FILE COPY

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

| | | |
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| IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST | : | FINAL DECISION AND ORDER |
| JOHN PALLA-PALLA & GOLDEN EAGLE REALTORS, INC., RESPONDENTS. | : | LS 9203132 REB |

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

John Palla-Palla
1714 E. Kane Place, Unit I
Milwaukee, WI 53202

Golden Eagle Realtors, Inc.
1840 North Farwell
Milwaukee, WI 53202

Wisconsin Real Estate Board
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

Division of Enforcement
Department of Regulation and Licensing
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 in the attached "Notice of Appeal Information".

On April 16, 1992, the Division of Enforcement, represented by Attorney Charles Howden, presented a motion for default in this matter pursuant to s. RL 2.14, Wis. Admin. Code. Mr. Palla-Palla and Golden Eagle Realtors, Inc., had been served with notice of the date and time of the hearing on the motion for default, but neither appeared. The motion for default was based on the failure of either Palla-Palla or Golden Eagle to file any response to the Notice of Hearing and Complaint which had been served on them. Pursuant to s. RL 2.14, Wis. Admin. Code, on failure of the Respondents Palla-Palla or Golden Eagle to answer the complaint or appear at the hearing, the allegations of the complaint are deemed admitted.

The Administrative Law Judge issued a Proposed Decision on May 5, 1992, which was reviewed by the Real Estate Board at its meeting on May 28, 1992. Based upon the entire record in this case, the Real Estate Board makes the following Findings of Fact, Conclusions of Law, and Order.

## FINDINGS OF FACT

1. John Palla-Palla ("Palla"), 1714 East Kane Place, Unit I, Milwaukee, Wisconsin 53202, 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 number 40077, originally granted on February 20, 1987.

2. Golden Eagle Realtors, Inc., ("Golden Eagle"), 1840 North Farwell, Milwaukee, Wisconsin 53202 is and was at all times relevant to the facts set forth herein a real estate corporation licensed to practice in the State of Wisconsin pursuant to license number 833739, originally granted on September 22, 1988. At all times relevant to the facts set forth herein, Palla worked as a broker for and owned an interest in Golden Eagle.

## AS TO COUNT I

3. On or about September 5, 1989 Palla, as the broker for Golden Eagle, drafted a "WB-11 Residential Offer to Purchase" on behalf of Mary A. Bowers (Bowers) whereby Bowers offered to purchase property known as 3845 North 44th Street, Milwaukee, Wisconsin ("property").

4. The property was listed with Federated Realty Group Inc., ("Federated") 6000 North Port Washington Road, Milwaukee, WI 53217.

5. The seller of the property was the Travelers Mortgage Services, Inc. (Travelers").

6. The Bowers' offer included a requirement that earnest money of $1,000.00 be paid within two days of acceptance of the offer by the seller.

7. Travelers countered the Bowers' offer by counter-offer dated September 6, 1989 and the counter-offer was accepted by Bowers on September 12, 1989.

8. Subsequent to the acceptance of the counter-offer, Bowers failed to pay the $1,000.00 earnest money to Palla.

9. Palla failed to inform either Federated or Travelers that the earnest money had not been paid by Bowers as required by the terms of the Bowers' offer.

10. On or about October 16, 1989 Bowers served notice that she had changed her mind and no longer wished to purchase the property even though all contingencies had been satisfied.

11. Travelers requested Federated to pay Bowers' earnest money over to Travelers as liquidated damages pursuant to the terms of the offer.

12. In spite of repeated demands by Federated that the earnest money be paid over to Federated, Palla failed to pay the earnest money over to Federated or Travelers or inform Federated that the earnest money had never been received from Bowers.

13. Travelers dropped its demand for the earnest money on November 16, 1989.

14. On or about August 1, 1990 Patrick Lynch an auditor of the Department of Regulation and Licensing attempted to audit the real estate trust account records of Palla regarding the Travelers to Bowers transaction. Auditor Lynch found that Palla failed to keep any records which could be audited.

