement attorney Henry Sanders again contacted Werner, requesting a written explanation concerning the Michon complaint, and further notifying Werner that the Division of Enforcement was in receipt of information concerning Werner's conviction for interference with public assistance and would be filing a disciplinary complaint. Again, Werner made no response to the letter, however, no disciplinary action was commenced by the Division of Enforcement concerning the Michon complaint or the conviction.

20. In his testimony at the hearing, Werner explained that because the Michon complaint did not name Werner as the person or entity complained against but only named Town and Country Manor, Inc., because Town and Country Manor, Inc., had closed as of July 27, 1993, because Werner was no longer "employed" by Town and Country Manor, Inc., as its nursing home administrator, because he left the records of Town and Country Manor, Inc., on its premises upon its closing and did not have any idea what happened to them and did not "have access to any records" of Town and Country Manor, Inc., and because he could not afford the legal expenses of responding to the complaint or assisting with resolution of the matter of outstanding money owed Michon, Werner was unsure of any obligation on his part to respond to the complaint and could not assist with resolution of the claim for unreturned nursing home fees.

21. Administrative notice is taken of the following sections of the Wisconsin Statutes and Wisconsin Administrative Code: HSS 132.41(1), Wis. Adm. Code, which notes that sec 50.04(2), Stats., requires that a nursing home be supervised by an administrator licensed under ch. 456, Stats.; HSS 132.45(4)(f)2., Wis. Adm. Code, which requires a nursing home to retain all records required under ch. HSS 132 to be maintained for a period of at least two years; HSS 132.45(4)(f)4., which requires a facility to arrange for the storage and safekeeping of records for the periods and under the conditions required of HSS 132.45 in the event the facility closes; and sec. HSS 132.31(1)(c)4. which requires a facility to maintain a record of all expenditures, disbursements and deposits made on behalf of the nursing home's residents.

22. Werner's pattern of conduct relating to his failure to respond as a licensed nursing home administrator respecting the Michon complaint demonstrates incompetence to transact professional duties and obligations similar to those of the practice of a licensed real estate salesperson.

CONCLUSIONS OF LAW

1. The Department of Regulation and Licensing has jurisdiction in this matter pursuant to sec. 452.05, Stats.

2. John R. Werner, as conceded by the attorney for the Department, did not make a false or material misstatement in his application for a real estate salesperson license.

3. The circumstances of the record of conviction of John R. Werner for Interference with Public Assistance are substantially related to the circumstances of the practice of a real estate salesperson within the meaning of secs. 111.335(1)(c)1., Stats.

4. Criminal violation of laws the circumstances of which substantially relate to the circumstances of the practice of a real estate salesperson constitutes a basis for denial of a license under secs. 452.03 and 452.14(3)(i), Stats.

5. John R. Werner's pattern of conduct in failing to respond to the investigation by the Department of Regulation and Licensing, Division of Enforcement, on behalf of the Nursing Home Administrators Examining Board, concerning a complaint against Town and Country Manor, Inc., for which Werner was the owner of the corporate stock, President, Treasurer, Registered Agent, and licensed nursing home administrator at the time of the occurrence complained of, demonstrates incompetence to practice, engage in, or follow the business or occupation of real estate in a manner which safeguards the interests of the public under sec. 452.03 and 452.14(3)(i), Stats., and therefore constitutes a basis for denial of his application for a real estate salesperson's license.

ORDER

NOW THEREFORE, IT IS ORDERED that the Order of the Department of Regulation and Licensing dated April 27, 1995 denying the application of John R. Werner for a license to practice as a real estate salesperson is hereby affirmed, and the license is therefore **DENIED**.

OPINION

The issues for decision in this case are whether the circumstances of John R. Werner's conviction for interference with public assistance substantially relate to the circumstances of the practice of a real estate salesperson, and whether the applicant's conduct with respect to the investigation concerning a complaint against Town and Country Manor, Inc., for whom Werner was the licensed nursing home administrator, constitute reasonable grounds for the Department of Regulation and Licensing to deny Werner's application for a real estate salesperson license. As this is a Class 1 hearing under sec. 227.01(3)(a), Stats., the applicant has the burden of proof to show the Department's denial was a mistake of law or fact, and that the decision of denial should be reversed.

Mr. Werner argues that the conviction should not be considered for purposes of denial on several grounds. The applicant argues that since the conviction was entered upon a no contest plea, that it may not be considered in a collateral civil matter. However, it is well settled that regardless of

the underlying plea, whether guilty, not guilty or no contest, there nevertheless remains a conviction which may be considered, subject to the standards of the Wisconsin Fair Employment Act, Ch. 111, subch. III, Wis. Stats.

