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**STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD**

**IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST**

**MARK M. KOENIG:
RESPONDENT.**

**FINAL DECISION AND ORDER
LS0001276REB
97 REB 031
96 REB 320**

The parties to this action for the purpose of Wis. Stats. sec. 227.53 are:

*Mark M. Koenig
804 Tuckaway Ct
Twin Lakes, WI 53181*

*Wisconsin Real Estate Board
P.O. Box 8935
Madison, WI 53708*

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

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Board . The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. **Mark M. Koenig** ("Koenig"), date of birth 10/16/53, is licensed in the State of Wisconsin as a real estate broker having license # 90-25032. This license was first granted to him on 3/06/81.
2. Koenig's most recent address on file with the Department of Regulation and Licensing is 804 Tuckaway Ct., Twin Lakes, WI 53181.
3. At all times relevant hereto, Koenig was a real estate broker for and half owner of real estate firm Roth & Taplin Inc. (d/b/a Coldwell Banker Premier Real Estate) located at, 11108 W. National Ave., West Allis, WI 53227.

COUNT 1

4. By letter dated January 31, 1997, Michael R. Roth (the other half owner of Roth & Taplin Inc.), through his attorney Thad W. Jelinske, notified the Department of Regulation and Licensing that as of the beginning of December 1996, the Roth & Taplin Inc's. real estate trust account (account #7136) had a \$212,000.00 deficit. This deficit occurred because trust money had been transferred from the Roth & Taplin Inc's. trust account into the Roth & Taplin Inc. business account (account #7128) by their bank, Lincoln State Bank, 2266 S. 13th. St., Milwaukee, WI 53215. The bank alleges that it had authority to transfer these funds based upon a "sweep agreement" between Koenig, Michael R. Roth, and the bank. Koenig denies ever signing such an agreement as it pertains to the trust account and the bank is unable to produce a copy of such an agreement. The transferred money was subsequently used by the firm for operations or business expenses. A copy of the January 31, 1997, letter from attorney Jelinske is attached as **Exhibit 1** and is incorporated herein by reference.

5. Based upon the information contained in attorney Jelinske's letter (Exhibit 1) the Department opened an investigation. During the course of that investigation various bank statements were obtained pertaining to Roth & Taplin Inc's. (d/b/a Coldwell Banker Premier Real Estate) business and trust accounts. A review of a sampling of these Statements of Accounts for the firms trust account # 7136 reveals the following discrepancies:

a. STATEMENT OF ACCOUNT JULY 31, 1996 - TRUST ACCOUNT #7136.

1. Check Overdrafts

Check # 7657 for \$2,000.00 Check # 7718 for \$3,500.00

Check # 7641 for \$4,250.00 Check # 7750 for \$1,000.00

Check # 7649 for \$9,990.00 Check # 7741 for \$2,500.00

Check # 7714 for \$2,000.00 Check # 7768 for \$1,500.00

Check # 7724 for \$7,000.00 Check # 7778 for \$10,000.00

Overdraft checks total \$43,740.00.

2. Account Fund Transfers

7/5/96, from account # 7128 (business account) to account # 7136 (trust account) \$60,000.00.

7/9/96, from account # 7136 (trust account) to account # 7128 (business account) \$20,689.83.

7/11/96, from account # 7136 to account # 7128 - \$21,827.00.

7/15/96, from account # 7136 to account # 7128 - \$6,402.14.

7/17/96, from account # 7136 to account # 7128 - \$23,677.00.

7/22/96, from account # 7136 to account # 7128 - \$23,431.86.

7/23/96, from account # 7136 to account # 7128 - \$27,997.00.

7/24/96, from account # 7136 to account # 7128 - \$1,163.40.

7/25/96, from account # 7136 to account # 7128 - \$21,897.00.

The amount transferred from the business account to the trust account for the month of July 1996, totals \$60,000.00. The amount transferred from the trust account to the business account for the month of July 1996, totals \$147,085.23.

A copy of the July 31, 1996, Statement of Account for account # 7136 is attached as **Exhibit 2** and is incorporated herein by reference.

b. STATEMENT OF ACCOUNT, AUGUST 30, 1996 - TRUST ACCOUNT # 7136

1. Check Overdrafts.

Check # 7776 for \$10,000.00

Check # 7813 for \$3,000.00

Check # 7780 for \$3,000.00

Check # 7906 for \$10,000.00

Overdraft checks total \$26,000.00

2. Account Fund Transfers

8/06/96, from account # 7136 (trust account) to account # 7128 (business account) \$4,000.00.

8/08/96, from account # 7136 to account # 7128 - \$2,000.00.

8/09/96, from account # 7136 to account # 7128 - \$11,000.00.

8/12/96, from account # 7136 to account # 7128 - \$20,000.00.

8/13/96, from account # 7136 to account # 7128 - \$11,000.00.

