

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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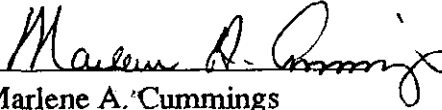
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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

| | | |
|---------------------------------|---|-----------------------------|
| IN THE MATTER OF A PETITION FOR | : | |
| AN ADMINISTRATIVE INJUNCTION | : | ORDER |
| INVOLVING | : | Case No. LS-9308051-REB |
| MARSHALL J. KEITH, | : | (90 REB 217 and 91 REB 387) |
| RESPONDENT. | : | |

Based upon the Findings of Fact and Conclusions of Law in the Proposed Decision, I find that this action is necessary and appropriate in the public interest and for the protection of the public, and I adopt the Proposed Order as a Final Order of the Department of Regulation and Licensing.

EXECUTED at Madison, Wisconsin this 26th day of October, 1993.


Marlene A. Cummings
Secretary

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

| | | |
|---------------------------------|---|-----------------------------|
| IN THE MATTER OF A PETITION FOR | : | |
| AN ADMINISTRATIVE INJUNCTION | : | PROPOSED ORDER AND DECISION |
| INVOLVING | : | Case No. LS-9308051-REB |
| MARSHALL J. KEITH, | : | (90 REB 217 and 91 REB 387) |
| RESPONDENT. | : | |

PROPOSED ORDER

Pursuant to § 440.21(2), Stats., and ch. RL 3, Wis. Admin. Code,

IT IS ORDERED THAT, unless and until he obtains licensure under ch. 452, Stats.,

- the respondent, Marshall J. Keith, is enjoined and prohibited from continuing to engage, either directly or indirectly, in conduct which requires licensure as a real estate broker or real estate salesperson under ch. 452, Stats.; and
- the respondent, Marshall J. Keith, is enjoined and prohibited from continuing to use the title of "real estate broker" or "real estate salesperson" or any other title or name requiring licensure under ch. 452, Stats.

This order becomes effective on the date this proposed order is signed and adopted as a final order on behalf of the Department of Regulation and Licensing.

Mr. Keith is hereby notified that a violation of the above order may result in a forfeiture of up to \$10,000 for each offense, and each day of a continued violation constitutes a separate offense.

The hearing scheduled for November 16, 1993 is hereby cancelled.

PARTIES

The parties in this matter under chapter RL 3, Wis. Admin. Code and § 227.44, Stats., and for purposes of review under § 227.53, Stats. are:

Complainant:

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

Respondent:

Marshall J. Keith
112 South Lake Avenue
Crandon, WI 54520

Regulatory Authority:

Department of Regulation and Licensing
1400 East Washington Ave.
Madison, WI 53708

PROCEDURAL HISTORY

A. This case was initiated by the filing of a petition for an administrative injunction on August 5, 1993. A hearing on the petition was scheduled for November 16, 1993. Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and delivered to the respondent, Marshall J. Keith, by personal service on August 18, 1993.

B. The notice of hearing informed Mr. Keith that he was to file a written answer to the petition within 20 days after service. Mr. Keith did not file an answer to the complaint within the specified time limit.

C. Attorney Charles Howden of the Department's Division of Enforcement filed a Motion for Default Judgment on September 20, 1993.

D. Notice of the motion for default judgment was served personally on Mr. Keith on September 28, 1993.

E. All time limits and notice and service requirements having been met, the hearing on the motion for default judgment was held as scheduled on October 14, 1993. Mr. Keith did not appear. The Department of Regulation and Licensing was represented by Attorney Howden. The hearing was recorded but not transcribed. The complaint and the exhibits entered into evidence at the hearing form the basis for this Proposed Decision.

