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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
BERNARD N. BULT, RESPONDENT.	:	

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

Bernard N. Bult
2007 Gladys Street
Appleton, WI 54915

Real Estate Board
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

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

The rights of a party aggrieved by this decision to petition the board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information" document.

A prehearing conference in the above-captioned matter was conducted before the hearing examiner on August 23, 1989. Participating in the conference was the respondent, Bernard N. Bult, and the attorney for the complainant, Ruth E. Heike. At the conference, respondent admitted the allegations of the Complaint, and it was agreed that the question of discipline, if any, would be argued by the parties in writing. It was also agreed that respondent would be given an opportunity to submit by way of mitigation the transcript of the proceedings before the Board of Attorneys Professional Responsibilities of the State Bar of Wisconsin, which was based upon, in part, the same conduct that forms the basis for this proceeding.

The respondent did not provide the concerned transcript by October 31, 1989, the deadline established by the examiner. However, arguments on discipline were filed by the complainant on November 27, 1989, and by the respondent on December 12, 1989.

The examiner filed his Proposed Decision with the board on February 13, 1990. No objections to that decision were filed by the respondent or complainant. Based upon the record in this case, as considered by the board at its meeting of March 22, 1989, the Real Estate Board hereby adopts as its final decision in this matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. At all times material to the matters set forth herein, Bernard N. Bult (respondent), 2007 Gladys Street, Appleton, Wisconsin, was licensed to practice as a real estate broker in the State of Wisconsin by license #16038 granted on March 11, 1977.

2. At all times material to the matters set forth herein, respondent was also licensed to practice law in the State of Wisconsin by license granted in 1976.

3. While representing a couple in a land contract foreclosure action, respondent's clients suffered a fire loss to a structure on the property in question for which they were paid an insurance settlement in the amount of $55,000.

4. With his clients' consent, respondent deposited the settlement check in his client trust account on October 1, 1982.

5. Within one week, respondent withdrew approximately $37,000 of those funds without the knowledge or consent of the clients: $27,732.50 on October 7, 1982, used to pay an overdue tax liability of a fast-food business of which he was a shareholder and director; and $11,986.47 on October 8, 1982, used to pay another past due liability of that business.

6. When the circuit court handling the foreclosure action demanded an accounting approximately a year and a half later, respondent repaid the money to his clients.

7. In addition to repaying the funds improperly withdrawn buy him, respondent paid his client $4500, which they agreed would compensate them for the earnings they might have earned on the funds if the funds had not been misappropriated.

8. The Wisconsin Supreme Court in a decision filed on February 19, 1988, captioned In the Matter of Disciplinary Proceedings Against Bernard N. Bult, 142 Wis. 2d 885, adopted its referee's recommended conclusion that by the conduct set forth above, respondent had co-mingled the money of a client with his own, in violation of Supreme Court Rule SCR 11.05; had failed to preserve the identity of client funds and failed to keep such funds deposited in a

trust account, in violation of SCR 20.50; and had engaged in conduct involving dishonesty and misrepresentation, in violation of SCR 20.04. The court order that respondent's license to practice law be suspended for a period of two years, effective April 1, 1988.

9. In having violated SCR 11.05, SCR 20.50 and SCR 20.04, respondent has violated laws the circumstances of which substantially related to the practices of a real estate broker, within the meaning of Wis. Stats. sec. 111.335(1)(c).

CONCLUSIONS OF LAW

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

2. In having violated SCR 11.05, SCR 20.50, and SCR 20.04, respondent has violated laws the circumstances of which substantially relate to the practices of a real estate broker, within the meaning of Wis. Stats. sec. 111.335(1)(c), and in violation of Wis. Adm. Code sec. RL 24.17. Pursuant to Wis. Adm. Code sec. RL 24.01(3), respondent has thereby demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public, in violation of Wis. Stats. sec. 452.14(3)(i).

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Bernard N. Bult to practice as a real estate broker in the State of Wisconsin be, and hereby is, revoked for a period of two years, effective thirty days from the date of this order.

