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IN RE: DISCIPLINARY :
PROCEEDINGS AGAINST :
 : FINAL DECISION AND ORDER
DONALD E. LEONE, : LS0211252REB
d/b/a/ Leone Realty Company, :
Respondent. :

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Wisconsin Real Estate Board (hereinafter “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:

FINDINGS OF FACT

1. The Respondent **Donald E. Leone** (D.O.B. 2/2/55) is a licensed real estate broker, having license number 90-28480, granted on May 30, 1992. Respondent previously held a real estate salesperson license in Wisconsin, granted on January 22, 1983.
2. Leone was previously licensed as a real estate salesperson in the state of Nevada.
3. Respondent’s latest known business address on file with the Department of Regulation and Licensing is 2525 S. Shore Drive, Unit 5-B, Milwaukee, Wisconsin 53207.
4. Leone practices real estate as Leone Realty Company, which is not a separately licensed real estate business entity. The latest known address for Leone Realty Company on file with the Department of Regulation and Licensing is 2525 S. Shore Drive, Unit 5-B, Milwaukee, Wisconsin 53207.

5. On January 26, 1993, Leone was charged in the State of Nevada with the crime of Felony Theft and a warrant was issued for his arrest. Leone fled from justice and returned to Wisconsin.

6. The Nevada authorities issued a Warrant for Arrest and extradition of Leone from Wisconsin. Leone was taken into custody and returned to Nevada. Upon his surrender to the Nevada authorities, the Milwaukee Circuit Court dismissed the criminal charge of Fugitive from Justice.

7. On May 10, 1993, Leone appeared in the District Court for Clark County, Nevada where he entered a plea of guilty to the criminal charge of Conspiracy to Commit Theft (Gross Misdemeanor). The criminal complaint alleged that Leone conspired with others to make an unauthorized transfer of personal property entrusted to him for other purposes and thereafter Leone sold the property to another individual.

8. Leone entered into a plea agreement and was convicted of Misdemeanor Theft. Leone was sentenced by the Nevada court to payment of an administrative fee and given credit for time served.

9. On January 6, 1987, Leone was charged with Possession of Controlled Substance-Cocaine (Felony) by the Justice Court in Las Vegas Township, Clark County, Nevada (Case No. 0015).

10. Leone entered into a plea agreement and pled guilty to the reduced charge of Possession of a Controlled Substance Not to be Introduced in Interstate Commerce.

11. On December 18, 1986, Leone was charged with Driving While Under the Influence of Intoxicating Liquor by the State of Nevada, Justice Court in Las Vegas Township, Clark County, Nevada, Case No. 4211.

12. Leone failed to appear in court on the Driving While Under the Influence charge and a bench warrant was issued for his arrest. Leone was arrested on the outstanding warrant several years later. Leone entered into a plea agreement and was convicted of the reduced charge of Reckless Driving due to the age of the charge.

Nevada Real Estate Commission Disciplinary Order (94 REB 281)

13. On May 5, 1993, the Nevada Department of Commerce Real Estate Division filed a Complaint filed against Leone charging him with failure to remit client earnest money, acceptance of commissions from other than his broker, forgery of his broker's signature on real estate commission checks and unauthorized direction to an escrow company for payment of sales commissions to him instead of his broker. The complaint alleged that Leone made improper use of trademark protected insignia regarding his status as a "Realtor" and misrepresented that he was a "Certified Commercial Investment Member" (CCIM) of the National Association of Realtors.

14. The Nevada Real Estate Division complaint was properly served on Leone at his latest address of record. Leone did not file an Answer and a default order was entered against him by the State of Nevada Real Estate Commission on June 17, 1994. The order of the Nevada Real Estate Commission found Leone guilty of twelve counts of violations and imposed a fine against Leone in the amount of \$6,000.00. 15. On August 1, 1994, the Wisconsin Department of Regulation and Licensing (Department) was notified by the Nevada Real Estate Division that disciplinary action had been taken against Leone. The Nevada Real Estate Division informed the Department that:

"Although the decision rendered only included a fine of \$6,000.00, it should be noted that this was our only recourse inasmuch as Mr. Leone's Nevada license had expired due to non-renewal. A revocation of his license would most likely have occurred if he still had a current license. In view of this determination, Mr. Leone would most likely be denied issuance of any real estate license in the future"

Wisconsin Real Estate Board Order

15. On August 27, 1986, Leone was disciplined by the Wisconsin Real Estate Board. The Board found that Leone had failed within a reasonable time to remit or account for money coming into his possession which belonged to another person; and had made false promises intended to persuade or induce the sellers into accepting an offer to purchase, and failed to make the promised payment to the sellers at the time of closing. The Board determined that Leone demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public and suspended Leone for a period of 60 days.