15. During 1989 and up to the time of the audit Palla failed to keep an accurate ledger and journal for his real estate trust account and failed to reconcile his trust account on a monthly basis.

AS TO COUNT II

16. On or about March 16, 1990, John D. Schroedel ("Schroedel"), as owner of 6100 West Stonehedge Drive, Greenfield, WI, (the "Schroedel property") accepted a "WB-14 Residential Condominium Offer to Purchase" from the buyer Laura Janes. The Janes' offer specified that occupancy of the Schroedel property was to be on closing and closing was to take place on or before April 30, 1990.

17. At the time Janes made her offer, the Schroedel property was listed with Homeowners Concept-Metrostar Inc., ("Homeowners"), under a listing contract that commenced on February 20, 1990 and was to expire on July 15, 1990.

18. The Janes offer was drafted by Robert Rice, a real estate broker associated with Forest Hill Realty, Inc.

19. Rice delivered the Janes offer and her $1,000.00 earnest money payment to Palla under the mistaken belief that Golden Eagle held the listing on the Schroedel property.

20. Golden Eagle's previous listing of the Schroedel property had terminated on November 4, 1989. Palla did not disclose to Rice that Palla and Golden Eagle no longer held a listing on the Schroedel property.

21. On or about March 17, 1990 at 8:00 p.m., Palla presented Janes' offer directly to Schroedel without going through the listing broker.

22. At the time Palla presented the Janes offer to Schroedel, Schroedel informed Palla that occupancy of the property could not be delivered until Schroedel was able to move into his new residence on or about June 30, 1990 and that the contract with Janes needed to specify this. Palla informed Schroedel that no amendment to the contract was necessary.

23. A closing was set for May 1, 1990, for this transaction. At this closing Schroedel was informed for the first time that occupancy was to be given as of May 1, 1990 and Schroedel refused to close because he could not move into his new residence until June or July, 1990.

24. On account of Schroedel's refusal to close on May 1, 1990, Janes engaged the services of an attorney who proceeded to threaten Schroedel with litigation.

25. Subsequent to this litigation threat, Schroedel and Janes entered into an amendment of the March 16, 1990 offer whereby Schroedel agreed to pay Janes the sum of $225.00 at closing for additional moving expenses and the closing was changed from April 30, 1990 to July 30, 1990.

26. Closing of the Schroedel to Janes transaction took place on July 31, 1990.

27. As of July 31, 1990, Palla had not transferred the $1,000.00 earnest money to Homeowners.

28. At closing, Palla gave Schroedel a $1,000.00 check as payment of the earnest money amount which check was returned to Schroedel as nonnegotiable due to insufficient funds in Palla's account.

AS TO COUNT III

29. On or about April 12, 1990 Palla, as broker for Golden Eagle, closed a transaction wherein Donald D. Heffner and Patricia J. Heffner ("Heffner"), Sellers, sold property located at 4504 North 45th Street, Milwaukee, Wisconsin

30. At the April 12, 1990 closing, Palla escrowed $322.50 of the seller's funds for the purpose of assuring the payment of a sidewalk special assessment. No written escrow agreement was signed by the seller and the buyer describing the escrow arrangement.

31. The closing statement in this transaction indicates that the sidewalk escrow was established with the title company and makes no mention of the escrow established with Palla.

32. Palla did not deposit the escrow funds into a real estate trust account.

33. On or about September 1, 1990 the City of Milwaukee billed the Heffners $131.04 for the assessment and the seller notified Palla of the amount due to the City and requested Palla to make payment and to return the balance of escrow.

34. As of September 27, 1990 Palla had failed to pay the assessment and the seller proceeded to pay the assessment and requested Palla to return to seller the entire amount held by Palla in escrow.

35. As of November 13, 1990 Palla had failed to return the escrow funds to the seller.

AS TO COUNT IV

36. On or about May 16, 1991 Century 21 Klug & Klug Realtors ("Century 21") entered into a "WB-3 Vacant Land Listing Contract-Exclusive Right to Sell" contract with John J. Jacobs and Linda R. Jacobs ("Jacobs") for the sale of the Jacobs property located in Menomonee Falls, Wisconsin ("Jacob's property").