In County of Milwaukee v. LIRC, 139 Wis. 2d 805 (1987), the Wisconsin Supreme Court defined the criteria for establishing substantial relationship of the circumstances of criminal conduct to the circumstances of employment or a licensed occupation or profession. The Court stated:

Assessing whether the tendencies and inclination to behave in a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed, is the purpose of the test. What is important in this assessment is not the factual details It is the circumstances which foster criminal activity that are important, e.g. the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the person. (139 Wis. 2d at 824)

The Supreme Court has interpreted substantial relationship as defined in the Wisconsin Fair Employment Act, Ch. 111, subch. III, Wis. Stats., to balance society's interest in rehabilitation of persons convicted of crimes against its interest in protecting citizens from unreasonable risks that the convicted person will commit similar offenses if placed in an employment or professional situation which presents circumstances, responsibilities or opportunities for behavior or conduct similar to that for which the person was convicted.

The undersigned finds and concludes that the applicant has not carried its burden of showing that the Department's decision was founded on a mistake of law or fact. The ALJ concludes that the circumstances of applicant's conviction for interference with public assistance are substantially related to the practice of a real estate salesperson, and that the applicant's conduct concerning his response to the Department's investigation of the complaint against Town and Country Manor Inc., does constitute reasonable grounds to deny Werner's application. Therefore, the ALJ recommends that the Department's decision to deny Werner's application be affirmed.

John R. Werner is licensed as a nursing home administrator by the Nursing Home Administrator Examining Board. Werner owned the corporate stock of, and served as President, Treasurer, Registered Agent and Nursing Home Administrator of Town and Country Manor, Inc., a state licensed nursing home. In view of the circumstances of holding ownership of corporate stock and all key executive administrative positions of Town and Country Manor, Inc., in substance, Town and Country Manor, Inc., and Werner were one and the same. Further, as the licensed nursing home administrator of Town and Country Manor, and under the Medical Assistance Program, Werner was ultimately responsible for the timely filing of claims for medical assistance reimbursement from the state of Wisconsin for patients of Town and Country Manor, Inc.

Werner was criminally convicted for violation of sec. 49.12(2), Stats., interference with public assistance, in connection with his operation of the nursing home. The conviction was based on the fact that Town and Country Manor, Inc., and Mr. Werner as its nursing home administrator, failed to timely file on behalf of a former nursing home resident, Mr. Edwards, corrected claims

for reimbursement from the Medical Assistance Program. The patient had initially paid for his care from his own resources, but was found retroactively eligible for Medical Assistance for the months of October, November and December, 1992. Town and Country Manor and Werner were notified of the patient's retroactive eligibility in February 1993. Town and Country Manor and Werner had one year from the date of service to file such claims in order to obtain reimbursement for the patient. Town and Country Manor and Werner failed to respond to 3 written inquiries by an attorney for the Edwards family in May and June, 1993, and further failed to file any claims for reimbursement on the patient's behalf until July 2, 1993, after the Wisconsin Department of Justice commenced an investigation regarding the Edwards matter. Claims for reimbursement for October, November and December, 1992 were filed on or about July 2, 1993. One of the claims, for October 1992, was paid by Medical Assistance, and the Edwards family was reimbursed by Werner. However, the remainder of the claims were rejected because of technical errors. The claims were resubmitted on August 24, 1993, and were rejected again for technical errors, the date of the last rejection being August 27, 1993. Werner testified the errors in the claims made by Town and Country Manor were the fault of the administrative assistant, Mary Jo Vander Grinten, however he did acknowledge that the responsibility for seeing to the proper filing of the claims rested with himself. Werner never filed corrected claims following August 27, 1993, although he had until November and December 1993, respectively, to file corrected claims for Mr. Edwards nursing home care for the months of November and December 1992. Werner testified that he and his attorneys attempted after the fact to have the state grant an exemption from the one year deadline for the filing of the claims, however, the state would not grant the exemption.

Werner testified that Town and Country Manor, Inc., closed as a nursing home in July, 1993. From the evidence in the record the exact date appears to be July 27, 1993. No explanation of the circumstances of the closing were presented in this proceeding, other than a reference in Exhibit 4 that the nursing home closed because it lost its license. Werner testified that it was due to inadvertence and the press of other business and creditors that he did not respond to the inquiries from the Edwards' attorney regarding reimbursement for Mr. Edwards care, and that he did not file the corrected claims for reimbursement with Medical Assistance prior to the one year deadline.

