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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY

PROCEEDINGS AGAINST:

RALPH L. MITCHELL, M.D.,

FINAL DECISION AND ORDER

RESPONDENT

LS0005311REB

The State of Wisconsin, Real Estate Board, 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, Real Estate Board.

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs with the Department General Counsel within 15 days of this decision. The Department General Counsel shall mail a copy thereof to respondent or his or her representative.

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 7th day of December, 2000.

James Imhoff, Jr.

A Member of the Board

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF

DISCIPLINARY PROCEEDINGS AGAINST

RALPH L. MITCHELL

PROPOSED DECISION

Respondent

LS0005311REB

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

Ralph L. Mitchell

8907 North Park Plaza Court, #120

Brown Deer, WI 53223

Department of Regulation & Licensing

Division of Enforcement

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708

State of Wisconsin Real Estate Board

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708

A Class II hearing was conducted in the above-captioned matter on September 26, 2000, at 1400 East Washington Avenue, Madison, Wisconsin. The Division of Enforcement appeared by Attorney Gerald M. Scanlan. Mr. Mitchell did not appear, nor did anyone appear to represent him. Accordingly, Mr. Scanlan's Motion for Default was granted pursuant to sec. RL 2.14, Code. Under that section, the board may make findings and enter an order on the basis of the Complaint and other evidence, and Mr. Scanlan proceeded to present prima facie evidence of the allegations of the Complaint.

Based upon the entire record in this case, the administrative law judge recommends that the Real Estate Board adopt as its final decision in the matter the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Ralph L. Mitchell ("Mitchell"), date of birth 11/25/51, is licensed in the State of Wisconsin as a real estate broker having license # 90-30595, first granted to him on 01/04/84. On January 1, 1999, Mitchell's Wisconsin real estate broker's license expired and it has not been renewed by him to date.
2. Mitchell's most recent address on file with the Department of Regulation and Licensing is, 8907 North Park Plaza Court, Apt. #120, Brown Deer, WI 53223.
3. At all times relevant hereto, Mitchell was the real estate broker/owner of Century 21, Ralph L. Mitchell Inc., located at 6574 W Brown Deer Rd., Brown Deer, WI 53223.
4. On or about November 5, 1996, Ms. Margaret Romine contacted Mitchell by telephone about purchasing some real estate investment property in the Milwaukee area. After that initial call, Mitchell began to call her regularly at her home in Michigan to discuss various possible real estate investments. On December 24, 1996, Ms Romine traveled from her home in Michigan to Milwaukee to visit Mitchell for business and personal reasons. Soon after that visit, Mitchell called Ms. Romine and told her he had located investment property for her to buy. On or about January 13, 1997, in reliance on Mitchell's real estate expertise, Ms. Romine forwarded Mitchell a cashier's check for \$25,000.00 via Federal Express payable to Ralph L. Mitchell, Inc. The back of the check was subsequently endorsed by Ralph L. Mitchell and the check was deposited in Mitchell's Real Estate Trust Account # 183719068607 on January 14, 1997, with First Bank of St. Paul, MN.
5. Mitchell never provided Ms. Romine a written contract or any other written document memorializing their agreement as to real estate investments. Over the next several months Ms. Romine inquired, in writing and verbally, on the status on her \$25,000.00 investment. Mitchell refused to disclose any specific information about the \$25,000.00 other than acknowledging that he received the money.
6. By letters dated December 1, 1997, December 7, 1997, and again on or about January 24, 1998, Ms. Romine requested that Mitchell return the \$25,000.00. Mitchell did not respond, nor did he return the \$25,000.00.
7. As stated above, Ms. Romine's check for \$25,000.00 was deposited in Mitchell's real estate trust account on January 14, 1997. The bank statement for this account for January 1997, (Exhibit 2) is summarized as follows:

Previous balance \$4,022.69

Customer Deposits 3 \$28,345.60

Other Deposits 0 \$0.00

Other Withdrawals and Fees 1 - \$14.76

Checks Paid 42 -\$9,290.17

New Balance on January 31 \$23,063.36

None of the 42 checks written by Mitchell from real estate trust account # 183719068607 in January, 1997, were for the purpose of investing in real estate on behalf of Ms. Romine. Rather, Mitchell spent this money to cover other personal/business expenses without Ms. Romine's knowledge or consent.

8. The First Bank bank statement for Mitchell's real estate trust account # 183719068607 for the month of February 1997 is summarized as follows:

Previous balance \$23,063.36

Customer Deposits 0 \$0.00

Other Deposits 0 \$0.00

Other Withdrawals and Fees 0 \$0.00

Checks Paid 24 -\$11,331.39

New Balance on February 28 \$11,731.97

None of the 24 checks written by Mitchell from his real estate trust account # 183719068607 in February, 1997, were for the purpose of investing in real estate on behalf of Ms. Romine. Rather, Mitchell spent this money to cover other personal/business expenses without Ms. Romine's knowledge or consent.