37. On or about August 12, 1991 Palla, on behalf of Theophilus O. Iyasele and Aldatrine Patterson Iyasele ("Iyasele"), drafted a "WB-13 Vacant Land Offer to Purchase" whereby the Iyaseles offered to purchase the Jacobs' property.

38. The Jacobs accepted the Iyasele offer on or about August 21, 1991, after several counter-offers had been negotiated.

39. On or about August 21, 1991, pursuant to the terms of the Iyasele offer, Palla collected $500.00 in earnest money from the Iyaseles.

40. Palla delayed paying the earnest money over to Century 21 until Friday, September 27, 1991, when he delivered Golden Eagle trust account check #1066 to Century 21.

41. The Jacobs to Iyasele closing took place on Monday, September 30, 1991.

42. On September 30, 1991 a dispute arose at the closing regarding payment of a commission to Palla.

43. On or about September 30, 1991, Palla ordered his bank to "stop payment" on the earnest money transfer check he had given to Century 21 and did not inform Century 21 of this stop payment order.

## CONCLUSIONS OF LAW

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

2. By the conduct described in the Findings of Fact, Respondent John Palla-Palla has violated:

COUNT I

a. Section 452.14(3)(i), Wis. Stats., and Secs. RL 24.025 and 24.07, Wis. Admin. Code, by his failure to promptly inform Federated and Travelers that no earnest money was collected from Bowers pursuant to the terms of the offer.

b. Section 452.14(3)(i), Wis. Stats., and Sec. RL 18.13, Wis. Admin. Code, by failing to maintain accurate bookkeeping records, failing to prepare or have prepared accurate journal and ledger entries, monthly reconciliations, supporting trial balances, and further failing to review the reconciled account statement balance, the open ledger account listing and the journal running balance of his real estate trust account and to ensure that all of these records are valid and in agreement as of the date the account statement has been reconciled.

COUNT II

a. Section 452.14(3)(i), Wis. Stats., and Secs. RL 24.025 and 24.07, Wis. Admin. Code, by failing to inform the selling broker of the fact that he was no longer the listing broker for the Schroedel property.

b. Sections 452.14(3)(b) and (i), Wis. Stats., and Secs. RL 24.08 and 24.03(2)(c), Wis. Admin. Code, by his incompetency in failing to reduce to writing on a form approved by the Department of Regulation and Licensing the exact agreement concerning occupancy in the Schroedel to Janes transaction and advising the seller that the occupancy agreement need not be reduced to writing.

c. Section 452.14(3)(i), Wis. Stats., and Secs. RL 18.03(1)(b) and 18.08, Wis. Admin. Code, by his failure to deposit the Janes' earnest money payment into a real estate trust account and by his failure to transmit the earnest money to the listing broker within the time required.

d. Section 452.14(3)(i), Wis. Stats., and Sec. RL 24.15, Wis. Admin. Code, by his issuing a check upon a business or trust account which contained insufficient funds.

e. Section 452.14(3)(i), Wis. Stats., and Sec. RL 24.13(5), Wis. Admin. Code, by his engaging in direct negotiations with Schroedel, who was the principal of another broker without the permission of the other broker.

COUNT III

a. Section 452.14(3)(i), Wis. Stats., and Sec. RL 18.03(1)(b), Wis. Admin. Code, by his failure to deposit the Heffner escrow money into a real estate trust account.

b. Section 452.14(3)(i), Wis. Stats., and Secs. RL 18.07(1) and (2), Wis. Admin. Code, by his failure to hold the escrow funds in a real estate trust account pursuant to an agreement prepared by the parties or an attorney or pursuant to a closing statement that properly disclosed and authorized the escrow with the respondent.

c. Section 452.14(3)(h), Wis. Stats., by his failure to account for or remit moneys in his possession belonging to another person within a reasonable time.

