

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE APPLICATION
FOR A REAL ESTATE BROKER LICENSE

PAUL P. PALMISANO,
APPLICANT.

FINAL DECISION
AND ORDER
LS9311041REB

The State of Wisconsin, Department of Regulation and Licensing, 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, Department of Regulation and Licensing.

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

Dated this 2nd day of May 1994.

Marlene A. Cummings
Marlene A. Cummings, Secretary

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE APPLICATION
FOR A REAL ESTATE BROKER'S LICENSE

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CASE NO. LS9311041REB

PAUL P. PALMISANO,
APPLICANT

PROPOSED DECISION

The parties to this matter for the purposes of WI Stats. sec. 227.53 are:

Paul P. Palmisano
W204 N5925 Lannon Road
Menomonee Falls, WI 53051

State of Wisconsin
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

Mr. Palmisano applied for a license as a real estate broker in February of 1993. On or about September 16, 1993, the Department denied the application on the grounds that Mr. Palmisano did not qualify for a broker's license because he was not competent to safely transact the business of a broker. Accordingly, the Department issued its decision by a Notice of Denial dated September 16, 1993. Mr. Palmisano subsequently requested a hearing concerning his denial.

A hearing in this matter was conducted on January 19, 1994, at 1400 East Washington Avenue, Madison, Wisconsin. The Division of Enforcement appeared by Attorney Roger R. Hall. Mr. Palmisano appeared in person and by his attorney, Thomas L. Frenn.

Based upon the entire record in this matter, the administrative law judge recommends that the Department of Regulation and Licensing adopt as its final decision in the matter the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Paul P. Palmisano, W204 N5925 Lannon Road, Menomonee Falls, Wisconsin, was originally licensed to practice as a real estate broker in Wisconsin on September 17, 1976. He renewed his license several times thereafter.
2. On January 26, 1989, the Wisconsin Real Estate Board issued its Final Decision and Order in the Matter of Disciplinary Proceedings Against Paul P. Palmisano, Landmark Homes, Inc., a/k/a Century 21-Landmark Homes, Edward D. Sinner, and Richard C. Semrad. The Board found that Mr. Palmisano had violated various provisions of the real estate statutes and code by submitting false documents to a lender; by failing to reduce agreements regarding financial obligations and earnest money in writing; by submitting closing statements to a lender which falsely reflected the purchaser's down payment; and by concealing or failing to disclose to all parties an undated, handwritten agreement pertinent to a transaction. The Final Decision and Order was affirmed by the Waukesha County Circuit Court on March 19, 1991.
3. Mr. Palmisano did not appeal the Circuit Court order, and his license was therefore revoked as of June 19, 1991, for two years.
4. The Final Decision and Order required Mr. Palmisano to surrender any and all licenses issued to him by the Real Estate Board to the Department of Regulation and Licensing. Mr. Palmisano did not return his license to the Department.
5. Mr. Palmisano entered into a residential listing contract with Delores Anderson on January 21, 1992, to perform the services of a real estate broker in connection with the sale of property located at 3530 N. 58th Boulevard, Milwaukee, Wisconsin.
6. Membership dues for Mr. Palmisano were paid to the Waukesha County Association of Realtors, Inc., in August of 1991. The documents filed with the Waukesha County Association of Realtors list Mr. Palmisano as a real estate broker with Century 21-Four Seasons Realty.
7. Data from the Multiple Listing Service identified Mr. Palmisano as the listing agent or co-broker for a home located at 204 Washington Street in Walworth County, Wisconsin. The home was sold on March 31, 1992.
8. Mr. Palmisano was assessed fees for having used the Multiple Listing Service on 8/25/91; 11/25/91; 1/25/92; 2/25/92; 5/25/92; 8/25/92; 11/25/92; 2/25/93.
9. On October 5, 1992, Midwest Business Services, Inc., submitted an application for a real estate broker's license. Mr. Palmisano was listed on the application as the president of the corporation and also as a licensed broker, partner, or officer of the corporation.