9. Early in 1997, Mitchell employed Genell Stribling to work part time in his Century 21 office. Ms Stribling was also going to college at the time. Ms. Stribling mentioned to Mitchell that she was having a difficult time working and going to school at the same time. Mitchell suggested that for an investment of \$20,000.00 to \$30,000.00 in real estate he could produce about \$1,500.00 a month income for her.

10. On March 10, 1997, in reliance of Mitchell's assurances, Ms. Stribling provided to Mitchell cashier's check # 1840891 for \$20,000.00. Mitchell was to use that money to invest in real estate property so as to produce a return that would allow for Ms. Stribling to remain in school full time. Ms. Stribling did not receive a contract or a written agreement detailing their agreement. Mitchell deposited this check in his First Bank real estate trust account # 183719068607 on March 11, 1997.

11. The March 1997 First Bank bank statement for account # 183719068607 is summarized as follows:

Previous balance \$11,731.97

Customer Deposits 2 \$22,490.00

Other Deposits 0 \$0.00

Other Withdrawals and Fees 0 \$0.00

Checks Paid 17 -\$5,176.17

New Balance on March 31 \$29,045.80

None of the 17 checks written by Mitchell from his real estate trust account # 183719068607 in March, 1997, were for the purpose of investing in real estate on behalf of Ms. Stribling. Rather, Mitchell spent this money to cover other personal/business expenses without Ms. Stribling's knowledge or consent.

12. The April 1997 First Bank bank statement for account # 183719068607 is summarized as follows:

Previous balance \$29,045.80

Customer Deposits 0 \$0.00

Other Deposits 0 \$0.00

Other Withdrawals and Fees 0 \$0.00

Checks Paid 10 -\$4,279.98

New Balance on April 30 \$24,765.82

None of the 10 checks written by Mitchell from his real estate trust account # 183719068607 in April, 1997, were for the purpose of investing in real estate on behalf of Ms. Stribling. Rather, Mitchell spent this money to cover other personal/business expenses without Ms. Stribling's knowledge or consent.

13. The May 1997 First Bank bank statement for account # 183719068607 is summarized as follows:

Previous balance \$24,765.82

Customer Deposits 1 \$1000.00

Other Deposits 0 \$0.00

Other Withdrawals and Fees 0 \$0.00

Checks Paid 20 -\$5,813.32

New Balance on May 31 \$19,952.50

None of the 20 checks written by Mitchell from his real estate trust account # 183719068607 in May, 1997, were for the purpose of investing in real estate on behalf of Ms. Stribling. Rather, Mitchell spent this money to cover other personal/business expenses without Ms. Stribling's knowledge or consent.

14. The June 1997 First Bank bank statement for account # 183719068607 is summarized as follows:

Previous balance \$19,952.50

Customer Deposits 3 \$3,872.00

Other Deposits 0 \$0.00

Other Withdrawals and Fees 0 \$0.00

Checks Paid 35 -\$9,593.23

New Balance on June 30 \$14,231.27

None of the 35 checks written by Mitchell from his real estate trust account # 183719068607 in June, 1997, were for the purpose of investing in real estate on behalf of Ms. Stribling. Rather, Mitchell spent this money to cover other personal/business expenses without Ms. Stribling's knowledge or consent.

15. The July 1997 First Bank bank statement for account # 183719068607 is summarized as follows:

Previous balance \$14,231.27

Customer Deposits 1 \$1,000.00

Other Deposits 0 \$0.00

Other Withdrawals and Fees 0 \$0.00

Checks Paid 21 -\$6,186.63

New Balance on July 31 \$9,044.64

None of the 21 checks written by Mitchell from his real estate trust account # 183719068607 in July, 1997, were for the purpose of investing in real estate on behalf of Ms. Stribling. Rather, Mitchell spent this money to cover other personal/business expenses without Ms. Stribling's knowledge or consent.

16. The August 1997 First Bank bank statement for account # 183719068607 is summarized as follows:

Previous balance \$9,044.64

Customer Deposits 3 \$6,264.00

Other Deposits 0 \$0.00

Other Withdrawals and Fees 0 \$0.00

Checks Paid 35 -\$11,247.41

New Balance on August 31 \$4,061.23

None of the 35 checks written by Mitchell from his real estate trust account # 183719068607 in August, 1997, were for the purpose of investing in real estate on behalf of Ms. Stribling. Rather, Mitchell spent this money to cover other personal/business expenses without Ms. Stribling's knowledge or consent.

17. Mitchell eventually returned \$5,500.00 of the \$20,000.00 to Ms. Stribling, but provided no explanation of what happened to the rest of the money. On or about September 17, 1998, a civil action was brought in Circuit Court, Milwaukee County by Ms. Stribling seeking court award of \$14,500.00 (the remainder of the initial investment), punitive damages and costs and disbursements incurred by Ms. Stribling.

