

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



## **Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions**

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

### **Please read this agreement prior to viewing the Decision:**

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscca>.
- Records not open to public inspection by statute are not contained on this website.

**By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.**

**Correcting information on the DRL website:** An individual who believes that information on the website is inaccurate may contact the webmaster at [web@drl.state.wi.gov](mailto:web@drl.state.wi.gov)

FILE COPY

STATE OF WISCONSIN  
BEFORE THE EXAMINING BOARD OF ARCHITECTS,  
PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS

-----  
IN THE MATTER OF DISCIPLINARY :  
PROCEEDINGS AGAINST :

GERALD M. RISKE, R.L.S., :  
RESPONDENT. :

FINAL DECISION  
AND ORDER  
-----

The State of Wisconsin, Examining Board of Architects, Professional Engineers, Designers and Land Surveyors, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Hearing Examiner and having considered the objectives, requests and responses made by the parties after hearing and having heard oral argument by the parties, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Hearing Examiner, and with the change of date in Finding of Fact Number 3 from "April 15, 1980" to "January, 1980," as agreed to by the parties shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Examining Board of Architects, Professional Engineers, Designers and Land Surveyors. Let a copy of this order be served on the respondent by certified mail. Respondent's requests for remand and further hearing are denied.

A party aggrieved by this decision may petition the board for rehearing within twenty (20) days after service of this decision pursuant to Wis. Stats. sec. 227.12. The party to be named as respondent in the petition is Gerald M. Riske.

A party aggrieved by this decision who is a resident of this state may also petition for judicial review by filing the petition in the office of the clerk of the circuit court for the county where the party aggrieved resides within thirty (30) days after service of this decision. A party aggrieved by this decision who is not a resident of this state must file the petition for judicial review in the office of the clerk of circuit court for Dane County. A party aggrieved must also serve the board and other parties with a copy of the petition for judicial review within thirty (30) days after service of this decision pursuant to Wis. Stats. sec. 227.16. The party to be named as respondent in the petition is the State of Wisconsin, Examining Board of Architects, Professional Engineers, Designers and Land Surveyors.

Board member Donald Paulson took no part in the deliberations or decision on this matter.

Dated this 31<sup>st</sup> day of May, 1984.

Bernard S. Walsworth

STATE OF WISCONSIN  
BEFORE THE EXAMINING BOARD OF ARCHITECTS,  
PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS

-----  
IN THE MATTER OF DISCIPLINARY :  
PROCEEDINGS AGAINST :  
: SECOND PROPOSED DECISION  
GERALD M. RISKE, R.L.S., :  
RESPONDENT. :  
-----

The parties to this proceedings for the purposes of Wis. Stats.  
sec. 227.16 are:

Gerald M. Riske  
P.O. Box 739  
Beaver Dam, Wisconsin 53916

Examining Board of Architects, Professional  
Engineers, Designers and Land Surveyors  
1400 East Washington Avenue, Room 288  
P.O. Box 8936  
Madison, Wisconsin 53708

Department of Regulation and Licensing  
Division of Enforcement  
1400 East Washington Avenue, Room 183  
P.O. Box 8936  
Madison, Wisconsin 53708

These proceedings were commenced by the filing of a Notice of Hearing and Complaint on April 14, 1982. A hearing was held on June 7, 1982. A proposed decision was issued by the examiner on October 19, 1982. The board reviewed the proposed decision, as well as the entire record in the case, and rendered an "Order Remanding Matter to Hearing Examiner", dated January 20, 1983. The order of the board remanded the matter for the purpose of making additional findings in certain areas specified within the order.

The board's remand order of January 20, 1983 was mailed to and received by the parties. Prehearing conferences were subsequently held on February 8, 1983; June 1, 1983; June 6, 1983; and, June 30, 1983. The purpose of the prehearing conferences was to establish procedures upon remand, as well as to discuss the receipt of information by stipulation between the parties if possible. The hearing on remand was held on July 27, 1983. Mr. Riske failed to appear at that time. The complainant's attorney, Steven M. Gloe appeared at the hearing and introduced several exhibits. Mr. Gloe requested that the hearing be left open for the receipt of an additional documentary exhibit. This request was granted, and the exhibit was received and filed on September 6, 1983.

Based upon the entire record in this case, the Hearing Examiner recommends that the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors adopt as its final decision the following Findings of Fact, Conclusions of Law, and Order.

