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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY

PROCEEDINGS AGAINST:

JOHN P. LAPPEN,

FINAL DECISION AND ORDER

RESPONDENT

LS0006151REB

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 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 28th day of September, 2000.

James Imhoff, Jr.

A Member of the Board

IN THE MATTER OF

DISCIPLINARY PROCEEDINGS AGAINST

JOHN P. LAPPEN

PROPOSED DECISION

Respondent

LS0006151REB

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

John P. Lappen

14075 Highway 32 & 64

Mountain, WI 54149

State of Wisconsin Real Estate Board

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708

Department of Regulation & Licensing

Division of Enforcement

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708

A hearing was held in the above-captioned matter on September 13, 2000. Appearing for the Division of Enforcement was Attorney Charles J. Howden. Respondent neither filed an Answer to the Complaint nor appeared at the hearing, and no one appeared to represent him.

Based upon respondent's failure to file an Answer or to appear at the hearing, complainant's Motion for Default Judgment pursuant to sec. RL 2.14, Code, was granted, and complainant submitted prima facie evidence establishing the allegations of the Complaint. Based upon the Complaint and the evidence submitted, the administrative law judge recommends that the Real Estate Board adopt as its final order in the matter the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. John P. Lappen ("Lappen"), date of birth 11/09/1966, is licensed in the state of Wisconsin as a real estate salesperson, by license #94-45156, granted to him on 05/10/1996. This license has expired but, pursuant to section 440.08(3) of the Wisconsin Statutes, Lappen has the right to renew this license upon payment of a late fee and the credential renewal fee.
2. The most recent address on file for Lappen is 14075 Highway 32 & 64, Mountain, WI 54149. Lappen may also use as an additional mailing address the following: John P. Lappen, c/o Julie De France, 218 Abbey Avenue, Menasha, Wisconsin 54952.
3. During the period of time commencing on or about January 1, 1998, and continuing to approximately June 10, 1998, Lappen was employed as a real estate salesperson with State Wide Real Estate, a firm owned by real estate broker Mary Elaine Niemann (Niemann), located at Mountain, Wisconsin.

4. Lappen, while employed by Niemann, took a listing for her office from Nadine Rushton and drafted an offer to purchase on the Rushton property without informing Niemann and without the supervision of Niemann.

5. Niemann discharged Lappen from her real estate firm on or about June 10, 1998. Once discharged, Lappen encouraged Rushton to cancel the listing with Niemann's firm and Rushton did cancel the listing with Niemann.

6. After Lappen was discharged by Niemann, Lappen started providing real estate brokerage services to Williams Farms Co. of Wisconsin, Inc., ("Williams Farms"). Williams Farms is a corporate farm entity owned by Nadine Rushton, Robert Rushton, Laurie Johnson and Sharon Rushton, consisting of approximately 3500 acres of agricultural and woodland located in Oconto County, Wisconsin.

7. The brokerage services provided by Lappen related to marketing approximately 1500 acres of property owned by Williams Farms, and consisted of advising the corporation of what property to sell, the price at which to advertise and sell the property, the advertisement of the property, the terms of sale, including terms of land contracts to offer potential purchasers, the showing of the property to purchasers, the negotiation of terms of sale, and the drafting of contracts between the corporation and purchasers.

8. Lappen advertised the sale of this Williams Farms property under his own name during the month of July 1998. These advertisements appeared in the Green Bay Press-Gazette (Exhibit #3).

9. Lappen collected from Williams Farms commissions and fees in an approximate amount of \$80,000.00 during 1998 as compensation for providing brokerage services to Williams Farms relating to the sale of eight parcels of land. Lappen provided Williams Farms these real estate services subsequent to the June 10, 1998, termination of his employment with State Wide Real Estate and at a time that he was not employed by, or supervised by, a licensed real estate broker.

10. On or about October 9, 1998, Investigator Angi Jerney, as an investigator of the Division of Enforcement for the Department of Regulation and Licensing, mailed a letter to Lappen at his last known address requesting information and documents relating to the complaint of the matters set forth above. The Division of Enforcement received no response to this inquiry.