COUNT IV

a. Section 452.14(3)(i), Wis. Stats., and Secs. RL 18.03(1)(b) and 18.08, Wis. Admin. Code, by his failure to transmit the Bower's earnest money to the listing broker within the time required.

b. Section 452.14(3)(h), Wis. Stats., by his failure to account for or remit moneys in his possession belonging to another person within a reasonable time and by his issuing a transmittal check to the listing broker and than issuing a stop payment order on the check.

3. Respondent Golden Eagle Realtors, Inc., is subject to discipline pursuant to the provisions of Section 452.14(4), Wis. Stats.

## ORDER

NOW, THEREFORE, IT IS ORDERED that the real estate broker's license previously issued to John Palla-Palla be and hereby is REVOKED.

IT IS FURTHER ORDERED that the real estate corporation license previously issued to Golden Eagle Realtors, Inc., be and hereby is REVOKED.

IT IS FURTHER ORDERED that the licenses may be reinstated at a time to be determined in the appropriate discretion of the board, pursuant to s. 452.15, Wis. Stats. Such reinstatement shall be conditioned upon Palla-Palla successfully completing the real estate broker's examination, and may be accompanied by limitations upon practice, including supervision.

IT IS FURTHER ORDERED that the assessable costs of this proceeding be imposed against John Palla-Palla, pursuant to s. 440.22, Wis. Stats.

## EXPLANATION OF VARIANCE

The board has accepted the administrative law judge's Findings of Fact and Conclusions of Law, as well as the recommendation that the licenses in this case be revoked and the costs of the proceeding assessed against John Palla-Palla. The board also agrees that reinstatement of the licenses must be contingent upon respondent's passing the examination, but has substituted language in the third paragraph of the order to assure that the time of reinstatement is a clearly function of board discretion, rather than when respondent may chose to take, and successfully completes, the real estate broker's examination.

The nature of the numerous violations in this case clearly show a lack of competency to practice real estate. Accordingly, respondent must establish his technical proficiency to practice through future passage of the real estate examination. The violations also demonstrate, if not dishonesty, at least a wanton disregard for the laws regarding the handling and record keeping required for real estate trust funds. One cannot become a real estate broker in this state without being keenly aware of the strict requirements pertaining to such funds. Respondent's violations require that he establish to the satisfaction of the board that he will not disregard these laws in the future. Accordingly, in addition to passing the examination, he must be required to demonstrate his rehabilitation and likelihood of complying with the real estate laws to the satisfaction of the board before again being licensed.

Dated: June 25, 1992.

STATE OF WISCONSIN
REAL ESTATE BOARD

Peter J. Schils
Chairman

BDLS2-1837

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

| | | |
|---|---|---|
| IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST<br><br>JOHN PALLA PALLA<br>GOLDEN EAGLE REALTORS, INC.,<br>RESPONDENTS. | :<br>:<br>:<br>:<br>:<br>: | AFFIDAVIT OF COSTS<br>OFFICE OF BOARD LEGAL SERVICES<br>LS 9203132 REB |

STATE OF WISCONSIN,
COUNTY OF DANE, ss.:

James E. Polewski, being first duly sworn on oath, deposes and says

1. That he is an attorney employed by the Office of Board Legal Services, Department of Regulation and Licensing, and in that capacity was appointed administrative law judge in the captioned matter.

2. That in the course of that assignment, he expended the following time with the resulting costs to the Office of Board Legal Services, Department of Regulation and Licensing:

| Date | Activity | Time |
|---|---|---|
| 4/16/92 | Preside at default motion hearing | 30 minutes |
| 5/2/92 | Draft decision | 2 hours 15 minutes |
| 5/4/92 | Draft decision | 30 minutes |
| | TOTAL | 3 hours 15 minutes |

Administrative Law Judge salary and benefits: $24.75/hour

Total costs, Office of Board Legal Services: $74.25

NOTARY PUBLIC
RUBY JEFFERSON-MOORE
STATE OF WISCONSIN

James E. Polewski

James E. Polewski

Sworn and subscribed before me this 4th day of May, 1992.

Ruby Jefferson-Moore

Notary Public
My Commission is Permanent.