#### FINDINGS OF FACT

1. Gerald M. Riske (Riske) is, and was at all times material to this proceeding, registered as a land surveyor in the State of Wisconsin. The certificate of registration of Riske bears number S-1203 and was issued on September 24, 1974.

2. Riske resides at 508 Kenyon Lane, Beaver Dam, Wisconsin 53916. Riske's business mailing address, as well as the address on his registration card is P.O. Box 739, Beaver Dam, Wisconsin 53916.

#### CONVERSION OF FUNDS

3. At all times material hereto, Riske served on the Board of the Wisconsin Society of Land Surveyors (WSLS). In this capacity, Riske was responsible for receiving and depositing funds generated by the WSLS annual institute held at the University of Wisconsin-Stevens Point on or about ~~April 15, 1980~~ January, 1980.

4. Pursuant to the responsibilities described in paragraph 3, Riske received \$2,752.50 on behalf of the WSLS which he failed to deliver to the WSLS.

5. On or about March 17, 1981, the amount owed to the WSLS by Riske was reduced to judgment in civil proceedings brought against Riske in the State of Wisconsin, Circuit Court for Dane County, the Honorable Robert C. Jenkins presiding. Riske did not make an appearance in that proceeding and, accordingly, a default judgment in the amount of \$2,752.50 plus interest, attorneys fees and costs was entered against him.

6. Riske has not paid any part of the \$2,752.50 owed the WSLS, although he acknowledges that he is obligated to make restitution.

7. As a defense to the allegation that he unlawfully converted the \$2,752.50 belonging to the WSLS to his own use, Riske claims that he deposited the WSLS funds into his business account for his land surveying practice. Riske's business account was maintained in his own name at the First National Bank & Trust Co. in Beaver Dam, Wisconsin. Riske further claims that subsequent to his depositing the \$2,752.50, the Internal Revenue Service (IRS) garnished the account. According to Riske, he was unaware that the IRS would garnish the account, thereby transferring the funds held by Riske on behalf of the WSLS to the IRS.

8. The evidence in the record is insufficient to establish whether or not Riske actually deposited any or all of the concerned funds held on behalf of the WSLS into his business account.

9. The IRS first served a "Notice of Levy" upon the First National Bank & Trust Co. to garnish Riske's business account on November 20, 1978. Sixteen additional notices were served on various dates, the last being served on November 29, 1979. These notices were served to satisfy delinquent taxes, interest, and statutory additions approximating \$15,000.00 which were due from Riske. As a result of these notices, the following amounts were received from the First National Bank & Trust Co. on the dates indicated:

<u>Date</u>	<u>Amount</u>
January 22, 1979	\$ 325.00
January 31, 1979	\$ 275.00
February 20, 1979	\$ 502.00
February 26, 1979	\$ 116.00
March 21, 1979	\$ 178.00
May 7, 1979	\$ 264.00
July 30, 1979	\$ 444.00
September 12, 1979	\$ 40.00
October 1, 1979	\$ 712.00
October 9, 1979	\$ 55.00
November 15, 1979	\$ 186.00
TOTAL	<u>\$3,097.00</u>

The individual amounts garnished on each date represents the balance in Riske's account at that time.

10. Riske claims that he notified the IRS that \$2,752.50 of the funds garnished from his business account actually belonged to the WSLs, but that the IRS was unwilling or unable to return those funds to Riske or the WSLs. However, the records of the IRS do not reflect that Riske notified the IRS that funds levied from the account actually belonged to the WSLs or that the IRS notified Riske that it was unwilling or unable to return the garnished funds.

11. The affirmative defense of Riske has not been established, in that insufficient evidence exists to find that he deposited any of the funds received on behalf of the WSLs into his business account, that he was unaware of the IRS garnishment action upon the account at the time he may have deposited the funds into the account, that he notified the IRS that the garnished funds included those belonging to the WSLs, or that the IRS was unwilling or unable to return any such funds.

12. As of the date of the original hearing in this matter, Riske continued to owe the IRS between \$3,000.00 and \$4,000.00.

13. Riske converted the \$2,752.50 held on behalf of, and owing to the WSLs to his own use.

#### FAILURE TO FURNISH INFORMATION

14. On or about January 11, 1982, an investigator for the Department of Regulation and Licensing, Division of Enforcement directed a letter dated January 11, 1982 to Riske inquiring into the matter discussed above. The letter requested a written response from Riske.