In substance, Werner argues that the criminal conviction was not warranted on the basis of these facts, that is, technical errors in completion of the reimbursement claims, and a negligent or inadvertent failure on his part to file corrected claims within the deadline. Werner also testified that he pled no contest to the reduced charge in order to avoid the expense of a lengthy trial which he could not afford. However, these arguments amount to collateral attacks on the conviction which, it is well settled, is not appropriate to raise in this forum, and the conviction remains of record. Werner also argues that this conviction for simply filing forms with technical errors, and then through negligence or inadvertence failing to file corrected forms within a deadline, which the state refused to grant exemption from, should not be deemed of such seriousness as to bar him from licensure as a real estate salesperson, who in any event may only practice under the supervision of a real estate broker.

As noted in the findings of fact, Mr. Clete Hansen testified that the practice of a real estate salesperson frequently involves acting in a fiduciary capacity on behalf of clients and the proper and timely completion of legal documents and other documents having legal and financial significance and impact upon clients' legal rights and financial interests.

In the matter of the conviction, Werner was under the obligation to file Medical Assistance reimbursement claims on behalf of his nursing home patient, Mr. Edwards, once he was notified of Edwards retroactive eligibility. Werner was notified of this in February 1993. He had between 8 and 11 months to see that his staff filed proper claims, or do the filing himself. Werner apparently chose to ignore several letters from the Edwards' attorney from May through June 1992 inquiring about the reimbursement, and it was not until the Department of Justice initiated an investigation that Werner initially filed the claims, however, with certain typographical and technical errors, easily correctable. Defective claims were filed again and rejected again. Werner then had another 3 to 4 months to file corrected claims, which he failed to do prior to the legal deadline, resulting in a loss to the Edwards family of some \$2600.00. Werner apparently did not seek any extension or exemption of the one year deadline from the State until after the deadline passed, and did not pay over to the Edwards any refund or reimbursement until ordered by the criminal court after his conviction.

In the circumstances of the Edwards Medical Assistance financing arrangements for nursing home care, Werner has failed in a quasi-fiduciary and ministerial obligation to obtain a reimbursement by the simple filing of forms with rather simple but key information, pursuant to the requirements of a governmental program. Werner had between 8 and 10 months to file these claim forms. He did not do it until a regulatory authority commenced an investigation, despite a series of three letters from the family attorney, which he ignored. After notice of rejection of the claims for simple typographical and technical errors involving procedure and provider codes and date of service, Werner still did not file corrected claims before the deadline had passed.

By this pattern of conduct in the handling of the Edwards Medical Assistance reimbursement claims, Werner has demonstrated at best, a rather cavalier negligence and disregard of the substantial financial interests of his client. Werner has also demonstrated incompetence in the rather simple procedure of obtaining a substantial financial benefit for a client. This occurred in the context of a role, as in the practice as a real estate salesperson, which is fiduciary in responsibility, yet in the circumstances of the Medical Assistance claims, routine and ministerial in function. Such failings in the practice of real estate, such as disregard of a client's financial interests, the missing of a deadline for filing of a document, an error in a significant date or other key information in a real estate transaction document could result in even greater loss of money, financial interest or property interests on the part of a client. Clearly, the circumstance of the criminal conviction for interference with public assistance is substantially related to the circumstances of the practice of a real estate salesperson.

The second matter for determination is whether Werner's conduct with respect to the Michon complaint filed with the Department constitutes grounds for denial of Mr. Werner's application for a real estate salesperson license. On the basis of the record made here, I conclude that the Michon matter also constitutes reasonable grounds for denial.

On or about October 7, 1993, Ms. Julia Murphy, acting by durable power of attorney for her sister, Ms. Anna Marie Michon, complained to the Department of Regulation and Licensing that Town and Country Manor, Inc., had still not refunded \$990.00 in prepaid nursing home fees for Ms. Michon's care two months following closure of the facility. Ms. Murphy alleged she had spoken with Mr. Werner, Nursing Home Administrator for Town and Country Manor, Inc., who indicated refund would be made in about two weeks following closure. The Department's Division of Enforcement opened an investigative file on the Michon complaint, and on August 4, 1994 sent a letter to Werner notifying him of the Michon complaint and requesting immediate written response to the allegations and further questions concerning the closing of Town and Country Manor, Inc., information on any other former residents that were owed money, any plan for reimbursement, trust account information and the status of the above described criminal action which was pending at the time. No response was received from Werner, and a second letter dated August 25, 1994 was sent by the Division of Enforcement. Again, no response was made by Werner. By letter dated March 23, 1995, Division of Enforcement attorney Henry Sanders contacted Werner, again requesting a written explanation concerning the Michon complaint, and further notifying Werner that the Division of Enforcement was in receipt of information concerning Werner's conviction for interference with public assistance and would be filing a disciplinary complaint. Again, Werner made no response to the letter.

