

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION & LICENSING

IN THE MATTER OF

THE APPLICATION FOR A LICENSE OF

ROBERT D. KOCH

LS9812031RAL

APPLICANT

FINAL DECISION AND ORDER

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

Robert D. Koch
131 East Adams Street
Lake Delton, WI 53940

Attorney Alan J. White
Helland Law Offices
737 Oak Street
P.O. Box 86
Wisconsin Dells, Wisconsin 53965

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

The Applicant, Robert D. Koch, filed an application for Timeshare Salesperson Registration which was received by the Department of Regulation and Licensing (Department) on February 17, 1998. A Notice of Denial was issued February 23, 1998 to the Applicant and indicated that the basis of the denial was the applicant's record of criminal convictions. A Proposed Decision was issued by ALJ Wayne Austin on June 7th, 1999 following a Class I hearing held March 23, 1999. An Objection to the Proposed Decision was filed on June 10, 1999 by the prosecuting attorney, Steven M. Gloe, and a response to the Objection from the Applicant's attorney, Alan J. White, was received June 21, 1998.

The Department of Regulation and Licensing has considered the matter, and based upon the entire record, the Department makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Robert D. Koch, 131 East Adams street, Lake Delton, WI 53940, applicant herein, filed his application for a Timeshare Salesperson Registration by application received on February 17, 1998.
2. By letter dated February 23, 1998, the Department of Regulation & Licensing (department), by Cletus J. Hansen, served its notice of denial of the application. The letter of denial cited as the bases for denial a felony conviction in Oklahoma occurring in January, 1993 for second degree statutory rape; and a felony conviction in Wisconsin occurring on November 6, 1997, for receiving stolen property. The letter of denial states that the circumstances of the convictions substantially relate to the circumstances of the practice of a timeshare salesperson, and therefore constitute a basis for denial of the registration under sec. 111.335(1)(c)1., Stats.,

which states as follows:

(c) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ or license, or to bar or terminate from employment or licensing, any individual who:

1. Has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the particular job or licensed activity.

3. The provision of the Oklahoma criminal Code under which applicant was convicted in 1993 for Second Degree Rape is 21 Okl. St. sec. 1111.A.1., which states as follows:

A. **Rape** is an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator under any of the following circumstances:

1. Where the victim is under sixteen (16) years of age;

4. The provision of the Wisconsin Statutes under which applicant was convicted on November 6, 1997, for receiving stolen property is sec. 943.34(1)(c), Stats., which states as follows:

(1) Except as provided under s. 948.62, whoever intentionally receives or conceals stolen property is guilty of:

* * * *

(c) A Class C felony, if the value of the property exceeds \$2,500.

5. Following his conviction in Wisconsin on November 6, 1997, applicant was placed on probation for a period of three years. At the time of the hearing herein, applicant still had approximately one year and six months of probation to serve.

6. Applicant's conduct leading to the two felony convictions indicates character and behavioral traits which, if they reappear in the context of practice as a timeshare salesperson, could result in further criminal activity. The circumstances of those convictions therefore substantially relate to the circumstances of practice as a timeshare salesperson.

CONCLUSIONS OF LAW

1. The department has jurisdiction in this matter pursuant to sec. 452.05, Stats.

2. Applicant's conduct leading to the two felony convictions indicates character and behavioral traits which, if they reappear in the context of practice as a timeshare salesperson, could result in further criminal activity. The circumstances of those convictions therefore substantially relate to the circumstances of practice as a timeshare salesperson.

3. There was adequate basis for the department's action in denying applicant's application for registration as a timeshare salesperson.

ORDER

NOW, THEREFORE, IT IS ORDERED that the denial of the application of Robert D. Koch for registration as a timeshare salesperson is affirmed.

IT IS FURTHER ORDERED that at such time as Robert D. Koch is released from probation, he may apply for registration as a timeshare salesperson.

EXPLANATION OF VARIANCE

The Department accepts the Findings of Fact and Conclusions of Law indicated in the ALJ's Proposed Decision.

The Department accepts the portion of the ALJ's Order affirming the denial of application. However, the Department agrees with Attorney Gloe's objection to the broad wording of the Proposed decision which reads,

IT IS FURTHER ORDERED that at such time as Robert D. Koch is released from probation, he may reapply for registration as a timeshare salesperson, and such further application shall be approved on condition that applicant has not committed any further illegal acts, has no civil or criminal charges pending against him, and has not otherwise engaged in any conduct or activity which would provide a basis for denial of the application.

As the Proposed Decision was written, no matter how much change in the law or in the applicant's situation, once he has been released from probation and has submitted his application, he shall be issued the credential.

There is no certainty as to the time when the applicant will be eligible under this Final Decision and Order to reapply, nor is there certainty that by that time there will not be changes in the requirements for issuance of the credential or changes in the Applicant's situation. If the applicant submits an application subsequent to his release from probation, the Department should be free to evaluate anew all the requirements authorized by law effective at the time of application.

Dated this 19th day of July, 1999.

STATE OF WISCONSIN

DEPARTMENT OF REGULATION AND LICENSING

BY _____

Marlene A. Cummings, Secretary