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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST RUSSELL D. JOSEPH, RESPONDENT.	: : : : :	FINAL DECISION AND ORDER 90 REB 150

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

Russell D. Joseph
1436 Lakeshore Drive
Menasha, WI, 54952

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

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 decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

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

FINDINGS OF FACT

1. Respondent Russell D. Joseph ("Joseph"), 1436 Lakeshore Drive, Menasha, WI, was at all times relevant to this complaint licensed as a real estate broker pursuant license # 37903, and has been so licensed since June 5, 1986, and as of June 5, 1986 also has been known as Invesco.

2. In or about October, 1989, Joseph who owns property located at 100 E. College Avenue, Appleton, Wisconsin offered to rent the upper level two bedroom unit ("apartment") for $275.00 per month.

3. On or about October 15, 1989, Arlene Fernandez-Tome ("Tome"), whose income is derived from social security entitlements, responded to an advertisement in the Appleton newspaper concerning rental of the apartment.

4. After Tome was shown the apartment later that evening, she indicated to Joseph a desire to rent the apartment for her and her child.

5. At the time, Joseph was aware of Tome's source of income but did not have available other pertinent information concerning Tome's ability to pay.

6. On the same day as the showing, Joseph informed Tome that he would decide if she could rent the apartment after he had shown the apartment to other perspective tenants.

7. On or about October 18, 1989, Joseph informed Tome that she could not rent the apartment, because he preferred that two working people to rent the apartment.

8. In a proceeding before the Equal Rights Division of the Wisconsin Department of Industry, Labor and Human Relations, Administrative Law Judge Olstad, after hearing, found that Joseph refused to rent to Tome on the basis of her lawful source of income; concluded that Joseph discriminated against Tome, in violation of the Wisconsin Open Housing Act, when he refused to rent to her; and ordered that Joseph cease and desist from discrimination against Tome on the basis of her source of income, pay a forfeiture of $150.00 and pay Tome the difference between the rent she paid, and will pay, from November 1, 1989 through October 31, 1990 and the rent she would have paid to Joseph for that period of time had he rented to her.

9. By Order Memorandum Opinion, dated July 25, 1990, the Labor and Industry Review Commission ("LIRC") affirmed the decision of the Administrative Law Judge and entered the decision as the Final Order in the case, subject to Joseph's right to judicial review.

10. By Decision, dated October 26, 1990, the Outagamie Circuit Court, per Judge Froehlich, dismissed Joseph's petition for judicial review based on the failure to properly serve his petition on LIRC within the 30 day statutory time limit.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter pursuant to Sec. 452.14, Wis. Stats.

2. The Wisconsin Real Estate Board is authorized to enter into the attached Stipulation pursuant to Sec. 227.44(5), Wis. Stats.

3. By his violation of the Wisconsin Open Housing Act, Respondent Russell Joseph has violated sec. RL 24.17(1) Wis. Adm. Code, in that he has violated a law, the circumstances of which substantially relate to the practices of a real estate broker.

ORDER

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

IT IS FURTHER ORDERED, that Respondent Russell D. Joseph's practice of real estate in the State of Wisconsin is restricted in lieu of other discipline and consistent with his agreement as follows:

a. Respondent Russell D. Joseph, who has not renewed his real estate broker's license (# 37903), will not renew his license for an additional sixty (60) days from the date of this Final Decision and Order;

b. Respondent Russell D. Joseph will not practice real estate in the State of Wisconsin without a current and valid license;

c. Respondent Russell D. Joseph will receive education within six (6) months of the date of this Final Decision and Order on fair housing law from a institution offering such education and submit proof of the same in the form of verification from the institution providing the education. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that are or may be instituted by the Board.

Dated this 25TH day of APRIL, 1991.

WISCONSIN REAL ESTATE BOARD

by: Peter J. Schils

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST RUSSELL D. JOSEPH, RESPONDENT.	: : : : :	STIPULATION 90 REB 150

It is hereby stipulated between Russell D. Joseph, personally on his own behalf and the Department of Regulation and Licensing, Division of Enforcement by its attorney Richard Castelnuovo, as follows:

1. This Stipulation is entered into as a result of a pending disciplinary action against Russell D. Joseph ("Respondent") by the Division of Enforcement (90 REB 150). Respondent consents to the resolution of this action without further proceedings by this Stipulation to be submitted directly to the Board for its approval.

2. Respondent is aware and understands his rights with respect to disciplinary proceedings, including the right to a statement of the allegations against him; the right to a hearing at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel attendance of witnesses by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondent voluntarily and knowingly waives the rights set forth in paragraph 2 above, on the condition that all of the provisions of this Stipulation are approved by the Board.

4. Respondent is aware of his right to seek legal representation and has been given the opportunity to seek legal advice prior to execution of this Stipulation.

5. Respondent represents that he has not and will not renew his real estate broker's license (# 37903) prior to the Board's consideration of this Stipulation, and in lieu other discipline which may be imposed as a result of a disciplinary proceeding agrees that he will (1) not renew his license for an additional sixty (60) days from the date of the Final Decision and Order, (2) not practice real estate in the State of Wisconsin without a current and valid license, and (3) receive education in fair housing law.

6. With respect to the attached Final Decision and Order, Respondent neither admits nor denies any wrongdoing, but agrees that the Board may make the findings set forth in the Findings of Fact, reach the conclusions set forth in the Conclusions of Law and enter the Order limiting Respondent's practice of real estate in the State of Wisconsin consistent with his agreement.

7. The parties acknowledge that the basis for disciplinary action in this matter is an administrative agency decision that Respondent violated the Wisconsin Open Housing Act, and Respondent reserves his right to request the Board to vacate the Final Decision and Order in the event that he prevails on both his appeal of the administrative agency decision and any subsequent trial de novo on the issue of discrimination.

8. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that the Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

9. If the Board accepts the terms of this Stipulation, the parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties.

10. Respondent agrees that complainant's attorney, Richard M. Castelnuovo, may appear at any deliberative meeting of the Board with respect to this stipulation but that appearance is limited to statements solely in support of the Stipulation and for no other purpose.

11. The Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

Russell D. Joseph

Russell D. Joseph

April 6 91

Date

Richard Castelnuovo

Richard M. Castelnuovo, Attorney
Division of Enforcement

April 11, 1991

Date

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 26, 1991.

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886-490

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.52 Judicial review; decisions reviewable. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employe trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.