

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

CENTURY 21-ALL SERVICE REALTY
AND MARY J. HOLMAN,
RESPONDENTS.

FINAL DECISION
AND ORDER
LS9207272REB

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

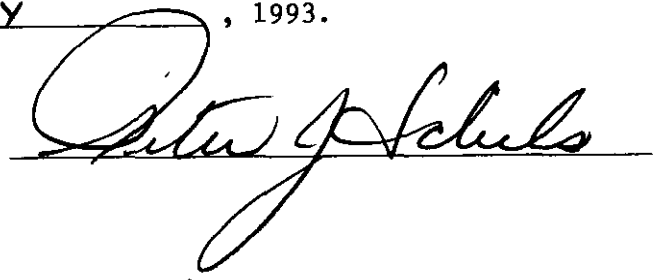
NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Real Estate Board.

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 27TH day of MAY, 1993.



STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

PROPOSED DECISION
LS 9207272 REB

CENTURY 21-ALL SERVICE REALTY,
AND MARY J. HOLMAN,

RESPONDENT.

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

Century 21-All Service Realty
1055 Lincolnshire Court, #B16
Stone Mountain, GA 30083

Mary J. Holman
1055 Lincolnshire Court, #B16
Stone Mountain, GA 30083

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

PROCEDURAL HISTORY

A Notice of Hearing and Complaint in the above-captioned matter were sent by certified mail to the respondents at their last known address on July 27, 1992, and subsequently returned and marked "unclaimed".

Jurisdiction having been obtained through appropriate mailing, the evidentiary hearing was held on September 10, 1992. Respondents neither filed an answer to the complaint, nor appeared at the hearing. Accordingly, a Proposed Decision was issued on October 21, 1992, mailed to the parties and filed with the board.

Thereafter, respondent Mary J. Holman, who is the sole shareholder and chief executive officer of respondent Century 21-All Service Realty, Inc., submitted a letter to complainant's attorney and the board objecting to the Proposed Decision and requesting a new hearing. Ms. Holman stated that she had not received the complaint because she had been out of state at the time it was mailed and returned.

The board considered respondents' request at its meeting on December 10, 1992. The board accepted Ms. Holman's statements as truthful regarding her absence from the state when the complaint was mailed and returned.

Believing that the circumstances presented constituted good cause for granting relief, the default was vacated upon a finding of good cause, pursuant to RL 2.14, Wis. Adm. Code.

The matter was subsequently remanded to the administrative law judge in order to permit respondents to answer and defend this action. A hearing was held in this matter on February 4, 1993. Attorney Roger Hall appeared on behalf of the Division of Enforcement. Respondent Mary J. Holman appeared in person without counsel.

On the basis of the entire record and proceedings in this matter, the Administrative Law Judge recommends the Wisconsin Real Estate Board adopt as its final decision in this case the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Respondent Mary J. Holman (Holman) was licensed as a real estate broker, license #30308, in the State of Wisconsin on September 14, 1987. Said license was current through December 1992, and has not been renewed. Holman currently resides at 1055 Lincolnshire Court, #B16, Stone Mountain, Georgia.
2. Respondent Century 21-All Service Realty (hereafter, "Century 21"), a Wisconsin corporation, was licensed to engage in the practice of real estate in the State of Wisconsin on September 14, 1987. Century 21 does not hold a current real estate license. Holman is currently in the process of liquidating Century 21.
3. On December 5, 1990, Patrick Lynch (Lynch), an auditor with the Wisconsin Department of Regulation and Licensing-Division of Enforcement, commenced an audit of the real estate trust account records of Century 21-All Service Realty.

