

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

PHILLIP D. STARKS, LS9904301REB
RESPONDENT

1. Phillip D. Starks, Respondent, date of birth July 22, 1943, was licensed as a real estate salesperson in the state of Wisconsin, pursuant to license number 39654, which was first granted June 29, 1993.
2. Respondent's last address reported to the Wisconsin Department of Regulation and Licensing, Division of Enforcement, is N2644 Miller Avenue; Neillsville, WI 54456. The Department has determined that Respondent's current address is 100 Richburn Drive, Cedar Mountain, NC 28718.
3. Respondent has not renewed his real estate salesperson license since it expired on January 1, 1997. Respondent made the decision not to renew his license for personal reasons unrelated to this matter.
4. Pursuant to §440.08(3), Stats., Respondent could renew his license at this time, by providing evidence of having met the continuing education requirements and by payment of a late renewal fee.
5. On March 24, 1988, Respondent was charged in State of Wisconsin, Dane County Circuit Court case number 88 CF 211, with two counts of violating §940.225(2)(e), Stats., second degree sexual assault, a Class C felony

for having sexual contact with a person who was over the age of 12 years and under the age of 16 years.

6. Pursuant to a plea agreement in that case, Respondent pled no contest to one count of violating §940.225(2)(e), Stats., and on June 23, 1988, Respondent was convicted of the felony criminal offense.

7. On August 23, 1988, the court withheld sentence and Respondent was ordered to four years of probation. Terms of probation included: six months jail incarceration with work release; continued cooperation with counseling for sexual offenders including individual and group counseling at OASIS; 50 hours of community service; no contact with the victim; and, to undergo any assessment or treatment as recommended by probation officer.

8. On August 23, 1992, Respondent successfully completed the probation for that conviction and was discharged from probation.

9. Although the conduct which resulted in Respondent's conviction did not take place while Respondent was functioning as a real estate sales person, the conviction of second degree sexual assault is conviction of a crime, the circumstances of which substantially relate to the practice of a real estate salesperson.

10. In 1993, as today, §452.05(1)(a), Stats., provided the Department of Regulation and Licensing (Department) the power to grant and issue licenses to salespersons. §452.09(1)(e), Stats., granted the Department the power to determine the contents of the application form necessary to enable the Department to determine the competency of each applicant to transact business in a manner which safeguards the interests of the public.

11. On June 29, 1993, five years and six days after the conviction set out in Finding of Fact 6, Respondent signed and filed with the Department an application, as prescribed by the Department, seeking licensure as a real estate salesperson.

12. The application Respondent signed on that date contained the following question:

Have you been convicted of a felony or misdemeanor (excluding speeding tickets) within the past 5 years or are you now on probation or on parole for any conviction (regardless of when the conviction occurred)?

13. Respondent accurately answered "No" to that question, and Respondent was granted a real estate salesperson's license.

14. In 1994, as today, §452.05(1)(a), Stats., provided the Department of Regulation and Licensing (Department) the power to grant and issue licenses to brokers. §452.09(1)(e), Stats., granted the Department the power to determine the contents of the application form necessary to enable the Department to determine the competency of each applicant to transact business in a manner which safeguards the interests of the public.

15. On October 20, 1994, Respondent signed and filed with the Department an application, as prescribed by the Department, seeking licensure as a broker.

16. The application for a broker's license Respondent signed on that date contained the following question:

Have you been convicted of a felony or misdemeanor? If YES, attach a sheet providing details about the crime, including the date of conviction, court, and penalty. (Please do not give details on minor traffic conviction, but do include information related to Driving while Intoxicated (DWI) convictions.)

17. Respondent accurately answered "Yes" to that question. However, in providing details of the conviction Respondent inaccurately stated that the conviction was in 1989 and inaccurately stated that it was for fourth degree sexual assault.

18. The Department then ran a Criminal Information Bureau (CIB) record check on Respondent and discovered that the conviction was in 1988 and was for violating §940.225(2)(e), Stats., second degree sexual assault, a Class C felony for having sexual contact with a person who was over the age of 12 years and under the age of 16 years.

19. The Department then sought additional information regarding Respondent and with Respondent's cooperation obtained an 8/20/90 evaluation report of Respondent conducted by Lloyd G. Sinclair, MSSW, ACSW of Midwest Psychotherapy Center - Midwest Center for Sex Therapy.

20. On February 17, 1995, The Department issued an order denying Respondent's application for a broker's license.

21. By stating on his application for a broker's license that he had been convicted of fourth degree sexual assault Respondent made a material misrepresentation in the application for that license and in the information furnished to the Department with that application.

22. That Respondent has agreed to surrender his right to renew his license as a real estate salesperson.

CONCLUSIONS OF LAW

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

2. The Wisconsin Real Estate Board is authorized to enter into this stipulated resolution pursuant to §227.44(5), Stats.

3. Respondent, by misrepresenting his conviction as fourth degree sexual assault is subject to discipline for having made a material misstatement in information provided to the board or department and is subject to discipline pursuant to §452.14(3)(a), Stats.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's surrender of his right to renew his real estate salesperson's license is accepted, effective immediately.

IT IS FURTHER ORDERED that if Respondent ever applies for any license under chapter 452, Stats.:

a. Respondent shall, at Respondent's own expense, have undergone an assessment by a mental health care provider experienced in assessing individuals who have committed sexual offenses.

b. The practitioner performing the assessment must have been approved by the Department, with an opportunity for the Division of Enforcement to make its recommendation, prior to the evaluation being performed.

c. Respondent must provide proof sufficient to the Department that Respondent can practice with reasonable skill and safety of the public.

d. If the Department determines to license Respondent, the license shall be limited in a manner to address any recommendations resulting from the assessment, including, but not limited to:

i. Psychotherapy, at Respondent's expense, by a therapist approved by the Board or its designees, to address specific treatment goals, with periodic reports to the Board by the therapist.

ii. Additional professional education in any identified areas of deficiency.

iii. Restrictions on the nature of practice or practice setting or requirements for supervision of practice, by a person approved by the Board, with periodic reports to the Board by the supervisor.

e. Respondent shall appear before the Board on an annual basis, if requested by the Board, to review the progress of any treatment and rehabilitation.

3. If Respondent believes that the Department's refusal to license Respondent is inappropriate or that any limitation imposed by the Department or maintained by the Board, on any license that is granted, is inappropriate, Respondent may seek a class 1 hearing pursuant to §227.01(3)(a), Stats., in which the burden shall be on Respondent to show that the Department's or Board's decision is arbitrary or capricious. The denial of license or limitations on any license granted to Respondent shall remain in effect until there is a final decision in Respondent's favor on the issue.

4. Violation of any term or condition of this Order, or of any limitation imposed under the paragraphs above, may constitute grounds for revocation of any license Respondent may be granted. Should the Board determine that there is probable cause to believe that Respondent has violated the terms of this Order, or any limitation on any license which Respondent may be granted under the paragraphs above, the Board may order that any license granted to Respondent be summarily suspended pending investigation of and hearing on the alleged violation.

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

Dated at Madison, Wisconsin this 24th day of June, 1999

James Imhoff

Chairperson

Real Estate Board