18. On or about January 13, 1999, an Order For Judgment was entered against Mitchell in Circuit Court Civil Division, Milwaukee County, for a total judgment of \$14,500.00 plus costs and disbursements.

19. Throughout the Department's investigation, Mitchell refused to answer Division of Enforcement's correspondence requesting him to produce records and provide information regarding the matters set forth herein. On or about August 31, 1999, the Department of Regulation & Licensing, Division of Enforcement, had Mitchell served with a Subpoena Duces Tecum by the Milwaukee County Sheriff's Department. This Subpoena Duces Tecum required Mitchell to appear on September 15, 1999, at the Department, and to produce his real estate records and answer questions to be posed by investigator Betsy Wood and Auditor Gene Kleinert concerning complaints made against his real estate practice. He did not honor the Subpoena Duces Tecum, nor did he contact the Department as to why he could not appear on September 15, 1999.

CONCLUSIONS OF LAW

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

2. In having failed to provide either Ms. Romine or Ms. Stribling a contract or a written agreement detailing their agreement, respondent has provided brokerage services without an agency agreement authorizing those brokerage services, and has failed to have a written agreement expressing the exact agreement of the parties, in violation of secs. RL 24.025(2) and RL 24.08, Code. Pursuant to sec. RL 24.01(3), Code, respondent has thereby demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public, in violation of sec. 452,14(3)(i), Stats.

3. By converting \$25,000.00 of Ms. Romine's funds to his own personal use without Ms. Romine's knowledge or consent, and by converting \$14,500.00 of Ms. Stribling's funds to his own personal use without Ms. Stribling's knowledge or consent, respondent has failed to represent the interests of his clients as an agent, in violation of sec. RL 24.025(1), Code, failed to act to protect the public against fraud, misrepresentation and unethical practices, in violation of sec. RL 24.03(2)(b), Code, failed provide brokerage services to all parties to the transactions honestly, fairly and in good faith, in violation of sec. 452.133(1)(a), Stats., made substantial misrepresentations with reference to the transactions injurious to the purchasers, in violation of sec. 452.14(3)(b), Stats., failed, within a reasonable time, to account for or remit moneys coming into his possession which belonged to other persons, in violation of sec.452.14(3)(h), Stats., demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public, in violation of sec. 452,14(3)(i), Stats., and been guilty of other conduct which constitutes improper, fraudulent or dishonest dealing, in violation of sec.452.14(3)(k), Stats.

4. By refusing to answer Division of Enforcement's correspondence requesting him to produce records and provide information regarding the matters set forth herein, respondent has failed to retain records for a period of three years and make those records available to the Department for inspection and copying, in violation of sec. RL 15.04, Code, and he has thereby violated the terms and conditions of chs. RL 11 to 26, Code, in violation of sec. 24.17(3), Code. Pursuant to sec. RL 24.01(3), Code, respondent has thereby demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public, in violation of sec. 452.14(3)(i), Stats.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Ralph L. Mitchell to practice as a real estate broker, and any right to renew that license, be, and hereby are, revoked.

IT IS FURTHER ORDERED that pursuant to sec. 440.26, Stats., the costs of this proceeding shall be assessed against the respondent.

OPINION

It is well established that the objective of licensing discipline is the protection of the public by promoting the rehabilitation of the licensee and by deterring other licensees from engaging in similar misconduct. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481 (1968).

The findings set forth herein are fully supported by the testimonial and documentary evidence provided at hearing and, because respondent failed to answer or to appear for hearing, they are completely unchallenged. Also because respondent did not appear, there is no mitigating evidence to rationalize respondent's conduct. Rather, the circumstances of these transactions lead to an inference that his conduct was purposeful and intentionally unlawful, and that is an aggravating factor. Mitchell deposited Ms. Romine's check for \$25,000 on January 14, 1997, leaving a balance in the account of \$26,523.52. By the end of February, he had funneled sufficient funds from the trust account to reduce the account balance to \$11,731.97. Then, in March, Mitchell persuaded Ms. Stribling, an employee and a college student attempting to work her way through school, to permit him to invest \$20,000 of her money into income property, for the purpose of providing her with sufficient income to permit her to attend college on a full time basis. He deposited her check on March 11, 1997, leaving a balance in the account of \$29,045.80 at the end of March. By the end of August, he had stripped the account of all but just over \$4000. That is outrageous conduct, and it is not surprising that Mitchell declined to confront his actions and cooperate with the board in its investigation of the matter. Given his conduct, and absent any mitigating evidence, there is no basis to believe that rehabilitation is probable or even possible, and that conclusion militates for revocation of the license. Nor would anything less than revocation of the license sufficiently protect the public safety or adequately deter other brokers from engaging in this kind of unconscionable behavior. It is therefore recommended that Mitchell's license, and any right to ever renew that license, be revoked, effective on the date of the board's order adopting the terms of this Proposed Decision.

Dated this 13th day of October, 2000.

Respectfully submitted,

Wayne R. Austin

Administrative Law Judge