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

| | | |
|---|---|---|
| IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST<br><br>JOHN PALLA-PALLA and,<br>GOLDEN EAGLE REALTORS, INC.,<br>RESPONDENTS. | :<br>:<br>:<br>:<br>:<br>: | AFFIDAVIT IN SUPPORT OF MOTION FOR COSTS<br>89 REB 386, 90 REB 306<br>91 REB 114, 91 REB 413 |

STATE OF WISCONSIN )
) ss.
COUNTY OF DANE )

Charles J. Howden, being duly sworn, deposes and states as follows:

1. That he is an attorney licensed in the state of Wisconsin and is employed by the Wisconsin Department of Regulation and Licensing, Division of Enforcement;

2. That in the course of those duties he worked as the prosecutor in the above-captioned matters; and

3. That set forth below are the costs of the proceeding accrued to the Division of Enforcement in this matter, based upon Division of Enforcement records compiled in the regular course of business in the above-captioned matter:

INVESTIGATOR EXPENSE

| Date | Activity | Time Spent |
|---|---|---|
| 3/26/90 | Review file and phone calls and memorandums | 40 minutes |
| 3/27/90 | Correspondence | 25 minutes |
| 5/30/90 | Correspondence | 20 minutes |
| 2/12/91 | Review file, organize material from auditor | 1 hour |
| 2/13/91 | Review interview tape of Respondent | 45 minutes |
| 2/22/91 | Edit and correct word processing transcription of Palla-Palla interview tape | 5 hours |
| 2/28/91 | Edit transcript of interview | 1 hour |
| 2/28/91 | Prepare a case summary, review file and correspondence | 1½ hours |

| | | |
|---|---|---|
| 5/27/91 | Edit summary and phone call to Palla-Palla and memo | 30 minutes |
| 9/17/90 | Review file 90 REB 306 | 20 minutes |
| 2/12/91 | Review file 90 REB 306 | 30 minutes |
| 2/28/91 | Review file 90 REB 306 and correspondence to Schroedel | 30 minutes |
| 3/1/91 | Call Rice and memo | 30 minutes |
| 3/1/91 | Prepare case summary and phone calls and memo | 1½ hours |
| 3/15/91 | Review correspondence | 15 minutes |
| 3/19/91 | Phone conference-Schroedl and memo | 2 hours |
| 4/9/91 | Organize information for Board Advisor | 30 minutes |
| 12/16/91 | Review file 91 REB 413 and forward to attorney | 5 minutes |
| 8/7/91 | Review file 91 REB 114 and prepare summary | 30 minutes |
| 4/17/91 | Correspondence, Milwaukee Board of Realtors regarding 91 REB 114 | 5 minutes |
| | | 18 hours |

Subtotal ($18 x 18 hrs = $ 324.00)

PROSECUTING ATTORNEY EXPENSE

| Date | Activity | Time Spent |
|---|---|---|
| 2/27/91 | Review all files and prepare stipulation and correspondence to Mr. Palla-Palla | 8 hours |
| 3/3/92 | Preparation of Complaint involving all four cases | 5 hours |
| 3/10/92 | Final draft of complaint and Notice of Hearing and service of Respondent | 6 hours |
| 3/19/92 | Preparation of subpoena and service | ½ hour |
| 4/6/92 | Preparation of Affidavit of Default, Motion for Default and Notice of Motion, and Service | 3 hours |

| | | |
|---|---|---|
| 4/16/92 | Hearing on motion for default, with preparation | 1 hour |
| 6/8/92 | Preparation of Affidavit of Costs | 45 minutes |
| | | 24.25 hours |
| | Subtotal ($30 x 24.25 hrs = | $ 727.50) |
| | TOTAL ASSESSABLE COSTS | $1,051.50 |

Charles J. Howden

Subscribed and sworn to before me
this 10th day of June, 1992.

Notary Public
My Commission is Permanent.

CJH:kcb
ATY-2096

# NOTICE OF APPEAL INFORMATION

**(Notice of Rights for Rehearing or Judicial Review, th times allowed for each, and th 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 Board of Real Estate.