4. Holman established a real estate trust account, #10048596, at M & I Northern Bank in August 1987.
5. Fourteen overdrafts were found in trust account #10048596 on the following dates:
 - March 14, 21, 28--1989
 - July 25, 1989
 - August 22, 23, 25--1989
 - October 2, 31--1989
 - November 10, 17, 20--1989
 - December 5, 29--1989
6. On four occasions checks were returned for Insufficient Funds on trust account #10048596. Check #1355 for \$2000.00 was returned on October 3, 1989. Check #1385 for \$2580.00 and #1386 for \$3000.00 were returned on November 13, 1989. Check #1388 for \$500.00 was returned on December 6, 1989.
7. Holman's cash journal for trust account #10048596 indicates she received a check from Christopher Hagner on December 30, 1988 for \$700.00. No deposit record for that check exists.
8. Holman's cash journal for trust account #10048596 indicates she received a check from Joel Kirkendoll on January 10, 1989 for \$1500.00. No deposit record for that check exists.
9. Holman's cash journal for trust account #10048596 indicates she received a check from Victory Temple Church on April 5, 1989 for \$13,470.00. No deposit record for that check exists.
10. Service charges ceased to be recorded in Holman's cash journal after May 1989.
11. No running balance is recorded in Holman's cash journal after June 1989.
12. Holman failed to reconcile her real estate trust account #10048596 from December 1988-October 1989.
13. Holman opened a second real estate trust account #12122411 at the M & I Bank on November 21, 1989. No running balance was kept for this account.
14. On February 2, 1990, Holman issued a \$1000.00 check from her business account and deposited it into her second trust account, #12122411. Both the check and the deposit slip indicated that the check was for a shortage in the trust account.

15. Holman maintained another real estate trust account located at the North Milwaukee State Bank, account #1042947. On July 31, 1990, there was an overdraft of \$1500.00 in account #1042947.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has subject matter jurisdiction in this case pursuant to s. 452.14, Stats. and personal jurisdiction over the respondents under s. 440.11, Stats.

2. Respondent Mary J. Holman has demonstrated incompetency to act as a real estate broker in a manner which safeguards the interests of the public contrary to sec. 452.14 (3) (i), Stats. by:

a. Issuing checks upon a trust account which contained insufficient funds contrary to s. RL 24.15, Wis. Admin. Code as set forth in the Findings of Fact.

b. Failing to maintain a proper bookkeeping system as indicated by multiple overdrafts, several instances of insufficient funds, failing to record service charges, and failing to keep a running balance contrary to s. RL 18.13, Wis. Admin Code.

c. Failing to deposit real estate trust funds in a real estate trust account within 24 hours of receipt of those funds contrary to s. RL 18.03 (1) (b), Wis. Admin. Code as specifically described in Paragraphs 7-9 of the Findings of Fact.

3. Respondent Century 21 has demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public contrary to sec. 452.14(3) (i), Stats. by:

a. Issuing checks upon a trust account which contained insufficient funds contrary to s. RL 24.15, Wis. Admin. Code as set forth in the Findings of Fact.

b. Failing to maintain a proper bookkeeping system as indicated by multiple overdrafts, several instances of insufficient funds, failing to record service charges, and failing to keep a running balance contrary to s. RL 18.13, Wis. Admin Code.

c. Failing to deposit real estate trust funds in a real estate trust account within 24 hours of receipt of those funds contrary to s. RL 18.03 (1) (b), Wis. Admin. Code as specifically described in Paragraphs 7-9 of the Findings of Fact.

ORDER

NOW, THEREFORE, IT IS ORDERED that Mary J. Holman's right to renew her real estate broker's license is hereby revoked for two years, commencing on the date the final decision and order are signed by the Wisconsin Real Estate Board.

IT IS FURTHER ORDERED that the right of Century 21 to renew its real estate license is hereby revoked.

IT IS FURTHER ORDERED that any trust accounts held in the name of either Century 21 or Mary J. Holman be closed immediately and any funds remaining therein be disbursed to the appropriate individuals forthwith.

