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STATE OF WISCONSIN
REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST GARY A. ZELLER, RESPONDENT.	: : : : :	FINAL DECISION AND ORDER LS9412081REB

The State of Wisconsin, Real Estate Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Real Estate Board.

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs, and mail a copy thereof to respondent or his or her representative, within 15 days of this decision.

Respondent or his or her representative shall mail any objections to the affidavit of costs filed pursuant to the foregoing paragraph within 30 days of this decision, and mail a copy thereof to the Division of Enforcement and Administrative Law Judge.

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

Dated this 23RD day of FEBRUARY, 1995.

Peter J Schils

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST GARY A. ZELLER, RESPONDENT.	:	**PROPOSED DECISION** Case No. LS-9412081-REB (93 REB 367)

PARTIES

The parties in this matter under § 227.44, Stats., and § RL 2.037, Wis. Admin. Code, and for purposes of review under § 227.53, Stats., are:

Complainant:
Division of Enforcement
Department of Regulation and Licensing
Madison, WI 53708-8935

Respondent:
Gary A. Zeller
818 West Eula Court
Milwaukee, WI 53209

Disciplinary Authority
Real Estate Board
1400 East Washington Ave.
Madison, WI 53703

PROCEDURAL HISTORY

A. This case was initiated by the filing of a complaint with the Real Estate Board on December 8, 1994. A disciplinary proceeding (hearing) was scheduled for March 14, 1995. Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and sent by certified mail on December 8, 1994.

B. Mr. Zeller did not file an answer to the complaint as required by sec. RL 2.09, Wis. Admin. Code, and as explained in the notice.

C. On January 10, 1995 a Motion for Default Judgment was filed and also served on Mr. Zeller by certified mail. The motion was scheduled for hearing on February 6, 1995.

D. All time limits and notice and service requirements having been met, the motion hearing was held as scheduled on February 6, 1995 . Mr. Zeller did not appear. The Real Estate Board was represented by Attorney Charles Howden of the Department's Division of Enforcement. The hearing was recorded; no transcript was prepared. The testimony and exhibits entered into evidence at the hearing form the basis for this Proposed Decision.

E. Mr. Howden moved that Mr. Zeller be found in default under RL 2. 14, Wis. Admin. Code, and the motion was granted.

FINDINGS OF FACT

1. The respondent, Gary A. Zeller, is a real estate broker licensed in the state of Wisconsin, under license number 13384, which he has held continuously since it was originally granted on January 2, 1974 [exhibit 7]. The last address for Mr. Zeller on file with the Department of Regulation and Licensing is 818 West Eula Court, Milwaukee, WI 53209.

2. A real estate broker must renew his license every two years by submitting a renewal application to the Department of Regulation and Licensing.

3. From 1978 through approximately 1985, real estate brokers were required as a condition of license renewal to obtain continuing education. This requirement was removed for a few years, but it was reinstated such that applicants for license renewal in December 1992 were required to certify that they had met the continuing education requirement. This reinstated requirement was well-publicized, appearing prominently in the February 1991, August 1991, February 1992, and September 1992 issues of the Wisconsin Regulatory Digest (a publication for real estate brokers and other professionals) [exhibits 3-6]. The renewal application used by applicants in December 1992 also contained the following text on its reverse in large capital letters:

> I HAVE COMPLETED THE 12 HOURS OF REAL ESTATE CONTINUING EDUCATION OR PASSED THE TEST-OUT EXAM FOR THE 1991-92 LICENSE BIENNIUM AND I HAVE EVIDENCE OF THIS WHICH I WILL FURNISH TO THE BUREAU OF DIRECT LICENSING AND REAL ESTATE UPON REQUEST.

Following that declaration is space for a signature and date. The signature line is then followed by the following statement: "Making a false statement in connection with any application for license is grounds for revocation or denial of that license."

4. On December 30, 1992, Mr. Zeller submitted a Renewal Application to the Department of Regulation and Licensing for his real estate broker's license. He signed and dated the application on the reverse side on the line immediately following the declaration regarding continuing education [exhibit 1].