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

**2. Judicial Review.**

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

**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 Board of Real Estate.

**The date of mailing of this decision is** June 26, 1992.

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

| | | |
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| IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST<br><br>JOHN PALLA-PALLA &<br>GOLDEN EAGLE REALTORS, INC.,<br>RESPONDENTS. | :<br>:<br>:<br>:<br>:<br>: | NOTICE OF FILING<br>PROPOSED DECISION<br>LS9203132REB |

TO: John Palla-Palla
1714 East Kane Place, Unit I
Milwaukee, WI 53202
Certified P 568 982 555

Golden Eagle Realtors, Inc.
1840 North Farwell
Milwaukee, WI 53202
Certified P 568 982 556

Charles Howden, 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 Administrative Law Judge, James E. Polewski. A copy of the Proposed Decision is attached hereto.

If you have objections to the Proposed Decision, you may file your objections in writing, briefly stating the reasons, authorities, and supporting arguments for each objection. Your objections and argument must be 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 May 20, 1992. You must also provide a copy of your objections and argument to all other parties by the same date.

You may also file a written response to any objections to the Proposed Decision. Your response must be received at the office of the Real Estate Board no later than seven (7) days after receipt of the objections. You must also provide a copy of your response to all other parties by the same date.

The attached Proposed Decision is the Administrative Law Judge'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 5th day of May, 1992.

James E. Polewski
James E. Polewski
Administrative Law Judge

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

| | | |
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| IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST | : | PROPOSED DECISION |
| JOHN PALLA-PALLA & GOLDEN EAGLE REALTORS, INC., RESPONDENTS. | : | LS 9203132 REB |

For purposes of s. 227.53, Stats., the parties to this proceeding are:

John Palla-Palla
1714 E. Kane Place, Unit I
Milwaukee WI 53202

Golden Eagle Realtors, Inc.
1840 North Farwell
Milwaukee WI 53202

Wisconsin Real Estate Board
Department of Regulation and Licensing
P.O. Box 8935
Madison WI 53708

Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison WI 53708

On April 16, 1992, the Division of Enforcement, represented by Attorney Charles Howden, presented a motion for default in this matter pursuant to s. RL 2.14, Wis. Admin. Code. Mr. Palla-Palla and Golden Eagle Realtors, Inc., had been served with notice of the date and time of the hearing on the motion for default, but neither appeared. The motion for default was based on the failure of either Palla-Palla or Golden Eagle to file any response to the Notice of Hearing and Complaint which had been served on them. Pursuant to s. RL 2.14, Wis. Admin. Code, on failure of the Respondents Palla-Palla or Golden Eagle to answer the complaint or appear at the hearing, the allegations of the complaint are deemed admitted. The Administrative Law Judge therefore recommends that the Wisconsin Real Estate Board adopt the following Findings of Fact, Conclusions of Law, Order and Opinion as its Final Decision in this matter.

## FINDINGS OF FACT

1. John Palla-Palla ("Palla"), 1714 East Kane Place, Unit I, Milwaukee,

Wisconsin 53202, 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 number 40077, originally granted on February 20, 1987.

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been received from Bowers.

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24. On account of Schroedel's refusal to close on May 1, 1990, Janes engaged the services of an attorney who proceeded to threaten Schroedel with litigation.

25. Subsequent to this litigation threat, Schroedel and Janes entered into an amendment of the March 16, 1990 offer whereby Schroedel agreed to pay Janes the sum of $225.00 at closing for additional moving expenses and the closing was changed from April 30, 1990 to July 30, 1990.

26. Closing of the Schroedel to Janes transaction took place on July 31, 1990.

27. As of July 31, 1990, Palla had not transferred the $1,000.00 earnest money to Homeowners.

28. At closing, Palla gave Schroedel a $1,000.00 check as payment of the earnest money amount which check was returned to Schroedel as nonnegotiable due to insufficient funds in Palla's account.

