

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

FILE COPY

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
: FINAL DECISION AND ORDER
: 98 REB 172
: JAMES I. ATKINSON :
RESPONDENT. :
: LS 9809245 REB

The parties to this action for the purpose of Wis. Stats. sec. 227.53 are:

James I. Atkinson
PO Box 738
Portage, WI 53901

Wisconsin Real Estate Board
P.O. Box 8935
Madison, WI 53708

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

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. **James I. Atkinson** ("Atkinson"), date of birth 4/26/60, is licensed in the State of Wisconsin as a real estate broker having license # 90-44697. This license was first granted to him on 1/11/91. Atkinson is the broker of Jim Atkinson Real Estate, Inc., license # 91-834079, located at N6139 Hwy. 51 S., Portage, WI 53901.
2. Atkinson's most recent address on file with the Department of Regulation and Licensing is PO Box 738, Portage, WI 53901.

3. On or about July 27, 1998, Xiaodong Li, an auditor with the Department of Regulation and Licensing, conducted an audit the Jim Atkinson Real Estate, Inc. real estate trust account records. During the audit Ms. Li found discrepancies in the office trust account bookkeeping system as follows:

- a. From at least October 1997 to June 1998, no account reconciliations, trial balances or validations had been performed.
- b. There was a \$200.00 error in the journal entry for October 30, 1997, that was carried over to subsequent entries. The error occurred when check number 1123 (\$3,115.00) was subtracted from the running balance (\$7,632.00) for a new recorded balance of \$4,717.00, rather than the correct amount of \$4,517.00. This error occurred on October 30, 1997, but was never found or corrected until Ms. Li's July 27, 1998, audit. A copy of the journal page #12 is attached as **Exhibit 1** and is incorporated herein by reference.
- c. Ledger # S186 balance was \$50.64 in error as of February 1, 1998. The error occurred when check number 1151 dated February 1, 1998, for \$50.64 was recorded in the journal but not in the ledger. This error was not found and corrected until the July 27, 1998, audit by Ms. Li. A copy of the ledger page S186 is attached as **Exhibit 2** and is incorporated herein by reference. A copy of the journal page #15 is attached as **Exhibit 3** and is incorporated herein by reference.
- d. The balance of the broker's personal funds in the real estate trust account as of August 1997, was \$7.08. In September 1997, there was a \$16.00 bank charge which caused a negative balance in the broker's funds. This discrepancy was not discovered until Ms. Li's July 27, 1998, audit.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter pursuant to sec. 452.14, Wis. Stats.

2. The Wisconsin Real Estate Board is authorized to enter into the attached Stipulation pursuant to sec. 227.44(5), Wis. Stats.

3. Respondent **James I. Atkinson** has violated:

a.. Sections RL 18.13(3), RL 18.13(4), RL 18.13(5), and RL 24.17(3) of the Wisconsin Administrative Code and section 452.14(3)(i) of the Wisconsin Statutes by failing to do required monthly account reconciliations, trial balances and validations for the months of October 1997 to June 1998.

b. Section RL 18.10 and RL 24.17(3) of the Wisconsin Administrative Code and section 452.14(3)(i) of the Wisconsin Statutes from September 1997, to May 1998, by

failing to deposit additional personal funds in the broker's real estate trust account within 10 business days following receipt of a statement or other notification from a depository institution that a service charge has been made against the account for which insufficient personal funds are available in the account.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is hereby accepted.

IT IS FURTHER ORDERED, that Respondent **James I. Atkinson**, license #90-44697, be, and hereby is, **REPRIMANDED**.

IT IS FURTHER ORDERED, that Respondent **James I. Atkinson**, within six months of the date of this Order, successfully complete the following course module from the 36 hour pre-licensing real estate broker's course at an educational institution approved by the Department of Regulation and Licensing:

- a. The five hour Trust Accounts, Escrow, Closing Statement module-section RL 25.02(2)(c), of the Wisconsin Administration Code.

and submit proof of the same to the Real Estate Board, P O. Box 8935, Madison, WI 53708-8935, in the form of verification from the institution providing the education. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that are or may be instituted by the Board or the Department of Regulation and Licensing.

