

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 :
 :
 : FINAL DECISION AND ORDER
THOMAS D. MALONE, :
 : LS0502248REB
RESPONDENT. :

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

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

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

Real Estate Board
Department of Regulation & Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

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

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

FINDINGS OF FACT

1. Thomas D. Malone (“Respondent”), (DOB 07/11/1934) is duly licensed as a Real Estate Broker in the state of Wisconsin (90-11107). This license was first granted on 09/05/1961.
2. Respondent's most recent address on file with the Wisconsin Real Estate Board is 6125 West Baldwin Street, Milwaukee, WI, 53218.
3. On or about July 2, 2001, Mr. Malone received a check for \$500.00 as earnest money. By agreement of the parties at closing, on or about July 11, 2001, the earnest money was held back as an incentive for the seller to take certain actions with respect to the property.
4. Mr. Malone held the \$500.00 in his business checking account, rather than in his real estate trust account, for a period of weeks.
5. Per Wis. Admin. Code § RL 18.031(1), “A broker shall deposit all real estate trust funds received by the

broker in a real estate trust account within 48 hours of receipt of the trust funds.”

6. Per Wis. Admin. Code § RL 18.14, “A broker who fails to comply with the rules of this chapter shall be considered to have demonstrated incompetency to act as a real estate broker in a manner as to safeguard the interests of the public, as specified in s. 452.14(3), Stats.”

7. Per Wis. Stat. § 452.14, “Disciplinary proceedings shall be conducted by the board... if it finds that the holder of the license... has: ... (i) Demonstrated incompetency to act as a broker... in a manner which safeguards the interests of the public.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter, pursuant to Wis. Stat. § 452.14, and is authorized to enter into the attached Stipulation and Order, pursuant to Wis. Stat. § 227.44(5).

2. The conduct described in paragraphs 3-4, above, constitutes a violation of Wisconsin Statutes § 452.133(1)(i).

AGGRAVATING FACTORS

1. Respondent has previously been disciplined on two separate occasions regarding trust account and/or record keeping issues, including a two-year limitation placed upon Respondent’s license, effective July 27, 2000 to July 27, 2002. Hence, the events giving rise to this complaint occurred at least partially while Respondent was subject to said limitation.

2. To date, the Department of Regulation and Licensing has obtained no evidence suggesting that Respondent’s improper conduct was motivated by a desire to obtain an improper profit for himself.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The license of **Thomas D. Malone**, to practice as a Real Estate Broker in the State of Wisconsin is hereby **LIMITED** as follows: Respondent must have another licensed real estate broker act on his behalf with respect to all trust account matters and record-keeping matters.

IT IS FURTHER ORDERED that:

2. Respondent shall, within sixty (60) days of the date of this Order, pay partial costs of these proceedings in the amount of \$450.00. Payment shall be made payable to the Wisconsin Department of Regulation and Licensing.

3. Respondent shall, within sixty (60) days of the date of this Order submit the name of a licensed real estate broker in good standing as the broker responsible for trust account and record-keeping matters on his behalf, and, further, if the broker who will be responsible for Mr. Malone’s trust account matters and record-keeping will be his spouse, she will only be acceptable for this role if she shows proof that she completed no less than two hours of continuing education on the subject of trust accounts between December 2, 2004, and May 2, 2005.

4. Payments shall be mailed to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935
Telephone (608) 267-3817

5. Violation of any of the terms of this Order may 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 additional discipline for a violation of any of the terms of this Order. In the event Respondent fails to timely submit any payment of the forfeiture as set forth above, or fails to timely submit proof of completion of education as set forth above, the Respondent's license (90-46656) SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order, and with the suspension called for in this Order not to begin until the other terms of the Order have been complied with.

6. This Order is effective on the date of signing.

WISCONSIN REAL ESTATE BOARD

By: Richard Kollmansberger
A Member of the Board

2-24-05
Date