AS TO COUNT III

29. On or about April 12, 1990 Palla, as broker for Golden Eagle, closed a transaction wherein Donald D. Heffner and Patricia J. Heffner ("Heffner"), Sellers, sold property located at 4504 North 45th Street, Milwaukee, Wisconsin

30. At the April 12, 1990 closing, Palla escrowed $322.50 of the seller's funds for the purpose of assuring the payment of a sidewalk special assessment. No written escrow agreement was signed by the seller and the buyer describing the escrow arrangement.

31. The closing statement in this transaction indicates that the sidewalk escrow was established with the title company and makes no mention of the escrow established with Palla.

32. Palla did not deposit the escrow funds into a real estate trust account.

33. On or about September 1, 1990 the City of Milwaukee billed the Heffners $131.04 for the assessment and the seller notified Palla of the amount due to the City and requested Palla to make payment and to return the balance of escrow.

34. As of September 27, 1990 Palla had failed to pay the assessment and the seller proceeded to pay the assessment and requested Palla to return to

seller the entire amount held by Palla in escrow.

35. As of November 13, 1990 Palla had failed to return the escrow funds to the seller.

AS TO COUNT IV

36. On or about May 16, 1991 Century 21 Klug & Klug Realtors ("Century 21") entered into a "WB-3 Vacant Land Listing Contract-Exclusive Right to Sell" contract with John J. Jacobs and Linda R. Jacobs ("Jacobs") for the sale of the Jacobs property located in Menomonee Falls, Wisconsin ("Jacob's property").

37. On or about August 12, 1991 Palla, on behalf of Theophilus O. Iyasele and Aldatrine Patterson Iyasele ("Iyasele"), drafted a "WB-13 Vacant Land Offer to Purchase" whereby the Iyaseles offered to purchase the Jacobs' property.

38. The Jacobs accepted the Iyasele offer on or about August 21, 1991, after several counter-offers had been negotiated.

39. On or about August 21, 1991, pursuant to the terms of the Iyasele offer, Palla collected $500.00 in earnest money from the Iyaseles.

40. Palla delayed paying the earnest money over to Century 21 until Friday, September 27, 1991, when he delivered Golden Eagle trust account check #1066 to Century 21.

41. The Jacobs to Iyasele closing took place on Monday, September 30, 1991.

42. On September 30, 1991 a dispute arose at the closing regarding payment of a commission to Palla.

43. On or about September 30, 1991, Palla ordered his bank to "stop payment" on the earnest money transfer check he had given to Century 21 and did not inform Century 21 of this stop payment order.

CONCLUSIONS OF LAW

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

2. By the conduct described in the Findings of Fact, Respondent John Palla-Palla has violated:

COUNT I

a. Section 452.14(3)(i), Wis. Stats., and Secs. RL 24.025 and 24.07, Wis. Admin. Code, by his failure to promptly inform Federated and Travelers that no earnest money was collected from Bowers pursuant to the terms of the offer.

b. Section 452.14(3)(i), Wis. Stats., and Sec. RL 18.13, Wis. Admin. Code, by failing to maintain accurate bookkeeping records, failing to prepare or have prepared accurate journal and ledger entries, monthly reconciliations, supporting trial balances, and further failing to review the reconciled account statement balance, the open ledger account listing and the journal running balance of his real estate trust account and to ensure that all of these records are valid and in agreement as of the date the account statement has been reconciled.

COUNT II

a. Section 452.14(3)(i), Wis. Stats., and Secs RL 24.025 and 24.07, Wis. Admin. Code, by failing to inform the selling broker of the fact that he was no longer the listing broker for the Schroedel property.

b. Sections 452.14(3)(b) and (i), Wis. Stats., and Secs. RL 24.08, 24.03(2)(c), Wis. Admin. Code, by his incompetency in failing to reduce to writing on a form approved by the Department of Regulation and Licensing the exact agreement concerning occupancy in the Schroedel to Janes transaction and advising the seller that the occupancy agreement need not be reduced to writing.

c. Section 452.14(3)(i), Wis. Stats., and Secs. RL 18.03(1)(b) and 18.08, Wis. Admin. Code, by his failure to deposit the Janes' earnest money payment into a real estate trust account and by his failure to transmit the earnest money to the listing broker within the time required.

d. Sections 452.14(3)(i) and Sec. RL 24.15, Wis. Admin. Code, by his issuing a check upon a business or trust account which contained insufficient funds.

e. Section 452.14(3)(i) Wis. Stats., and Sec. RL 24.13(5) Wis. Admin. Code, by his engaging in direct negotiations with Schroedel, who was the principal of another broker without the permission of the other broker.