IT IS FURTHER ORDERED, that in the event Respondent **James I. Atkinson**, fails to successfully complete the educational requirements within the time and in the manner as set forth above, then and in that event, and without further notice to the Respondent **James I. Atkinson**, his real estate license shall be suspended without further hearing and without further Order of the Board, and said suspension shall continue until further Order of the Board.

IT IS FURTHER ORDERED, that Respondent **James I. Atkinson**, pay partial costs of this matter in the amount of \$300.00 within 30 days of the date of this Order by making payment of the same to the Department of Regulation and Licensing, P.O. Box 8935, Madison, WI 53708-8935.

IT IS FURTHER ORDERED, that in the event Respondent **James I. Atkinson**, fails to pay the \$300.00 partial costs within the time and in the manner as set forth above, then and in that event, and without further notice to the Respondent **James I. Atkinson**, his real estate license shall be suspended without further hearing and without further Order of the Board, and said suspension shall continue until the full amount of said costs have been paid to the

Department of Regulation and Licensing and his failure to pay the costs shall be considered a violation of this Order by the Board.

IT IS FURTHER ORDERED, that file 98 REB 172 be, and hereby is, closed.

Dated this 28TH day of Sept, 1998.

WISCONSIN REAL ESTATE BOARD

By: Richard E. Simon
A member of the Board

LAATKNSNF.DOC

Ledger #	Date	Received From/Paid To	Buyer/Seller	Check No.	Receipts	Disbursements	Balance
		BALANCE BROUGHT FORWARD			PAGE 11		8,556.13
S176	10/31/97	FRANK J. CONE + DANIELLE E. UKITA Tomuch brought for closing	CONC PULVER	1113		40.50	8,515.63
S176	11/1/97	KATHERINE PULVER	CONC PULVER	1114		150.45	8,365.18
S170	11/1/97	Kim KENEVAN LISTING AGENT	GRISSE PULVER	1115		1,050.00	7,315.18
S176	11/1/97	COUNTRY PLUMBER	CONC PULVER	1116		145.00	7,170.18
S176	11/1/97	GEORGE S PLUMBING	CONC PULVER	1117		83.00	7,087.18
S176	11/1/97	Atkinson REAL ESTATE	CONC GRISSE PULVER	1118		2,625.00	4,462.18
S178	10/16/97	DEPOSIT E/M	MERTNER ERUBER		500.00		4,962.18
S179	10/16/97	DEPOSIT E/M	BRAASCH ROBARRE		1,000.00		5,962.18
S173	11/22/97	COUNTRY PLUMBER SOIL TEST	LUETT HERBERT BENNETT	1119		350.00	5,612.18
S173	11/24/97	CURT BENNETT + CHRISTY BENNETT # 575 - soil test # 352 - soil test	LUETT HERBERT BENNETT	1120		225.00	5,387.18
S172	11/25/97	DEPOSIT WELL/SEPTIC TEST 506 Gillette St.	BLISS LUETT		175.00		5,212.18
S179	11/25/97	CONCRETE E/M	BRAASCH ROBARRE	1121		1,000.00	4,212.18
S174	11/30/97	DEPOSIT CLOSING	TIEDE RASMUSSEN		3,228.82		933.36
S174	10/30/97	REGISTER OF DEEDS CLOSING	TIEDE RASMUSSEN	1122		159.00	7,774.36
S174	10/30/97	Atkinson REAL ESTATE CLOSING	TIEDE RASMUSSEN	1123		3,115.00	4,659.36
S174	10/30/97	William RASMUSSEN CLOSING	TIEDE RASMUSSEN	1124		1,554.82	3,104.54
S173	11/3/97	CHRISTY BENNETT ESCROW # 175 - mineral 134.95	LUETT HERBERT BENNETT	1125		40.05	3,064.49