IT IS FURTHER ORDERED that before Ms. Holman is eligible to receive her broker's license she present satisfactory evidence to the Wisconsin Real Estate Board that she is competent to practice as a real estate broker. Ms. Holman shall demonstrate her competency by submitting evidence to the Board that she has successfully completed a course in accounting, that she has taken 12 hours of continuing education credits, six of which will be in the areas of accounting, bookkeeping, and/or managing real estate trust accounts, and that she take and pass the broker's examination.

IT IS FURTHER ORDERED that upon successful completion of six continuing education hours, Ms. Holman may apply for a real estate salesperson's license.

IT IS FURTHER ORDERED that Mary J. Holman and Century 21 shall pay to the Department of Regulation and Licensing the assessable costs of this proceeding pursuant to s. 440.22, Stats.

OPINION

The testimony in this case, along with Exhibits 1-13, establish by a clear preponderance of the evidence that Ms. Holman was incompetent in her dealings as a real estate broker. The repeated overdrafts, the failure to deposit trust moneys, and the lack of sufficient funds demonstrates a clear disregard for the laws and rules governing real estate brokers.

A broker is a fiduciary and holds a position of trust and confidence. She is required to exercise fidelity and good faith in all matters within the scope of her employment. Ms. Holman failed to live up to those duties by carelessly neglecting to make necessary trust account deposits, by continuing to disburse checks for which there were insufficient funds, and by improperly maintaining an accurate bookkeeping system. In so doing, Ms. Holman and Century 21 breached their fiduciary duties and undermined the trust and confidence that had been placed with them. The practice of real estate is essential to maintaining a healthy economy. Brokers who fail to adhere to the rules and regulations of the practice undermine the ability to do that, and jeopardize the public's confidence. Such behaviors cannot be tolerated.

It is well established that the purposes of discipline are to protect the public, to deter other licensees from engaging in similar misconduct, and to promote the rehabilitation of the licensee. State v. Aldrich, 71 Wis. 2d 206 (1976). Punishment of the licensee is not an appropriate consideration. State v. McIntyre, 41 Wis. 2d 481 (1961).

Whether Ms. Holman's failure to comply with the applicable statutes and rules was intentional or merely sloppy book work is not altogether clear. Nevertheless, Ms. Holman was charged with the responsibility of maintaining an up-to-date bookkeeping system not only as a real estate broker, but also as the chief executive officer of her own real estate firm. She also had affirmative duties to deposit any real estate trust funds into her trust account within 24 hours of receiving those funds, to maintain a positive cash balance in her accounts, to keep a running balance, and to reconcile her accounts, to name but a few. At best, Ms. Holman kept her obligations sporadically.

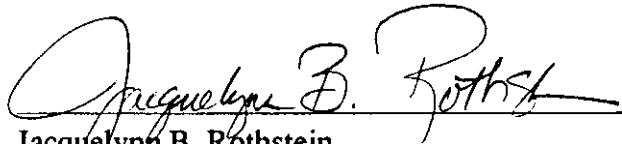
Ms. Holman has readily accepted responsibility for her failures and has further acknowledged that taking an accounting course would be quite helpful. She blames human error and her own carelessness on her bookkeeping difficulties. Nevertheless, fourteen overdrafts cannot be construed as mere mathematical errors. Rather, they, along with the other violations, demonstrate that Ms. Holman is incapable of managing real estate trust accounts and that she has an apparent disregard for the regulations governing real estate brokers. Whether anyone was harmed as a result of Ms. Holman's actions is not known. However, in order to avert that potential and to ensure Ms. Holman's real estate practices are successfully rehabilitated, a period of revocation along with additional education and passage of the broker's examination is believed to be necessary. The recommended disciplinary measures will further ensure that the public is safeguarded against further violations while also deterring other brokers from engaging in similar conduct.