FURTHERMORE, IT IS ORDERED, that prior to the expiration of the revocation ordered herein, respondent shall take, and successfully pass, all examinations necessary to qualify for original licensure as a real estate broker in this state.

FURTHERMORE, IT IS ORDERED, that respondent shall return his license to the board offices on or before the effective date of this order. The license shall be returned to him upon satisfaction of the above period of revocation and examination requirement.

EXPLANATION OF VARIANCE

The board has accepted the Findings of Fact and Conclusions of Law of the hearing examiner in this case. However, the board has modified the recommended order to provide for a revocation, rather than a suspension, of respondent's real estate license for a period of two years, as well as to require the respondent to take and successfully pass the examinations required of a broker for original licensure in this state, prior to a return of his broker's license.

The board agrees with, and accepts the examiner's reasoning regarding the necessity for prohibiting respondent from practicing real estate for two years. However, it believes that a revocation, rather than a suspension should be imposed in this case in order to adequately deter other real estate licensees from engaging in similar misconduct in order to protect the public.

The board does not view the respondent's claim that he was aware when he converted his clients' funds to his own use that the court might eventually demand an accounting in order protect his clients as sufficiently mitigating to detract from the necessity for the imposition of a revocation in this case. The fact that he was legally mandated to return the monies, and did not do so "voluntarily" previously, hardly speaks in positive favor of respondent's actions. Furthermore, fortunately, when forced by the court to make his accounting, the respondent actually possessed sufficient funds in order to return the money. At the time respondent converted the funds, a year and a half prior to the court's action, no such guarantee could have been given to his clients that he would be able to do so. In the board's opinion, neither the existence of court oversight in this case, nor the repayment when caught and forced to, warrant the imposition of a disciplinary less than revocation.

The board also expressly orders that the respondent be required to pass the necessary examinations leading to original licensure in order to achieve reinstatement to practice. This modification is made in recognition of the fact that a two year absence from professional practice in the area of real estate brokerage will be significant both in terms of time of absence from actual practice in the profession and possibly the changes in real estate law which can be realistically expected to have occurred during that time. Given these facts, respondent should be required in the interest of the public to demonstrate his competency to practice as a real estate broker, through the passage of the examinations administered at that time.

Dated at Madison, Wisconsin this 26th day of April, 1990.

STATE OF WISCONSIN
REAL ESTATE BOARD

Linda L. Schlavensky

DRR
EXC16799

NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review, the times allowed for each and the identification of the party to be named as respondent)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Real Estate Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Real Estate Board.

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Real Estate Board.

The date of mailing of this decision is April 27, 1990.

WLD:dms
886-490

BEFORE THE STATE OF WISCONSIN
REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	NOTICE OF FILING PROPOSED DECISION
BERNARD N. BULT, RESPONDENT.	:	

TO: Bernard N. Bult
2007 Gladys Street
Appleton, WI 54915

Ruth E. Heike, Attorney
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708

PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Real Estate Board by the Hearing Examiner, Wayne R. Austin. A copy of the Proposed Decision is attached hereto.

If you are adversely affected by, and have objections to, the Proposed Decision, you may file your objections, briefly stating the reasons and authorities for each objection, and argue with respect to those objections in writing. Your objections and argument must be submitted and received at the office of the Real Estate Board, Room 281, Department of Regulation and Licensing, 1400 East Washington Avenue, P.O.Box 8935, Madison, Wisconsin 53708, on or before March 14, 1990.

The attached Proposed Decision is the examiner's recommendation in this case and the Order included in the Proposed Decision is not binding upon you. After reviewing the Proposed Decision together with any objections and arguments filed, the Real Estate Board will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin this 13th day of February, 1989.