8/14/96, from account # 7136 to account # 7128 - \$3,000.00.

8/15/96, from account # 7136 to account # 7128 - \$7,000.00.

The amount transferred from the trust account to the business account for the month of August 1996, totals \$58,000.00.

A copy of the August 30, 1996, Statement of Account for account # 7136 is attached as **Exhibit 3** and is incorporated herein by reference.

c. STATEMENT OF ACCOUNT, SEPTEMBER 30, 1996 - TRUST ACCOUNT # 7136

1. Check Overdraft.

Check # 8008 for \$1,500.00

2. Account Fund Transfers

9/09/96, from account # 7136 (trust account) to account # 7128 (business account) \$55,000.00.

9/11/96, from account # 7136 to account # 7128 - \$1,206.30.

9/12/96, from account # 7136 to account # 7128 - \$13,297.00.

9/13/96, from account # 7136 to account # 7128 - \$11,147.00.

9/16/96, from account # 7136 to account # 7128 - \$5,223.00.

9/17/96, from account # 7136 to account # 7128 - \$6,497.00.

9/18/96, from account # 7136 to account # 7128 - \$4,537.00.

9/19/96, from account # 7136 to account # 7128 - \$5,497.00.

9/20/96, from account # 7136 to account # 7128 - \$10,247.00.

9/23/96, from account # 7136 to account # 7128 - \$14,000.00.

9/23/96, from account # 7136 to account # 8647 (unknown account) \$5,000.00.

The amount transferred from the trust account to the business account for the month of September 1996, totals \$126,651.30. The amount transferred from the trust account to an unknown account (#8647) for the month of September 1996, was \$5,000.00.

A copy of the September 30, 1996, Statement of Accounts for account # 7136 is attached as **Exhibit 4** and is incorporated herein by reference.

d. STATEMENT OF ACCOUNT, OCTOBER 31, 1996 - TRUST ACCOUNT

7136

1. Check Overdraft.

Check # 8174 for \$20,000.00

2. Account Fund Transfers

10/28/96, from account # 7136 (trust account) to account # 7128 (business account) \$2,000.00.

10/29/96, from account # 7136 to account # 7128 - \$22,000.00.

The amount transferred from the trust account to the business account for the month of October 1996, totals \$24,000.00.

A copy of the October 31, 1996, Statement of Account # 7136 is attached as **Exhibit 5** and is incorporated

herein by reference.

e. STATEMENT OF ACCOUNT, NOVEMBER 29, 1996 - TRUST ACCOUNT

7136

1. Check Overdrafts.

Check # 8241 for \$1,000.00

Check # 8256 for \$4,000.00

Overdraft checks total \$5,000.00

2. Account Fund Transfers

11/01/96, from account # 7136 (trust account) to account # 8647 (unknown account) \$1,000.00.

11/08/96, from account # 7136 (trust account) to account # 7128 (business account) \$9,000.00.

11/12/96, from account # 7136 to account # 7128 - \$18,038.00.

11/21/96, from account # 7136 to account # 7128 - \$8,000.00.

The amount transferred from the trust account to the business account for the month of November 1996, totals \$35,038.00. The amount transferred from the trust account to an unknown

account (#8647) for the month of November 1996, was \$1,000.00.

A copy of the November 29, 1996, Statement of Account # 7136 is attached as **Exhibit 6** and is incorporated herein by reference.

6. In mid-November 1996, partner Michael R. Roth became aware that a series of Roth & Taplins Inc. checks drawn from the firm's business and trust accounts failed to clear the bank. Prior to then, Koenig was primarily responsible for the business administration for the firm and Michael R. Roth worked primarily in the sales division of Roth & Taplin Inc. After becoming aware of some possible serious discrepancies in the firm's finances, Roth hired Dalin Lindseth & Co., S.C., Certified Public Accountants, to conduct an audit. The audit as conducted by Dalin Lindseth, CPA., showed that as of November 30, 1996, there was a deficit in the trust fund in the amount of \$212,044.00. A copy of Mr. Lindseth's Trust Account Recap for Roth & Taplin Inc. dated November 30, 1996, is attached as **Exhibit 7** and is incorporated herein by reference.

7. During the July 1996, to December 1996, time frame, Koenig failed to insure that required monthly account reconciliations, trial balances and validations were performed by himself, Michael R. Roth, Ann Wilkerson (a Roth & Taplin Inc. employee responsible for the firm's bookkeeping) or by anyone else.

8. On or about January 14, 1997, Michael R. Roth deposited \$212,000.00 into the trust account to correct the deficit.

COUNT 2

9. In mid September, 1996, the Department of Regulation and Licensing received a Notice of Termination of Employment of Broker or Salesperson from real estate salesperson Richard B. Dolan informing the Department that he was terminating his employment with Roth & Taplin Inc., d/b/a Coldwell Banker Premier Real Estate as of September 5, 1996. A copy of the Notice of Termination of Employment of Broker or Salesperson is attached as **Exhibit 8** and is incorporated herein by reference.