Criminal Violations in Wisconsin

16. On July 14, 1995, Leone was charged with a Domestic Violence, Class A Misdemeanor, for assault and Battery of Alejandrina Lyon. Leone entered into a Deferred Prosecution Agreement whereby he was required to serve twenty (20) days in the House of Corrections and was placed on probation for eighteen (18) months with requirements that he complete an Alcohol and Drug Assessment, treatment and have no contact with the victim.

17. On December 20, 1976, Leone was convicted of Criminal Damage to Property and Misdemeanor Theft. The criminal alleges that an alarm was triggered at a school building and that Leone was found hiding on the roof of school with two electric typewriters removed to the landing of the school building.

98 REB 075

18. On April 6, 1998, the Department received a complaint from Marlene Brugger alleging that on or about March 1998, Leone had contacted Ms. Brugger in regard to the sale of a property which she had been advertised in the local newspaper as "for-sale-by-owner." Leone informed the sellers that his name was Donald Lyon and he was representing Lyon Realty. Leone indicated that he had buyers who were interested in purchasing the home.

19. Ms. Brugger alleged that on March 19, 1998, Leone had met with Ms. Brugger and her sister at the property and offered to sell the property as a "net listing." Ms. Brugger further alleged that Leone told her that he would get whatever net price that she wanted, but he would not clarify the price he would list the property for or clarify the rate he would charge as his sales commission.

20. Ms. Brugger received a Lyon Realty business card from Leone which had the name of "Donald Lyon" handwritten above the name of Nina Lyon, the broker and owner of Lyon Realty. Ms. Brugger alleged that Leone told her that his name was Donald Lyon and that he had run out of business cards, but since Nina was his wife, he could use her card.

21. Ms. Brugger alleged that Leone presented her with a partially completed WB-1 Residential Listing Contract, on which the heading "Exclusive Right to Sell" had been crossed out and the term "Agency" handwritten across the top. The name and signature of Nina Lyon appeared on line 74, as the agent of the broker. A blank copy of Addendum A was also presented to the sellers by Leone, along with the exclusive listing contract.

22. Ms. Brugger alleged that Leone insisted that she needed to sign the listing contract immediately because he had several buyers who were anxious to see the home. Ms. Brugger indicated that she told Leone that she wanted a few days to think about it, but Leone could bring his interested buyers to the home even if they did not decide to list the property with him. Leone did not bring any buyers to look at the property.

23. Ms. Brugger contacted the Milwaukee Realtors Association and the Department of Regulation and Licensing after her encounter with Leone to obtain more information about him. Ms. Brugger was informed that a "Donald Lyon" was not a member of the Milwaukee Realtors Association. Ms. Brugger was informed by the Department that there was no licensee by the name of "Donald Lyon."

24. The records show that Alejandrina Lyon was granted a real estate salesperson license on May 21, 1994. Leone is listed as the broker for Ms. Lyon at the time of her licensure.

25. The Department records show that Ms. Lyon received her broker's license on June 20, 1995 and cancelled her affiliation with Leone. The records show that Ms. Lyon continued to work as a broker under her own license, doing business as "Lyon Realty" since 1995.

26. According to the Department records, Leone has never been listed an employee, officer, partner, owner or affiliate of Lyon Realty.

27. Ms. Lyon alleged that Leone has continued to misrepresent his affiliation with her company and that he has even represented that she was his "wife." Ms. Lyon alleged that Leone has signed her name to real estate documents without her knowledge or consent. Nina Lyon denied that she signed the listing contract presented by Leone to Ms. Brugger and denied that she authorized him to represent Lyon Realty in any manner.

00 REB 265

28. On November 6, 2000, Steven Halcomb, a broker with Lyon Realty, filed a complaint with the Department alleging that Leone continued to misrepresent himself as being affiliated with Lyon Realty. Steven Halcomb alleged that he received numerous calls at the Lyon Realty office from people asking to speak with Donald Leone. Halcomb alleged that the callers were surprised to learn that Leone was not affiliated with the company because Leone led them to believe that he owned Lyon Realty.

29. Mr. Halcomb sent a complaint to the Metropolitan Association Realtors Association describing how Leone misrepresented his status and association with Lyon Realty. The complaint described that Leone would tell people that his surname "Leone" was actually the same name in the Spanish language as "Lyon."

30. On August 20, 2002, the Department was contacted by Joe and Dolly Mays who alleged that they sold a condominium to Leone in 1999. The Mays alleged that Leone told them that at the time of the purchase that he owned Lyon Realty. The Offer to Purchase drafted by Leone indicated that his address for service was 3479 S. 15th Place, Milwaukee, Wisconsin, which is the address for Lyon Realty.

31. The Mays alleged that after Leone purchased their condominium, he renegotiated the contract with them and convinced them to partially release their mortgage so that he could refinance the unit. The Mays alleged that Leone then defaulted on the payments and when they attempted to reach him, they went to the Lyon Realty Office and were informed that Leone did not work there and did not own the business.