COUNT III

a. Section 452.14(3)(i), Wis. Stats., and Sec. RL18.03(1)(b), Wis.

Admin. Code, by his failure to deposit the Heffner escrow money into a real estate trust account.

b. Section 452.14(3)(i), Wis. Stats., and Secs. RL18.07(1) and (2), Wis. Admin. Code, by his failure to hold the escrow funds in a real estate trust account pursuant to an agreement prepared by the parties or an attorney or pursuant to a closing statement that properly disclosed and authorized the escrow with the respondent.

c. Section 452.14(3)(h), Wis. Stats., by his failure to account for or remit moneys in his possession belonging to another person within a reasonable time.

COUNT IV

a. Section 452.14(3)(i), Wis. Stats., and Secs. RL 18.03(1)(b) and 18.08, Wis. Admin. Code, by his failure to transmit the Bower's earnest money to the listing broker within the time required.

b. Section 452.14(3)(h), Wis. Stats., by his failure to account for or remit moneys in his possession belonging to another person within a reasonable time and by his issuing a transmittal check to the listing broker and than issuing a stop payment order on the check.

3. Respondent Golden Eagle Realtors, Inc., is subject to discipline pursuant to the provisions of Section 452.14(4), Wis. Stats.

## ORDER

NOW, THEREFORE, IT IS ORDERED that the real estate broker's license previously issued to John Palla-Palla be and hereby is REVOKED.

IT IS FURTHER ORDERED that the real estate corporation license previously issued to Golden Eagle Realtors, Inc., be and hereby is REVOKED.

IT IS FURTHER ORDERED that the licenses may be re-instated, with limitations requiring supervision of Palla-Palla's practice, only upon Palla-Palla successfully completing the real estate broker's examination.

IT IS FURTHER ORDERED that the assessable costs of this proceeding be imposed against John Palla-Palla, pursuant to s. 440.22, Stats.

## OPINION

In Exhibit 8, a letter from John Palla-Palla to Patrick Lynch, the auditor who attempted to audit the financial records of Golden Eagle Realtors,

Palla-Palla attributes the lack of records to lack of personnel and the part-time nature of the business pursuit. That is not an adequate explanation for either the lack of records or for the rest of the conduct described in the Findings of Fact.

There is no sufficient basis to conclude that the violations of the statutes and rules by Palla-Palla are the result of dishonesty on his part, although the violations of the trust account and financial transaction regulations certainly raise the question. There is no doubt that Palla-Palla has clearly demonstrated incompetency in the practice of real estate, and that it is a deeply rooted incompetency evincing either a particularly relaxed approach to business or a striking ignorance of basic principles of real estate practice.

If there were only one, or maybe two, instances where Palla-Palla's practices had caused difficulties for the principals or others concerned in real estate transactions, revocation of his license, and his business's license, might not be necessary. However, the continuing pattern of neglect of his responsibilities in the face of rather pointed reminders and insistence that he do his duty lead me to conclude that the purposes of public protection, deterrence, and rehabilitation of the licensee will not be met by any sanction short of revocation. Public protection and rehabilitation both require that Palla-Palla be restrained from practice until he can learn real estate practice and demonstrate competency in the use of the principles on the examination. Apparently, the knowledge he had when he first passed the examination has left him, and it is likely to take some time before he can regain the knowledge he has lost. A period of suspension may well pass before he has accomplished that task, and the protection of the public manifestly requires that he be prevented from practicing until he can show he is competent. Meeting the goal of deterrence requires that this pattern of neglect of his principals' and other parties' interests be treated seriously, and not depreciated as merely below average business practice.

Dated this 5th day of May, 1992.

James E. Polewski
Administrative Law Judge