The broker's license of Century 21 is also revoked as a result of Ms. Holman's incompetence. Section 452.14 (4) WI Stats states that "[i]f a broker is a company it shall be sufficient cause for...revocation of a broker's license that any officer...has been guilty of any act or omission which would be cause for refusing a broker's license to such person as an individual." The broker's license of a company should not be suspended unless the board deems it absolutely necessary to protect the interests of the public. This is because of the hardship such a step is likely to impose upon innocent employees and shareholders. Lewis Realty, Inc. v. Wisconsin Real Estate Brokers' Board, 6 Wis. 2d 99, 127 (1959). The facts in this case warrant the revocation of Century 21's right to renew its license especially since Ms. Holman is the chief executive officer and the sole shareholder of Century 21, and substantially breached her duties in that capacity. Ms. Holman testified that she was in the process of liquidating Century 21 (Transcript p. 7). She has not renewed her establishment permit and therefore cannot legally employ anyone to work there. To ensure that the interests of the public are adequately protected, Century 21's right to renew its license must be revoked.

The primary issue in this matter centered on Ms. Holman's failure to properly maintain her trust accounts. Therefore, in the event that Ms. Holman is eventually granted a real estate salesperson's license, adequate safeguards will be in place to prevent further wrongdoing and to protect the public because Ms. Holman will not be authorized to open and maintain any trust accounts. That responsibility would fall upon Ms. Holman's employer, that is, a licensed real estate broker, under whom Ms. Holman would work and report to.

Dated this 23rd day of April, 1993.

Respectfully submitted,



Jacquelyn B. Rothstein
Administrative Law Judge

BDLS2/3017

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF	:	AFFIDAVIT OF COSTS OF
DISCIPLINARY PROCEEDINGS AGAINST	:	DIVISION OF LEGAL SERVICES
	:	Case No. LS9207272REB
Mary J. Holman, and	:	
Century 21-All Service Realty,	:	
RESPONDENTS.	:	

STATE OF WISCONSIN)
DANE COUNTY)

Jacquelynn B. Rothstein, being first duly sworn on oath, deposes and says:

1. She is an attorney licensed to practice law in the State of Wisconsin, employed by the Division of Legal Services, Department of Regulation and Licensing, and as such was assigned as Administrative Law Judge in the above-captioned case.

2. In the course of that assignment, she extended the following amounts of time and committed the Department to the following expenses:

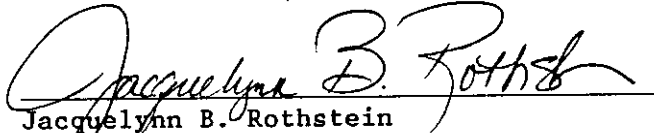
<u>DATE</u>	<u>ACTIVITY</u>	<u>TIME</u>
<u>PROPOSED DECISION #1:</u>		
9/10/92	Preside at hearing	30 minutes
9/30/92	Draft decision	1 hour
10/19/92	Draft decision	1 hour
10/20/92	Draft decision	1 hour
10/22/92	Draft decision	1 hour
TOTAL TIME		4 hours 30 minutes
Administrative Law Judge expense (\$19.00/hour x 4.5 hours)		\$ 85.50
Transcript cost (Magne-Script Reporters)		\$106.10
TOTAL ASSESSABLE COSTS, DIVISION OF LEGAL SERVICES		
DECISION #1		\$191.60
<u>PROPOSED DECISION #2:</u>		
1/7/93	Draft prehearing memo and order	30 minutes
1/20/93	Letter to respondent	15 minutes
2/4/93	Preside at hearing	2 hours
4/1/93	Draft opinion	3 hours
4/7/93	Draft opinion	2 hours
4/8/93	Draft opinion	2 hours
4/9/93	Draft opinion	2 hours
4/23/93	Draft opinion	1 hour
TOTAL TIME		12 hours 45 minutes

Administrative Law Judge expense (\$19.00/hour x 12.75) \$242.25

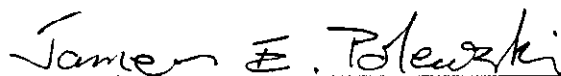
Transcript cost (Magne-Script Reporters) \$240.90

**TOTAL ASSESSABLE COSTS, DIVISION OF LEGAL SERVICES
DECISION #2** \$483.15

TOTAL COST OF BOTH HEARINGS \$674.75


Jacquelyn B. Rothstein

Sworn and subscribed before me this 23rd day of April, 1993.


