

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN

BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST:

THOMAS D. MALONE,

FINAL DECISION AND ORDER

99 REB 276

RESPONDENT.

LS0007272REB

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

*Thomas D. Malone
6125 West Baldwin Street
Milwaukee, WI 53218*

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

*Wisconsin 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 Real Estate Board ("Board"). The Board has reviewed the stipulation and considers it acceptable.

Accordingly, the Board adopts the attached stipulation and makes the following:

FINDINGS OF FACT

1. **THOMAS D. MALONE** ("Malone"), is and was at all times relevant to the facts set forth herein, a real estate broker licensed to practice in the State of Wisconsin pursuant to license #90-11107, originally granted to him on September 5, 1961. The last address on record for Malone at the Department of Regulation and Licensing is 6125 West Baldwin Street, Milwaukee, WI 53218.

2. This investigation involves Malone's failure to comply with minimum standards of record retention and accounting relating to real estate transactions during 1997, 1998 and 1999. At various times during each of these years Malone failed to properly maintain real estate records relating to client transactions, failed to properly maintain real estate trust records and accounts and failed to maintain adequate separation of records and accounts relating to both his licensed real estate business and his other business interests.

MITIGATING CIRCUMSTANCE

3. Malone has agreed to strictly comply with the license limitations set forth herein. Failure to comply with these license limitations may result in summary suspension of Malone's real estate license and further disciplinary action against him.

CONCLUSIONS OF LAW

1. The Real Estate Board has jurisdiction in this matter pursuant to section 452.14 of the Wisconsin Statutes.
2. The Wisconsin Real Estate Board is authorized to approve the attached Stipulation pursuant to section 227.44(5) of the Wisconsin Statutes.
3. Respondent, **THOMAS D. MALONE** has violated the following:

Sections RL 15.04 and 18.13 of the Wisconsin Administrative Code and section 452.14(3)(i) of the Wisconsin Statutes by failing to maintain required records and accounts related to all real estate brokerage services provided by him, thereby demonstrating incompetency to act as a broker in a manner which safeguards the interests of the public.

ORDER

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

IT IS FURTHER ORDERED, that the license of **Thomas D. Malone**, real estate broker license number 90-11107, is **REPRIMANDED**.

IT IS FURTHER ORDERED, that the real estate broker's **license of respondent shall be LIMITED FOR A PERIOD OF TWO YEARS**, commencing 5 days from the date of this Order, as follows:

Respondent shall engage a Certified Public Account (CPA), licensed to practice in the State of Wisconsin, to assist Respondent in the creation and maintenance of both a records retention system and a financial records system. These systems shall be created and maintained in full compliance with all requirements of Chapters RL 15 and RL 18 of the Wisconsin Administrative Code and section 452.13 of the Wisconsin Statutes. In the event Respondent is employed by another broker, this CPA shall be engaged by both the Respondent and the employer(s) to create and maintain these records as they relate, in any way, to brokerage activities of the Respondent. The terms employ and employer are defined in chapter 452 of the Wisconsin Statutes.

Respondent shall also be actively engaged in the following supervision program at all times during the period of limitation.

SUPERVISION OF REAL ESTATE PRACTICE RECORDS AND TRUST ACCOUNTS

Respondent shall continue successful participation in all components of a supervision program established with the licensed Certified Public Account (CPA) for the full two-year period of license limitation. Respondent shall commence involvement in the supervision program within 5 days of the date of the Final Decision and Order of the Board.

The supervision program shall include, and respondent shall participate in, individual consultation meetings on at least a monthly basis with the CPA. These meetings shall continue on at least a monthly basis, without interruption, during the period of limitation.

The licensed CPA shall personally conduct the supervision consultation by meeting with Respondent in person.

During, or prior to, each supervision consultation, respondent shall provide to the CPA a full and complete copy of each document drafted by, or received by, Respondent related to brokerage services engaged in by Respondent during the immediate period of time predating the meeting and commencing with the most recent supervision consultation meeting. The CPA shall closely examine each document and determine what financial records required by Chapter RL 18 Wis. Adm. Code and section 452.13 are required to be maintained by respondent and/or his business entity and/or employer. The CPA shall create and maintain, on behalf of the Respondent and his business entities and employer(s) all such records on a timely basis and at least once each month. Respondent and the CPA shall review all such records during the monthly supervision consultation.