Werner testified that he was uncertain of his obligation and responsibility to respond to the Division's investigation and inquiries because Town and Country Manor had closed and he was no longer employed as its nursing home administrator. Further, he explained, he had simply left all the records of the nursing home on the premises when it closed, had no idea what happened to the records and felt he had no access to the records by which he could resolve the Michon claim for refund, or respond to the Division's investigation of the matter.

Werner's explanations concerning the Michon matter carry little water and completely miss the point. First, Werner was the nursing home administrator for Town and Country at the time of Michon's residence there and as of the time of the facility's closing. He was also the owner, President, Treasurer and Registered Agent for the nursing home. Under all these circumstances, Werner was clearly responsible for the nursing home affairs at the time of its closing, and in the absence of any offer of proof to the contrary, he continued to be responsible for winding up and resolving its affairs following its closure. Moreover, as a licensed nursing home administrator, Werner continued to be professionally responsible for any matters that arose during his tenure as administrator of Town and Country Manor, Inc., even after it closed, notwithstanding that he was no longer "employed" there. Werner also had had the professional responsibility under HSS Ch. 132, Wis. Adm. Code, to see to the maintenance and safekeeping of mandated records for a period of at least two years following closure, including statements and records of all expenditures, disbursements and deposits made on behalf of nursing home patients during their residence and upon permanent discharge from the facility.

Werner's purported belief he may not have been responsible to respond to the Michon matter or the Department's investigation, because he was no longer employed as its administrator, is fatuous. Moreover, his lack of access to, or knowledge of the disposition of, the nursing home

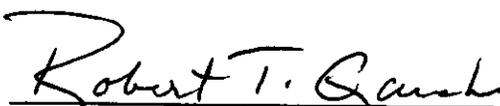
records was apparently due to his own irresponsibility, having simply left the records on the premises when it closed, with apparently no provision made by him, as required by regulation, for their maintenance and safekeeping. What is most troubling is that he never responded in any way to any Department correspondence, even to simply advise of his stated belief that he had no continuing obligation, responsibility or means to respond to the Michon complaint.

Werner's pattern of conduct regarding the Michon matter again demonstrates an incompetence and lack of professional responsibility in required record keeping, accounting for client funds, and responding under his general professional responsibility as a licensed nursing home administrator to legally authorized and appropriate investigative inquiries concerning a client's complaint about unrefunded fees. Again, the substantial relationship to the practice of real estate is readily seen. Real estate salespersons are required to routinely maintain records, account for client funds, and respond timely and appropriately to investigative inquiries from the Department concerning any matter subject to its regulation or investigation. In the Michon matter, due to his failures of professional responsibilities for record keeping, Werner was unable to provide an accounting or resolve the issue of Michon's refund, and due to his indifference, unresponsiveness and lack of understanding of his continuing professional responsibility, frustrated the Departments ability to investigate a consumer complaint involving his professional practice.

Werner's conduct concerning the Michon matter demonstrates incompetence to practice, engage in, or follow the business or occupation of real estate in a manner which safeguards the interests of the public under sec. 452.03 and 452.14(3)(i), Stats., and therefore constitutes a basis for denial of his application for a real estate salesperson's license.

Therefore, based upon the record of this case, the denial of the application for a real estate salesperson license of John R. Werner should be affirmed.

Dated at Madison, Wisconsin this 30th day of January, 1997.



Robert T. Ganch
Administrative Law Judge

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

In the Matter of the Application for a License to Practice as a Real Estate Salesperson of

John R. Werner,

AFFIDAVIT OF MAILING

Applicant.

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.

2. On February 21, 1997, I served the Final Decision and Order dated February 20, 1997, LS9509191REB, upon the Applicant John R. Werner's attorney by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Applicant's attorney and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is P 201 374 024.

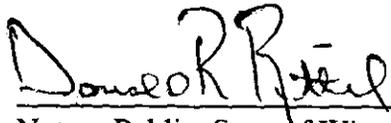
Scott N. Burns, Attorney
Halling & Cayo, S.C.
839 North Jefferson Street
Milwaukee WI 53202



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 21st day of February, 1997.



Notary Public, State of Wisconsin
My commission is permanent.

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:

February 21, 1997

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.)