11. Some of the purchase contracts drafted by Lappen while providing brokerage services to Williams Farms and to purchasers included the use of forms not approved by the Department of Regulation and Licensing.

12. Lappen illegally rented 400 acres individually in 1998 from Williams Farms and failed to pay the rent. Lappen purchased the 400 acres by land contract in 1999 at a price of \$375.00 per acre. At the time Lappen made this purchase the parcel was appraised at approximately \$875.00 per acre.

13. Lappen illegally committed waste on the property he was purchasing by land contract from Williams Farms by depositing solid waste on the property in violation of law. On July 30, 1999, the Wisconsin Department of Natural Resources sent Lappen a letter setting forth the violations and providing notice of the requirement that the solid waste be removed within 20 days (Exhibit 5).

14. On or about December 1, 1999, Investigator Angi Jerney, again mailed a letter to Lappen at his last known address requesting information and documents relating to these matters. The Division of Enforcement received no response to this inquiry.

15. On or about January 13, 2000, a Subpoena Duces Tecum, issued by Charles J. Howden, was personally served on Lappen. This Subpoena required Lappen's attendance at the offices of the Department of Regulation and Licensing on February 10, 2000, and required him to produce documents related to the investigations. Lappen failed to appear in compliance with the demands of the Subpoena and failed to produce documents.

CONCLUSIONS OF LAW

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

2. By engaging in real estate practice at a time when he was not employed by a broker, Lappen has violated secs. RL 17.03(4) and RL 24.17(3), Code. Pursuant to sec. RL 24.01(3), Code, Lappen has thereby demonstrated incompetency to act as a real estate licensee, in violation of sec 452.14(3)(i), Stats.

3. By engaging in real estate services contrary to the interests of his employing broker, Lappen has engaged in conduct which constitutes improper, fraudulent or dishonest dealing, in violation of sec. 452.14(3)(k), Stats.

4. By illegally depositing solid waste on property he was purchasing from Williams Farms, Lappen has engaged in conduct which constitutes improper, fraudulent or dishonest dealing, in violation of sec. 452.14(3)(k), Stats.

5. By entering into a real estate transaction with his principal that included purchasing property on his own behalf at a price significantly less than the appraised value of the property, Lappen has engaged in conduct contrary to the interests of his principal, in violation of sec. RL 24.025, Code, and, pursuant to sec. RL 24.01(3), Code,

Lappen has thereby demonstrated incompetency to act as a real estate licensee, in violation of sec 452.14(3)(i), Stats.

6. By failing to use the proper up-to-date forms approved by the Department of Regulation and Licensing pursuant to sec. 452.05, Stats., Lappen has violated secs. RL 16.04(1) and RL 16.06(7), Code, and sec. 452.14(3)(m), Stats.

7. By failing to cooperate with the Division of Enforcement during the investigation of these matters and by failing to protect the public against fraud, misrepresentation and unethical practices, Lappen has violated Secs. RL 15.04 and 24.03(2)(b), Code, and sec. 452.13(3)(k)Stats. Pursuant to sec. RL 24.01(3), Code, Lappen has thereby demonstrated incompetency to act as a real estate licensee, in violation of sec 452.14(3)(i), Stats.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of John P. Lappen to practice as a real estate salesperson 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 chronicling respondent's conduct in this matter are fully supported by the documents admitted as Exhibits 1 through 8, and describe behavior completely antithetical to the honesty and integrity required of one practicing as a real estate salesperson. That conduct included acting contrary to the interests of his employer (see Exhibit 2), practicing real estate without a supervising broker (see, *inter alia*, Exhibits 3, 4 & 5), self-dealing (see Exhibit 5), illegally committing waste on the property he acquired from Williams Farms (see DNR letter at Exhibit 5), and refusing to cooperate with the board in its investigation of these matters (testimony of Investigator Angi Jerney at hearing). Respondent has offered no evidence in justification or mitigation of his actions, and there is therefore nothing in this record to explain his conduct. Accordingly, it is concluded that the protection of the public requires nothing less than that respondent's license be revoked.

Dated this 15th day of September, 2000.

Respectfully submitted,

Wayne R. Austin

Administrative Law Judge