The supervising CPA shall make and submit a written, signed and dated report to the Real Estate Board on a once a month basis commencing 30 days after the Order has gone into effect. These reports shall continue for a period of twenty-four months (24 reports). Each report shall include a statement assessing the cooperation of respondent with the supervision program stated above and shall state specifically when and where each consultation session took place. The report shall include a compilation stating each date of consultation and the amount of time each consultation consisted of.

In addition, each monthly report shall have attached to it copies of each document prepared by the CPA in compliance with this Order. Each monthly report shall include a statement of the CPA's opinion as to whether or not Respondent is in full and complete compliance with the requirements of chapters RL 15 and 18 of the Wisconsin Administrative code and section 452.13 of the Wisconsin Statutes for the period of time the report covers.

This requirement for supervision and consultation sessions may be modified only upon written petition to the Real

Estate Board supported by a written recommendation by the CPA expressly supporting the modifications sought. A denial of such petition for modification shall not be deemed a denial of the license under §§ 227.01(3) or 227.42, Wis. Stats., or ch. RL 1, Wis. Adm. Code, and shall not be subject to any right to further hearing or appeal.

Additional Required Reporting by Certified Public Account

In addition to the twenty-four monthly reports identified above, the Supervising CPA shall report immediately to the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement by FAX or telephonic communication, any failure of Respondent to cooperate with the supervision consultations.

Required reporting by Respondent

Respondent is responsible for compliance with all of the terms and conditions of this Final Decision and Order. It is the responsibility of Respondent to promptly notify the Department Monitor of any suspected violations of any of the terms and conditions of this Order, including any failures of the Supervising CPA to conform to the terms and conditions of this Order.

Releases

Respondent shall provide and keep on file with the Supervising CPA current releases which comply with state and federal laws authorizing release of all consultation records and reports to, and permitting the Supervising CPA to disclose and discuss the progress of respondent's supervision and rehabilitation with the Board or any member thereof, or with any employee of the Department of Regulation and Licensing acting under the authority of the Board. Copies of these releases shall be filed with the Department Monitor.

Petition for modification of Order

Respondent may petition the Board for modification of the terms of this limited license. Any such petition shall be accompanied by a written recommendation from respondent's Supervising CPA expressly supporting the specific modifications sought. Denial of the petition in whole or in part shall not be considered a denial of a license within the meaning of Sec. 227.01(3)(a), Stats., and Respondent shall not have a right to any further hearings or proceedings on any denial in whole or in part of the petition for modification of the limited license.

Expense of supervision and monitoring

Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring and supervision and any other expenses associated with compliance with the terms of this Order.

Change in address or work status

Respondent shall report to the Board any change of employment status, residence, address or telephone number within five (5) days of the date of a change.

Department Monitor

The Department Monitor is the individual designated by the Board as its agent to coordinate compliance with the terms of this Order, including receiving and coordinating all reports and petitions, and requesting additional monitoring and surveillance. The Department Monitor may be reached as follows:

Department Monitor

Department of Regulation Division of Enforcement

P.O. Box 8935

Madison, WI 53708-8935

FAX (608) 266-2264

TEL. (608) 267-7139

IT IS FURTHER ORDERED, that Respondent give a copy of this Final Decision and Order to each of his current employers within five days of the date of this Order. In the event Respondent changes employers during the time of the two year limitation set forth herein, Respondent shall give a copy of this Order to each employer prior to the date the new employment commences.

VIOLATION OF ORDER

Violation of any of the terms of this Order shall be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license; the Board in its discretion may in the alternative impose additional conditions and limitations or other discipline.

IT IS FURTHER ORDERED, Respondent Thomas D. Malone, pay **partial costs** of this matter in the amount of \$2,000.00 within 30 days 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 Thomas D. Malone, fails to pay the \$2,000.00 costs within the time and in the manner as set forth above, then and in that event, and without further notice to the Respondent Thomas D. Malone, his real estate license shall be immediately suspended without further hearing and without further Order of the Board, and said suspension shall continue until the full amount of said costs have been paid to the Department of Regulation and Licensing. Failure to pay the costs shall be considered a violation of this Order.

IT IS FURTHER ORDERED, that Division of Enforcement file 99 REB 276 be, and is hereby, closed.

Dated this 27th day of July, 2000.

WISCONSIN REAL ESTATE BOARD

By: James Imhoff _____

A member of the Board