15. The letter was addressed and mailed to Riske at "509 Kenyon Lane, Beaver Dam, Wisconsin 53916." As indicated in paragraph 2 above, Riske resides at 508 Kenyon Lane, Beaver Dam, Wisconsin 53916 and his registration card as a land surveyor indicates a mailing address of P.O. Box 739, Beaver Dam, Wisconsin 53916. It was not established that Riske received the concerned letter.

#### CONCLUSIONS OF LAW

1. The Examining Board of Architects, Professional Engineers, Designers and Land Surveyors has jurisdiction in this proceeding pursuant to Wis. Stats. sec. 443.12(1).

2. The act of Riske in converting the funds of WSLs to his own use, as set forth in the Findings of Fact, demonstrates misconduct in the practice of land surveying within the meaning of Wis. Stats. sec. 443.12(1) and Wis. Adm. Code sec. A-E 4.003(3)(c).

3. Since the letter from the Department of Regulation and Licensing, Division of Enforcement under date of January 11, 1982 was not addressed to Riske's actual home address or his post office box number, it has not been established that Riske received the letter. Accordingly, Riske's failure to respond to the letter does not constitute a violation of Wis. Stats. sec. 443.12(1), or Wis. Adm. Code secs. A-E 4.003 or 4.05(2).

#### ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Gerald M. Riske to practice as a land surveyor in the State of Wisconsin be, and hereby is, revoked, commencing thirty days from the date of the board's Final Decision and Order herein.

#### OPINION

The Complaint filed in this case charges the respondent, Gerald M. Riske, with two separate counts of misconduct. The first alleges that he wrongfully converted \$2,752.50 in funds owing to the Wisconsin Society of Land Surveyors (WSLS) to his own use. The second count charges that Mr. Riske failed to respond to a letter of inquiry by the Department of Regulation and Licensing, Division of Enforcement, contrary to a rule of the examining board.

An evidentiary hearing was held and a proposed decision was rendered on October 19, 1982 which recommended that the board dismiss both counts. Upon consideration of that proposed decision, the board remanded the matter to the examiner with instructions that further findings be made with respect to that count in the Complaint which alleged the wrongful conversion of funds. Pursuant to the instructions of the board, further proceedings were held. After several prehearing conferences, the evidentiary hearing took place. For reasons unknown, Mr. Riske did not attend the evidentiary hearing.

Based upon the evidence received at the hearing upon remand, it is the examiner's opinion that Mr. Riske did engage in misconduct with respect to the conversion of funds belonging to the WSLs.

At the initial evidentiary hearing held in this case, and prior to the proposed decision rendered, Mr. Riske testified as to certain facts which, if true, established an affirmative defense to the charge of wrongful conversion of funds. At that time he testified that as he received funds pursuant to the WSLs' annual institute to be held in April, 1980, his practice was to deposit them into his business account at the First National Bank & Trust Co. in Beaver Dam, Wisconsin. He further testified that at the time of such deposits he was unaware that the account would be garnished by the Internal Revenue Service. His specific testimony in this regard was as follows:

"Q. (Mr. Gloe) Was this account that was garnished you, your personal checking account?

A. (Mr. Riske) No. It was not.

Q. What was it?

A. It was my business account that I use for land surveying. And it's identified as land surveying account.

Q. When did that garnishment action start in relation to the deposit of the Two Thousand Seven Hundred Dollars (\$2,700)?

A. I had--I had not been garnished in that account before this money was deposited. So that when the garnishment came or when I made the deposits, there was no knowledge on my part that those funds were going to be garnished; otherwise I would have just kept the checks themselves and--uncashed, and turn them over that way." (Trans., 6/7/82, p. 23).

"A. There was no garnishment of my accounts or salaries or anything of that nature prior to my depositing of any of those funds.

So, like I stated before, if--if I would have known there was going to be that garnishment proceedings or paper--monies were going to be garnished for IRS, I would not have deposited those funds and then would not have incurred any debt whatsoever to the Wisconsin Society." (Trans., 6/7/82, p. 25).

This testimony, un rebutted by other evidence presented at the hearing, was accepted by the examiner as truthful. Accordingly, the resultant proposed decision recommended that the matter be dismissed upon the following rationale contained within the opinion section of that decision:

"It is important to note that this is not a case of theft. Rather, it involves a failure to deliver funds collected on behalf of another due to the unforeseen intervention of outside circumstances--in this case, the garnishment of a bank account....The extraordinary circumstances surrounding the creation of the obligation and inability to currently repay the WSLs do not indicate that Mr. Riske is untrustworthy."