James E. Polewski
Notary Public
My commission is permanent.

STATE OF WISCONSIN
BEFORE THE REAL ESTATE EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

CENTURY 21 - ALL SERVICE
REALTY, INC.
MARY J. HOLMAN,
RESPONDENT.

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:

AFFIDAVIT OF COSTS

LS 9207272 REB

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Roger R. Hall, being duly sworn, deposes and states as follows:

1. That I am 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 I was assigned as a prosecutor in the above-captioned matter; and

3. That set out 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 agency business in the above-captioned matter.

PROSECUTING ATTORNEY EXPENSE

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
7/29/91	Review file	1.0
7/30/91	Review file	1.0
5/26/92	Audit Compilation	2.0
7/18/92	Draft Complaint	2.0
9/19/92	Preparation for hearing	2.2
9/10/92	Appear at hearing	0.9
2/1/93	Preparation for hearing; conference with auditor	2.4

2/2/93	Review file for hearing	6.0
2/3/93	Preparation for hearing	6.0
2/4/93	Appear at hearing	2.0

TOTAL HOURS

25 hours 30 min.

Total attorney expense for 25 hours and 30 minutes at \$30.00 per hour (based upon average salary and benefits for Division of Enforcement attorneys) equals:

\$765.00

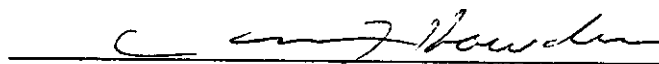
TOTAL ASSESSABLE COSTS

\$765.00.



Roger R. Hall, Attorney

Subscribed and sworn to before me this 10 day of May, 1993.



CHARLES HOWDEN

MY COMMISSION IS PERMANENT

RRH:djm
DOEATTY-2512

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 MAY, 28 1993.

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

CENTURY 21-ALL SERVICE REALTY
AND MARY J. HOLMAN,
RESPONDENTS.

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NOTICE OF FILING
PROPOSED DECISION
LS9207272REB

TO: Century 21-All Service Realty
8303 W. Silver Spring Dr.
Milwaukee, WI 53218
Certified P 992 818 905
and
P.O. Box 18612
Milwaukee, WI 53218
Certified P 992 818 906

Mary J. Holman
8303 W. Silver Spring Dr.
Milwaukee, WI 53218
Certified P 992 818 907
and
P.O. Box 18612
Milwaukee, WI 53218
Certified P 992 818 908

Roger R. Hall, Attorney
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

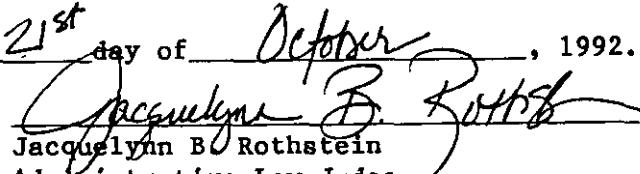
PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Real Estate Board by the Administrative Law Judge, Jacquelyn B. Rothstein. A copy of the Proposed Decision is attached hereto.

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, Department of Regulation and Licensing, Room 281, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, on or before November 4, 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 21st day of October, 1992.


Jacquelyn B. Rothstein
Administrative Law Judge

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

PROPOSED DECISION
LS 9207272 REB

CENTURY 21-ALL SERVICE REALTY,
AND MARY J. HOLMAN,

RESPONDENT.

