

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
: FINAL DECISION AND ORDER
STEVEN S. GILBERTSON, :
RESPONDENT : LS0306261REB

Division of Enforcement Case No. 01 REB 056

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

Steven S. Gilbertson
7849 Summerfield Dr.
Verona, WI 53593

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

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 decision 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. Steven S. Gilbertson (Gilbertson) D.O.B. 03/22/54, is duly licensed to practice as a Real Estate Broker in the s Wisconsin (license #90 34273). This license was first granted on May 6, 1985. Gilbertson's most recent address known Department is 7849 Summerfield Dr., Verona, WI 53593.

2. On or about October 28, 2002, Gilbertson was convicted of five counts of §779.02(5) Wis. Stats. Misdemeanor Theft by Contractor (<=\$1000). A true and correct copy of the Judgment of Conviction in this matter is attached and is

incorporated herein by reference as **State's Exhibit A.**

3. The circumstances which ultimately led to the misdemeanor charges against Gilbertson involved a dispute between Gilbertson, acting as a general contractor for his construction company, Building Equity.

4. Gilbertson has been a broker and a general contractor, doing business as "Building Equity, for over twenty years. This action is only the second complaint filed against Gilbertson with the Department of Regulation and Licensing (hereinafter "Department"), since his broker's license was granted. The first complaint received in 2000 was closed not opened at the screening level.

5. During the course of his professional career, Gilbertson has built and sold twelve to fifteen different projects ranging from multi-unit condominiums to duplexes and single family homes. In October 1999, Gilbertson was approached by Ziemba who requested that he review and bid on her plans for construction of a single family home.

6. The Ziembas had originally contracted with another builder to construct their home, but were dissatisfied with the company and were seeking another general contractor to finish the home.

7. Gilbertson and the Ziembas entered into a "fixed price" contract rather than a "cost plus" contract for the completion of their new home. The contract did not include the sale of any real property, as the Ziembas already own the building lot when they approached Gilbertson. A true and correct copy of the building contract is attached and incorporated herein as **State's Exhibit B.**

8. During the course of construction, the Ziembas requested various changes to the features of the home, resulting in an increase in the actual construction costs.

9. Subsequently, a contractual dispute arose between Gilbertson and the Ziembas in regard to Gilbertson's fee for the project and the allocation of construction loan funds. The nature of this dispute is described in a memorandum submitted by his defense attorney in the criminal case. A true and correct copy of the memorandum is attached and incorporated herein as **State's Exhibit C.**

10. Unbeknownst to Gilbertson, during the construction period, several of the supply creditors for the Ziemba project were not paid due to misallocation of Gilbertson's payments to other open accounts and due to the restriction on further disbursements which the Ziembas directed to their lender.

11. Litigation was commenced between the parties, including the filing of a complaint against Gilbertson and the Ziembas with the Department of Regulation and Licensing. The complaint alleged the pending criminal action and Gilbertson's failure to renew his broker's license.

12. The civil and criminal actions were resolved with Gilbertson's agreement to plead no contest to the misdemeanor charges and the parties entering into a Settlement Agreement whereby Gilbertson paid the sum of \$84,000.00 to the Ziembas as a compromise of disputed claims and release of liability. A true and correct copy of the Settlement Agreement is attached and incorporated herein as **State's Exhibit D.**

13. The Department records confirm that Gilbertson's broker's license expired on January 1, 1997 and was renewed until March 1, 2001.

14. Gilbertson's supervising broker, Dennis Midthun, informed the Department that Gilbertson's failure to renew his license was an inadvertent error, which occurred because Gilbertson had moved and did not receive the renewal notice. Midthun voluntarily agreed and stipulated to discipline by the Board for his failure to check Gilbertson's licensure.

MITIGATING FACTS

15. In addition to the restitution paid to the Ziembas, Gilbertson, acting through his attorney, Gerald Mowris, voluntarily sent a written notice to the Department of the pending criminal charges and provided a copy of the final judgment conviction and information which described the nature of the criminal convictions as required under RL 24.17 (1), Wis. Adm. Code.