FINDINGS OF FACT

1. The respondent, Marshall J. Keith, received the petition in this case and he failed to comply with the requirement to file an answer.
2. Respondent Marshall J. Keith, 112 South Lake Avenue, Crandon, Wisconsin 54520, was licensed as a real estate broker in the State of Wisconsin, license #30770, originally granted on January 11, 1984. Mr. Keith voluntarily surrendered his real estate broker license effective February 22, 1990.
3. The voluntary surrender of Mr. Keith's real estate broker's license was formalized by formal order of the Real Estate Board dated February 22, 1990, in case nos. 87 REB 7, 86 REB 356, 87 REB 80, 88 REB 437, and 86 REB 343.
4. Mr. Keith has not been licensed as a real estate broker or a real estate sales person from February 22, 1990 through the date of this petition.
5. At all times relevant to the facts set forth herein, Mr. Keith was affiliated with Keith Realty, Inc., whose address is registered with the Department of Regulation and Licensing as being 112 South Lake Avenue, Crandon, Wisconsin 54520. Keith Realty, Inc. held Wisconsin real estate broker's license #833180, from March 20, 1985 to December 31, 1992. The license of Keith Realty, Inc. expired, without renewal, on December 31, 1992.
6. At all times relevant to the facts set forth herein, Mr. Keith was and is the sole owner of the corporation known as Keith Realty, Inc., and was and is the President of said corporation.
7. Subsequent to the February 22, 1990 Order of the Real Estate Board, and without being first licensed as a real estate broker or real estate salesperson, Mr. Keith continued to be active in real estate activities requiring a real estate broker's license or a real estate salesperson's license, including performing activities requiring licensure in the following transactions:
 - a. A transaction between the seller Ruby Plummer and the buyer Ken Ivanoski, which closed on or about June 30, 1990.
In this transaction, Mr. Keith appraised the home for the sellers and supervised the closing. Keith Realty, Inc., received a commission of \$700.00.
 - b. A transaction between the seller Thelma Houlette and the buyer Cindy Ryder which closed on or about September 10, 1990.
In this transaction, Mr. Keith exhibited the property to Cindy Ryder and arranged for her to rent the property prior to purchase, drafted the documents necessary for the transfer and accepted a commission of \$2,610.12.

- c. A transaction between the sellers Louis J. Plummer and Ruby J. Plummer and the buyers Eugene Spirewka and Louise Spirewka, which transaction closed on or about August 21, 1991.
In this transaction, Mr. Keith negotiated the purchase terms of the transaction, prepared documents for closing and issued checks from the Keith Realty, Inc. trust account and accepted a commission.
- d. A transaction between Carl A. Laufer and Martha F. Laufer and the buyer Vernon Dvorak, which transaction closed on or about August 5, 1991.
In this transaction, the purchaser was shown the property by Mr. Keith, Mr. Keith drafted several offers to purchase for the purchaser's signature, negotiated the final sale, accepted earnest money, and attended the closing. Keith Realty, Inc., received a commission from this transaction.
- e. A transaction between the seller Ruth Cernik and the buyers Joseph B. Gengalo and Sandra Gengalo, which transaction closed on or about October 4, 1991.
In this transaction, Mr. Keith exhibited the property to potential purchasers, drafted the offer to purchase, accepted the earnest money, drafted the warranty deed, drafted closing statements and issued Keith Realty, Inc., checks related to the closing. Keith Realty Inc., received a commission in the amount of \$3,395.00.
- f. A transaction between the sellers Alice S. Michalske and Clem A. Michalske and the sellers Verne W. Losser and Shirley M. Losser which transaction closed on or about December 24, 1991.
In this transaction, Mr. Keith exhibited the property to the purchaser, drafted the offer to purchase, accepted earnest money, drafted a warranty deed, issued checks from the Keith Realty Inc., Trust Account checking account at Security Bank S.S.B., Crandon, Wisconsin, and accepted a commission.
- g. A transaction between the seller Eunice Castellion and the buyer Chery A. Schmidt which transaction closed on or about June 13, 1992.
In this transaction, Mr. Keith solicited purchasers for the property, exhibited the property to purchasers, drafted an offer to purchase, accepted earnest money, ordered title evidence from Forest Abstract Company, drafted closing statements, held the closing and issued checks related to the closing from the Keith Realty, Inc., Trust account, and accepted a commission.
- h. A transaction between the seller Paul Van Zeeland Heating, Inc. and the buyers Robert Weber and Darlene Weber which transaction closed on or about September 16, 1992.