Simply stated, that decision accepted the un rebutted testimony of Mr. Riske in two critical aspects. First, it was found that Mr. Riske did deposit the funds into his business account, and, second, that those funds were garnished by the IRS, which was an action unanticipated by Mr. Riske. The evidence submitted at the second hearing, after remand by the board, suggests that neither finding is appropriate.

The evidence produced at the remand hearing clearly establishes that the garnishment of the account by the IRS was not unforeseen by Mr. Riske and that his above-quoted testimony can, at best, be characterized as exhibiting a lack of candor. According to the records of the IRS (Complainant's Ex. 7), as complimented by the records of the bank at which Mr. Riske maintained the account (Complainant's Ex. 5), it is clear that the account at issue had been subject to garnishments by the IRS as early as January of 1979. In fact, according to the IRS' records, funds were removed from the account pursuant to garnishment a total of 11 times during 1979. In light of this evidence, it is necessary that Mr. Riske's testimony that he was unaware of garnishments against the account when he supposedly deposited the proceeds for the 1980 WSLS institute in the account, be totally rejected.

Not only does the additional information provided at the remand hearing cast serious doubt upon Mr. Riske's claim that he was unaware that the amounts deposited in his business account would be garnished, but it also suggests that the funds were never deposited in the account at all. In this regard, the evidence is unclear as to exactly when Mr. Riske received and supposedly deposited the funds. As stated within the letter received from Mr. Riske's bank (Complainant's Ex. 5):

"...(W)e are sorry but without an approximate date or dates, and the amounts if the deposits were made at more than one time, we have been unable to tell when and if Mr. Riske deposited the \$2,752.00. We have contacted Mr. Riske, several times, but he will not give us the information we requested....You will notice that the balance in Mr. Riske's account was never large when the garnishments were presented. Our check to the Internal Revenue was for the balance of the account."

During 1979, as previously indicated, the business account was garnished by the IRS on 11 separate occasions. The last garnishment of the account took place on November 15, 1979. The largest amount collected at any one time was \$712.00 on October 1, 1979. The total amount garnished by the IRS in 1979 was \$3,097.00. (Complainant's Ex. 7). It seems obvious that the \$2,752.00 collected on behalf of the WSLS could not have been included in the total garnished by the IRS. In the last half of 1979 (the earliest time period during which Mr. Riske can reasonably be assumed to have been receiving funds for the April, 1980 WSLS institute) only \$1,437.00 was garnished, according to the records of the IRS. Accordingly, the garnishments by the IRS does not account for all, if any, of the \$2,752.00 received.



Once again, the evidence received suggests that Mr. Riske's testimony that he deposited the funds of the WSLS in his business account, may not be accurate. Based upon the record herein, there can be no finding that Mr. Riske deposited any of the concerned funds in his business account.

The unanswered question, of course, is what happened to those monies. The only reasonable inference is that Mr. Riske converted them to his own use. Clearly he received funds of another which he failed to deliver. He has offered an explanation which is not consistent with the documentary evidence submitted. In light of the additional evidence received upon remand, it is clear that Mr. Riske's conversion of the funds demonstrate his untrustworthiness and constitute misconduct.

The remaining issue in this case is the appropriate discipline, if any, to be imposed. The interrelated purposes for applying disciplinary measures are 1) to promote the rehabilitation of the licensee, 2) to protect the public, and 3) to deter other licensees from engaging in similar conduct. State v. Aldrich, 71 Wis. 2d 206 (1976). Punishment of the licensee is not a proper consideration. State v. MacIntyre, 41 Wis. 2d 481 (1969).

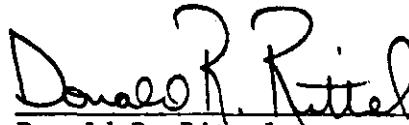
Mr. Riske's lack of candor at the initial hearing concerning his knowledge that garnishment proceedings had been instituted against his bank account, suggests that discipline is necessary in this case in order to impress upon him the severity of his misconduct. His explanation of the events in this matter is inconsistent and bespeaks of fabrication. He is in need of rehabilitation if he is again to be deemed worthy of the public trust.

Furthermore, the seriousness of the misconduct involved in the wrongful conversion of funds of another requires strong discipline in order to deter other licensees from engaging in similar conduct. Nothing short of a revocation in this case will adequately protect the public from occurrences similar to this in the future.

It is recommended that Mr. Riske's license to practice as a land surveyor in the State of Wisconsin be revoked.

Dated at Madison, Wisconsin this 27<sup>th</sup> day of January, 1984.

Respectfully submitted,



Donald R. Rittel  
Hearing Examiner