10. Upon receipt of the Notice of Termination of Employment of Broker or Salesperson (Exhibit 8), Department personnel noted that Dolan's real estate salesperson's license had expired as of January 1, 1995. An investigation was opened, and Roth & Taplin Inc. was subsequently contacted by a Department investigator regarding Dolan's real estate sales activities during the time his license had expired.

11. In response to the Department's inquiry, a Sales Print pertaining to Dolan was supplied by Michael R. Roth, which indicated that Dolan had been involved in at least nineteen real estate transactions while unlicensed and while yet employed by Roth & Taplin Inc. A copy of the Sales Print as provided by Michael R. Roth is attached as **Exhibit 9** and is incorporated herein by reference.

CONCLUSIONS OF LAW

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

2. The Wisconsin Real Estate Board is authorized to enter into the attached Stipulation pursuant to sec. 227.44(5), Wis. Stats.

3. Respondent **Mark M. Koenig** has violated:

a. Sections RL 17.08 (1), RL 17.08(2), RL 18.13(3), RL 18.13(4), RL 18.13(5) and RL 24.17(3) of the Wisconsin Administrative Code and section 452.14(3)(i) of the Wisconsin Statutes by failing to adequately supervise Roth & Taplin Inc. employee Ann Wilkerson in her bookkeeping responsibilities and by failing to insure that required monthly account reconciliations, trial balances and validations were prepared for the months of July 1996, through November 1996.

b. Section RL 18.10 of the Wisconsin Administrative Code and sections 452.12(3), 452.14(3)(i) and 452.14(3)(L) of the Wisconsin Statutes by negligently commingling \$60,000.00 on July 5, 1996, of the business account funds (#7128) with the trust account funds (# 7136) and not discovering this commingling of funds until December 1996.

c. Section RL 18.09(1) of the Wisconsin Administrative Code and section 452.14(3)(i) of the Wisconsin Statutes by negligently permitting the disbursement of trust funds from trust account # 7136 to business account # 7128 and to account # 8647, as outlined in paragraph 5 Findings Of Facts above, and using these funds to pay for business and operating expenses resulting in a \$212,000.00 deficit in the trust account as of the beginning of December, 1996.

d. Section RL 24.15 of the Wisconsin Administrative Code and section 452.14(3)(i) of the Wisconsin Statutes by negligently permitting the issuance of checks from the Roth & Taplin Inc's trust account (account # 7136) as depicted in paragraph 5 Findings Of Fact above, when that account contained insufficient funds.

e. Sections RL 17.07 and RL 24.17(3) of the Wisconsin Administrative Code and sections 452.03, 452.12(3), 452.14(3)(i) and 452.14(3)(L) of the Wisconsin Statutes by failing to check Richard Dolan's licensing status at the beginning of the 1995 biennial licensing period and allowing him to continue to act as a real estate agent in at least nineteen real estate transactions while he was unlicensed, i.e., from January 1, 1995, until he terminated employment on September 5, 1996.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is hereby accepted.

IT IS FURTHER ORDERED, that **Mark M. Koenig's** real estate broker's

license #90-25032 be, and hereby is, **SUSPENDED** for three years effective the date of the Order.

IT IS FURTHER ORDERED, that Respondent **Mark M. Koenig**, pay a **FORFEITURE** in the amount of \$3,000.00, within 3 years of the date of this Order by making payment of the same to the Department of Regulation and Licensing, P.O. Box 8935, Madison, WI 53708-8935.

IT IS FURTHER ORDERED, that Respondent **Mark M. Koenig**, pay **PARTIAL COSTS** in this matter in the amount of a \$1,500.00, within 3 years of the date of this Order by making payment of the same to the Department of Regulation and Licensing, P.O. Box 8935, Madison, WI 53708-8935.

IT IS FURTHER ORDERED, that in the event Respondent **Mark M. Koenig**, fails to pay the \$3,000.00 forfeiture and the \$1,500.00 partial cost within the time and in the manner as set forth above, then and in that event, and without further notice to the Respondent **Mark M. Koenig**, all credentials issued to him under Chapter 452 of the Wisconsin Statutes shall be permanently suspended without further notice, hearing or Order of the Board, and said suspension shall continue until the full amount of said forfeiture and partial costs have been paid to the Department of Regulation and Licensing and his failure to make said payments shall be considered a violation of this Order by the Board.

IT IS FURTHER ORDERED, that files 96 REB 320 and 97 REB 031 be, and hereby are, closed as to Mark M. Koenig.

Dated this 27th day of January, 1998.

By:

James Imhoff, Jr.

A member of the Board