5. The Bureau of Direct Licensing and Real Estate conducted a random audit of renewal applications and requested evidence from Mr. Zeller of his satisfaction of the continuing education requirement.

6. Mr. Zeller was unable to satisfy the bureau's request. He admitted in a letter to a department investigator that he did not complete the continuing education requirement [exhibit 2]. Mr. Zeller did not comply with the continuing education requirement for license renewal, and he made a false statement in his application.

CONCLUSIONS OF LAW

I. The Real Estate Board is the legal authority responsible for controlling credentials for real estate brokers, under ch. 452, Stats. The Real Estate Board has jurisdiction over the subject-matter of a complaint alleging unprofessional conduct, under sec. 15.08(5)(c), Stats., and sec. 452.14, Stats.

II. The Real Estate Board has personal jurisdiction over Mr. Zeller under sec. 801.04 (2), Stats., and sec. RL 2.08, Wis. Admin. Code. Notice to the respondent was satisfied by mailing the Notice of Hearing to the respondent's last-known address on file with the Department.

III. The respondent, Gary A. Zeller, is in default under sec. RL 2.14, Wis. Admin. Code, which means that the Real Estate Board may make findings of fact and enter a disciplinary order on the basis of the complaint and the evidence presented at the hearing.

IV. Mr. Zeller violated sec. 452.12(5)(c), Stats., by failing to provide proof to the board of attendance at and successful completion of continuing education programs or courses as required. This violation is also a violation of sec. 452.14(3)(L), Stats.

V. Mr. Zeller violated sec. 452.14(3)(a), Stats., by making a material misstatement in a renewal application.

VI. The violations in IV and V above constitute grounds for professional discipline, under sec. 452.14(3), Stats.

ORDER

THEREFORE, IT IS ORDERED that the real estate broker's license issued to Gary A. Zeller be suspended for a period of 180 days, commencing on the tenth day after this order is signed on behalf of the Real Estate Board.

IT IS FURTHER ORDERED that as a condition of the reinstatement of his license following the above-ordered suspension, pursuant to sec. 452.14(4m)(b), Stats., Mr. Zeller must take and successfully complete the 36-hour real estate broker's course normally required for licensure, and that his license shall remain suspended indefinitely until proof of satisfaction of this requirement is received by the board.

IT IS FURTHER ORDERED that Mr. Zeller pay a forfeiture of $1,000 to the Real Estate Board, pursuant to sec. 452.14(4m)(a), Stats., and that his license shall remain suspended indefinitely until this requirement is satisfied.

IT IS FURTHER ORDERED that Mr. Zeller pay the costs of this proceeding, as authorized by § 440.22(2), Wis. Stats. and § RL 2.18, Wis. Admin. Code, and that his license shall remain suspended indefinitely until this requirement is satisfied.

OPINION

This is a disciplinary proceeding conducted under the authority of ch. 227, Stats. and ch. RL 2, Wis. Admin. Code. Mr. Zeller did not file an answer to the complaint and he did not appear at the hearing on the motion for default judgment. The allegations of the complaint are amply proven by the additional evidence adduced in the motion hearing. Mr. Zeller violated statutes which govern the professional conduct of real estate brokers, and discipline is appropriate.

The purposes of professional discipline have been set forth in Wisconsin Supreme Court Rule SCR 21.03(5) and in various attorney discipline cases, including Disciplinary Proc. Against Kelsay, 155 Wis.2d 480, 455 N.W.2d 871 (1990). In that case the Wisconsin Supreme Court stated "discipline for lawyer misconduct is not intended as punishment for wrongdoing; it is for the protection of the public, the courts and the legal profession from further misconduct by the offending attorney, to deter other attorneys from engaging in similar misconduct and to foster the attorney's rehabilitation." That reasoning has been extended by regulatory agencies to disciplinary proceedings for other professions.