32. On July 28, 1997, the Department auditor requested that a complaint be opened against Leone for failure to deposit client funds into a real estate trust account. The auditor examined nine (9) real estate transactions handled by Leone in which earnest money was either paid or transferred to Leone and not deposited into a trust account. Leone responded to the auditors that he had did not receive the trust funds and directed that they be paid to the title companies. The auditors found that Leone had not forwarded funds to the title companies.

33. On June 25, 1995, the Department received notice that the Metropolitan Association of Realtors of Milwaukee and Waukesha Counties, Inc., issued a sanction against Leone and Leone Realty Company for refusal to arbitrate. The sanction consisted of a 30 day suspension from the Association and a fine in the amount of \$1,000.00. The Association informed the Department that the sanction was based upon Leone's pattern and practice of not paying co-broke commissions. The Association had received numerous reports of this practice from its members and expressed concern about Leone's use of his trust account and handling of client earnest money.

34. On November 21, 1995, the Department received a letter from Vivian Sampson, a former resident of Las Vegas, Nevada. Ms. Sampson alleged that she had given her savings to Leone as an investment in a restaurant business in Nevada. Ms. Sampson alleged that Leone promised that she would receive a partnership interest and repayment of her loan in one year with higher than conventional interest. Leone signed a promissory note to Sampson for \$13,500.00.

35. Ms. Sampson alleged that instead of investing her money, Leone retained the funds and left the state. Ms. Sampson alleged that she became concerned and went to the owner of the business. Ms. Sampson alleged that she was told by the owner that he had no intention of selling the business to Leone and was not aware of her investment.

36. Ms. Sampson alleged that she sued Leone in Nevada, received a judgment and subsequently attempted to enforce her judgment against Leone in Wisconsin. Ms. Sampson alleged that her attorney was unable to obtain recovery because Leone continued to avoid service of process and had no locatable income or assets.

37. Leone has voluntarily offered to resolve all of the complaints against him by the surrender of his broker's real estate license pursuant to the terms of the Order set forth below.

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 Donald E. Leone has violated the following:

sec. RL 24.17(1) Wis. Adm. Code, which provides that a licensee may not by violate, aid or abet the violation of any law the circumstances of which substantially relate to the practices of a real estate broker or salesperson, and provides that a licensee who has been convicted of a crime, except motor vehicle offenses under chs. 341 to 349, Stats., shall send to the Department within

30 days after the judgment of conviction a copy of the complaint or other information which describes the nature of the crime and the judgment of conviction in order that the Department may determine whether the circumstances of the crime are substantially related to practice of real estate broker or salesperson, to wit;

- a) by his failure to report his misdemeanor criminal convictions in the states of Wisconsin and Nevada and failure to provide a copy of the judgment of convictions or other information describing the nature of the convictions to the Department;
- b) by the 1993 disciplinary order of the Nevada Real Estate Commission which imposed sanctions against his real estate broker's license in the state of Nevada.

ORDER

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

IT IS FURTHER ORDERED, that the Voluntary Surrender of the Real Estate Broker license of Respondent, Donald E. Leone (lic.# 90-28480), is hereby accepted.

IT IS FURTHER ORDERED, that all rights and privileges including, but not limited to, the right to renew, heretofore granted to Respondent Donald E. Leone (lic.#90-28480) are forever terminated effective at 11:59 p.m. on the date of the Order.

IT IS FURTHER ORDERED, that at no time following the date of this Order, shall Donald E. Leone, be granted a credential as a real estate broker, salesperson or time-share salesperson under Chapter 452 of the Wisconsin Statutes. The denial, in whole or in part, of any petition or license application of Donald E. Leone for a credential authorized under Chapter 452 of the Wisconsin Statutes shall not constitute a denial of a license and shall not give rise to a contested case within the meaning of sections 227.01(3) and 227.42 of the Wisconsin Statutes.

IT IS FURTHER ORDERED, that at no time following the date of this Order, shall any business entity owned or controlled, in whole or in part, by Donald E. Leone, as a business representative, be granted a credential under Chapter 452 of the Wisconsin Statutes, until and unless the Respondent has personally appeared before the Board to answer questions in regard to the application for licensure. In that event, the Board shall retain the sole discretion to grant, deny or place limitations upon said license. The denial, in whole or in part, of any petition or license application for a business entity credential owned or controlled, in whole or part, by Donald E. Leone, authorized under Chapter 452 of the Wisconsin Statutes shall not constitute a denial of a license and shall not give rise to a contested case within the meaning of sections 227.01(3) and 227.42 of the Wisconsin Statutes.

IT IS FURTHER ORDERED, that Division of Enforcement files 00 REB 265 and 98 REB 075 be, and hereby are closed.

By: Richard Hinsman

2-27-03

Board Chairperson

Date