In resolution of this matter, Gilbertson consents to the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction over this matter, pursuant to sec. 440.20, Wis. Stats.
2. The Wisconsin Real Estate Board is authorized to enter into the attached stipulation, pursuant to sec. 227. Wis. Stats.
3. Respondent **Steven S. Gilbertson** has violated:
 - a. Wis. Stats. 452.14(3)(i), Stats. and Wisconsin Administrative Code §RL 24.17(1) & (2), by having been convicted of five counts of §779.02(5) Wis. Stats. Theft by Contractor (<=\$1000), which substantially relate to the practice of real estate.
 - b. Wis. Adm. Code sec. RL 24.17(3) and Wis. Stats. sec. 452.03, Wis. Stats. sec. 452.12(5)(b), Wis. Stats. sec. 452.14(3)(i) and Wis. Stats. sec. 452.14(3)(L) by practicing real estate without having a valid Wisconsin real estate license from January 1, 1997, until March 1, 2001.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the Real Estate Broker's license of **Steven S. Gilbertson** (34273) shall be **REPRIMANDED**.

IT IS FURTHER ORDERED THAT the license of **Steven S. Gilbertson** (#90 34273) to practice as a Real Estate Broker in the State of Wisconsin shall be **LIMITED** as follows:

SCOPE OF PRACTICE: LIMITATIONS AND CONDITIONS

Disclosure

1. Respondent shall provide any current or prospective real estate agency employers with a copy of this Final Decision and Order upon issuance of this Order, and upon any change of employment during the time in which the Order is in effect.

Required reporting

2. Respondent shall report to the Board any change in employment status (if it involves real estate sales) change of residence address or phone number, within fifteen (15) days of any such change. In addition, respondent shall submit documentation to the Department Monitor showing respondent's timely compliance the terms and conditions of his conviction, including payment of all fines and restitution.

3. Respondent shall comply with all terms of probation and/or parole imposed upon him, and arrange for probation/parole officer to **immediately** notify the Department Monitor of any violation of probation/parole terms. Respondent shall provide the Board with current releases complying with state and federal laws, authorizing release and access to his probation and parole records.

4. Respondent shall arrange for quarterly reports from his real estate employer(s) reporting the terms and conditions of his employment and evaluating his work performance for at least a two (2) year period following effective date of this Order. These reports shall be submitted to the Department Monitor in the Department Regulation and Licensing, Division of Enforcement. The Respondent's employer shall **immediately** report to Department Monitor any violation or suspected violation of the Real Estate Board's Final Decision and Order.

Practice restrictions

5. During the period of his limited license, Respondent shall practice only in settings where he works under supervision by another real estate broker acceptable to the Board.

6. During the period of his limited license, Respondent shall enter into listing agreements with a licensed broker for the sale of any new construction projects built by his company and keep his current supervising broker informed as to the projects handled by his construction company.

Petition for Modification of restrictions

7. At any time following two (2) years from the effective date of this Order, Respondent may petition the Board to revise or eliminate any of the above conditions. The Real Estate Board may in its discretion require that Respondent personally appear before the Board in conjunction with a petition under this paragraph to answer questions the Board may have concerning his rehabilitation. Denial in whole or in part of a petition under this paragraph shall not constitute denial of a license and shall not give rise to a contested case within the meaning of Wis. Stats. sec. 227.01(3) and 227.42.

Department Monitor

8. The Department Monitor is the individual designated by the Board as its agent to coordinate compliance with the terms of this Order, including receiving and coordinating all reports and petitions.

The Department Monitor may be reached as follows:

Department Monitor
Department of Regulation Division of Enforcement
P.O. Box 8935,
Madison, WI 53708-8935
FAX (608) 266-2264,
TEL. (608) 261-7938

Continuing Education

9. The Respondent shall take six (6) credit hours of continuing education, consisting of three (3) credit hours in ethics and three (3) credit hours in contracts. The education requirements must be completed within six (6) months from the date of this Order.

IT IS FURTHER ORDERED that Respondent shall pay a forfeiture of \$1,000.00 and partial costs of investigation and prosecution of this matter, in the amount of \$1,250.00 within ninety (90) days of the effective date of this Order.

If Respondent fails to comply with terms of this order, such failure shall be construed as constituting a violation of the Real Estate Code, thereby imperiling public health, safety and welfare and shall result in a summary suspension of Respondent's Real Estate license without further notice or hearing and the suspension shall continue until compliance has been achieved. Furthermore, the Board in its discretion may in the alternative impose additional conditions, limitations or other discipline for a violation of any of the terms of this Order.

This Order shall become effective upon the date of its signing.

REAL ESTATE BOARD

By: Richard Kollmansberger

06-26-2003

On behalf of the Board

Date