Wayne R. Austin
Hearing Examiner

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

BERNARD N. BULT,

Respondent

PROPOSED DECISION

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

Bernard N. Bult
2007 Gladys Street
Appleton, WI 54915

State of Wisconsin Real Estate Board
1400 East Washington Avenue, Room 281
P.O. Box 8935
Madison, WI 53708

Department of Regulation & Licensing
Division of Enforcement
1400 East Washington Avenue, Room 183
P.O. Box 8935
Madison, WI 53708

A prehearing conference was conducted in the above-captioned matter on August 23, 1989, attended by Ruth E. Heike, attorney for the complainant; Bernard N. Bult, respondent herein; and the hearing examiner. At the conference, respondent admitted the allegations of the Complaint, and it was agreed that the question of discipline, if any, would be argued by the parties in writing. It was also agreed that respondent would be given an opportunity to submit by way of mitigation the transcript of proceedings in a matter based in part on the same conduct which is the basis for the Complaint herein, brought before the Board of Attorneys Professional Responsibility of the State Bar of Wisconsin. Respondent was unable to provide the transcript in question by the October 31, 1989, deadline, and it was thus not considered in preparing this Proposed Decision. Written arguments on discipline were filed by the complainant on November 27, 1989, and by the respondent on December 12, 1989.

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

FINDINGS OF FACT

1. At all times material to the matters set forth herein, Bernard N. Bult (respondent),

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Bernard N. Bult to practice as a real estate broker in the State of Wisconsin be, and hereby is, suspended for a period of two years, effective thirty days from the date of the board's order adopting the terms of this Proposed Decision. Respondent shall return his license to the board offices on or before the effective date of the board's order. The license shall be returned to him upon expiration of the period of suspension.

OPINION

In its opinion in the attorney discipline proceedings, the Wisconsin Supreme Court discussed the basis for imposition of a two-year suspension of respondent's license to practice law as follows:

> In determining appropriate discipline for lawyer misconduct, we consider, among other factors, the nature of the misconduct and the injury caused or threatened. Misappropriation or conversion of client funds held in trust is one of the most serious acts of lawyer misconduct. It violates the fundamental principle of the lawyer-client relationship -- the trust the client places in the lawyer and upon which the lawyer depends to properly represent the client. Further, it places the lawyer's personal pecuniary interests above the client's interests, which the lawyer has undertaken to protect and promote, and it does so at the client's expense. Accordingly, such misconduct should warrant the imposition of the most severe discipline -- license revocation.
>
> However, license revocation ought not be imposed indiscriminately in every case of misappropriation or conversion of client funds, as there are other factors to consider and no two disciplinary cases present precisely the same circumstances. Here, Attorney Bult took a substantial amount of funds belonging to his clients which he was holding in trust for them and, without their knowledge, used it for his own purposes. He thus exposed his clients to the risk of losing those funds in the event he were subsequently unable to repay them, and he also deprived them of money those funds might have earned while being held in trust. While this conduct is egregious, its gravity is mitigated to some extent by the fact that Attorney Bult knew he would ultimately have to account for the funds in the pending foreclosure action and that the circuit court would, if necessary, act to protect the clients. Also, he attempted to make the clients whole by paying them an agreed-upon amount of money to compensate them for any loss they might have incurred.

The Supreme Court's comment that conversion of client funds is among the most serious possible professional violations is reminiscent of similar comments by the Real Estate Board, which has for many years consistently affirmed the importance the board attaches to that issue. The board has not hesitated to revoke the licenses of those who have failed to scrupulously protect client funds entrusted to their care. For example, in the matter of Disciplinary Proceedings Against Palmisano, et al (1989), the board accepted the hearing examiner's finding that respondents had misrepresented to a mortgage lender that earnest money had been deposited into the brokers' trust account. The board did not, however, accept the hearing examiner's recommendation that the responsible broker's license be suspended for one year.

Supreme Court in suspending respondent's license to practice law would probably have no deterrent effect as to other real estate licensees absent similar action by the Real Estate Board, and failure by the Real Estate Board to take action on respondent's real estate license would send exactly the wrong message to the profession and to the public on the board's view of the seriousness of this violation. Accordingly, while the examiner agrees with the Supreme Court that the mitigation present here militates for a lesser discipline than outright revocation, a two-year suspension of the license is appropriate and necessary.

Dated at Madison, Wisconsin this ~~12th~~ 13th day of February, 1990.

Respectfully submitted,

Wayne R. Austin
Hearing Examiner

wra:13856