CONCLUSIONS OF LAW

1. The Wisconsin Department of Regulation and Licensing has jurisdiction in this case pursuant to ss. 440.21(1), 452.03, and 452.05(1)(a), Stats.
2. By entering into a residential listing contract in January of 1992, for the exclusive right to sell property owned by Delores Anderson, Mr. Palmisano engaged in the practice of real estate without a valid license contrary to s. 452.03, Stats.
3. By being listed as a real estate broker with the Waukesha County Association of Realtors, by continuing to utilize the Multiple Listing Service, and by submitting an application to the Department in which he listed himself as a broker of a firm, Mr. Palmisano held himself out as a real estate broker in violation of s. 452.03, Stats.
4. By failing to surrender his real estate broker's license after it had been revoked, Mr. Palmisano violated the real estate board's formal disciplinary order issued against him on January 26, 1989, in violation of s. RL 24.17 (3).

ORDER

NOW, THEREFORE, IT IS ORDERED that the Order of the Department of Regulation and Licensing denying a real estate broker's license to Paul P. Palmisano is affirmed.

IT IS FURTHER ORDERED that Paul P. Palmisano may apply for a real estate broker's license no sooner than one year from the date of the Department's order adopting the terms and conditions of this Order.

OPINION

Mr. Palmisano's real estate broker's license was revoked on January 26, 1989. The decision was appealed and subsequently upheld. Mr. Palmisano was present in court with counsel when Judge Snyder issued his decision wherein the Board's order was upheld, and the temporary restraining order staying the Board's order was vacated contingent upon Mr. Palmisano's failure to file a timely appeal. Mr. Palmisano never appealed Judge Snyder's decision. Accordingly, Mr. Palmisano's license was revoked for two years beginning June 19, 1991.

Throughout these proceedings, Mr. Palmisano has maintained that he did not act in the capacity of a real estate broker during the term of his revocation. In the alternative, he argues

that if, in fact, he did act as a broker, it was completely unintentional because he believed that his suspension had already been served.

Mr. Palmisano's arguments are not convincing. To begin, because Mr. Palmisano was present when Judge Snyder issued his decision, he had actual notice that his license was revoked. Mr. Palmisano did not appeal that decision, and therefore should have returned his license to the Department on June 19, 1991. Instead, he kept it and continued to hold himself out, albeit somewhat sporadically and without apparent harm to anyone, as a real estate broker. He did so by entering into a residential listing contract when he was not licensed to do so. In addition, he was listed as a broker with the Waukesha County Association of Realtors and continued to utilize the services of the Multiple Listing Service thereby giving the impression that he was a licensed broker able to engage in the practice of real estate.

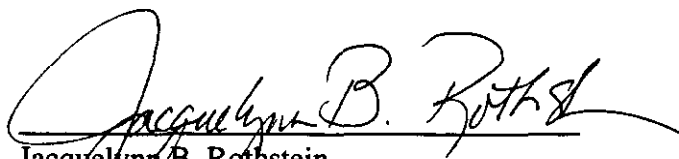
Mr. Palmisano has implicitly argued that because the Department failed to notify him of the effective dates of his revocation period, he was unaware that he was under any form of discipline. Consequently, any of his brokering activities were unintentional violations of the Board's order and should therefore not result in his license now being denied.

While it is possible that Mr. Palmisano may have been unclear as to the effective dates of his suspension period, it was incumbent upon him to find out that critical information. It was Mr. Palmisano's responsibility to determine whether or not he was properly licensed prior to engaging in the practice of real estate. His failure to do so calls into question his competency to act as a real estate broker.

By acting as a real estate broker when he knew or should have known that his license to do so had been revoked, Mr. Palmisano has demonstrated that he is not competent to act as a broker. Indeed, Mr. Palmisano's behavior demonstrates his lack of regard towards the disciplinary order issued against him. Accordingly, it is therefore appropriate that Mr. Palmisano's real estate broker's license be denied and that he demonstrate his competency prior to being allowed to practice in this state.

Dated this 13th day of April, 1994.

Respectfully submitted,


Jacquelyn B. Rothstein
Administrative Law Judge

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 DEPARTMENT OF REGULATION AND LICENSING.

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

MAY 4, 1994.

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.)