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

Century 21-All Service Realty
8303 W. Silver Spring Drive
Milwaukee, WI 53218
and
P.O. Box 18612
Milwaukee, WI 53218

Mary J. Holman
8303 W. Silver Spring Drive
Milwaukee, WI 53218
and
P.O. Box 18612
Milwaukee, WI 53218

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

PROCEDURAL HISTORY

A hearing was held in this matter on September 10, 1992, Roger R. Hall appeared for

the Division of Enforcement. Respondent Mary J. Holman did not appear and no one appeared on her behalf. Likewise, no one appeared on behalf of Respondent Century 21-All Service Realty.

On the basis of the entire record and proceedings in this matter, the Wisconsin Real Estate Board makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Notice of hearing and the complaint were sent by certified mail to Ms. Holman and to Century 21-All Service Realty on July 27, 1992, to respondents Holman and Century 21-All Service Realty, Inc. at there last known address. The notice of hearing and complaint were returned as "unclaimed" to the Department by the Post Office.

2. Respondent Mary J. Holman holds license number 30308 and is licensed to practice as a real estate broker in the state of Wisconsin. Respondent Holman's last-known address of the holder as indicated in the records of the department are 8303 W. Silver Spring Drive, Milwaukee, Wisconsin 53218 and P.O. Box 18612, Milwaukee, WI 53218.

3. Respondent Century 21-All Service Realty, Inc., a Wisconsin corporation, is and was at all times relevant to the events set forth herein a real estate corporation licensed to engage in the practice of real estate in the State of Wisconsin pursuant to license number 833583 granted on September 14, 1987. The last known address of Respondent Century 21-All Service Realty, Inc. as indicated in the records of the department is 8303 W. Silver Spring Drive, Milwaukee, Wisconsin 53218 and P.O. Box 18612, Milwaukee, WI 53218.

4. On December 5, 1990, Patrick Lynch, an auditor with the Wisconsin Department of Regulation and Licensing-Division of Enforcement, commenced an audit of the real estate trust account records of Century 21-All Service Realty.

5. On December 5, 1990, Ms. Holman admitted to Auditor Lynch that Holman knew that the trust account was "short" and that the real estate trust account records were inaccurate.

6. The audit of the real estate trust account of Century 21-All Service Realty disclosed discrepancies. More specifically, the trust account at M&I Northern Bank reflected overdrafts on the following dates:

03/14/89; 03/21/89; 03/28/89; 07/25/89; 08/22/89; 08/23/89; 08/25/89
10/02/89; 10/31/89; 11/10/89; 11/17/89; 11/18/89; 11/19/89; 11/20/89
12/05/89; 12/29/89

7. A compilation of the financial records indicates that there were insufficient funds to cover the amount of money held in the broker's trust account on the following dates:

12/30/88; 01/31/89; 02/28/89; 03/31/89; 04/28/89; 05/31/89
06/30/89; 07/31/89; 08/31/89; 09/29/89; 10/31/89

8. Respondents handled a real estate transaction between buyer, Victory Temple, and a seller, the Jewish Federation. This transaction began with an offer to purchase dated February 23, 1989. Subsequently, as part of the transaction, respondents received a check from the buyer, Victory Temple, for \$13,470. This check was never deposited in a trust account.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction in the subject matter of this case pursuant to s. 452.14, Stats. and personal jurisdiction over the respondents under s. 440.11, Stats.

2. The Respondent is in default under s. RL 2.14, Wis. Admin. Code for failing to file an answer within twenty days of service of the complaint. The allegations in the complaint are therefore deemed admitted pursuant to s. RL 2.09 (3), Wis. Admin. Code.

3. Respondent Mary J. Holman has demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public contrary to sec. 452.14 (3) (i), Stats. by:

a. Issuing checks upon a trust account which contained insufficient funds contrary to s. 24.15, Wis. Admin. Code as set forth in the Findings of Fact.

b. Failing to maintain a proper bookkeeping system as indicated by the fact that overdrafts and insufficient funds were prevalent from 12/30/88 through 12/29/89 contrary to s. RL 18.13, Wis. Admin. Code.

c. Failing to deposit real estate trust funds of Victory Temple in a real estate trust within 24 hours of receipt of those funds contrary to s. RL 18.03 (1) (b), Wis. Admin. Code as specifically described in paragraph 7 of the Findings of Fact.