In this transaction, Mr. Keith located a buyer for the property, exhibited the property to the buyer, drafted the purchase documents, drafted the closing documents, held the closing, issued checks from the Keith Realty, Inc., trust account and accepted a commission.

8. Subsequent to February 22, 1990, and during a time that Mr. Keith did not hold a real estate broker's license or real estate salesperson's license, Mr. Keith continued to operate the business known as Keith Realty, Inc. of 112 South Lake, Crandon, Wisconsin and continued, in the course of operating said company, to write checks off of Keith Realty, Inc. trust accounts and Keith Realty, Inc. operating account, including those accounts at the following institutions:

- a. Security Bank, S.S.B., Crandon, Wisconsin, checking account #088-3521940.
- b. F & M Bank, Wittenberg, Wisconsin, checking account #420929.
- c. F & M Bank, Wittenberg, Wisconsin checking account #228347.

The above mentioned checking accounts were actively used by Keith Realty, Inc., under the signature of Marshall J. Keith between February 22, 1990, and November, 1992. The checks used by Mr. Keith for account # 228347 carry the notation "M. J. Keith, Broker".

9. Keith advertised the services of Keith Realty, Inc., M. John Keith (President) subsequent to February 22, 1990, in the Pioneer Express, a newspaper circulated in the Crandon, Wisconsin area.

10. Mr. Keith continues the solicitation of real estate services through advertisements in the local phone directory for Crandon, Wisconsin, including a solicitation which appears in the 1992-1993 issue of said publication regarding his solely owned company, Keith Realty, Inc.

CONCLUSIONS OF LAW

I. The respondent, Marshall J. Keith, received notice of this proceeding while he was physically present in the state of Wisconsin. The Department of Regulation and Licensing has personal jurisdiction over the Respondent under §§801.04(2) and 801.05(1), Stats.

II. The Department of Regulation and Licensing is the legal authority responsible for enforcing laws requiring credentials, under §440.21, Wis. Stats. Under chapter RL 3, Wis. Admin. Code, the Department has jurisdiction over the subject-matter of a petition alleging that the respondent engaged in a practice without a credential required under chs. 400 to 459.

III. The Respondent, Marshall J. Keith, is in default under § RL 3.13, Wis. Admin. Code. The Department may make findings of fact and enter an order on the basis of the petition and the evidence presented at the hearing.

IV. The respondent, Marshall J. Keith, has engaged in the practice of real estate and used the title of real estate broker without a license either as a real estate broker or a real estate salesperson, in violation of § 452.03, Stats. A special order enjoining Mr. Keith from the continuation of the practice of real estate and from advertising himself as a real estate broker is therefore appropriate under § 440.21 (2), Stats.

OPINION

The petition in this matter alleged that the respondent, Marshall J. Keith, engaged in activities which are reserved by statute to those holding a valid license either as a real estate broker or a real estate salesperson.

Mr. Keith is in default, not having answered the complaint as required by administrative rule. This proposed decision and order are issued in response to the motion for default judgment and a finding of default. By his default Mr. Keith has effectively admitted all the allegations of the complaint. There is no need in this opinion to weigh or discuss evidence, and no issues of fact remain. The evidentiary hearing scheduled for November 19, 1993 is therefore unnecessary.

The allegations in the complaint establish clearly that Mr. Keith advertised himself as a real estate broker and engaged in the practice of real estate after the voluntary surrender of his license was accepted, in violation of § 452.03, Stats. An administrative injunction is authorized by § 440.21(2), Stats. and ch. RL 3, Wis. Admin. Code, and it is clearly appropriate here.

Any person who violates a special order issued under § 440.21(2) may be required to forfeit not more than \$10,000 for each offense, under § 440.21(4), Stats. Each day of continued violation constitutes a separate offense. It should be noted that the issuance of an administrative injunction does not preclude other remedies for the respondent's violations of statutes, such as a misdemeanor prosecution by the county district attorney under § 452.17, Stats.

Dated October 14, 1993.


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)

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 Department of Regulation and Licensing.

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 Department of Regulation and Licensing

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 Department of Regulation and Licensing.

The date of mailing of this decision is October 28, 1993.