Mr. Zeller ignored a continuing education requirement, thereby calling into question his ability to serve the public competently. He also lied to the board in his renewal application, calling into question his honesty and integrity. Such a person may not be allowed to continue professional practice without some assurance to the regulating authority that the public and the profession will be protected from future incompetence, errors of judgment, or dishonesty.

The attorney for the Division of Enforcement, Mr. Howden, recommended the same discipline that has been imposed in similar cases, i.e. a 180-day suspension, passing the 36-hour broker's course, and costs. This recommendation is appropriate. An order for costs is especially appropriate because Mr. Zeller failed to respond to the Department's proposed stipulation, and since that time he has apparently ignored this disciplinary proceeding. I have added a forfeiture of $1,000 because such a forfeiture, in addition to the other terms, was contained in the proposed stipulation, and not imposing a forfeiture now would improperly reward Mr. Zeller for ignoring this proceeding.

Dated and signed: February 6, 1995

John N. Schweitzer
Administrative Law Judge
Department of Regulation and Licensing

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.

Serve Petition for Rehearing or Judicial Review on:

THE STATE OF WISCONSIN REAL ESTATE BOARD.

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

The Date of Mailing this Decision is:

FEBRUARY 24, 1995.

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)

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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST GARY A. ZELLER, RESPONDENT.	**AFFIDAVIT OF COSTS OF** **OFFICE OF BOARD LEGAL SERVICES** Case No. LS-9412081-REB (93 REB 367)

John N. Schweitzer affirms the following before a notary public for use in this action, subject to the penalties for perjury in sec. 946.31, Wis. Stats.:

1. I am an attorney licensed to practice law in the State of Wisconsin, and am employed by the Wisconsin Department of Regulation and Licensing, Office of Board Legal Services.

2. In the course of my employment, I was assigned as the administrative law judge in the above-captioned matter.

3. The expenses for the Office of Board Legal Services are set out below:

a. Administrative Law Judge Expense @ $26.29/hour.

2/6/95 Hearing	1 hr.
2/6/95 Work on proposed decision	2 1/2 hrs.
Total:	3 1/2 hrs.

Total allocable costs for Office of Board Legal Services = **$92.02**

John N. Schweitzer
Administrative Law Judge

Sworn to and signed before me this 13th day of March, 1995.

Donald R. Ritter, Notary Public, State of Wisconsin.

My commission is permanent.

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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST GARY A. ZELLER, RESPONDENT.	: : : : :	AFFIDAVIT IN SUPPORT OF MOTION FOR COSTS LS 9412081 REB

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

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

1. 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 a prosecutor in the above-captioned matter; 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
02/03/94	Review file and draft correspondence.	0.30 hour
03/02/94	Review response and file.	0.25 hour
05/20/94	Prepare summary.	0.50 hour
05/26/94	Conference with advisor.	.25 hour
06/01/94	Forward to attorney/conference.	0.25 hour

TOTAL INVESTIGATION TIME x $20.00 per hour equals---------- $26.00

PROSECUTING ATTORNEY EXPENSE

Date	Activity	Time Spent
06/01/94	Review and conference.	.25 hour
10/21/94	Draft of Stipulation, Final Decision and Order	1.50 hour
11/11/94	Phone conf w/respondent/memo	.25 hour

11/18/94	Attempt to contact respondent.	.10 hour
01/09/95	Draft Motion/notice and file.	1.25 hour
02/03/95	Preparation for motion/ witness/ exhibits.	1.50 hour
02/06/95	Motion hearing.	.50 hour
02/07/95	Receipt and review proposed decision.	.30 hours
02/28/95	Receipt of Final Decision, draft affidavit of costs.	.50 hour
TOTAL ATTORNEY TIME x $41.00 per hour equals:		$170.15
	TOTAL ASSESSABLE COSTS	**$196.15**

Charles J. Howden

Subscribed and sworn to before me
this 3rd day of March, 1995.

Notary Public
My Commission is Permanent.

CHH:kcb
WPPCHH-99.