4. Respondent Century 21-All Service Realty has demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public contrary to sec. 452.14 (3) (i) by:

a. Issuing checks upon a trust account which contained insufficient funds contrary to s. 24.15, Wis. Admin. Code as set forth in the Findings of Fact.

b. Failing to maintain a proper bookkeeping system as indicated by the fact that overdrafts and insufficient funds were prevalent from 12/30/88 through 12/29/89 contrary to s. RL 18.13, Wis. Admin. Code.

c. Failing to deposit real estate trust funds of Victory Temple in a real estate trust within 24 hours of receipt of those funds contrary to s. RL 18.03 (1) (b), Wis. Admin. Code as specifically described in paragraph 7 of the Findings of Fact.

ORDER

Now, therefore, IT IS ORDERED that the real estate broker's license previously issued to Mary J. Holman be and hereby is REVOKED.

IT IS FURTHER ORDERED that the real estate license previously issued to Century 21-All Service Realty is REVOKED.

IT IS FURTHER ORDERED that Mary J. Holman and Century 21-All Service Realty shall pay to the Department of Regulation and Licensing the assessable costs of this proceeding pursuant to s. 440.22, Stats.

OPINION

By failing to file an answer, Ms. Holman and Century 21-All Service Realty are in default, and the charges in the complaint are deemed admitted. However, under s. RL 2.14, Wis. Admin. Code, the matter may be reopened upon a showing of good cause. Furthermore, although no certified mail receipt was returned showing that Respondents received notice of the hearing, service by mail to a respondent's last known address is complete upon mailing and personal jurisdiction over the Respondents is thereby obtained under s. RL 2.08 (1).

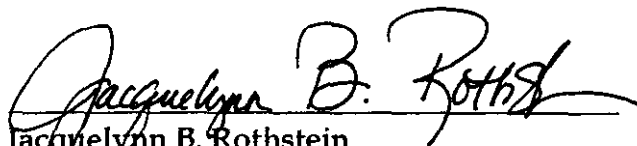
Ms. Holman's failure to answer or attend the hearing raises substantial doubts about her desire to comply with the regulations governing real estate brokers. The testimony in this case, and Exhibits 1 and 2, establish by a clear preponderance of the evidence that Ms. Holman was incompetent in her dealings as a real estate broker. The repeated overdrafts, the failure to deposit trust moneys, and the lack of sufficient funds demonstrates a clear disregard for the laws and rules governing real estate brokers.

A broker is a fiduciary and holds a position of trust and confidence. She is required to exercise fidelity and good faith in all matters within the scope of her employment. Ms. Holman failed to live up to those duties by carelessly neglecting to make necessary trust account deposits, by continuing to disburse checks for which there were insufficient funds, and by improperly maintaining an accurate bookkeeping

system. In so doing, Ms. Holman and Century 21 breached their fiduciary duties and undermined the trust and confidence that had been placed with them. The practice of real estate is essential to maintaining a healthy economy. Brokers who fail to adhere to the rules and regulations of the practice undermine the ability to do that, and jeopardize the public's confidence. Such behaviors cannot be tolerated.

Accordingly, there are a number of questions which would need to be answered in order to determine whether Ms. Holman and Century 21-All Service Realty are able to practice real estate brokering with due regard for the protection of the public. In as much as those questions cannot be answered without Ms. Holman's and Century 21's cooperation, revocation of both their licenses is the only available discipline which is certain to protect the public until such time as Ms. Holman decides to contact the Board and request reinstatement of her real estate broker's license.

Dated this 21st day of October, 1992.


Jacquelyn B. Rothstein
Administrative Law Judge

BDLS2/2326