Seller: 301 DEDT
 Listing Broker: Forest
 Buyer: Forest
 Selling Broker: Forest

Location of Property: _____
 Type of Transaction: _____
 Price: _____

Date	Name or Payee	Check No	✓	Deposits	Disbursed	Balance
1/2/98	RENT					1500.00
1/2/98	RENT	1141		1500.00		1500.00
1/12/98	GOLF HEATING REPAIRS				213.28	1286.72
1/14/98	REIMBURSEMENT FOR REPAIRS	1149			191.30	1095.42
1/12/98	RENT 1775.00	48			750.00	345.42
1/13/98	WISCONSIN POWER & LIGHT	1149			96.64	248.78
2/5/98	PORTAGE WATER DEPT.				37.89	210.89
3/6/98	DEPOSIT SALE OF SAFE to KAMMERLAW OFFICE					227.89
3/6/98	W.P.L. Bill	1159		120.00		107.89
7/17/98	CORRECTIONAL DISBURSEMENT 2/1/98	1151			309.89	278.00
7/17/98	BROKER'S FUNDING to COVER ERROR			50.64		227.36

(#19)

Ledger #	Date	Received From/Paid To	Buyer/Seller	Check No.	Receipts	Disbursements	Balance
S187	2/24/98	DEPOSIT E/M	HAGAN HARRISON		500.00		1,248.86
S186	2/1/98	COLZ HEATING 301 DEWITT ST.	HARRISON	1151		50.64	1,198.22
S188	2/5/98	DEPOSIT E/M	KLOOSTER PERLICK		500.00		1,698.22
S186	2/5/98	PORTAGE WATER DEPT WATER bill	HARRISON	1152		39.89	1,658.33
S189	2/11/98	DEPOSIT E/M	HAMELINK KUHNER		500.00		2,158.33
S190	2/16/98	DEPOSIT E/M	WASSON MAGINN		2,000.00		4,158.33
S182	2/19/98	JEFF + AMY HOFF. E/M RETURNED	HOFF McSHERRY	1153		300.00	3,858.33
S191	2/20/98	DEPOSIT E/M	BADCOCK HOFF		1,000.00		4,858.33
S192	2/24/98	DEPOSIT E/M	HOFF BUDDE		1,000.00		5,858.33
S193	2/24/98	DEPOSIT E/M	FELLAH FUGATE		500.00		6,358.33
S194	2/27/98	DEPOSIT E/M	JOLES FELLAH		500.00		6,858.33
S189	3/4/98	ATKINSON REAL ESTATE CLOSING - 18761 GENSKE RD	HAMELINK Kohler	1154		500.00	6,358.33
S190	3/4/98	DEPOSIT CLOSING	WASSON MAGINN ESTATE		5,748.55		12,106.88
S190	3/4/98	Columbia County Register of Deeds	WASSON MAGINN ESTATE	1155		251.70	11,855.18
S190	3/4/98	ATKINSON REAL ESTATE CLOSING	WASSON MAGINN ESTATE	1156		4,794.00	7,061.18
S190	3/4/98	JOHN + SEAN WASSON CLOSING	WASSON MAGINN ESTATE	1157		1,800.00	5,261.18
S190	3/4/98	ESTATE OF RICHARD MAGINN	WASSON MAGINN ESTATE	1158		902.85	4,358.33
S195	3/4/98	DEPOSIT E/M	Holmes CASH		1,000.00		5,358.33
EXHIBIT 3		NEXT PAGE					

**STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD**

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
	:	98 REB 172
JAMES I. ATKINSON	:	
RESPONDENT.	:	

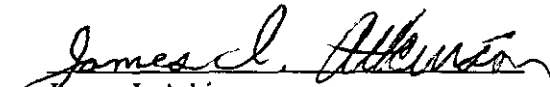
The parties in this matter agree and stipulate as follows:

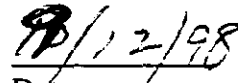
1. This Stipulation is entered into for the purpose of resolving this matter known as investigative file 98 REB 172. James I Atkinson, ("Respondent") consents to the resolution of this matter by this Stipulation and the attached Final Decision and Order.
2. Respondent understands that by the signing of this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the State has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.
3. Respondent has had the opportunity to consult with legal counsel regarding these matters and the legal implications of this Stipulation.
4. Respondent voluntarily and knowingly waives his rights set forth in paragraph 2 above, on the condition that all of the provisions of this Stipulation are approved by the Real Estate Board.
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order. The matter shall then be returned to the Division of Enforcement for further proceedings which may include the filing of a formal administrative disciplinary complaint. In the event that the Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.
6. If the Board accepts the terms of this Stipulation, the parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties.


7. Respondent agrees that Complainant's attorney, Gerald M. Scanlan, may appear at any meeting of the Board with respect to the Stipulation and that his appearance is limited to providing statements in support of the Stipulation and to answering any questions the Board may have regarding the Stipulation. Respondent waives any rights he may have to notice of that meeting and to be present at the meeting of the Board.

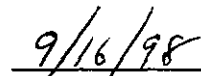
8. Respondent agrees that the board advisor assigned to this case may attend and participate in any meeting of the board related to this Stipulation and may vote on whether or not to approve this Stipulation.

9. The Division of Enforcement joins the Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.


James I. Atkinson
Respondent


Date


Gerald M. Scanlan, Attorney
Division of Enforcement


Date

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Department of Regulation & Licensing

State of Wisconsin

P.O. Box 8935, Madison, WI 53708-8935
(608)

TTY# (608) 267-2416, hearing or speech
TRS# 1-800-947-3529, impaired only

GUIDELINES FOR PAYMENT OF COSTS AND/OR FORFEITURES

On September 24, 1998, the Real Estate Board
took disciplinary action against your license. Part of the discipline was an assessment of costs and/or a
forfeiture.

The amount of the costs assessed is: \$300.00 Case #: LS9809245REB

The amount of the forfeiture is: _____ Case # _____

Please submit a check or a money order in the amount of \$300.00

The costs and/or forfeitures are due: October 24, 1998

NAME: James I. Atkinson LICENSE NUMBER: 44697

STREET ADDRESS: P.O. Box 738

CITY: Portage STATE: WI ZIP CODE: 53901

Check whether the payment is for costs or for a forfeiture or both:

COSTS FORFEITURE

Check whether the payment is for an individual license or an establishment license:

INDIVIDUAL ESTABLISHMENT

If a payment plan has been established, the amount due monthly is:

Make checks payable to:

DEPARTMENT OF REGULATION AND LICENSING
1400 E. WASHINGTON AVE., ROOM 141
P.O. BOX 8935
MADISON, WI 53708-8935

#2145 (Rev. 9/96)
Ch. 440.22, Stats.
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For Receipting Use Only

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE REAL ESTATE BOARD

In the Matter of the Disciplinary Proceedings Against

James I. Atkinson,

AFFIDAVIT OF MAILING

Respondent.

STATE OF WISCONSIN)
)
COUNTY OF DANE)


I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.

2. On September 25, 1998, I served the Final Decision and Order dated September 25, 1998, and Guidelines for Payment of Costs and/or Forfeitures, LS9809245REB, upon the Respondent James I. Atkinson by enclosing true and accurate copies of the above-described documents in an envelope properly stamped and addressed to the above-named Respondent and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is Z 233 819 829.

3. The address used for mailing the Decision is the address that appears in the records of the Department as the Respondent's last-known address and is:


James I. Atkinson
P.O. Box 738
Portage WI 53901



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 28th day of September, 1998



Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF RIGHTS OF APPEAL

TO: JAMES I ATKINSON

You have been issued an Order. For purposes of service the date of mailing of this Order is 9/25/98. Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

A. 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 section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Order is shown above.

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

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review.

B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Order 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. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227.57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

STATE OF WISCONSIN REAL ESTATE BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison WI 53708-8935